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HIST 105-07, The Supreme Court in U.S. History, Fall 2011

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History 105
Introductory Seminar:
The Supreme Court in U.S. History – Fall 2011
TR, 8:00-9:15 a.m.

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Course Description and Objectives:

This course examines the history of the United States Supreme Court from its beginnings until the early twenty-first century. The course pays particular attention to tracing how the Court came to exercise such an important role in American life. We will examine the provisions of the Constitution that relate to the Court, the justices who played the most significant roles in the Court's history, the landmark decisions that have shaped America, and the historical relationship between the Court and the other branches of government.

Class meetings will consist of a mixture of lecture and discussion based on the assigned readings. Therefore, to maximize the quality and depth of discussion for each class meeting (and to maximize your grade), you will need to complete the readings beforehand. You should leave this class with a broad understanding of the changing role of the Supreme Court in American life, as well as improved critical thinking and written communication skills.

Readings:

Bernard Schwartz, *A History of the Supreme Court* (1993).

Herbert A. Johnson, *The Chief Justiceship of John Marshall, 1801-1835* (1997).

Robert P. George, *Great Cases in Constitutional Law* (2000).

Supplementary articles and documents, available through the Academic Volume (AV) and as handouts.

Assignments and Grading Policies:

Your final grade in this course will be determined as follows:

- Take-home Final Examination – 15%
- Short Essays (3 @ 15% each) – 45%
- Review Essay – 20%
- Class participation/Quizzes/News Assignment – 20%

Attendance is mandatory at all class meetings. More than two absences will adversely affect your grade in this course. You should make all travel and vacation plans in accordance with the schedule below. Airline arrangements, in other words, are no excuse for missing classes, deadlines, or exams.

Make up exams will not be given without a verifiable medical excuse, and all excuses are subject to the approval of the instructor. No late papers will be accepted. Quizzes are unannounced and cannot be made up.

All work, unless otherwise indicated, is pledged under the Rhodes College Honor Code.

Class Assignments:

1. Beginnings

(Schwartz, 3-31)

Aug. 25 – Introduction to course

- U.S. Constitution, Articles I, II, III

Aug. 30 – The Early Court

- *Federalist 78* (AV)
- Judiciary Act of 1789 (http://www.constitution.org/uslaw/judiciary_1789.htm)

Discussion Questions: Why did the founders provide for a Supreme Court? What were the precedents for such a tribunal? Was it really necessary to establish the Supreme Court? Couldn't the state courts have handled things? What about a decentralized system of federal courts? Was there any danger in creating a Supreme Court? How did Hamilton deal with concerns? What did the Judiciary Act of 1789 provide? What was the role of the Court during the nation's first decade?

2. The Marshall Court and the New Nation

(Schwartz, 32-68)

Sept. 1 – The Marshall Court Takes Shape

- Johnson, 1-52

Sept. 6 – *Marbury* and Judicial Review

- Johnson, 53-84
- *Marbury v. Madison* (handout)
- George, 17-63

Sept. 8 – Judicial Unanimity and Economic Nationalism

- Johnson, 85-111, 138-189
- *McCulloch v. Maryland* (handout)
- Ely, "The Marshall Court and Property Rights: A Reappraisal," *John Marshall Law Review*, 33 (2000), 1023-1061. (AV)

Sept. 13 – Jackson versus Marshall – **Essay One Due (document analysis)**

- Johnson, 256-263
- Newmyer, "Chief Justice Marshall's Last Campaign: Georgia, Jackson, and the Cherokee Cases," *Journal of Supreme Court History*, (March 1999), 76-94. (AV)

- *Worcester v. Georgia* (handout)

Discussion Questions: Why is John Marshall known as “the great chief justice?” What was so great about him? What changes did he institute as chief justice? Was judicial review Marshall’s creation, or was there constitutional and legal precedent for the decision in *Marbury*? What kind of a leader was Marshall? Did he dominate the other justices? Was there a “golden age” of the Marshall Court? When and why did Marshall’s influence begin to wane? How significant was the election of Andrew Jackson as president?

3. The Taney Court and Antebellum America

(Schwartz, 69-104)

Sept. 15 - Taney and Jacksonian Democracy

- Hofstadter, “Andrew Jackson and the Rise of Liberal Capitalism” in Hofstadter, *The American Political Tradition*, 56-85. (AV)
- *Charles River Bridge v. Warren Bridge* (handout)

Monday, Sept. 19, 4 p.m. - Constitution Day Lecture, Prof. James W. Ely, Vanderbilt University (attendance required)

Sept. 20 – Guest speaker: Prof. James Ely, Vanderbilt University

Sept. 22 – The Slavery Issue and *Dred Scott*

- Schwartz, 105-125
- *Dred Scott v. Sandford* (handout)

Sept. 27 – *Dred Scott* and Taney’s Legacy

- George, 64-93
- Finkelman, “‘Hooted Down the Page of History’: *Journal of Supreme Court History* (1994), 833-102. (AV)
- Huebner, “Roger Taney and the Slavery Issue: Looking Beyond—and Before—*Dred Scott*,” *Journal of American History*, 97 (2010), 17-38. (handout)

Discussion Questions: How did the Court change after the death of Marshall? Was Taney as effective a leader as Marshall? Did the justices tend to disagree more often, or was it just that the issues before the Court became more divisive? What about the *Dred Scott* decision? Was it a correctly reasoned opinion, in light of what the Constitution said about slavery? Or was it an example of judicial hubris? How did the decision contribute to the coming of the Civil War? What are we to make of Chief Justice Taney? Should he be “hooted down the page of history?”

4. The Supreme Court, the Civil War, and Reconstruction

(Schwartz, 126-146)

*Sept. 29 – Lincoln versus Taney

- Lincoln, “First Inaugural Address” (handout)
- *Ex parte Merryman* (handout)

- Lincoln, “Message to Congress in Special Session, July 4, 1861” (handout)

Oct. 4 – Remaking the Court – **Essay Two Due (article critique)**

- “Circuit Reorganization and the Rise of the Lincoln Court” (handout)

Oct. 6 – Reconstruction and Civil Rights

- U.S. Constitution, Amendments XIII, XIV, XV
- *Plessy v. Ferguson* (handout)
- Michael Les Benedict, “Preserving the Constitution: The Conservative Basis of Radical Reconstruction,” in *Preserving the Constitution: Essays on Politics and the Constitution in the Reconstruction Era*, 3-31. (AV)

Discussion Questions: What effect did secession and the Civil War have on the composition of the Court? Did all of the southerners go home? Why not? Why did Lincoln suspend the privilege of the writ of habeas corpus? Was he justified in doing so, or was Taney correct in his *Merryman* opinion? Did Lincoln and the Republican attempt to “pack” the Court? If so, were they justified in doing so? What constitutional changes came about during Reconstruction? Is the Court to blame for the undoing of a potential civil right revolution? Or should we blame Congress? Or public opinion?

5. *Lochner* and the Progressive Response

(Schwartz, 147-189, 203-224)

Oct. 11 – Capitalism, *Lochner* and Classical Legal Thought

- *Lochner v. New York* (handout)
- Schwartz, 190-202
- George, 94-135

Oct. 13 – Progressivism

- *Muller v. Oregon* (handout)
- Excerpts from the Brandeis Brief (handout)
- Maltese, “Interests versus Nominees: The Defeat of John J. Parker,” in *The Selling of Supreme Court Justices*, 52-69.

Oct. 18 – Fall Break

Discussion Questions: What significant changes marked late nineteenth-century America? How did the Court respond to those changes? Was the Court simply the tool of capitalists, or was it protecting fundamental constitutional rights? Who were the progressives and what was their agenda? Were there any progressive justices on the Supreme Court? What does *Muller* tell us about how progressives viewed the law? Was sociological jurisprudence a reasonable way of deciding cases, or did it give too much credence to non-legal evidence? Why was Supreme Court nominee John J. Parker defeated in 1930?

6. The New Deal and the Supreme Court

(Schwartz, 225-262)

Oct. 20 – The New Deal, the Four Horsemen, and the Black Nomination

Oct. 25– The Court Packing Controversy

- Roosevelt Fireside Chat (handout)
- Judiciary Reform Bill of 1937 (handout)
- *West Coast Hotel v. Parrish* (handout)

Oct. 27 – No class. Prof. Huebner out of town.

Nov. 1 – Civil Liberties - **Essay Three Due (oral argument analysis)**

- *U.S. v. Carolene Products* (handout)
- *Korematsu v. United States* (handout)

Discussion Questions: What was the New Deal all about? Why was it so controversial in its day? Was the Supreme Court justified in striking down many of its provisions, or were the justices acting from purely political motives? What about FDR? Was his Court-packing plan an attempt to preserve the rule of law or to undermine his political opponents? What about the Court's ruling in the areas of civil liberties during this period? Why did the U.S. government imprison Japanese-Americans during World War II? How did the government attempt to justify this on constitutional grounds? What does this episode tell us about the Court?

7. The Warren Court and the Triumph of Liberalism (Schwartz, 263-285)

Nov. 3 – Warren and *Brown*

- *Brown v. Board of Education* (handout)
- Schwartz, 286-310

Nov. 8 – The Response to *Brown*

- George, 136-174
- “Southern Manifesto” (handout)

Nov. 10 – Judicial Activism

- *Engel v. Vitale* (handout)
- *Griswold v. Connecticut* (handout)

Nov. 15 – Nixon versus Warren

- Maltese, “Interests versus Nominees: The Defeat of Clement Haynsworth,” in *The Selling of Supreme Court Nominees*, 70-85. (AV)

Discussion Questions: What was the constitutional basis for the *Brown* decision? Were Warren and his colleagues on solid ground? What was “judicial activism?” Should we be afraid of it? Did southern conservatives have any valid constitutional reasons for opposing desegregation? What do *Brown* and subsequent cases tell us about the Warren's Court's method of decision making? Did the Warren Court usher in a dangerous period of "government by judiciary," or

was it simply attempting to correct long-standing social injustices through adhering to a principled, results-oriented jurisprudence? Why did Nixon take on the Court in his 1968 run for president? Should presidents criticize the work of the justices? Why did Nixon unsuccessfully in nominating Haynsworth and Carswell to the Court?

8. Burger, Rehnquist and Beyond

(Schwartz, 311-336, 362-380)

Nov. 17 – The Burger Court and *Roe v. Wade*

- *Roe v. Wade* (handout)
- Schwartz, 337-361

Nov. 22 - The Impact of *Roe*

- George, 175-200
- Brennan v. Meese on Construing the Constitution (AV)

Nov. 24 – Thanksgiving Holiday

Nov. 29 – The Bork and Thomas Nominations – **Review Essay Due**

- Maltese, “Speaking Out: Interest Groups, Nominees, and Presidents,” in *Selling of Supreme Court Nominees*, 86-115. (AV)

Dec. 1 – The Rehnquist Court

- *United States v. Lopez* (handout)
- Craig S. Lerner and Nelson Lund, “Judicial Duty and the Supreme Court’s Cult of Celebrity,” *George Washington Law Review*, 78:1255. (AV)

Dec. 6 – The Roberts Court/Summary and Review

(All News Assignments must be submitted by this date.)

Discussion Questions: How successful has the Court been in resolving controversial issues such as abortion? Did the Court overstep its bounds in *Roe*, for example, by “legislating” when it should have exercised restraint? What do you make of the conservative response to *Roe*? Is original intent a reasonable basis for constitutional interpretation, or is it all just bunk? Can we really know the intent of the framers? Even if we could know it, should we care what they thought? Why did the Bork nomination fail and the Thomas nomination succeed? Given all the controversy over the Court and its justices, do we still respect the work of the justices? Why or why not? Is the Court likely to continue to play such a significant role in American life?

Take-Home Final Examination Due: Friday, December 9, 12 noon.