

**LAW 4074****U.S. CONSTITUTIONAL LAW  
AND COMPARATIVE CIVIL LIBERTIES****Fall 2007**

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**SYLLABUS AND READING LIST****INTRODUCTION**

This is an advanced seminar in constitutional law. Our focus is U.S. constitutional law and civil liberties, with comparative analysis of Canadian law.

We begin with a “crash course” in *some* of the basic principles of US constitutional law, including (1) the history of the U.S. constitution (2) the history and interpretation of the Bill of Rights and the Civil War Amendments and (3) the impact of the U.S. federal system on civil liberties.

We then compare and contrast US and Canadian constitutional law in such areas as abortion, religious freedom, and terrorism.

**COURSE EVALUATION**

As this is a seminar with limited enrollment, I look forward to a high level of engagement from all of you.

Your grade is determined on the basis of:

1. One essay (20-25 pages), on a topic of your choice but approved by me, due **Tuesday, December 4, 2007.** (50%)

The paper must be **comparative** or **focused on U.S. Constitutional Law**. It may be research-oriented or more philosophical, but it *must* be critical in nature with a clear, well-developed argument. A purely descriptive paper is insufficient.

A one-page précis of your proposed essay is due no later than **Tuesday, October 23**. I encourage you to think about your papers, discuss topics with me, and submit your précis as early as possible.

2. Two short “reaction papers”, 2-3 pages in length, on some aspect of the readings assigned for a class. (20%)

At least one of your reaction papers must be on a subject covered in Part One of the course (classes 2-11).

A sign-up sheet will be distributed in the second week of classes. A maximum of two students may submit reaction papers for any one class.

Papers are due at noon on the day preceding the class in question, e.g., Monday at noon for a Tuesday class. **Papers not submitted in time will not receive credit. All papers for classes for which you have signed up must nonetheless be submitted before your final grade is calculated.**

Any student may submit more than two papers, in which case I will count only the best two. In that case, papers 3,4,5 etc. are not subject to the “two reaction papers per class” rule.

You will be considered “on call” in classes for which you have officially signed up (as opposed to merely submitting extra papers); you should assume that I will engage you in discussion.

All papers must be typewritten. I would appreciate receiving them electronically but hard copies are fine too.

3. Class attendance and participation (30%)

A significant portion of your grade is reserved for attendance and participation. This component is not a giveaway; you will be marked rigorously on the quality of your participation throughout the seminar.

Following many of the cases in the materials, I have included questions for you to think about. Although we will not be able to cover them all, they will be the principal basis for discussion.

**OFFICE HOURS:**

Tuesdays 3:30 – 5:30, or by appointment. Feel free to email me as well.

**MATERIALS**

Mathen, “*U.S. Constitutional Law and Comparative Civil Liberties*”, Fall 2007 (LSS Bookstore). Volumes 1 and 2 are in; Vol. 3 should be available very shortly; Vol. 4 will be available in a few weeks.

Some materials have been placed on reserve.

I have created a TWEN page for this course. The password is “Marshall”. You may sign up at your convenience.

**READING LIST**

A few Canadian cases, in parentheses, are not included in your materials. You should nonetheless have a sufficient understanding of them to engage in analysis and debate. (You may need to return to your first-year notes!)

The materials marked with an asterisk (\*) are recommended, but not required. I categorized materials in this way to assist you with prioritization. Generally, you should read the cases before anything else. If you are on call for a class, you should read all the materials.

**a. US Constitutional Law****First Principles – Class #1**

(September 11)

*Constitution Act, 1982*

*US Constitution*

\*Articles of Confederation

\*Declaration of Independence

\*Madison, *Federalist #10*

\*Madison, *Federalist, #51*

Hamilton, *Federalist #78*

*Marbury v. Madison*

\*Tribe, *Federal Courts*

**Enumerated Powers, Federalism and the Bill of Rights – Class #2**

(September 13)

*Recall* US Constitution, Preamble*McCulloch v. Maryland*\*Madison, *Letter to Spencer Roane*Tribe, *Federal v. State Courts**Tennessee v. Lane*\*Hamilton, *Federalist #84*Madison, *Letter to Thomas Jefferson**Recall* U.S. Constitution, Amendments I – X**Racial Subordination – Class #3**

(September 18)

*Recall* Declaration of Independence

US Constitution, Article I §2 cl.3, §9 cl.1; Art. IV, §2 cl.3

Madison, *Federalist #54*

The Missouri Compromise

*Dred Scott v. Sandford*

\*Matthew Spalding, “Understanding Slavery and the Constitution”

\*Thurgood Marshall, “Commentary”

\*Sanford Levinson, “...Would You Sign the Constitution?”

**The Reconstruction Amendments - Class #4**

(September 20)

US Constitution, Amends XIII, XIV and XV

Black Code – Mississippi (1865)

*Slaughterhouse Cases*

Civil Rights Act of 1875

*Civil Rights Cases**Plessy v. Ferguson***The “Second Reconstruction” – Class #5**

(September 25)

*Brown v. Board of Education 1 and 2*

William Rehnquist, “A Random Thought on the Segregation Cases”

Herbert Weschler, “Toward Neutral Principles of Constitutional Law”

“The Southern Manifesto”

*Cooper v. Aaron*

\*Adam Cohen, “The Supreme Struggle”

### **The Role of the Commerce Clause – Class #6**

(September 27)

Civil Rights Act, 1965

Recall US Constitution, Art. I § 8 cl. 3

*Heart of Atlanta Motel*

Carissima Mathen, “Constitutional Dialogue in Canada and the United States”

*United States v. Morrison*

### **Equal Protection Doctrine – Class #7 (Discussion may begin on September 27)**

(October 2)

Hogg, *Constitutional Law of Canada*

*Carolene Products* (Footnote 4)

*New York Transit Authority v. Beazer*

Recall *Brown #1*

*Washington v. Davis*

(*Andrews v. Law Society of British Columbia*)

(*Law v. Canada*)

\**Eldridge v. British Columbia*.

*Auton v. British Columbia*

### **The First Amendment (Speech) – Class #8**

(October 4)

Recall US Constitution, Amend. I

*Sedition Act (1798)*

*Sedition Act (1918)*

*Schenck v. United States*

*Abrams v. United States*

*Chaplinsky v. New Hampshire*

*Brandenburg v. Ohio*

*New York Times v. Sullivan*

\* Richards, *Foundations of American Constitutionalism* (RS)

(*Irwin Toy*)

(*Keegstra*)

**The First Amendment (Religion) – Class #9**

(October 9)

Lawrence Tribe, “Rights of Religious Autonomy”  
 James Madison, *Memorial and Remonstrance*  
*Rosenberger v. Rectors of the University of Virginia*  
*Glassroth v. Moore*  
*(R. v. Big M Drug Mart)*  
*(R. v. Edwards)*

**Due Process - Class #10**

(October 11)

*Lochner v. New York*  
 Shapiro and Tresolini, *American Constitutional Law*  
*Griswold v. Connecticut*  
*Reference re: Motor Vehicle Act (BC)*  
*(Edwards v. A.G. Canada – The Persons Case)*

**Perspectives on Constitutional Interpretation - Class #11**

(October 18)

Antonin Scalia, *A Matter of Interpretation*  
 Ronald Dworkin, “Comment on Scalia”  
 Tribe and Dorf, “Judicial Value Choice in the Definition of Rights”  
*Recall* Weschler, “Neutral Principles”

**b. Comparative Civil Liberties****Abortion – Class # 12**

(October 23)

*Roe v. Wade*  
*R. v. Morgentaler*  
*Casey v. Planned Parenthood*  
 Amy Richards, “When One is Enough”  
*Medical Services Payment Act (N.B.)*  
 \*Judith Jarvis Thomson: A Defence of Abortion (RS)

**Hate Speech – Class #13**

(October 25)

*Beauharnais v. Illinois*

*RAV v. City of St Paul*

*R. v. Keegstra*

Mari Matsuda, “Public Response to Racist Speech: Considering the Victim’s Story”

U.N.B.L.J. Symposium – *The Danish Cartoon Controversy*

**Pornography – Class #14**

(October 30)

*Roth v. United States*

*Miller v. California*

*R. v. Butler*

Catharine MacKinnon, *Only Words*

Ronald Dworkin, “MacKinnon’s Words”

**Child Pornography – Class #15**

(November 1)

*Ferber v. New York*

*Free Speech Coalition v. Ashcroft*

*R. v. Sharpe*

Janine Benedet, “Children in Pornography after *Sharpe*”

Amy Adler, “The Perverse Law of Child Pornography”

**Gender Equality – Class #16**

(November 6)

*United States v. Virginia (VMI)*

*Frontiero v. Richardson*

*Brooks v. Canada Safeway*

*Geduldig v. Aiello*

*R. v. Hess; R. v. Nguyen*

*Symes v. Canada*

**Affirmative Action – Class #17**

(November 8)

*Bakke v. Regents of University of California*  
 Stanley Fish, “When Principles Get in the Way”  
*Grutter v. Bollinger*  
 \*Peter Schuck, “Reflections on *Grutter*”  
 \*Derrick Bell, “Learning from Living”  
*Lovelace v. Ontario*

**Sexual Orientation – Class #18**

(November 13)

*Romer v. Evans*  
*Lawrence v. Kansas*  
 (Vriend)  
 Buckley and Ponnuru, Comments  
 Sam Schulman, “Marriage – and Gay Marriage”  
 Massachusetts Supreme Judicial Court – *Advisory Opinion*  
 Proposed Federal Marriage Amendment  
*Reference Re Same-Sex Marriage*

**Religion – Class #19**

(November 15)

Margaret Talbot, “Darwin in the Dock” (*The New Yorker*)  
*Kitzmiller v. Dover Area School District*  
 \*Zylberberg v. Sudbury Board of Education  
 Religious Schooling in Ontario  
*Employment Division (Oregon) v. Smith*  
*The Globe and Mail*, “McGill Muslims launch human-rights complaint”

**Disability and Euthanasia – Class #20**

(November 20)

*United States v. Cruzan*  
*R. v. Rodriguez*  
*The Terri Schiavo Case*  
*Congressional Act for the Relief of the Parents of Theresa Marie Schiavo*  
 Stephen Bainbridge, “Schiavo, Congress and First Principles”  
 \*Eric Cohen, “How Liberalism Failed Terri Schiavo”



**Prisoner's Rights – Class #21**

(November 22)

*Giles v. Harris*

*Richardson v. Ramirez*

*Sauvé v. Canada*

*Johnson v. California* (from *Harv. L. Rev.*)

**Capital Punishment – Class #22**

(November 27)

*McCleskey v. Kemp*

*Roper v. Simmons*

*U.S. v. Burns*

**TBD**

**Immigration OR Reparations – TBD – Class #23**

(November 29)

**Responses to Terrorism – Class #24**

(December 4)

*USA Patriot Act*

Maureen Dowd, "Torture Chicks Gone Wild"

*Rasul v. Bush*

\* Civil Liberties Watch, "*Padilla, Hamdi and Rasul v. Rumsfeld and Bush*"

*R. v. Charkaoui*

**TBD**