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American Constitutional Law Syllabus

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Political Science 339 AMERICAN CONSTITUTIONAL LAW Autumn 1990

Dr. Samson, LUB 206 Office Hours: 10-11 MW, 3-4:30 TR Phone: x7935

DESCRIPTION

This course is a topical and developmental survey of the principles of the American Constitution. The first part of the course covers the development of the principles of constitutionalism, judicial review, federalism, and the separation of powers. The balance of the term is focused on key developments in the areas of intergovernmental relations, regulation of commerce, civil liberties protections, and criminal procedure. The course objectives are as follows:

1. To examine some of the sources of American constitutional theory and practice.
2. To consider the role of the Supreme Court in the American political system.
3. To examine areas of constitutional and political continuity and change within the federal system.
4. To develop skills in political research and effective citizenship.
5. To enable students to explore the role of ideological presuppositions that help shape contemporary social and political issues.

REQUIREMENTS

1. Each student is responsible for all assigned readings, including handouts and other supplementary materials. Students should keep lecture notes and supplementary materials in a looseleaf notebook.
2. Students will be tested on their knowledge of material covered in the reading assignments and classroom lectures through three exams (60%), two book reviews (20%), and participation, including briefs (20%). Extra credit adds 2% to the overall score.
3. The three short answer and essay exams are scheduled for October 2nd, November 6th, and finals week.
4. The first book review -- O'Brien's <u>Storm Center</u> -- is due on September 25th. The second review will be on a book chosen by the student but must be cleared with the professor. It will be due on October 30th. It may examine any subject relating to the topics covered in the course: biographical, philosophical, or institutional.
5. Students are expected to brief the assigned cases before they are discussed in class. A format for briefs and some tips about briefing are included in this packet.
6. Attendance is mandatory. One week's absence may be excused for good cause. Two weeks' absences substract 2% from the overall score. Three weeks' absences require a withdrawal or result in a failing grade.
7. It is imperative that book reviews and other work be completed on time. Tardiness subtracts 1% each time and 2% if work is at least three days overdue.
8. Two extra credit points may be earned by attending two talks by Russell Kirk during his Presidential Lectures, November 14th-16th.
9. The grading scale is 93-100=A, 91-92=A-, 89-90=B+, 83-88=B, 81-82=B-, 79-80=C+, 73-78=C, 71-72=C-, 69-70=D+, 63-68=D, 61-62=D-, 0-60=F.

READING

Textbooks:

Kammen, Michael, ed. The Origins of the American Constitution: A Documentary History (optional)

Mason, Alpheus Thomas, and Donald Grier Stephenson, Jr. American Constitutional Law: Introductory Essays and Selected Cases, 9th ed.

O'Brien, David M. Storm Center: The Supreme Court in American Politics, 2nd ed.

Supplementary Readings (on reserve)

CALENDAR

ONE: THEORIES OF LAW AND JUSTICE

A. BIBLICAL LAW: Rushdoony, Institutes, pp. 1-14; Silving, "Jurisprudence;" Wines (optional)
B. NATURAL LAW: Blackstone; Lon Fuller
C. POSITIVE LAW: H. L. A. Hart

TWO: FORMATION OF THE WESTERN LEGAL TRADITION

A. ROMAN LAW: Berman (optional)
B. FOLKLAW: Kirk, Roots, pp. 177-83.
C. MEDIEVAL SYNTHESIS: Kirk, Roots, pp. 183-200; Silving, "Origins;" Magna Carta

THREE: ORIGINS OF AMERICAN CONSTITUTIONALISM

A. COLONIAL PERIOD: Boettner, pp. 382-99; Bahnsen, Lutz; Wright (optional)
B. INDEPENDENCE: Titus, "Declaration;" Mason, pp. 22-38 (Locke).
C. FEDERAL SYSTEM: Riker; Rushdoony, Republic, pp. 1-22, 156-59; Samson, Swords, pp. 163-83.

FOUR: FEDERALIST AND ANTI-FEDERALIST WRITINGS

A. FEDERALIST PAPERS: 1, 6, 9, 10, 15, 39, 47, 51, 62-63, 70, 78
B. ANTI-FEDERALISTS: Mason, pp. 253-67, 277-83.

CONSTITUTIONAL LAW

Reading List

Kelly, Alfred H. and Winfred A. Harbison. The American Constitution
Burgess, John W. Recent Changes in American Constitutional Theory
Bancroft, George. A Plea for the Constitution
Corwin, Edward S. "The Supreme Court as a National School Board"
Note: "The Changing Role of the Jury in the Nineteenth Century," Yale Law Journal, 74 (1964): 170-94.
Hall, Livingston. "The Substantive Law of Crimes," Harvard Law Review (1937)
Keedy, Edwin R. "History of the Pennsylvania Statute Creating Degrees of Murder," University of Pennsylvania Law Review (1949)
Friedman, Lawrence M. and Jack Landinsky, "Social Change and the Law of Industrial Accidents," Columbia Law Review (1967)
Warren, Charles.

Cases:

American Constitutional Law REVIEW QUESTIONS First Exam Dr. Samson

1. Compare the views of supporters and opponents of the Constitution regarding the advantages (or disadvantages) of a large republic.

2. Compare the expectations of supporters and opponents of the Constitution regarding the judiciary. How was the historical role of juries changed?

3. Compare the views of supporters and opponents of the Constitution regarding the ability of states to protect their rights and interests. What evidence did they give in support of their conclusions?

4. Identify four specific provisions of the Articles of Confederation that weakened the political system. Explain why.

5. What are the implications for Rushdoony of the law's dependence on an underlying system of religion? Is religious toleration possible?

6. How does Helen Silving show the influence of the biblical tradition on social (or state) contract theory? Where do these traditions differ?

7. What advantages did John Locke find in a social contract and civil government over a state of nature? How do Locke and the Declaration of Independence reflect the Christian tradition of resistance to tyranny?

8. Identify six medieval and early modern elements that contributed to the development of the American constitutional tradition. How were they woven together in colonial New England?