

**Princeton University
Department of Politics**

**POL 420 – Democracy and the Problem of Judicial Review
Fall 2006**

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Tuesday, 1:30-4:20 pm
Corwin 023
office hours: Monday, 9:30-11:45am

The course provides a historical and philosophical framework within which to consider the place of judicial review within a democratic political system. The semester will trace the continuing debate over whether the power of judicial review should exist, how it might be justified, and how it should be exercised. The focus of the course will be on debates within the American context, but the broader problems in political philosophy raised by judicial review and the lessons from constitutional review in other countries will also be considered.

Schedule:

1. Introduction – Sept. 19
No Readings

2. British Constitutionalism – Sept. 26
Locke *Second Treatise* ch. 8-14, 18-19
Coke Dr. Bonham's Case 8 Co. 114 (C.P. 1610)
Coke selection from Calvin's Case 7 Co. 1, 12-14 (C.P. 1609)
Blackstone *Commentaries on the Laws of England* (selections)

3. Republicanism and Constitutionalism – Oct. 3
Rousseau *On the Social Contract* bk. 1-VII, 2-I, 2-III-IV, 3-I-IV, 3-XV, XVIII
Montesquieu *Spirit of the Laws* bk. 11
"Centinental No. 1"
The Federalist Papers (selections)

4. American Origins, part 1 – Oct. 10
James Otis, Writs of Assistance Case (1761)
Commonwealth v. Caton (1782)
James Iredell, "An Elector" (1786)
Robert Yates, "Brutus"
The Federalist Papers (selections)

5. American Origins, part 2 – Oct. 17
Judiciary Act of 1789
Kamper v. Hawkins (1792)
Hayburn's Case (1792)

Calder v. Bull (1793)
United States v. Calendar (1800)
Debates on the Repeal Act of 1801
Stuart v. Laird (1803)
Marbury v. Madison (1803)
John Marshall, Letter to Samuel Chase (1805)

6. Antebellum Democracy – Oct. 24

Alexis de Tocqueville, *Democracy in America* pt. 1.4, 1.6, 2.7-2.8
Thomas Jefferson, letters
Andrew Jackson, Bank Veto
 Letter to Robert Hayne
John Calhoun, Speech on the Veto Power,
 “Disquisition on Government,”
 “Exposition”
James Buchanan, Inaugural Address
Abraham Lincoln, Inaugural Address,
 Speeches of July 10 and 17, 1858
Frederick Douglass, “The Dred Scott Decision”

7. Industrialization and “Mobocracy” – Nov. 7

J.S. Mill *Considerations on Representative Government* ch. 6-8 (selected)
Herbert Spencer "Representative Government"
Stephen Field Address on the centenary of the Supreme Court (1892), concurrence in
 Butchers' Union v. Crescent City (1883)
John Dillon Presidential address to the ABA (1892)
Oliver Wendell Holmes "The Path of Law";
 dissent in Lochner (1904)
James Bradley Thayer "The Origin and Scope of the American Doctrine of
 Constitutional Law" 7 *Harvard Law Review* 129 (Oct. 1893)

8. Populism and Progressivism – Nov. 14

Roscoe Pound “Liberty of Contract”
Theodore Roosevelt, speeches
Karl Llewellyn, “The Constitution as an Institution”
John Dewey, *The Public and Its Problems* (selection)
The Court-Packing Plan Debate
Learned Hand, *The Bill of Rights* pp. 66-77

9. Procedural Democracy, part 1 – Nov. 21

Joseph Schumpeter, *Capitalism, Socialism and Democracy*, pp. 250-264, 269-273
Robert Dahl, *A Preface to Democratic Theory*, pp. 124-145
Charles Black, *The People and the Court*, pp. 42-55
Alexander Bickel, *The Least Dangerous Branch*, pp. 16-33, 235-243

10. Procedural Democracy, part 2 – Nov. 28

John Hart Ely, *Democracy and Distrust*, ch. 4-6

Mark Tushnet, "Darkness on the Edge of Town"
Michael Klarman, "The Puzzling Resistance to Political Process Theories"

11. Fundamental Values – Dec. 5

Alpheus Thomas Mason, "Judicial Activism: Old and New"
Ronald Dworkin, *Taking Rights Seriously* (selection)
Randy Barnett, *The Lost Constitution* pp. 253-269

12. Popular Sovereignty – Dec. 12

Bruce Ackerman, *We the People* pp. 3-33
Keith Whittington, *Constitutional Interpretation* pp. 127-159
Jeremy Waldron, "The Core of the Case Against Judicial Review"

Materials:

The following books are available for purchase:

Alexander Hamilton, et al. *The Federalist Papers*
John Ely *Democracy and Distrust*
Ronald Dworkin, *Taking Rights Seriously*

The remaining readings will be posted on Blackboard or available on library electronic reserves.
The books are also available on library reserve.

Requirements:

The requirements for the course include both written and oral components. All students are expected to come to class fully prepared to be active participants. A seminar cannot work unless all of its participants are prepared to make useful contributions, and you will not be able to take full advantage of the seminar if you are not prepared. Participation will be a significant component of your final grade. You will also be expected to give two scheduled oral presentations.

One oral presentation may accompany your short paper (5-10 pages) which will examine the issues in a given week's (required) readings. The bulk of your grade will be determined by a term paper. This research paper (20-25 pages) will focus on a topic of your own choosing, approved by me before October 1. A hard copy of the paper will be due in a marked box outside the Politics office by 4:00 pm, January 16 ("Dean's Date").

Term Paper	50%
Short Paper	30%
Class Participation	20%