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Smolla explores connection between Constitution and campus

Furman president Rod Smolla is the former dean of the law schools at Washington & Lee University and the University of Richmond. He is nationally recognized as a scholar, teacher and writer, and is one of the nation's foremost experts on issues relating to freedom of speech, academic freedom and freedom of the press.

*His latest book, *The Constitution Goes to College*, was published this spring by New York University Press. Teresa Cosby, assistant professor of political science and holder of a law degree from Howard University, offers this review.*

THE MORAL AND ETHICAL principles that are the foundation of the United States Constitution were inspired by American values. These constitutional values are in turn incorporated into the cultures and mores of many private and public universities and colleges in America.

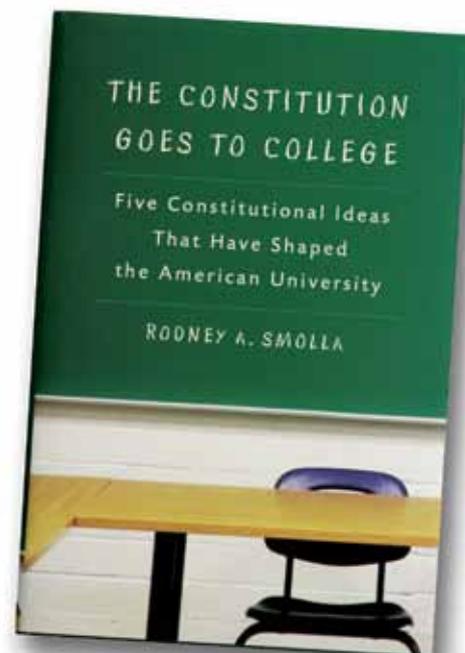
This phenomenon is clearly and expertly established in Rodney A. Smolla's exemplary new work, *The Constitution Goes to College*. The title suggests the personification of the document as a flip flop-wearing, backpack-toting (stuffed with books and an iPad) student sitting in a classroom studying history, while also remaining current on new events and structures in society that it may be called upon to address in the future. However, this is a serious work, and Smolla uses it to prove that the Constitution is the teacher, not the student.

The subtitle of the book is "Five Constitutional Ideas That Have Shaped the American University." These ideas are: academic freedom and the living Constitution, the public and private spheres of society, the distinction between rights and privileges, ordered liberty, and competing conceptions of equality. In discussing these ideas, he helps to answer a fundamental question: "Do we have a living Constitution?"

Smolla's thesis is "that the American Constitution and the American college campus are in a very deep and fundamental sense connected, and that we may learn a great deal by exploring that connection." He reflects on Daniel Webster and his argument in the 1819 Dartmouth College case that universities are special places. Smolla argues that "[u]niversities are curious legal creatures" because, although the public university is a government agency, it is not just a government agency, and although private universities are structured like non-profit corporate entities, they are not just corporations. Rather, these institutions are a peculiar blend of corporate and political structures that act more like civic and political organizations.

To make his case, Smolla shows that the Constitution is imbued with a life force that surpasses its legal moorings. The most intriguing influence of the Constitution on campuses is the existence of a "shadow constitution." Smolla explains that the "shadow constitution" is created by a milieu of legal statutes, contractual arrangements, and customs that act in parallel to the Constitution as a defining force on college campuses. Using prior case law, Smolla shows how the First Amendment right to free speech, married with the implied rights of privacy, applies with double force to the scholar's right to academic freedom — and how the public university and the private university, which are shaped by the law, have managed to carve out for themselves a separation of "university and state."

In the rights and privileges debate, colleges wrestle with the question of just how much academic freedom college and university players have — not whether they have rights and privileges. The modern university, Smolla



explains, is linked to the values of morality, culture and law, which create a constant tension between the values of order and the values of liberty.

Smolla ends with a discussion about the competing conceptions of equality and the tension created by the debate about a "color-blind" Constitution versus a race-conscious Constitution. This tension is found on college campuses in arguments for or against recruiting a diverse student body to create a robust "marketplace of ideas."

In each evaluation Smolla is able to draw a sharp line from the values preserved by the Constitution to how those values influence college life. *The Constitution Goes to College* does a superb job of showing how the very presence of colleges and universities benefits society because these institutions eagerly volunteer to be the testing grounds for some of our most important American values. In doing so they allow the Constitution to continue to teach the citizens of America a thing or two.