

CONSTITUTION IN HISTORICAL PERSPECTIVE

NOTE—for fall 2018, the syllabus will be revised to include more material on post-2000 developments and current controversies. The reading list will also change.

The Course: This class is intended to give students a basic knowledge of American constitutional history. It assumes that constitutional history is a subset (and an important subset) of political history and should be treated as such. It further assumes that the Constitution changes radically over time, that it has no fixed meaning, and that, in the nature of things, it cannot have a fixed meaning. It also assumes that the Supreme Court is not an autonomous player in the American political system and that, in the words of Mr. Dooley, sooner or later the Court follows the election returns.

Prerequisites: There are no prerequisites for this course. Nevertheless, students should have a grasp of the general course of American political history.

Requirements: Regular attendance, timely completion of assignments, mid-term examination, bookreview, and final examination.

Readings: The following required books are available at the Columbia Bookstore:

- Stanley Kutler, ed., The Supreme Court and the Constitution, 3rd ed. (Norton)
- Michael Les Benedict, The Blessings of Liberty (Heath)
- Jack Rakove, James Madison
- Jill Norgren, The Cherokee Cases (McGraw Hill)

- Richard Polenberg, Fighting Faiths (Penguin)
- Peter Irons, The New Deal Lawyers (Oxford)
- J. Harvie Wilkinson, From Brown to Bakke (Oxford)

Please note that all reading is on reserve in the Barnard Library Reserve Room; items marked with an asterisk are available only in the Barnard Library Reserve Room.

Bookreview: A ten-page bookreview is due on 25 April. I will distribute a list of approved books for the bookreview next week, together with instructions on format and contents. If you cannot find a book on the list that interests you, you may substitute a book of your choice with my written permission.

Grading: Your grade for this course has three components, with weights as indicated: the midterm examination (25%), the bookreview (25%), and the final examination (50%). Half of the final will be cumulative; the other half will cover material since the midterm. Please note that success on the examinations requires a thorough knowledge of the Supreme Court cases excerpted in the Kutler reader.

Schedule:

16 Jan Introduction

18 Jan Philadelphia, 1787: Kutler, 741-49; Benedict, 50-94

23 Jan The Bill of Rights: Kutler, 749-51; Rakove, all

25 Jan The 1790s: Kutler, 3-22; Benedict, 95-103

30 Jan Marbury and Judicial Review: Kutler, 25-35; Benedict, 103-20

1 Feb Jeffersonian Tensions: Kutler, 36-98; Benedict, 121-32

6 Feb Jacksonian Tensions: Norgren, all; Benedict, 133-46

8 Feb More Jacksonian Tensions: Kutler, 101-09, 126-44; Benedict, 147-54

13 Feb The Court and Property Rights: Kutler, 114-25

15 Feb Slavery and the Court: Kutler, 110-13, 145-57; Benedict, 155-82

20 Feb The Civil War and the Collapse of the First Constitution: Kutler, 161-69; Benedict, 183-98

22 Feb MIDTERM EXAMINATION

27 Feb Constructing the Second Constitution: Kutler, 170- 91; Benedict, 199-223

29 Feb Interpreting the Second Constitution: Kutler, 193- 96, 225-41; Benedict, 224-46

5 Mar The Rights of Property and the Second Constitution: Kutler, 242-317, Urofsky, "State Courts" *; Benedict, 247-62

7 Mar Apartheid, American-style: Kutler, 197-221

12 Mar NO CLASS--SPRING VACATION

14 Mar NO CLASS--SPRING VACATION

19 Mar World War I and Civil Liberties: Polenberg, all, Kutler, 321-36; Benedict, 262-72

21 Mar The Roosevelt Court and Civil Liberties: Kutler, 486-90, 511-19, 708-12; Benedict, 306-10

26 Mar The New Deal and Crisis: Irons, all; Kutler, 337- 418; Benedict, 272-302

28 Mar The Cold War and Civil Liberties: Kutler, 429-62; Benedict, 310-15

2 Apr The Vicissitudes of Executive Power: Kutler, 703-08, 713-37

4 Apr Triumphs and Tribulations of the Warren Court: Kutler, 490-510, 615-44; Benedict, 315-25

9 Apr Religious Freedom and Its Problems: Kutler, 520-47

11 Apr Twenty Years of Civil Rights and the Court: Kutler, 548-614, 688-702; Wilkinson, all; Benedict, 326-372

16 Apr Gender and the Constitution: Goldstein, ed., Constitutional Rights of Women*, 165-80, 282-97, Kutler, 645-61, 683-87

18 Apr The Supreme Court and the Limits of Change: TBA

23 Apr Problems of Interpretation Revisited, and the Strange Re-emergence of Conservative Constitutionalism: Rakove, ed., Original Intent*, 13-34, 197-226; Benedict, 356-68

25 Apr A Few Words on the Rehnquist Court: Benedict, 369-89

BOOK REVIEW DUE.

11 May FINAL EXAMINATION (1:10-4:00 pm).