

### **REVISED SYLLABUS (2/6/14)**

This course examines major Supreme Court decisions in light of constitutional doctrine and the public policy controversies at the time they were handed down. It then places them in broader historical context. The overarching thesis of this course is that the Supreme Court is a major player in just about every major public policy in the United States. Its decisions regularly address times aspects of major policy issues. The questions are, just how important is the Court, and just how much impact do these decisions have?

The course will examine a number of major Supreme Court decisions and explore the political context in which they emerged, as well as the impact they have had. In addition to reading cases, we will read relevant political commentary of the times in order to establish the context in which these decisions arose and the impact they had.

#### **Required Readings**

MATERIALS. Malcolm Feeley and Samuel Krislov, eds., American Constitutional Law (selected cases), available from Copy Central

A basic American history text book (an out of date edition is fine) that covers U.S. political history from 1789 to the 1970s. (You can check used book stores in the area, shop on-line, or check one out of the library. If in doubt about a book, check with your GSI.) It is important that you become familiar with the political controversies at the time cases were handed down; between 1803 and the 1980s (other sources of information for more recent cases will be supplied as needed).

#### **Assignments**

There are five types of assignments for the course.

**1. Briefs.** You are expected to prepare a one page single space brief (400 words more or less) for each of the cases designated by an asterisk (\*), and have prepared it before coming to class the day the case is discussed. They are like drug tests and will be randomly collected in class, read, evaluated, and returned from time to time.

A brief consists of the following parts (pay close attention; all should be done in one single spaced typed page, of 400 words or less):

1. Name of Case (Date)

- 2.The Question (one sentence asking the single biggest question in the case)
- 3.Reasoning (a few sentences summarizing the court's reasons)
- 4.The Answer (one sentence answering the question)
- 5.Other Opinions (dissents; concurrences)

**2.Class Participation.** You are expected to read each assignment carefully before class and come prepared to be called upon to analyze the case assigned for the day. This means having read the case carefully, being able to specify the central question (almost always there is only one), discuss the Court's reasoning, and state the answer the Court gave to its question, and do this all *without* looking at your notes. Students will be called upon at random. It is not clear which is worse: not being present, or not being prepared. What is best is to come to class every day and come prepared.

**Important note: Bring your written brief to class and bring the volume with the case in it. (We may have to look up things.)**

**3. Discussion Section Participation.** Discussion section participation is crucial to this course. A number of the crucial cases and issues will only be examined in discussion section. The same drill outlined above will occur in discussion sections when cases are designated in advance. The GSIs will also present historical information setting the context for the political issues that have informed the case and/or have been generated by the case. In addition, discussion sections will provide an opportunity for students to ask questions about cases and seek elaboration of points made in the regular class sections, receive guidance on the papers assigned in the course (see below), and work in small groups to share background and contextual information about cases.

**4. Examinations.** There will be a midterm and a final examination. The exams will be straightforward. If asked, you will be required to do one or more of the following: a) specify the constitutional question in a case; b) elaborate on the reasoning of the case; c) specify the answer to the question in the case (all of which you will have prepared in advance in your briefs, although no notes are permitted at the exams); and/or describe the political and social context in which the case(s) arose or which it helped precipitate and shape (sources for this include Feeley and Krislov's section introductions and notes to the cases; class lectures; and your independent readings for your paper assignments).

**5. Papers.** You will be expected to write two short papers that elaborate on the political context and social context in which one or two or a set of cases arose, and consequences of the Court's decision. There will be eight or nine such options; you can select one paper from the first four options, and the second from the balance of the options. More details on these assignments will be forthcoming.

## **Grading**

Grades will be based upon performance on the five activities described above.

All assignments must be completed.

Briefs, Class Discussion, Pop Quizzes, and Section Participation	20%
Midterm Exam	30%
Papers (each 10%)	20%
Final Exam	30%

## **Class Assignments**

NOTE: Come to class every day (and Section once a week) prepared to be called on at random and be able to answer questions about a) the question in the case; b) the Court's reasoning; c) the Court's answer to its question; and d) the implications of the Court's decision for public policy. Come to class prepared for a pop quiz on the cases to be discussed for the day. And come to class prepared to turn in your briefs to be graded. Do not come if you are not prepared; but if you are called on and are not present, woe unto you! Note above how grades are determined. (You may receive a free pass in this once, but probably not more. All cases with an asterisk (\*) beside them should be briefed.

Also bring a copy of your case materials to class every day.

F&K = Feeley and Krislov (most cases are in this volume, except where indicated in syllabus)

Note: Look for additional materials on bspace from time to time.

## **Introduction to Courts and public policy; How to read a case; how to put in context. Judicial Review**

F&K, pp. 3-28

\*Marbury v. Madison, 29

## **National Powers and Separation of Powers**

F&K, pp. 82-89

\*McCulloch v. Maryland, 95

\*Youngstown Sheet and Tube v. Sawyer, 101

## **National Powers of Taxation and Commerce**

F&K, pp. 170-184

\*Gibbons v. Ogden, 186

\*Hammer v. Dagenhart (b-space)

\*Schechter Poultry Co. v. U.S. (pp. 200-01; 203ff.)

\*U.S. v. Darby, 212

## **Commerce**

F&K 170-184 (con't.)

\*Wickard v. Filburn

\*Heart of Atlanta Motel v. U.S.

## **Continuing Issues of Federalism**

\*Garcia v. San Antonio Metropolitan Authority, 260

\*U.S v. Lopez, (1997), (supplementt)

\*NFIB v. Sebelius case (supplement)

## **Presidential Power**

F&K, pp. 90-93

\*Korematsu v. U.S., (supplement)

\*New York Times v. U.S. (supplement)

\*Boumediene v. Bush (2008) (supplement)

## **Property and the Constitution**

F&K 327-338

Charles River Bridge Co. v. Warren, 344

Slaughter House cases, 356

Home Building and Loan v. Blaisdell, 346

\*Munn v Illinois, 366

\*Lochner v. New York, 363

## **Nationalization of the Bill of Rights.**

F&K, pp. 375-382

\*Palko v. Connecticut (supplement)

## **Criminal Justice**

F&K, 555-570

- \*Powell v. Alabama (supplement)
- \*Gideon v. Wainwright, 619

### **Death penalty**

- F&K651-654
- \*Gregg v. Georgia, 655
- \*McCleskey v. Kemp, 661
- \*Atkins v Virginia(supp.)
- List of Supreme Court  
Decisions on Capital  
Punishment

### **Administrative Due Process Revolution**

- F&K671-674
- Charles Reich, The New Property (handout)

- \*Goss v. Lopez, 678
- \*Goldberg v Kelly, 681
- \*Matthews v Eldridge,685

### **Equal Protection (early cases and race)**

- F&K, 690-709
- Civil Rights Cases, 738
- \*Bradwell v. Illinois (supplement)
- \*Plessy v. Ferguson, 710
  
- \*Yick Wo. v. Hopkins (supplement)
- \*Mendez v. Westminster (supplement)
  
- \*Brown v Board of Education (1954)
  
- \*Swann et al v. Charlotte-Mecklenburg Board of Ed, 717
- \*Milliken v. Bradley, 724
  
- \*Regents v. Bakke, 754
  
- \*Gratz v Bollinger and  
\*Grutter v. Bollinger  
(supplement—both cases  
together)

### **Equal Protection (other)**

- F&K 797-815)(read carefully)

### **Fifteenth Amendment and Voting Rights**

F&K 184-186

\*South Carolina v. Katzenbach (supplement)

\*Shelby County v. Holder (supplement)

### **Right to privacy/autonomy: abortion**

F&K 870-887

\*Roe. Wade, 38

\*Planned Parenthood v Casey (supplement)

### **Privacy, gay rights; same sex marriage**

\*Lawrence v. Texas (supplement)

\*U.S. v. Windsor (supplement)

