

CONSTITUTIONAL LAW IN THE MOVIES

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ABSTRACT

*This article discusses the use of movies in teaching the fundamentals of constitutional law. It describes the format of an academic "movie review" and provides the proper context of constitutional analysis by citing many of the ground-breaking constitutional law cases decided by the United States Supreme Court in recent decades. The paper concludes by applying the constitutional principles found in the Primer to two movies: *Inherit the Wind* and *Gideon's Trumpet*. The paper is relevant for those outside the United States as well who may wish to inquire about the nature of teaching constitutional law principles in a non-traditional manner that may appeal to students who exhibit quite different learning modalities.*

KEY WORDS: Constitutional Law; Media; Constitutional Rights

1. INTRODUCTION

In 1998/1999, an article was published in the *Journal of Legal Studies Education* concerning the use of book reviews in the undergraduate *Legal Environment of Business* course. (Hunter, 1988/1989). Since that date, I developed and taught a course at Seton Hall University called *Law in the Media*. It is taught as part of the Masters in Business Administration (MBA) program. The course syllabus contains the following information:

1. This course will explore how law, the legal system, and important legal issues are portrayed in film.
2. We will view some of the “classic” and time-honored films that have shaped public perceptions about law in society. Students will then write a *movie review* (2-3 pages maximum) of **three films**. The reviews are due at the *next class after the film is shown*. Even though a student may choose not to review a particular film, attendance is expected and required at all sessions!
3. There will also be a brief lecture and discussion about each topical area. A full set of constitutional law notes (previously prepared for a course in *Constitutional Law Survey* at Seton Hall University School of Law) will be provided to each student for their reference.
4. Each film will be followed by a brief *class discussion* based on your individual movie reviews.
5. **ADDITIONAL REQUIREMENTS:** Each student must read, digest and summarize **three important constitutional law cases**. The case summaries, with a *personal reaction*, must be approximately 2-3 pages in length. One case is due each Tuesday during the term. The cases from which you may choose and which are found in your course book in edited form this summer are:

- **Lemon v. Kurtzman**
- **Stenberg v. Carhart**
- **Boy Scouts of America v. Dale**
- **Griswold v. Connecticut**
- **Planned Parenthood of Southeastern Pennsylvania v. Casey**
- **United States v. Morrison**
- **Lawrence v. Texas**
- **Kelo v. City of New London**
- **Bush v. Gore**
- **Texas v. Johnson**
- **Printz v. United States**
- **United States v. Lopez**
- **United States v. Nixon**
- **Heart of Atlanta Motel v. United States**

6. Each student must find and comment about three *current legal issues in the news*. These reflections must be about one page in length. *The article prompting the reflection must be attached. The articles should relate to some aspect of constitutional law or analysis or any issue related to any of the cases found above.*

7. The final course grade is based on the movie reviews (50%), the constitutional case summaries (30%), and the personal reflections (20%).

There are literally about a hundred films that you may choose for a course like this. The films I selected for the summer of 2011 were:

- *Advise and Consent* (the American political system);
- *12 Angry Men* (the jury system; “reasonable doubt”; and issues of conflict and prejudice in the jury deliberation room);
- *Inherit the Wind* (historically, a reenactment of the Scopes “Monkey Trial”; more broadly, issues relating to “separation of Church and State”; “creationism” vs. “evolution” as science);
- *Gideon’s Trumpet* (the right of an indigent to counsel; a view of the inner workings of the Supreme Court; judicial activism vs. judicial restraint; the impact of the Warren Court on constitutional development); and
- *Judgment at Nuremberg* (international law; the role a judge in the legal system; a discussion of legal positivism; issues relating to genocide).

I have also developed a brief, *movie review format* in guiding my students how to think about the movies we had viewed in class:

2. MOVIE REVIEW FORMAT:

1. Name of the film:
2. Year of first presentation:
3. Company making or producing the film:
4. Name of the Director:
5. Major actors:
6. What was the main theme of the movie? What was the movie about?
7. What do you think the Director was trying to “get across” to the audience?
8. What 2-3-4 scenes were most important in developing the theme of the movie?
9. What 2-3-4 characters were most important in developing the theme of the movie?
10. Did any portrayal(s) especially appeal to you? Were there any especially unappealing?
11. What, if anything, did you learn from the movie?
12. Would you recommend the film to someone else? Why or why not?
13. In the case of a “film classic,” does the film have any contemporary relevance or offer any lesson?

Students have enjoyed the class and have found it to be an interesting way to explore important legal and constitutional issues in a rather different learning format. In addition, the course is only taught in our summer session where a more relaxed atmosphere seems to pervade our campus—especially for our graduate students—most of whom are trying to balance full time work, family, and receiving their MBA degrees at the same time. The course is a part of our “Breadth Sequence”—a series of two or three credit courses that are classified as general electives in the 42-credit MBA program.

One of the major components of the course is an introduction to constitutional law. It is important to note that our students are not law students and have limited interaction with legal issues in their MBA program, although our faculty has attempted to infuse legal issues into a variety of our MBA courses, most especially in three courses: *International Perspectives* (with coverage of international legal systems, international legal and economic institutions [the United Nations, the International Monetary Fund, the World Bank], an introduction to international law, and legal aspects of trade regulation and foreign direct investment); a “hub” course [4 credits], blending law and accounting; and a course called *Social Responsibility*, a case-based course in business ethics taught by a professor with legal training. It has not always been easy maintaining the presence of our legal faculty in the broad graduate-MBA curriculum at a time when enrollments keep shrinking and pressure is increasing for more functional knowledge areas and courses in the MBA curriculum.

I have developed an outline or “*Primer*” in order to introduce students to the issues traditionally considered in discussing the broad topic of constitutional law. I then relate these issues to two of the films I have chosen (*Gideon’s Trumpet* and *Inherit the Wind*) and also to the cases which I have selected.

I have reproduced the outline or primer for your consideration with certain explanation points found in []. The outline is just that—a “bare bones” attempt to introduce these topics, but in a format that will provide for an overview of the major issues and a summary of some of the major cases in each area. I generally spend about an hour introducing and discussing the primer.

It is my hope that some of you may find this approach both interesting and helpful in designing your own course at your own institution. I enjoy the course very much—and so do my students! If I can be of any help to you, please do not hesitate to contact me!

3. CONSTITUTIONAL LAW: A PRIMER

[With reference to “*Gideon’s Trumpet*” and “*Inherit the Wind*”]

1. Where do we find Constitutional Rights?

- In the Constitution of the United States itself. However, it should be noted that the United States Constitution mainly deals with the organization of the Federal Government into three co-equal branches based upon the experiences of the “Articles of Incorporation—America’s “first attempt at a Constitution.” [Here, you can introduce concepts such as “separation of powers” and “checks and balances” and the role of the United States Senate in confirming presidential nominees—most especially for the United States Supreme Court.]
- More specifically, we find individual rights in the “**Bill of Rights**” or the first Ten Amendments to the Constitution which in many ways limits the powers of the Federal government in certain areas [for example, “Congress shall pass no law...”]. In other cases, the Bill of Rights may provide for the protection of individual rights against intrusion by the government [for example, **Texas v. Johnson**- “flag burning”; **Lawrence v. Texas**- protection of private homosexual conduct; **Roe v. Wade**- right of a woman to choose to have an abortion; **Stenberg v. Carhart**- issue of “partial birth abortion”; **Planned Parenthood of Southeastern Pennsylvania v. Casey**- constitutionally permissible limitations on the “right to choose”].

2. Can other rights be established or have other rights been recognized?

- Traditionally, additional rights have been created through the constitutional amendment process. [This is the preferred method for Justice Black and others, as noted in **Griswold v. Connecticut**.]
- How about creating rights through constitutional analysis in what Justice Goldberg called were the “*penumbras and emanations*” of the Constitution? [Again, **Griswold v. Connecticut**; and later, **Roe v. Wade**]. What about the contemporary issue of recognition of “gay marriage”?
- This brings us to the unique role of the Supreme Court in the interpretation and development of the Constitution through its power of “stare decisis,” a principle first established in **Marbury v. Madison** and later unsuccessfully challenged in **United States v. Nixon**.

3. At the same time, the power of the federal government has been greatly expanded (most especially since the “New Deal”) over vast areas of the United States economy and in a wide variety of regulations through:

- The “Interstate Commerce Clause” or the “**Commerce Clause**,” which generally gives the Congress the right to legislate in matters involving the *instrumentalities, channels*, and activities “*affecting*” interstate commerce [see especially, **Heart of Atlanta Motel**].
- But, can the Congress go too far? Perhaps.... Under current Supreme Court interpretations, the “activity to be regulated” must itself be “commercial in nature” and must actually involve “interstate activity.” [For example, see **United States v. Lopez**, in which the Supreme Court ruled as unconstitutional provisions of the “Gun Free School Act” and **United States v. Morrison**, in which the Supreme Court ruled as unconstitutional the “Violence Against Women Act.”] (Hunter, Shannon, O’Sullivan-Gavin & Blodgett, 2011).

4. Against whom are Constitutional rights applicable? Generally, the provisions of the United States Constitution are applicable to actions of the Federal government

- And... since the 1860s, Constitutional protections have been expanded to include actions by *State* governments as well through the application of the **Fourteenth Amendment** in what are termed its “Due Process” or “Equal Protection” Clauses. [See **Bush v. Gore**].
- This is done by applying what is termed as the “Incorporation Doctrine” which applies “some” provisions of the U.S. Constitution to the States; (Hunter & Lozada, 2011)

- Now, which rights are “incorporated” against the states via the 14th Amendment” is a matter of some controversy [the “fundamental rights” debate, also known as the **Frankfurter/Black Debate**]; (Simon, 1989)
 - What is the standard of proof in constitutional cases? Depending on the nature of the right asserted, courts may use one of three standards: Strict scrutiny; rational basis; or the Justice Sandra Day O’Connor formulation of “intermediate scrutiny.”
5. However, the Constitution generally does not “touch” private conduct [**Boys Scouts of America v. Dale**]:
- But only to circumstances involving “**state action**” [actions by the government or a government agency or through some governmental power] or where a private party is acting “**under color of law**” such as a state bar association or some other entity “cloaked with” or exercising some governmental authority or power—but not the NCAA! (NCAA v. Tarkanian, 1988); Hunter & Alexander Becker, 2007)
6. What were some of the more interesting legal issues raised in **Gideon’s Trumpet**? (By the way, I also raise the issue: who was *Wainwright* in the original case of *Gideon v. Wainwright*? Or for that matter, who was *Ferguson*, in *Plessy v. Ferguson*?)
- The “Rule of Four”
 - *Overcoming the “special circumstances”* ruling of **Betts v. Brady** which was entitled to deference under “stare decisis”
 - *Writ of habeas corpus*
 - *Writ of certiorari*
 - “*In forma pauperis*”
 - Oral arguments before the United States Supreme Court
 - “Double Jeopardy” and venue arguments raised by Gideon after his conviction had been overturned
7. The issues raised in “**Inherit the Wind**”
- “Separation of church and state”[a discussion of the issues raised by, among others, Madalyn Murray O’Hare] (Abington School District v. Schempp, 1963)
 - The rule of **Lemon v. Kurtzman** which established the three part (prong) test for determining if an action of the government violates First Amendment's separation of church and state:
 1. The governmental action must have a *secular purpose*;
 2. Its *primary purpose must not be to inhibit or to advance religion*;
 3. There must be *no excessive entanglement* between government and religion.

At this point, I introduce into the discussion several contemporary issues relating to church and state questions that have recently be raised in the media. You, no doubt, will find others of topical interest, perhaps in your own community:

- The Ocean Grove (N.J.) Amphitheater and the Neptune High School graduation, involving the use of a church building, with a massive cross over the podium, for a *public* school graduation;
- The recurring issues surrounding Christmas crèches and other religious symbols (like a display of the Ten Commandments) on public grounds;
- Student-led prayers at public school graduations;
- Half-time or pre-game prayers led by public school high school coaches such as occurred in New Brunswick, N.J.

This course has assisted our students in understanding the role and importance of the United States Constitution and the United States Supreme Court in attempting to resolve many important issues that they will confront either in their professional or personal lives. It is also a fun way to teach aspects of constitutional law in a less-formal, non-intimidating format that invariably enhances their interest in this field.

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