**American Cities and Local Governments: The Legal Perspectives**

**Seminar**

**Trinity Semester at Fudan University, Fall 2020**

Instructor: Chang Liu (刘昶)

Class Time: Wednesday 6:30-9pm

Class Venue: *TBD*

Office Hours: Wednesdays 9-9:30pm.

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**Description**

This course exposes students to the legal frameworks where American cities and local governments operate. Through readings of leading cases from various federal and state courts at different levels as well as writings of important urban thinkers, it explores the division of power between local, state, and federal government and evaluates the desirability of the current system in the broader context democracy and good government. In the process, it analyzes how the city decision making process was shaped by the relevant legal frameworks and in turn has shaped important aspects of the American life, including the ways in which racial and ethnic division fracture American metropolitan areas.

**Disability Statement**

Trinity College is committed to creating an inclusive and accessible learning environment consistent with the Americans with Disabilities Act. Like many things, the need for disability accommodations and the process for arranging them may be altered by the COVID-19 changes we are experiencing and the safety protocols currently in place.  Students with disabilities who may need some accommodation in order to fully participate in this class are urged to contact the Student Accessibility Resource Center, as soon as possible, to explore what arrangements need to be made to assure access.

If you have approval for academic accommodations, please notify me by the end of week two of classes. For those students with accommodations approved after the start of the semester, a minimum of 10 days’ notice is required. Please be sure to meet with me privately to discuss implementation.

Student Accessibility Resources can be reached by emailing [Lori.Clapis@trincoll.edu](mailto:Lori.Clapis@trincoll.edu) or SARC@trincoll.edu.

**Grading**

Each student will be graded on 1) a presentation on selected topics covered in class (with option for group presentation); 2) five short response papers (2 pages); and 3) an open-book 8-hour final exam (consisting of short essay questions). The final exam constitutes 40% of the overall grade, the essays 25%, the presentation project 15%, individual performance in class discussions 10%, and the remaining 10% based on class attendance.

**Readings**

* Frug, Gerald E., Richard T. Ford, and David J. Barron, *Local Government Law, Cases and Materials (6th)*[[1]](#footnote-2).
* Frug, Gerald E, *City Making: Building Communities without Building Walls*. Princeton University Press, 2001.  (*Optional*)
* Cases and articles (available online).

**Readings and Schedule**

Week 1: Introduction to Themes of Local Government Law (9/16)

* Centralization vs. Decentralization
  + Tocqueville, *Democracy in America*
  + Madison, *Federalist No. 10*
  + *Romer v. Evans*, 517 U.S. 620 (1996)[[2]](#footnote-3)
* Public vs. Private
  + Frug, *The City as a Legal Concept*
  + *International Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992)
  + *Mazdabrook Commons Homeowners’ Association v. Khan* (N.J. 2012).
  + *Council of Organizations and Others for Education About Parochiaid, Inc. v. Engler*, 566 N.W.2d 208 (Mich. 1997)
  + *Knight First Amendment Institute v. Trump*, No. 18-1691 (2d Cir. 2020)[[3]](#footnote-4)

Week 2: Local Governments: Sources of Authority (9/23)

* Dillon’s Rule
  + Dillon, *Municipal Corporation*
  + Frug, *City Making: Building Communities Without Building Walls*
  + *Arlington County v. White*, 528 S.E.2d 706 (Va. 2000)
  + *Olesen v. Town of Hurley* (S.D. 2004)
* Home Rule
  + Schwartz, *The Logic of the Home Rule and the Private Law Exception*
  + *Marshal House, Inc. v. Rent Review and Grievance Board of Brookline* (Mass. 1970)
  + *New Mexicans for Free Enterprise v. City of Santa Fe* (NM App. Ct. 2005)
  + *Town of Telluride v. Lot Thirty-Four Venture* (Colo. 2000)
  + *City of Tucson v. State of Arizona* (Ariz. 2012)
  + *Johnson v. Bradley* (Cal. 1992)

Week 3: Forms of Local Authorities (9/30)

* Defining City
  + *Oregon v. City of Rajneeshpuram* (D. Or. 1984)
  + *Marsh v. Alabama* (U.S. 1946)
* Homeowner Associations
  + Ellickson, *Cities and Homeowners Associations*
  + McKenzie, *Privatopia*
  + Miller, *Cities by Contract*
* Special District/Business Improvement District
  + *Municipal Building Authority v. Lowder* (Utah 1985)
  + *Ball v. James* (U.S. 1981)
  + *Kessler v. Grand Central Dist. Management. Ass’n* (2d Cir. 1998)

Week 4: Local vs. State Government (10/14)

* Federal Constitution
  + *Hunter v. Pittsburgh*, 207 U.S. 161 (1907)
  + *City of N.Y. v. State of N.Y.*, 86 N.Y.2d 286 (1995)
  + *Milliken v. Bradley*, 418 U.S. 717 (1974)[[4]](#footnote-5)
  + *Equality Foundation v. Cincinnati*, 128 F.3d 289, 301 (6th Cir. 1997)
* Special Legislation
  + *Chicago National League Ball Club Inc. v. Thompson* (Ill. 1985)
* Preemption
  + *City of Cincinnati v. Baskin*
  + *American Financial Services Ass’n v. Oakland*

Week 5: Local vs. Federal Government (10/21)

* Federalism and Local Government
  + *National League of Cities v. Usery* (U.S. 1976)
  + *Garcia v. San Antonio Metropolitan Transit Authority* (U.S. 1985)
* Anti-Commandeering
  + *Printz v. U.S.* (U.S. 1997)
  + *NFIB v. Sebelius* (U.S. 2012)
  + Barron, *A Localist Critique of the New Federalism*
* Federal Government as Allies
  + *Lawrence County v. Lead-Deadwood School District* (U.S. 1985)
  + *Nixon v. Missouri Municipal League* (U.S. 2004)
* Immigration[[5]](#footnote-6)
  + *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)[[6]](#footnote-7)
  + Su, *A Localist Reading of Local Immigration Regulations*
  + *Garcia v. Dicterow* (Cal. Ct. App. 2008)

Week 6: Democratic Theories and Local Governments (10/28) [\*Response Paper]

* Tiebout, *A Pure Theory of Local Expenditure*
* Nozick, *Anarchy, State, and Utopia*
* Buchanan, *Principles of Urban Fiscal Strategy*
* Michelman, *Political Market and Community Self-Determination*
* Young, *Justice and the Politics of Difference*
* Dahl, *Dilemmas of Pluralist Democracy*
* Zuckerman, *Peaceable Kingdoms*
* Ford, *Law’s Territory*

Week 7: Suburbs **[Presentation I]** (11/4)

* Suburbs[[7]](#footnote-8)
  + Hall, *Cities of Tomorrow*
  + Ford, *The Perpetuation of Racially Identified Spaces*
  + Segrue, *The Origin of the Urban Crisis*
  + Jackson, *The Federal Housing Authority*
  + Mumford, *The City in History*
* Sprawling
  + Findlay, *Magic Lands: Western Cityscapes & American Culture After 1940*
  + Garreau, *Edge City: Life on the New Frontier*
  + Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*
  + Easterbrook, *Comment on Karen A. Danielsen, Robert E. Lang, and William Fulton’s Retracting Suburbia: Smart Growth and the Future of Housing*
* Controlling Sprawling
  + American Planning Association, *Growing Smart Legislative Guidebook*

Week 8: Residents and Non-residents (11/11)

* Distinction between Residents and Non-residents
  + *Holt Civic Club v. City of Tuscaloosa* (1978)
  + *May v. Town of Mountain Village* (10th Cir. 1997)
* Favoring Residents
  + *Martinez v. Bynum* (U.S. 1983)
  + *Leydon v. Town of Greenwich* (Conn. 2001)
* Exclusions
  + *Milliken v. Bradley*, 418 U.S. 717 (1974) (*reprise*)
  + *San Antonio Independent School District v. Rodriguez* (U.S. 1973)
  + *Edgewood Independent School District v. Kirby* (Texas 1989)
  + *Sheff v. O’Neill* (Conn. 1996)
  + Williams*, The Constitutional Vulnerability of American Local Government*

Week 9: Zoning (11/18) [\*Response Paper]

* Zoning[[8]](#footnote-9)
  + *Village of Belle Terre v. Borass* (U.S. 1974)
  + *City of Cleburne, Texas v. Cleburne Living Center* (U.S. 1985)
  + *City of Renton v. Playtime Theaters* (U.S. 1986)
  + *Telluride v. Lot 34 Venture* (Colo. 2000) (*reprise*)
  + Warner, *The Trouble with Normal*
* Exclusionary Zoning
  + *Village of Arlington Heights v. Metropolitan Housing Development Corp* (U.S. 1977)
  + *Southern Burlington County NAACP v. Township of Mt. Laurel* (I) & (II) (N.J. 1972/1975)
  + Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*
* Inclusionary Zoning
  + New York City, *Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods*[[9]](#footnote-10)
  + Ellickson, *The Irony of Inclusionary Zoning*

Week 10: Regionalism **[Presentation II]** (11/25)

* Interlocal Agreements
  + Frug, *Empowering Cities in a Federal System*
* Public Authorities and Special Districts
  + Briffault, *Our Localism: Part II – Localism and Legal Theory*
  + Georgia Regional Transportation Authority
* Regional Government
  + Rusk, *Cities Without Suburbs*
  + Weir, *Coalition Building for Regionalism*
  + Frug, *City Making: Building Communities Without building Walls*

Week 11: Local Government Functions and Privatization (12/2)

* Police
  + Frug, *City Making: Building Communities Without Building Walls*
  + *Castle Rock v. Gonzales*, 545 U.S. 748 (2005)
  + Sklansky, *The Private Police*
  + Livingston, *Police Discretion and the Quality of Life in Public Places*
* Education
  + *Owens v. Colorado Congress of Parents, Teachers, and Students* (Colo. 2004)
* Transit
  + Ramsey, *Selling the NYC Subway: Wild-Eyed Radicalism or the Only Feasible Solution?*
* Housing
  + Bosselman & Stroud, *Mandatory Tithes: The Legality of Land Development Linkage*
* Reynolds, *Taxes, Fees, Assessments, Dues, and the “Get What You Pay For” Model of Local Government*

Week 12: Urban Renewal and Economics Developments **[Presentation III]** (12/9)

* Urban Renewal[[10]](#footnote-11)
  + Aoki, *Race,* *Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*
  + *Maready v. The City of Winston-Salem*, 467 S.E.2d 615 (N.C. 1996)
  + *Kelo v. City of New London*, 545 U.S. 469 (2005)
  + Simon, *The Community Economic Development Movement*
  + Mcfarlane, *When Inclusion Leads to Exclusion: The Unchartered Terrain of Community Participation in Economic Development*
* Global City
  + Friedman, *The World Cities Hypothesis*
  + Sassen, *The Global City: New York, London, Tokyo*
* Tourist City
  + Boyer, *Cities for Sale: Merchandising History at South Street Seaport*
  + Eisinger, *The Politics of Bread and Circuses*
* Middle Class City
  + *Hernandez v. City of Hanford* (Cal. 2007)
  + Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution*

Week 13: Democratic Theories and Local Government: Part II (12/16) [\*Response Paper]

* Voting
  + *Avery v. Midland County* (U.S. 1968)
  + Notes on Groups and Voting Equality
  + Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, & Theoretical Meanings of Alien Suffrage*
* Initiative & Referendum
  + Bell, *The Referendum: Democracy’s Barrier to Racial Equality*
  + Barber, *Strong Democracy*
* Participation
  + Pitkin & Shumer, *On Participation*
  + Berry, Portney & Thompson, *The Rebirth of Urban Democracy*
  + Gaventa, *Power & Powerlessness*

1. Available at Fudan University Library. Most of the cases and materials are brief excerpts selected in this casebook. Earlier editions of the case book should also work as the later added cases are generally available online. [↑](#footnote-ref-2)
2. *See also Obergefell v. Hodges*, 576 U.S. 644 (2015) (majority opinion and Scalia dissent), available at <https://supreme.justia.com/cases/federal/us/576/14-556/>. [↑](#footnote-ref-3)
3. <https://law.justia.com/cases/federal/appellate-courts/ca2/18-1691/18-1691-2020-03-23.html> [↑](#footnote-ref-4)
4. # *See also This Supreme Court Case Made School District Lines A Tool For Segregation*, available at <https://www.npr.org/2019/07/25/739493839/this-supreme-court-case-made-school-district-lines-a-tool-for-segregation>.

   [↑](#footnote-ref-5)
5. *See also United States v. California*, 921 F.3d 865 (9th Cir. 2019), available at https://casetext.com/case/united-states-v-california-34 [↑](#footnote-ref-6)
6. https://supreme.justia.com/cases/federal/us/118/356/#tab-opinion-1911263 [↑](#footnote-ref-7)
7. *See also* Glaeser, *Are Cities Dying?* available athttps://www.csus.edu/indiv/c/chalmersk/econ180fa08/glaeserdyingcities.pdf [↑](#footnote-ref-8)
8. *See also Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), available at <https://supreme.justia.com/cases/federal/us/272/365/> [↑](#footnote-ref-9)
9. <https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/mih_report.pdf> [↑](#footnote-ref-10)
10. *See also* *Kaur v. New York State Urban Development Corporation* (N.Y. 2010) [↑](#footnote-ref-11)