

L/PS/H 148b The Supreme Court in U.S. History

Spring, 2008, Tuesday, 7:30 P.M., Baxter 210

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Course Requirements

This course is open *only* to students who have taken 148a or an equivalent course at another university. Each student must make two oral presentations and submit papers on topics related to each of the oral presentations. **Note that the last date that papers can be turned in is June 3, the date of the last class.** There will be no mid-term, but the 3-hour **closed-book, close-notes, closed-internet** final will cover all the material assigned from the O'Brien casebook, plus anything said by me or your fellow students in class. Note, please, that anyone who takes this course will receive a letter grade. It is not available on a Pass/Fail basis.

The three books assigned to everyone are David M. O'Brien's *Constitutional Law & Politics*, 6th ed., vols. *I* and *II*, and his 2007 Supplement, referred to as "Supp." in the assignment column. In addition, you should listen to audiotapes of selected oral arguments available at [<HTTP://www.Oyez.org/>](http://www.Oyez.org/). Material from them will appear on the final exam.

Week of	Topic	Assignment	Recording
April 1	Organization	None	
April 8	Economic Rights	<i>I</i> : 949-1014; Supp. 104-12	<i>Kelo</i>
April 15	Nationalization Bill of Rights	<i>II</i> : 304-385	<i>Griswold v. CT</i>
April 22	Free Speech, Obscenity	<i>II</i> : 386-517; Supp. 127-32	<i>FCC v. Pacifica</i>
April 29	Libel, Press	<i>II</i> : 526-606	<i>Masson v. N Yorker</i>
May 6	Confessions, Counsel, Death	<i>II</i> : 1018-82, 1091-1106, 1161-1221; Supp. 181-89	<i>Payne v. TN</i>
May 13	Privacy, Abortion	<i>II</i> : 1222-1324; Supp. 191-203	<i>Gonzales v. Carhart</i>
May 20	Broadcast, Symbols, Association	<i>II</i> : 606-687	<i>NAACP v. AL</i>
May 27	Religion: Establishment	<i>II</i> : 688-798; 2005: 47-72; Supp., 134-52	<i>Newdow</i>
June 3	Religion: Free Exercise; searches, wiretaps	<i>II</i> : 798-849, 962-69, 990-98	<i>Locke v. Davey</i>

Students learn best actively. The “book reports” will give you the chance to make two topics your own and to inform us all about them. Each student is to read one book basically about doctrines or issues and one that is more biographical or popular. In each instance, pick something from the book – it may be the whole book – that interests you and that you can tell the class about in 15 minutes. As in 148a, please supply a handout for the oral presentation. A week after the oral report, you should hand in to me a written report of about 8-10 pages in length on a topic explored or touched on in your oral report.

Please email the briefs and presentation notes to Sabrina, with a copy to me, by noon on Tuesday.

Because we ran out of time for oral reports last quarter, I’ll try to limit the length of the oral presentations this term. Please try to do so yourselves. As you learn more about this or any subject, you’ll be able to focus more easily on the truly important questions, so greater compression of reports and briefs should be a natural process. I’ll help it along if need be.

Issue Books

Date	Author/Title	pages	call number
Ap.8	David C. Williams, <i>The Mythic Meanings of the Second Amendment</i>	326	KF4558.2nd.W55. 2003
Ap. 15	1. Edward J. Cleary, <i>Beyond the Burning Cross: The First Amendment and the Landmark R.A.V. Case</i> (free speech) 2. Richard Polenberg, <i>Fighting Faiths: The Abrams Case, The Supreme Court, and Free Speech</i> 3. David Rabban, <i>Free Speech in Its Forgotten Years</i> 4. Donald Downs, <i>The New Politics of Pornography</i> (paired with) Catharine MacKinnon, <i>Only Words</i>	222 370 400 200 150	KF228.S23.C54. 1994 KF224.A34.P65. 1987 KF4772.R33.1997 KF9444.D69.1989 KF4772.M33.1993
Ap. 22	Anthony Lewis, <i>Make No Law: The Sullivan Case and the First Amendment</i>	350	KF1266.L48.1991

Ap. 29	1. Austin Sarat, <i>When the State Kills: Capital Punishment and the American Condition</i>	260	HV8699.U5.S27. 2001
	2. Carole McCann, <i>Birth Control Politics in the U.S., 1916-45</i>	210	HQ766.5.U5.M43. 1994
	3. Melvin Urofsky, <i>Lethal Judgments: Assisted Suicide and American Law</i>	150	KF3827.E87.U755. 2000
	4. Stuart Banner, <i>The Death Penalty: An American History</i>	310	HV8699.U5.B367. 2002
	5. Franklin Zimring, <i>The Contradictions of American Capital Punishment</i>	200	HV8699.U5.Z563. 2003
May 6	1. William Eskridge, <i>Gaylaw</i>	325	KF4754.5.E84. 2002
	2. Bernard Schwartz, <i>Decision: How the Supreme Court Decides Cases (on Webster v. Reproductive Health Services)</i>	270	KF8742.S323.1996
	3. Eva R. Rubin, ed., <i>The Abortion Controversy: A Documentary History</i>	300	KF3771.A7.A26. 1994
	4. N.E.H. Hull and P.C. Hoffer, <i>Roe v. Wade: The Abortion Rights Controversy in Am. History</i>	279	KF228.R59.H85. 2001
	5. Stephen Schulhofer, <i>Unwanted Sex: The Culture of Intimidation and the Failure of Law</i>	282	KF9325.S38.1998
	6. David Richards, <i>Women, Gays, and the Constitution</i>	460	KF4754.5.R53. 1998
May 13	1. Donald P. Judges, <i>Hard Choices, Lost Voices: How the Abortion Conflict Has Divided America, Distorted Constitutional Rights, and Damaged the Courts</i>	295	KF3771.J83.1993
	2. Barbara Craig & David O'Brien, <i>Abortion and American Politics</i>	360	HQ767.5.U5.C73. 1993
	3. Donald Critchlow, <i>Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America</i>	240	HQ763.6.U5.C75. 1999
	4. Leslie Reagan, <i>When Abortion Was a Crime: Women, Medicine, and Law in the U.S., 1867-1973</i>	250	HQ767.5.U5.R378. 1997
May 20	1. Philip Hamburger, <i>Separation of Church and State</i>	500	BR516.H19.2002
	2. Rodney K. Smith, <i>Public Prayer and the Constitution</i>	300	KF4162.S63.1987
	3. David Manwaring, <i>Render Unto Caesar: The Flag-Salute Controversy</i>	250	KF4162.M3

May 27	1. Bette Evans, <i>Interpreting the Free Exercise of Religion</i>	250	BR516.E9.1997
	2. Carolyn N. Long, <i>Religious Freedom and Indian Rights: The Case of Oregon v. Smith</i>	279	KF228.O74.L66. 2000
June 3	1. David Bodenhamer, <i>Fair Trial: Rights of the Accused in American History</i> (paired with) John F. Decker, <i>Revolution to the Right: Criminal Procedure Jurisprudence During the Burger-Rehnquist Court Era</i>	138	KF4765.B63.1992
		116	KF9619.D43.1992
	2. Akhil Amar, <i>The Constitution and Criminal Procedure: First Principles</i>	180	KF9619.A43.1997

Theory Books

Date	Author/Title	pages	call number
Ap. 8	Michael Curtis, <i>No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights</i> (paired with) Raoul Berger, <i>The Fourteenth Amendment and the Bill of Rights</i>	220	KF4757.C87.1986
		150	KF4757.B42.1989
Ap. 15	1. Akhil Amar, <i>The Bill of Rights: Creation and Reconstruction</i>	300	KF4750.A436. 1998
	2. Wayne D. Moore, <i>Constitutional Rights and Powers of the People</i>	290	KF4552.M66.1996
	3. Ronald Dworkin, <i>Taking Rights Seriously</i>		K240.D86
	4. Thomas I. Emerson, <i>The System of Freedom of Expression</i> , chapters 1-3, 11-12, 17-20 + any two other chapters	200+	KF4770.E44

Ap. 22	1. Leonard Levy, <i>Origins of the Bill of Rights</i> 2. Michael K. Curtis, “ <i>The People’s Darling Privilege</i> ”: <i>Struggles for Freedom of Expression</i> (ch. 1-3, 6-9, 15-17) 3. Jack Rakove, <i>Original Meanings: Politics and Ideas in the Making of the Constitution</i>	280 300 370	KF4749.L488.1999 KF4772.C87.2000 KF4541.R35.1996
Ap. 29	1. Ronald Dworkin, <i>Life's dominion : an argument about abortion, euthanasia, and individual freedom</i> 2. Christopher Wolfe, <i>The Rise of Modern Judicial Review</i> (Parts I and III) 3. Larry Yackle, <i>Regulatory Rights</i>	250 350 175	KF9315 .D85 1993 KF4575.W65.1994 KF4552.Y33.2007
May 6	1. Ronald Dworkin, <i>Freedom's law : the moral reading of the American Constitution</i> 2. Cass Sunstein, <i>One Case at a Time: Judicial Minimalism on the Supreme Court</i> 3. Michael J. Perry, <i>Morality, Politics, and Law</i>	350 263 200	KF4552 .D96 1996 KF8748.S875.1999 KF4552.P47.1990
May 13	1. Calvin Massey, <i>Silent Rights: The Ninth Amendment and the Constitution’s Unenumerated Rights</i> 2. Sanford Levinson, <i>Constitutional Faith</i> 3. William F. Harris II, <i>The Interpretable Constitution</i> 4. Ronald Dworkin, <i>Justice in Robes</i>	220 200 200 260	KF4558.9th.M37.1995 KF4552.L48.1988 KF4550.H375.1992 K290.D89.2006
May 22	1. Frank Lambert, <i>The Founding Fathers and the Place of Religion in America</i> 2. Louis M. Seidman, <i>Our Unsettled Constituion</i>	300 215	BR516.L29.2003 KF4550.S38.2001
May 29	1. Sotirios A. Barber, <i>The Constitution of Judicial Power</i> 2. Ronald Dworkin, <i>Sovereign Virtue: The Theory and Practice of Equality</i>	240 part I, 1-303	KF4575.B37.1993 JC575.D86.2002
June 3	Charles Fried, <i>Saying What the Law Is: The Constitution in the Supreme Court</i>	250	KF4550.F728.2004