Advanced Federalism Seminar

Justice Eid
Spring 2007

What this seminar is all about: In United States v. Lopez, 514 U.S. 549 (1995), the U.S. Supreme Court struck down—for the first time in sixty years—an act of Congress as falling outside of its authority to regulate pursuant to the Commerce Clause. Lopez ushered in what commentators have called an era of “New Federalism” on the Court. Once considered a somewhat outdated and clearly unenforceable constitutional norm, federalism—that is, the relationship between federal and state government—has now taken center stage in the constitutional law world. Indeed, commentators agree that “New Federalism” has been the most significant development in constitutional law in the last decade or more.

This seminar explores the Court’s New Federalism by looking both backward and forward. In other words, what is new about “New Federalism”? What are the values that federalism serves, and is New Federalism furthering them? Does federalism continue to have a role in our interconnected, global society, and if so, what is it? What is the role of the Supreme Court, if any, in enforcing the boundaries of federalism? Where is New Federalism going and why? We will be discussing these and other questions during classtime and explore them in greater depth through writing a seminar paper.

Class hours: This seminar meets Mondays from 4 to 5:47 pm in Room 303. (Note: I have added 7 extra minutes to each class to make up for the fact that we do not meet on Monday, January 15)

Where to find me: My phone number in chambers is (303)837-3751, and I can be reached by email at allison.eid@judicial.state.co.us. In addition, I will be available by appointment before class in my law school office, Room 451.

Paper requirement: As provided by the law school rules, this seminar will entail “substantial legal research and writing”—ie, writing a seminar paper. There is no set maximum or minimum page requirement for the paper, although around 40 pages is recommended. Throughout the semester, you will be required to submit: 1) a paper topic selection (two or three sentences describing your paper topic); 2) a topic outline (one or two pages outlining what you expect to write about your topic); 3) a draft of your paper; and 4) a final paper. The due dates for these assignments are listed below. In the last four weeks of class, each seminar participant will present his or her paper to the class, with another participant serving as the discussion leader. There will be no exam.

Syllabus: The following is a tentative schedule of topics and assignments we will cover during the semester:
Class #1 (Monday, January 22): Federalism and the Constitutional Design

Class #2 (Monday, January 29): National and Global Challenges to the Federalist Structure

Class #3 (Monday, February 5): What’s New About “New Federalism” (Part I): Judicial Review
Paper Topics Due
  Larry Kramer, Putting the Politics Back into the Political Safeguards of Federalism, 100 Colum. L. Rev 215 (2000).

Class #4 (Monday, February 12): New Federalism and the Protection of Fundamental Rights
Class #5 (Monday, February 19):  New Federalism and Criminal Law

Paper Outlines Due

- **Required Readings:**
  - *Gonzales v. Raich*, 575 U.S. 1 (2005)

Class #6 (Monday, February 26):  New Federalism and Environmental Law

- **Required Readings:**

Class #7 (Monday, March 5):  New Frontiers in New Federalism Doctrine: The Spending Clause and the Dormant Commerce Clause

- **Required Readings:**

Class #8 (Monday, March 12):  What’s New About “New Federalism” (Part II): Much Ado About Nothing?

- **Required Readings:**

**Class #9 (Monday, March 19):** A Comparative Perspective on Federalism  
**First Drafts Due**  
● Required Readings: [To Follow]

No Class Monday, March 26 (Spring Break)

Class #10 (Monday, April 2): Paper Presentations

Class #11 (Monday, April 9): Paper Presentations

Class #12 (Monday, April 16): Paper Presentations

Class #13 (Monday, April 23): Paper Presentations

**Last Day of Finals (Wednesday, May 9): Final Papers Due**