

## 326 quiz 1 review

### realism

- common law/normalism
- idea that legal questions are resolved with the correct legal answer
- law moves to true form of justice- judges drive law toward justice
- believe that judges already know how they will rule and will then find precedent to support their ruling
- problem: how do we know what the correct legal answer is?
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### textualism/originalism

- Coy v. Ohio- Textualism
  - girls testify behind a screen so as to not see their abuser and Coy appeals saying that the procedure didn't follow the constitution; wins
  - Scalia defines what confrontation is
- Hugo Black- Textualist
- Language is transparent
- all that matters is the constitution and the statute
- Textualism- good- easy/straightforward, consistent, no room for interpretation
  - bad- can't account for every case- definitions may change, constitution is a living document, can lead to unjust outcomes
- Clarence Thomas- originalist
- Warren Burger- originalist
- what the law/statute 'meant' to say- what it was intended to mean
- can apply textualism but to modern issues- ex. technology
- Marsh v. Chambers- chaplain was paid using state money- won because praying is a tradition and is what was 'intended' in that state
- originalism- good- follows text, room for interpretation; has real limits; appeal to authority
- originalism- bad- times change, language changes, intent/words may be unclear; were the founders infallible?
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### doctrinal reasoning

- gaines v. canada 1938 check over regarding plessy
  - somebody had to admit him
  - plessy not applicable because its different
- sipuel v. oklahoma state board of regents 1948

- had to provide education
- Sweatt v. Painter 1950-
  - had to admit to white school because law is mainly white so can't practice and learn in a vacuum
- ultimately it redefines set precedent and distinguishes old precedent
- advantages: specific, focused on cases, enables reconsideration, evolutionary, builds on law, precedent/clear reasoning, can be strategic
- disadvantages- can take a long time, undermines previous rulings, leaves more room for individual interpretation of the judge, precedents may not agree

#### natural law/aspirationalism

- Justice William O. Douglas
- roots in natural law
- government can't overstep boundaries- has to maintain our natural rights
- can't delegate for the states to take away natural rights
- **\*\*morality\*\***
- Rochin v. California 1949
  - made a guy that swallowed morphine pills pump their stomach and proved illegal because it's against decency
- Goodridge v. Department of Human Services
  - Massachusetts 2003
  - Massachusetts state law that violated their own constitution
  - against human right to individual liberty
  - living constitution
- advantages
  - sets out to protect fundamental rights; limits on state authority; some sense of social progressiveness; human side/exercise of moral voice
- disadvantages
  - far from the law
  - radical/changes frequently
  - very discretionary
  - morals don't necessarily agree

before the law, Kafka- you are what you make of the law

dialogue between a priest and K, Kafka- he doesn't know the law internally

amendments 1-10- bill of rights

13- abolishes slavery

14- citizenship

15- voting rights for black men

16- income tax

17- senators elected directly

18- gives congress right to regulate liquor

19- women's suffrage

llewellyn- legal realist- judges make the law what it is, not all law is perfect. judges work to make the system better