Themes and Objectives

MC 378 is not a conventional Constitutional law course. It does not attempt to follow the development of the U.S. Supreme Court, as a single institution, and its cases as they stand in isolation. Rather the attempt in this course is to examine landmark Supreme Court cases in US Constitutional law in order to understand the historical, dynamic and complex relationship between fundamental law and the inclusion and exclusion of social groups broadly understood, and how this inclusion and exclusion shapes the role of social groups in American social and political life.

The course will be organized around two parts. In the first section we will examine the dynamic definition of citizenship in the United States and place of the judicial review and separation of powers in a constitutional system. In the second section, we will examine the highly contested arenas of due process, equal protection and religion and the effects of judicial decisions on social groups.

It is of the essence of modern constitutional government that the law protect citizens and preserve free society. But what is free society and how is it dependent upon and independent of the law? Who are citizens? How is the Constitution to protect the free action of social groups without establishing "social" groups of its own? What of the freedom of the individual with respect to the actions and protections of social groups in free society -- how is the law to arbitrate between the two?

Texts

The following book is REQUIRED for this course and should be purchased:


Please also have available:

2. *The Federalist Papers*

Recommended books include the following:

1. Rogers Smith, *Civic Ideals*
2. Rogers Smith, *Liberalism and American Constitutional Law*
3. John Locke, *A Letter Concerning Toleration*
4. Judith Shklar, *American Citizenship*
5. Mary Ann Glendon, *Rights Talk*
6. Ely, *Democracy & Distrust*
7. Jeffrey Toobin, *The Nine*
8. Jan Crawford Greenberg, *Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court*

**Format and Requirements**

MC 378 will meet in a lecture and discussion format. Students are encouraged to participate in class. Reading assignments should be completed before class on the day they are due. Also you will be asked to present at least one court case to the class.

There is one short essay, a midterm, and a final in this course. In addition students must "brief" all of the required cases [denoted with an *] on the syllabus. Briefs will be turned in twice over the course of the semester. This collection of case summaries will then serve as an indispensable aid in preparing for the examinations. A sample brief of *Marbury v. Madison* and a guide to briefing cases will be distributed during the first week of classes.

Course grade will be computed according to the following percentages:

- Class participation: 15% including presentation of your Cases
- Short essay: 10% [late-March.]
- Legal briefs: 20%
- Midterm: 25% [March 2]
- Final examination: 30% [May 4: 10-12]

All written work and your Case presentations must be completed in order to receive a passing grade for the course, and College and University policies on academic honesty will apply to all work in the course.

**Schedule of Readings**

**The Constitutional Order and Citizenship** (Weeks I - V)

Weeks I & II: (Jan.10-19) Judicial Review
- US Constitution and *Federalists Papers* #s 1, 10, 78
- Sullivan & Gunther, *Constitutional Law*, pp. 1-30
- Cases: *Marbury v. Madison*, 1 Cranch 137 (1803)
  * Martin v Hunter's Lessee, 1 Wheat 304 (1816)
  * Exparte Parte McCardle, 7 Wall. 506 (1869)

Recommended: Sullivan & Gunther, *Constitutional Law*, pp. 31-59
Weeks III & IV (Jan. 24 - Feb 2): Separation of Powers
Sullivan & Gunther, Constitutional Law, pp. 248-347

Week III (Jan. 24 - 26) (pp. 248-300)
Cases: * Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)
  Ex Parte Quirin, 317 U.S. 1 (1942)

Week IV (Jan. 31 – Feb. 2) (pp. 300-347)

Week V: (Feb.7-9) National Citizenship & Incorporation
Sullivan & Gunther, Constitutional Law, pp. 348-370
  * Slaughter-House Cases, 16 Wall. 36 (1874)
  Duncan v. Louisiana, 391 U.S. 145 (1968)

FIRST SET OF BRIEFS DUE: Feb. 11 by 5:00 pm

Substantive Due Process and Privacy (Weeks VI-IX)
Sullivan & Gunther, Constitutional Law, pp. 362-380, 413-469

Week VI: (Feb 14-16) (pp. 375-398)
Cases: * Dred Scott v. Sanford, 19 How. 393 (1857) on ANGEL
  * Lochner v. NY, 198 U.S. 45 (1905)
  * U. S. v. Carolene Products Co., 304 U.S. 144, (1938)

Week VII: (Feb. 21-23) (pp. 427-464)
Cases: Meyer v. Nebraska, 262 U.S. 390 (1923)
  * Griswold v. CT, 381 U.S. 479 (1965)
  * Roe v. Wade, 410 U.S. 113 (1973)

Week VIII: (Feb 28 – March 2)
Review and Summary

Midterm

SPRING BREAK

Week IX: (Mar. 14-16) (pp. 464-484)

Classifications & Equal Protection (Weeks X-XIV)
   Sullivan & Gunther, Constitutional Law, pp. 641-643, 500-531, 531-576, 586-616

Week X: (Mar. 21-23) (pp. 625-632, 500-531)
   * Strauder v. West Virginia, 100 U.S. 303 (1880)
   * Korematsu v. United States, 323 U.S. 214 (1944) on ANGEL
   * Plessy v. Ferguson, 163 U.S. 537 (1896) on ANGEL
   Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Week XI: (Mar. 28- 30)
   Sullivan & Gunther, Constitutional Law, pp. 531-576

recommended: pp. 576-586

Week XII: (April 4-6)
   Sullivan & Gunther, Constitutional Law, pp.586-616
   Cases: Frontiero v. Richardson, 411 U.S. 677 (1973)
   * Craig v. Boren, 429 U.S. 190 (1976)

Week XIII: (April 11-13)
   Sullivan & Gunther, Constitutional Law, pp. 630-641, 654-692
   * Reynolds v. Sims, 377 U.S. 533 (1964)
Religion & Constitutionalism Week XIV (Apr. 18-20)
Free Exercise
Sullivan & Gunther, Constitutional Law, pp. 1275-1318

FINAL SET OF BRIEFS DUE: April 20 by 5:00 PM

Week XV: (Apr. 25-27)
Review and Conclusions

FINAL: Wednesday, May, 4: 10:00-12:00

Statement on Academic Honesty
Shared with other Madison Professors

The internet has increased the opportunities for academic dishonesty. Students should be aware that presenting the work of others so that it appears to be their own work is a violation of moral and professional standards, one that the College and University treat very seriously. Students are forewarned that College policies will be strictly enforced in this class; that the College and University are well aware of the various internet “services” that supply essays, summaries, etc.; and that the University Library actively investigates suspected cases of plagiarism by means of multiple search tools and several databases of hundreds of thousands of essays.

“What is plagiarism? In minor cases, it can be the quotation of a sentence or two, without quotation marks and without a citation (e.g., footnote) to the true author. In the most serious cases, a significant fraction of the entire work was written by someone else: the plagiarist removed the true author(s) names(s) and substituted the plagiarist's name, perhaps did some re-formatting of the text, then submitted the work for credit in a class (e.g., term paper or essay) or as part of the requirements for a degree (e.g., thesis or dissertation).” Ronald B. Sandler, “Plagiarism in Colleges in USA”