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Philosophy 480: Senior Seminar; Some Problems of American Democracy
Spring 2001
Prof. R.E. Walton

SYLLABUS

The Senior Seminar is intended to represent the culmination of the undergraduate Philosophy curriculum. Students are given the opportunity to bring the knowledge, skills and scholarly habits they have developed in the preceding three and one-half years of their training to bear on a set of philosophical problems. The topics chosen are relatively broad so that students with a variety of emphases in their training may participate effectively.

In this seminar we will take up some problems in the political and moral theory of American democracy. These have arisen in quite vital ways in the course of the more than two centuries of American history. Often they are manifest in the opinions of the U.S. Supreme Court; consequently, we will read several of the Court's opinions, and students will be expected to research several more. We will begin with a careful examination of the basic documents of the American founding. We will read a number of essays from the contemporary philosophical literature bearing upon the problems we identify.

The work of the seminar will fall into three phases: (a) Development of the problems; (b) reading and discussion of works treating some aspects of the problems developed; (c) preparation and presentation of the seminar papers.

TEXTS:

The Declaration of Independence and the Constitution of the United States of America (CatoInstitute).

Carter, Steven L., *Civility; Manners, Morals and the Etiquette of Democracy* (New York: HarperCollins, 1998).

Michael Sandel, ed., *Liberalism and Its Critics* (New York: New York University Press, 1984).

Pojman & Westmoreland, eds., *Equality* (New York: Oxford University Press, 1999).

-Various works on library reserve and from Internet sources

REQUIREMENTS:

Each student will present a summary and criticism of two or more of the readings and a brief for one of the cases we will read. Each student will present a major paper addressing some problem of American democracy.

READING ASSIGNMENTS:

Detailed reading lists will be supplied separately.

FINAL EXAM PERIOD: Tue., May 15, 3:20-5:20

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Useful URLs

www.lawschool.cornell.edu/lawlibrary/

www.indiana.edu/law/v-lib

www.findlaw.com/

www.founding.com/

<http://supct.law.cornell.edu/supct/cases/>

<http://lcweb2.loc.gov/const/mdbquery.html>

First Set of Readings

W.V.O. Quine, "A Letter to Mr. Ostermann," in Charles J. Bontempo and S. Jack Odell, eds., *The Owl of Minerva; Philosophers on Philosophy* (New York: McGraw-Hill Book Co., 1975).

Aristotle, *Metaphysics* I, 1-2.

The Declaration of Independence

The Constitution of the United States of America

Publius, *The Federalist* [see detailed assignments]

Marbury v. Madison (1803)

*Calder v. Bull** (1798)

Dennis v. U.S., J. Frankfurter, Concurring (1951) [BS 889ff.]

Rochin v. California (1952) [BS 541ff.]

Barron v. Mayor and City Council of Baltimore (1833)

*Dred Scott v. Sandford** (1857)

*Civil Rights Cases** (1833)

Plessy v. Ferguson (1896)

Brown v. Board of Education of Topeka (1954) [BS 739ff.]

*Baker v. Carr** (1962)

*Reynolds v. Simms** (1964)

Lochner v. New York (1905)

*West Coast Hotel Co. v. Parrish** (1937)

*Heart of Atlanta Motel v. U.S.** (1964)

Griswold v. Connecticut (1965) [BS 1037ff.]

Roe v. Wade (1973)

*Summary or extracts placed on reserve.

"BS" Bishin and Stone's *Law, Language and Ethics*, on reserve.

Federalist Papers

No. 1*	General introduction to the series.
No. 6	Concerning dangers from dissensions between the states.
No. 10*	How the dangers of faction may be addressed.
No. 39*	The conformity of the plan to republican principles.
No. 46	Division of powers and responsibilities between federal and state governments.
No. 47*	Separation of powers within the federal government.
No. 51*	Checks and balances through structure.
No. 69	The real character of the executive.
No. 70	More on the executive.
Nos. 78-82*	The judiciary.
No. 84	The value of a bill of rights.

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On Briefs

A student brief is a case abstract or *precis*. It is a summary of the essential features of a case which are of interest to us, as determined by the purposes of the course. Our briefs therefore differ somewhat from those customarily prepared by law students.

A brief consist of six parts: (1) the HEADER, including the name of the case, the jurisdiction and the date of the decision; (2) the OBJECT; (3) the ISSUE; (4) the RESULT; (5) the FACTS; and (6) the REASONING. Each of these is explained below.

HEADER: On the left side at the top of your paper you should type the name of the case; e.g., *Thomas Haslem v. William A. Lockwood*. At the right side of the paper, and on the same line as the name, type the jurisdiction (the court) and the date; e.g., Conn. Sup. Ct., 1871.

Below the header comes the body of the brief, broken into five parts, each labelled by typing its name in the left margin. Thus, down the left side of the page one should see OBJECT, ISSUE, RESULT, FACTS and REASONING. The appearance of the remainder of this document gives you an idea of what the body of your brief should look like.

OBJECT: What is the court being asked to do? Perhaps it must decide whether to issue a writ of habeas corpus. It may be reviewing a trial court's judgment for error; it may be considering the constitutionality of a statute, etc. State succinctly what the court has been asked to do in one sentence: e.g., "To review the trial court's judgment for error," "To declare a statute unconstitutional."

ISSUE: What is the basic question presented to the court?

Ordinarily, the issue will involve something fairly specific in the law, and it will always involve a specific act or state of affairs. The general form of the issue will then be, *Does this point of law forbid (require, or permit) this act, or state of affairs?* The issue should be stated as a single question, even though it may sometimes be a rather complicated sentence. For example: *Does the Montana open meetings statute require the Board of Regents to permit reporters to be present when university or college presidents are evaluated, even though the statute says that meetings in which personnel matters are discussed may be closed for the protection of the privacy of the individuals involved?*

RESULT: The result statement consists of two parts: first, simply answer the ISSUE question with a "yes" or "no," then give the main reason the court used to arrive at the result. For example: *No; the privacy of university or college presidents must be protected, even though they are public figures.*

FACTS: Here simply list the relevant facts making up the context for the case. The court will usually do a pretty good job of this for you, as J. Park does in *Haslem v. Lockwood*, paragraphs 2-4, for example. You must condense this material, however. The key idea is relevance; for each fact mentioned by the court ask yourself whether it really figures in the decision, or not--if not, omit it. The legal history of the case ordinarily is not important. *N.B.:* A "fact" in the broadest sense is whatever both parties in the dispute agree upon.

REASONING: Recapitulating the court's reasoning is the most difficult part of the brief writing job. You must discover the argument by which the court reached its result, and state it clearly and succinctly. Remember that the result is the argument's conclusion. Thus, the end of the Reasoning section points back to the Result section. Most importantly, remember that the reasoning is an intrinsic and essential part of a court's decision; it is in many respects the decision's heart.

N.B.: The court's reasoning will rely on the facts in the case (more or less), but this does not make the facts part of the reasoning. The reasoning represents the court's construction of the facts in the light of the relevant law.

One final point: Throughout your brief write as the court in the case you are briefing, not *about* the court; i.e., imagine that you are the judge and you have chosen to set out your decision in the form of this brief (you are a very tidy judge!). Thus, don't say, "The court decided that a new trial must be granted..." Say, "A new trial must be held because..."

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**Study Questions
for
*Marbury v. Madison***

1. Write OBJECT, ISSUE and RESULT statements for the case.
2. Compare Marshall's argument in this case with Hamilton's argument for judicial review in *Federalist* No. 78. Is there any possible influence?
3. Marshall concludes that it is the duty of the Court to decide whether an act of the legislature is repugnant to the Constitution. Granting his inference that an act repugnant to the Constitution must, ultimately, be rendered null and void, is the judiciary the only means of achieving that effect? Explain.
4. The power of substantive judicial review which the U.S. Supreme Court finds itself to have in *Marbury* has been adopted, comparably, by state supreme courts for their constitutions. State supreme courts now routinely strike down legislative acts as unconstitutional; but they also strike down initiatives and referenda. The Montana Supreme Court, for example, recently struck down an initiative which would have required a public vote on all tax increases proposed by the Legislature. Under the theory of the nature of constitution's in *Federalist* No. 78 should this happen? Explain.

NOTE: I have placed on reserve in the Boyce Library two articles for your use. They are: Wm. Van Alstyne, "A Critical Guide to *Marbury v. Madison*" *Duke Law Journal*, Vol. 1969, No. 1, January, 1969, and H.L.A. Hart, "American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream," *Georgia Law Review* Vol. 11, No. 5, Sept. 1977. You may read the first as you wish, but I would like everyone to read the Hart article.

Seminar Papers

SCHEDULE:

April 9: Draft of prospectus due.

April 16: Prospectus in final form due; copies made available to seminar for discussion.

April 23, 25, 27: Brief presentations of preliminary research results.

May 7: Presentation of final versions of papers begins.

May 15: Last meeting of seminar.

FORMAT:

A prospectus is a proposal for a research project, including a plan for completing it and a list of "materials" to be used. The prospectus should begin by stating the question to be addressed and resolved by the research. It should then state the hypothesis under which the research will be conducted; the hypothesis takes the form of a tentative statement of a conclusion. One should go on to sketch out the expected argument, if that can be done, and to note anything especially remarkable about the approach to be taken. For example, one might say, "In making the case that the U.S. must overcome its liberal heritage and adopt explicit measure to cultivate certain virtues in its citizens I will assume Aristotle's account of the structure of the virtues." Finally, a bibliography should be attached.

FURTHER READINGS:

When we have completed the readings now scheduled we will read selections from Sandel (*LAIC*), Pojman and Carter, devoting meetings not used for presentation of the papers to these discussions. Which selections will be read will be determined largely by the seminarians. You should choose items from these works useful for your paper research and then present them to the seminar. We will make up a list of such items April 11th.