

Topics in American Legal History (602-001) Spring 2008

Professor Richard A. Paschal (rpaschal@gmu.edu; 202-365-3672; Room 410)

Professor Ross E. Davies (rdavies@greenbag.org; 703-993-8049; Room 410)

Office Hours: by appointment

Purpose of the course: This course is an opportunity to closely examine selected topics in American legal history, in particular the development of American law in the Supreme Court in the years immediately preceding the famous 1937 “switch in time that saved nine.” This period in Supreme Court jurisprudence is commonly demonized in popular and general histories of the New Deal, and even in many more specialized legal studies of the period. It is, after all, the period in which the Court resisted the full flowering of the generally beloved New Deal, and therefore – the thinking goes (implicitly or explicitly) – the Court as an institution and many of its members as individuals must have been ignorant or incompetent, if not downright evil. Rather than rely on that negative assumption, we will test it, by looking at several cases and attempting to discover what the Justices – and the lawyers who appeared before them – were thinking, and why. The main idea is to become better students, scholars, and practitioners of American legal history. Finally, this course is not an introduction to modern American law or government; rather, we expect students to have an understanding of those subjects sufficiently deep and current to enable us to make analogical and passing references to modern topics without having to spend class time or office hours explaining them.

Classes: The class will meet on Mondays from 12 noon to 1:50 p.m. **Fair warning:** The reading is not light and the expectations for participation are high. Because the class is small and meets just once per week, enrolling implies the following commitments: (1) you will do the reading and think about it every week and (2) you will be prepared to participate in every meeting of the class (we will call on people from time to time, as will you as discussion leaders). To avoid problems, please do the reading well ahead of time.

Presentations: They are required. You will work in pairs to lead two 1-hour class discussions of cases (once in the “First Round” and once in the “Second Round”). Sign-up will be on the first day of class. Feel free to organize partnerships in advance if you like, but do not waste time choosing cases or dates you desire: Sign-up order will be set by a drawing conducted during class. (If we end up with an odd number of students, one will be allowed to work solo – we will draw straws for that burden/privilege in each round, unless there is just one volunteer.) Two class periods will be devoted to conferences with students interested in formal review of an outline or draft of the paper.

Assignments: (available on the web, except for Leuchtenburg, and subject to change based on the whim of the instructors)

Jan. 7: Course review and discussion of general context.

William E. Leuchtenburg, *Smashup* (ch. 13), in *THE PERILS OF PROSPERITY* (1993) (on reserve)

Thomas F. Cargill & Thomas Mayer, *The Great Depression and History Textbooks*, 31 *HIST. TEACHER* 441 (1998) (on JSTOR)

Jan. 14: Research training and discussion of Court context.

David P. Currie, *The Constitution in the Supreme Court*, 1985 *DUKE L.J.* 1111 & 1986 *DUKE L.J.* 65

Jan. 21: MLK Day so no class.

First Round

Jan. 28:

Baldwin v. Missouri, 281 U.S. 586 (1930)

Texas & N.O. RR v. Brotherhood of Ry & Steamship Clerks, 281 U.S. 548 (1930)

Feb. 4:

O’Gorman & Young, Inc. v. Hartford Fire Ins. Co., 282 U.S. 251 (1931).....

Near v. Minnesota, 283 U.S. 697 (1931).....

Feb. 11:

New State Ice Co. v. Liebmann, 285 U.S. 262 (1932)

Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932)

Feb. 18:

Coombes v. Getz, 285 U.S. 434 (1932)

Nixon v. Condon, 286 U.S. 73 (1932).....

Feb. 25: Field trip to Library of Congress or National Archives.

Second Round

Mar. 3:

Fox Film Corp. v. Doyal, 286 U.S. 123 (1932)

Home Building & Loan v. Blaisdell, 290 U.S. 398 (1934).....

Mar. 10 (spring break so no class)

Mar. 17:

Nebbia v. New York, 291 U.S. 502 (1934).....

Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).....

Mar. 24:

Gold Clause Cases, 294 U.S. 240 & 295 U.S. 330 (1935)

Schechter Poultry Co. v. United States, 295 U.S. 495 (1935)

Apr. 7:

Louisville Joint Land Bank v. Radford, 295 U.S. 555 (1935)

Humphrey’s Executor v. United States, 295 U.S. 602 (1935)

Apr. 14 & 21: Individual/team conferences (outline or draft of paper due three days before conference).

Apr. 28, 5:00 p.m. Eastern time: Paper due.

Grades: Your grade will be based on a 2,000-word paper and class participation. The paper will examine a case selected by you subject to our approval (team up with a classmate to write a longer paper, if you like). Your job will be to explain what the Justices and counsel in the case were thinking in that case, and why, in light of the legal and social context in which the case arose and was decided. Lengthy summary of the case or the reported decision, or presentist critique of the case or the work of the judges and counsel, will earn you zero credit. It is your responsibility to deliver the paper to the instructors by the due date and time, and to confirm successful delivery. A paper turned in late but less than one week late will be lowered one step (e.g., from B+ to B), one to two weeks late, two steps (e.g., from B+ to B-), and so on. Your grade in the class may be adjusted up or down one step from your paper grade based on class participation.