

Note: This syllabus is for a previous course offered by Adam White, not “The Constitution, the Courts, and Conservatism.”

HERTOG 2017 SUMMER COURSES

LANDMARK SUPREME COURT CASES: Scalia and the Last Half-Century of Constitutional Law Adam J. White, fellow, Hoover Institution, Stanford University

Location: This class will take place at **George Washington University, District House** (2121 H Street NW, Room 207).

The seminar will focus on five landmark Supreme Court cases from the past 50 years with a view to exploring how politics and law interact, the different approaches to constitutional judgment and rhetoric, and the impact of the Court’s decisions on American lives. We will find the late Justice Antonin Scalia at the center of this discussion throughout the week, as we consider how his focus on constitutional “originalism” and the Constitution’s structural checks and balances, both rooted in his view of the courts’ properly limited role in republican government, profoundly changed the way in which Americans view the Constitution and constitutional law.

Resources: To learn more about other important figures in constitutional law, we encourage you to visit ContemporaryThinkers.org, a website covering the ideas and influence of pioneering intellectuals of the 20th and 21st centuries.

Sponsored by the Hertog Foundation, ContemporaryThinkers.org includes sites devoted to Walter Berns, Martin Diamond, Herbert Storing, and many others.

Sunday, July 23, 2017

3:00 p.m. to 5:00 p.m.	Summer Course Fellow Arrival and Check-in — George Washington University, Thurston Hall (1900 F St NW)
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Monday, July 24, 2017

9:00 am to Noon **Griswold: The Return of Judge-Made Liberties**

Readings:

- *Federalist* No. 78 (1788)

- Brutus, No. 15 (1788)
- *Griswold v. Connecticut* (1965)
- Holmes’s Dissent in *Lochner v. New York* (1905)
- Alexander Bickel, “The Heavenly City of the Twentieth-Century Justices,” in *The Supreme Court and the Idea of Progress* (1970)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Guest Speaker: Edward Whelan, president, EPPC, on Justice Scalia, the Supreme Court, and American Constitutionalism

Tuesday, July 25, 2017

9:00 am to Noon

***Heller*: The Triumph of Justice Scalia’s Originalist Jurisprudence**

Readings:

- *D.C. v. Heller* (2008)
- Antonin Scalia, “Originalism: The Lesser Evil,” *University of Cincinnati Law Review* 57:849 (1988)
- J. Harvie Wilkinson, “Originalism: Activism Masquerading as Restraint,” in *Cosmic Constitutional Theory* (2012)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Guest Speaker: Ilya Shapiro, senior fellow, Cato Institute, on the need for “judicial engagement”

Wednesday, July 26, 2017

9:00 am to Noon

***Noel Canning*: Tradition versus originalism**

Readings:

- *Federalist* No. 37 (1788)
- Office of Legal Counsel Opinion on Recess Appointments, January 6, 2012
- *NLRB v. Noel Canning* (2014)
- Thomas Merrill, “Bork vs. Burke,” *Harvard Journal of Law and Public Policy* 19:2 (1995)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Christopher Scalia, writer and public relations professional, on Justice Scalia’s legacy as a writer, speaker, thinker, father

Thursday, July 27, 2017

9:00 am to Noon **Morrison: Taking structure seriously**

Readings:

- *Federalist* No. 51 (1788)
- *Federalist* No. 70 (1788)
- *Morrison v. Olson* (1988)
- Adam White, "The American Constitutionalist," *Weekly Standard*, February 29, 2016

Noon to 1:15 pm **Lunch Break**

1:30 to 3:00 pm **Mock Oral Arguments**

Friday, July 28, 2017

9:00 am to Noon **Smith: Rights and Republicanism**

Readings:

- *Employment Division v. Smith* (1990)
- Michael McConnell, "Taking Religious Freedom Seriously," *First Things*, May 1990
- Yuval Levin, "The Perils of Religious Liberty," *First Things*, February 2016
- Antonin Scalia, "Teaching About The Law," *Christian Legal Society Quarterly*, Fall 1987

12:30 p.m. to 2:00 pm	Working at a Think Tank: Lunch & Discussion American Enterprise Institute (1789 Massachusetts Avenue NW)
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Saturday, July 29, 2017

11 a.m.	Summer Course Fellow Check-Out and Departure — George Washington University, Thurston Hall
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