

**Humanities Seminars Program**  
**The Supreme Court's Great Debates**

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Wednesdays 6:00 p.m. – 8:00 p.m.

January 29, 2020; February 5, 12, 26, 2020; March 4, 2020

This 5-week course explores the United States Supreme Court and its role in deciding some fundamental social questions. After an introductory class, we will focus on the Court's cases involving religious displays on public property, flag burning, freedom of the press, law enforcement's ability to stop-and-frisk, the Second Amendment right to bear arms, and the death penalty. Readings will include edited versions of the Court's opinions.

As you consider the cases we will discuss this semester, take time to reflect on the following from *Federalist* No. 78:

The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

...

In this course, we will gain a better understanding of the Court's reasoning, predict how it may evolve in the future, and reassess whether Hamilton was correct.

The readings will be available as PDFs on Box@UA and registered students will receive the link to the site in early January. Additional readings (e.g., recent news articles) may be posted during the course.

## Class Schedule:

### **Jan. 29: First Hour: A Quick Introduction to the Supreme Court & Constitutional Interpretation**

Introductory Material; U.S. Constitution is merely for reference

Video – Justice Breyer & Scalia debate Constitutional interpretation issues. Please watch video before class, if possible.

<https://www.c-span.org/video/?289637-1/principles-constitutional-statutory-interpretation>

### **Second Hour: First Amendment: Establishment of Religion**

Applying what we've discussed regarding constitutional interpretation, we turn to the First Amendment's Establishment of Religion clause. We will consider the *Lemon* case wherein the Supreme Court developed a three-part test to determine whether there is a violation of the Establishment Clause, and then fast forward to the most recent term where the Court splintered over the continued viability of the *Lemon* test.

*Lemon v. Kurtzman* (1971)

*The American Legion v. American Humanist Ass'n* (2019)

### **Feb 5: First Hour: First Amendment: Freedom of Speech**

During this presidential election cycle and the day after the Iowa caucuses, we will consider whether the First Amendment's free speech clause protected a protestor's burning of the American flag during the 1984 Republican National Convention.

*Texas v. Johnson* (1989) – flag burning

### **Second Hour: First Amendment: Freedom of Press & Public Officials**

In the second hour, we will turn to the issue of whether the First Amendment provides protections to the press when faced with libel lawsuits by public officials, and whether the existing standard should be reconsidered.

*NY Times Co. v. Sullivan* (1964)

*McKee v. Cosby* (2019) (Thomas, J., concurring opinion)

**Feb 12: Fourth Amendment: Stop & Frisk**

We'll next consider whether the Fourth Amendment's protection against unreasonable searches and seizures is violated when law enforcement stops and frisks a suspect without probable cause to arrest. After a discussion of *Terry*, we'll discuss the evolution of New York City's stop-and-frisk and related litigation.

*Terry v. Ohio* (1968)  
New York City's stop-and-frisk policy

**Feb 19: NO CLASS**

**Feb 26: Second Amendment: Right to Bear Arms**

We will consider Justice Scalia's and Justice Stevens' competing constitutional interpretations of the Second Amendment in the *Heller* decision. We will also consider how lower courts have applied *Heller*, and the pending Supreme Court case from New York City addressing the city's ban on transporting a licensed, locked and unloaded handgun to a home or shooting range outside city limits.

*District of Columbia v. Heller* (2008)

*NY State Rifle & Pistol Ass'n Inc. v. City of NY, NY* (oral arguments scheduled December 2, 2019)

**Mar 4: Eighth Amendment: Death Penalty**

In our final class, we'll turn to the Eighth Amendment's protection against cruel and unusual punishment in the context of the death penalty. We'll consider competing interpretation of that Amendment, as well as recent issues that the Court had addressed. Some attention will be paid to *Glossip v. Gross* (2015) and Justice Breyer's dissent therein where he argued that the death penalty is no longer constitutional.

*Glossip v. Gross* (2015)