

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF POLITICAL SCIENCE

Political Science 381
Constitutional Law I

Autumn Quarter 1958
Mr. Storing

This is the first of a two-quarter sequence dealing with American constitutional law. The focus during the first quarter will be on problems of judicial review, protection of property rights, and federalism. (The second quarter will be devoted mainly to problems of civil liberties.) The course is organized partly chronologically, partly topically, and not all aspects of constitutional law will be treated. To assist their independent study students will be provided with the reading list of this course as it was given in 1957.

The text for the course will be Freund, Sutherland, Howe and Brown, Constitutional Law: Cases and Other Problems.

Students will find it helpful to consult one or more of the following for general background:

- A. H. Kelly and W. A. Harbison, The American Constitution
- A. C. McLaughlin, Constitutional History of the United States
- C. B. Swisher, American Constitutional Development
- C. Warren, The Supreme Court in United States History
- B. F. Wright, The Growth of American Constitutional Law

Other historical, interpretive, and biographical studies will be found in the 1957 course outline.

I. The Study of Constitutional Law

Robert G. McCloskey, Essays in Constitutional Law, Introduction
Thomas Reed Powell, "The Logic and Rhetoric of Constitutional Law," 1 Selected Essays on Constitutional Law 474. (Henceforth cited SECL. These volumes are on reserve at the desk in the Law Library). (This essay also available in McCloskey, Essays in Constitutional Law, p. 85)

J. W. Peltason, Federal Courts in the Political Process (Doubleday Short Study)

Recommended

Benjamin N. Cardozo, The Nature of the Judicial Process
Robert K. Carr, The Supreme Court and Judicial Review, Chs 1, 2, 10.

II. The Constitution

The Declaration of Independence

The Constitution of the United States

William W. Crosskey, Politics and the Constitution, Vol. I, chs 1, 13

Max Farrand, The Framing of the Constitution of the United States

Recommended

Charles Beard, An Economic Interpretation of the Constitution

R. L. Schuyler, The Constitution of the United States

Max Farrand, The Records of the Federal Convention

III. The Problem of Judicial Review

Calder v Bull, Freund et al, Vol. II, 732

Freund et al, Vol I, secs. 1-3

Federalist, # 78

Crosskey, Vol. II, ch. 29

Edward S. Corwin, "Marbury v Madison and the Doctrine of Judicial Review,"

1 SECL 128

Charles A. Beard, "The Supreme Court—Usurper or Grantee?" McCloskey, Essays in Constitutional Law, p. 24

Recommended

James B. Thayer, "The Origin and Scope of the American Doctrine of Constitutional Law", McCloskey, Essays in Constitutional Law, p. 63

H. W. Edgerton, "The Incidence of Judicial Control Over Congress" 1 SECL 793

A. J. Beveridge, Life of John Marshall, Vol III, chs 1-3

IV. The Protection of Property

E. S. Corwin, "The Basic Doctrine of American Constitutional Law," 1 SECL 101

_____, "The Doctrine of Due Process Before the Civil War," 1 SECL 203

Recommended

B. F. Wright, The Contract Clause

V. Towards "A More Perfect Union"

Freund, et al, Vol 1, Secs 4 and 5

Barron v Baltimore, Freund et al, Vol II, p. 729

F. Frankfurter, The Commerce Clause Under Marshall, Taney and Waite

VI. Civil War and the Limits of Law

Federalist, # 1, 15, 49

Scott v Sanford, Freund et al, Vol II, 1556

Harry V. Jaffa, "The Crisis of the House Divided: Three Lectures on the Lincoln-Douglas Debates"

Abraham Lincoln, "The Perpetuation of Our Political Institutions" Roy Basler (ed), Abraham Lincoln, His Speeches and Writings, p. 76

_____, "The Dred Scott Decision: Speech at Springfield, Illinois, June 26, 1857", Basler, p. 352

_____, "First Inaugural Address, March 4, 1861," Basler, p. 579

_____, "Address Delivered at the Dedication of the Cemetery at Gettysburg, November 19, 1863," Basler, 734

Cummings v Missouri, Freund et al, Vol II, 753

Ex parte Garland, Freund et al, Vol II, 758

Recommended

Abraham Lincoln, "The Repeal of the Missouri Compromise and the Propriety of Its Restoration: Speech at Peoria, Illinois, October 16, 1854," Basler, 283

_____, "Fragment: The Constitution and the Union," Basler, 514

J. G. Randall, Constitutional Problems Under Lincoln

VII. Substantive Due Process

Slaughter House Cases, Freund et al, 782

Freund et al, Vol II, Sec 14(A) (1)-(4)

Charles Grove Haines, "The History of Due Process of Law After the Civil War," 1 SECL 268

Walter H. Hamilton, "Affectation With the Public Interest", 2 SECL 494

Max Lerner, "The Supreme Court and American Capitalism," 2 SECL 154 (also in McCloskey, Essays in Constitutional Law, p. 107)

VIII. Commerce and Fiscal Powers and the Constitutional Crisis of 1937

Freund et al, Vol I, secs 6-7

C. Herman Pritchett, The Roosevelt Court, ch 4

David Fellman, "Ten Years of the Supreme Court: 1937-1947 Federalism," American Political Science Review, December, 1947

VIII. Commerce and Fiscal Powers (continued)

Vincent M. Barnett, "Ten Years of the Supreme Court: 1937-1947
The Power to Regulate Commerce," American Political
Science Review, December, 1947

E. S. Corwin, "The Passing of Dual Federalism," McCloskey, Essays in Constitu-
tional Law, p. 185

Recommended

E. S. Corwin, "The Power of Congress to Prohibit Commerce," 3 SECL 103

Robert E. Cushman, "Social and Economic Control Through Federal Taxation,"
3 SECL 543

E. S. Corwin, "The Spending Power of Congress", 3 SECL 565

IX. Problems of Federalism

Freund et al, Vol. I, secs. 8, 9, 10