



Academic Year 2015/2016

Alessandra Di Martino

## MODULE IN PUBLIC COMPARATIVE LAW

### ***Landmark Decisions of the US Supreme Court on Fundamental Rights and Freedoms***

This series of ten lessons will focus on key U.S. Supreme Court's judgments in the field of fundamental rights and freedoms and related issues of constitutional interpretation. In light of recent scholarly debate, different approaches to judicial supremacy and democratic constitutionalism will also be examined.

#### **1-2) The Rights' *Canon*: the "Civil Rights Revolution" and the Warren Court: Desegregation and Rights in Criminal Proceedings**

*Brown v. Board of Education* (1954); *Miranda v. Arizona* (1966).

Bibliographical references: J. Balkin, S. Levinson, *The Canons of Constitutional Law*, 111 Harv. L. Rev. 963 (1998); J. Balkin (ed.), *What Brown v. Board of Education Should Have Said*, 2001, New York, 2001; B. Ackerman, J. Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 Nw. U. L. Rev. 63 (2009); W. Powe, *The Warren Court and American Politics*, Cambridge Mass., 2001.

#### **3-4) Freedom of Expression under the First Amendment: in particular Defamation, Hate Speech and Campaign Finance**

*New York Times v. Sullivan* (1964); *R.A.V. v. City of St. Paul* (1992); *Citizens United v. FEC* (2010).

Bibliographical references: H. Kalven Jr., *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 *Sup. Ct. Rev.*, 191 (1964); A.R. Amar, *The Case of the Missing Amendments: R.A.V. v. City of St. Paul*, 106 Harv. L. Rev. 124 (1992); J. Hare, J. Weinstein (eds.), *Extreme Speech and Democracy*, Oxford, 2009; K.M. Sullivan, *Two Concepts of Freedom of Speech*, 124 Harv. L. Rev. 143 (2010).

#### **5-6) Unenumerated Rights and the "Modern" Substantive Due Process: the Right to Privacy and Sexual Liberty**

*Griswold v. Connecticut* (1965); *Roe v. Wade* (1973); *Lawrence v. Texas* (2003); *United States v. Windsor* (2013).

Bibliographical references: P.G. Kauler, *Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten: The Griswold Case*, 64 Mich. L. Rev. 235 (1965-1966); R.B. Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 Stan L. Rev. 261, (1992); Ead., *Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart* 117 Yale L. J. 1694 (2008); L. Tribe, *Lawrence v. Texas: The Fundamental Right That Dare not Speak its Name*, 117 Harv. L. Rev. 1893 (2004).

## 7-8) American Exceptionalism: the Death Penalty and the Right to Bear Arms

Furman v. Georgia (1972); Roper v. Simmons (2005); District of Columbia v. Heller (2008).

Bibliographical references: C. Steiker, *Capital Punishment and American Exceptionalism*, in *American Exceptionalism and Human Rights*, in M. Ignatieff (ed.), *American Exceptionalism and Human Rights*, Princeton, 2005, 57; J. Steiker, *United States: Roper v. Simmons*, 4 Int'l J. Const. L. 163 (2006); R.B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 Harv. L. Rev. 191 (2008); A.R. Amar, *The Bill of Rights: Creation and Reconstruction*, New Haven, 1998.

## 9-10) Habeas Corpus and Due Process in the Guantánamo Cases

Hamdi v. Rumsfeld (2004); Hamdan v. Rumsfeld (2006); Boumediene v. Bush (2008).

Bibliographical references: J. Balkin, S. Levinson, *Constitutional Dictatorship: Its Dangers and Its Design*, 94 Minn. L. Rev. 1789 (2009-2010); S. Issacharoff, R.H. Pildes, *Between Civil Libertarianism and Executive Unilateralism*, in M. Tushnet (ed.), *The Constitution in Wartime*, Durham, 2005, 161; A.L. Tyler, *The Forgotten Core Meaning of the Suspension Clause*, 125 Harv. L. Rev. 901 (2011-2012); D. Golove, *The Supreme Court, the War on Terror and the American Just War Constitutional Tradition*, in D. Sloss et al. (eds.), *International Law in the U.S. Supreme Court. Continuity and Change*, Cambridge, 2011, 561.

**Note:** Students who attend classes should either

- a) produce a **working paper** on one of the cases examined

or

- b) study following parts from the **textbook**: J.E. Nowak, R.D. Rotunda, *Principles of Constitutional Law*, 4<sup>th</sup> ed., St. Paul, 2010, pp. 213-230, 330-340, 354-366, 383-428, 496-539, 613-631, 698-718, 758-765.

They will then be allowed to discuss (a) the research subject or (b) the selected paragraphs of the textbook as part of the final exam in public comparative law (prof. P. Ridola).

General bibliographical references: For an overview of fundamental rights and freedoms under the U.S. Constitution, specific sections of following text- and case-books are equally recommended:

P. Brest, S. Levinson, J. Balkin, R.B. Siegel, A.R. Amar, *Processes of Constitutional Decision Making: Cases and Materials*, 5<sup>th</sup> ed., New York, 2006 and *Supplement* 2012; J.E. Nowak, R.D. Rotunda, *Principles of Constitutional Law*, 4<sup>th</sup> ed., St. Paul, 2010; R.D. Rotunda (ed.), *Modern Constitutional Law. Cases and Notes*, 10<sup>th</sup> ed., St. Paul, 2012; G.R. Stone, L.M. Seidman, C.R. Sunstein, M.V. Tushnet, P.S. Karlan, *Constitutional Law*, 6<sup>th</sup> ed., New York, 2009 and *Supplement* 2012; L.H. Tribe, *American Constitutional Law*, 2<sup>nd</sup> ed., Mineola, New York, 1988 (in the 3<sup>rd</sup> edition [vol. 1, 2000], the planned vol. 2 on rights and freedoms has not been published yet).

Essential bibliographical references on judicial supremacy and democratic constitutionalism: B. Ackerman, *The Living Constitution*, 120 Harv. L. Rev. 1737 (2007); J. Balkin, *Living Originalism*, Cambridge Mass., 2011; A. Bickel, *The Least Dangerous Branch*, 2<sup>nd</sup> ed., New Haven, 1986; J.H. Ely, *Democracy and Distrust. A Theory of Judicial Review*, Cambridge Mass., 1980; L. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review*, Oxford, 2004; R. Post, R. Siegel, *Popular Constitutionalism, Departmentalism and Judicial Supremacy*, 92 Cal. L. Rev. 1027 (2004); D.A. Strauss, *The Living Constitution*, New York, 2010; M. Tushnet, *Taking the Constitution away from the Courts*, Princeton, 1999.

The module will start on March 23 <sup>th</sup> 2016 and will take place every Wednesday from 10 to 12 in the seminar room of the Institute for Public Law.
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