

HAMLIN UNIVERSITY SCHOOL OF LAW

**CONSTITUTIONAL LAW I:  
The Craft of Constitutional Argument**

*Section Three – Three Credits  
Spring 2011*

**SYLLABUS**

Mon., Wed, Fri.

10:00 a.m. -- 10:50 a.m.

Room 103

Office Hours: By Appointment Mon-Fri. Afternoons

Professor Vogel

Room 221W

Phone: 651-523-2120

email: [hvogel@hamline.edu](mailto:hvogel@hamline.edu)

-----

**Purpose and Scope:** This course is designed to provide an introduction to the craft of American constitutional argument and the possibilities of American constitutional law for securing the vision of justice within “a more perfect union” declared in the Preamble to the United States Constitution. This involves development of expertise in the *practical skill of composing and performing constitutional argument* in a way that is grounded in a rich contextual understanding of the history and theory of constitutional argument and adjudication. The major focus of our study is to gain grounding and develop skill in *constitutional interpretation* as the practice of a *rhetorical art*.<sup>1</sup> Throughout the course, students will be encouraged to develop their own critical understanding of American constitutional interpretation as a particular expression of the quest to secure the meaning of justice under the constitution within the context of the specific doctrinal concerns of the course. These specific doctrinal concerns focus on a wide variety of principles related to federalism and constitutional rights as limits on governmental power with emphasis on due process under the Fifth and Fourteenth Amendments. Extended treatment of constitutional rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment are taken up in Constitutional Law II.

There is no prerequisite for the course.

**Classroom Activity:** The course will be taught through *extended class discussion* of a set of readings that include the text of the United States Constitution, opinions of the United States Supreme Court, and non-judicial public officials, along with documents and notes related to these sources, in American constitutional history. Written hypothetical case study problems will provide an opportunity to develop skill in applying the principles and rules of constitutional

---

<sup>1</sup> For an extended discussion of constitutional law as a rhetorical art, illustrated through the development of substantive due process cases decided by the Court in the 20<sup>th</sup> and early 21<sup>st</sup> centuries, see Howard J. Vogel, *The “Ordered Liberty” of Substantive Due Process and the Future of Constitutional Law as a Rhetorical Art: Variations on a Theme from Justice Cardozo in the United States Supreme Court*, 70 Albany L. Rev. 1473 (2007) available at the TWEN site for the course at the link entitled “Further Reading”.

doctrine in concrete everyday settings likely to arise in the courts. Beyond discussion of the rules of constitutional law that emerge from the cases, class discussion will be devoted to critical engagement with the *interpretive issues* that arise in the performance of constitutional argument so that students can gain expertise in performance of such argument themselves. Thus, our discussion of constitutional doctrine will proceed with contextual sensitivity as we explore the range of choices of interpretive strategy that might be made in approaching the text, including the choices made by members of the Court from time to time.

**Course Organization and Method:** The organization of the course generally follows the structure of the primary text for the course: Paul Brest, Sanford Levinson, J. M. Balkin, Akhil Reed Amar & Reva Siegel, *Processes of Constitutional Decisionmaking: Cases and Materials* (5th ed. Aspen L. & Bus. 2006) in chapters 1-5 & 8. The structure of this volume takes up various themes in the development of constitutional doctrine in *historical perspective*. This means that students should expect that their understanding of various key themes of constitutional doctrine will develop over time since our study will roughly follow the development of these themes in American constitutional history, rather than taking them up thematically without reference to historical development. This approach has great value and poses a distinct challenge.

The *value* of this historically conceptualized and contextually-sensitive approach is found in the fact that *constitutional doctrines are dynamic*, despite the presence of enduring features that will soon become apparent. In other words, the development of American constitutional doctrine is always open to evolving further and taking new and surprising turns in that development. The future shape and content of constitutional doctrine will, no doubt, reflect the past, but it may also embark on variant pathways not always anticipated by those who participated in the cases we shall study. Indeed, the students of today may well become the agents of such change in the future.

The *challenge* posed by an historically conceptualized and contextually-sensitive approach to doctrine means that students will need to be attentive to the task of *synthesizing the development of constitutional doctrine* into a comprehensive statement of what these principles have come to mean today, realizing that they may develop further in the years ahead. This is what lawyers do when they read cases in everyday practice, but it is not how many casebooks are organized. Many typical case books for law study are organized thematically, with little, if any attention, to the historical development of these themes. The casebook for this course is not organized in that manner, although, as you will see there are some exceptions to this, especially as we read cases decided in recent years.

Finally, as the first reading assignment for the course should make clear (an essay by the instructor entitled *The Craft of Constitutional Argument & the Creation of Meaning*), the approach taken by the instructor to these materials proceeds from an understanding of the activity of constitutional argument as one in which *constitutional lawyers participate in the creation of meaning within American political society* whether they think they do or not. This

theme will be explored throughout the course. One of the purposes of that exploration will be to critically examine and reconsider conventional categories such as “conservative”, “liberal”, “strict constructionist”, and “activist” that are used today to classify the way particular judges approach the task of constitutional decisionmaking. In the process we shall ask whether there might be different categories for characterizing how judges approach their task, and whether such ways might be more useful in our work as constitutional lawyers.

**Course Requirements:** The requirements for this course include (1) reading, (2) regular visits to the course website, (3) class discussion preparation & attendance, (4) observance of the technology policy for the course, and (5) a final examination. Details for each of these five requirements are set forth below.

**1. Required Reading:** Students are expected to *prepare the required reading materials for discussion in advance of the class session for which they are scheduled*. Required reading assignments will be drawn from two paper-bound printed sources, as well as digitized sources on-line at the TWEN site for the course

The paper-bound materials are available for purchase in the law school bookstore. They are: **(1)** a casebook on American constitutional law— Paul Brest, Sanford Levinson, J. M. Balkin, Akhil Amar & Reva Siegel, *Processes of Constitutional Decisionmaking – Cases and Materials, 5th Edition* (Aspen Publishers 2006); and **(2)** *2010 Supplement to Paul Brest, Sanford Levinson, J. M. Balkin, Akhil Reed Amar & Reva Siegel, Processes of Constitutional Decisionmaking: Cases and Materials* (5th ed. Aspen L. & Bus. 2006)(Prepared by Jack M. Balkin).

The on-line sources are available at the TWEN site for the course. They are: **(1)** An on-line set of supplementary materials prepared by the instructor will be distributed at the “*Instructor’s Course Supplement*” link; **(2)** An on-line set of study aids, including a guide for the practice of constitutional analysis and argument prepared by the instructor that we shall devote time to virtually every session, will be distributed under the “*Study Guide*” link; and **(3)** A series of hypothetical case study problems to be taken up from time to time in class discussion will be distributed at the “*Case Study Problems*” link. Students will need to log on to the TWEN site for the course at least weekly to gain access to these materials as they are distributed from time to time during the course of the semester.

The schedule of *Weekly Reading Assignments & Class Session Discussion Themes* for the course are set out on pages 6-14 of this syllabus.

*Highly Recommended Optional Reading Materials ON RESERVE in the Law School Library --*  
**(1)** For an excellent comprehensive, beautifully written study of the Constitution employing the resources of law, history and political science see Akhil Reed Amar, *America’s Constitution: A Biography* (Random House 2005); and **(2)** For an *extended doctrinal discussion* of all of the major constitutional law doctrines studied in Constitutional Law I & II, the one-volume text by

Erwin Chemerinsky, *Constitutional Law: Principles and Policies, Third Edition* (Aspen Publishers 2006) is the best choice.

*Recommended Collateral Reading for Additional Historical Perspective* -- **(1)** For the standard oft-cited reference on the proceedings of the constitutional convention of 1787 see Max Farrand, editor, *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 3 Vols., plus supplement edited by James H. Hutson 1911, 1987); and **(2)** For an excellent anthology of the public debate carried on in the so-called “Federalist Papers” and responses to them see *The Debate on the Constitution*, 2 volumes (Bernard Bailyn, ed., Library of America 1993).

**2. Web Pages/On-Line Virtual Classroom:** A special website on the internet, using the TWEN technology of the West Group, has been established for this course. The website is open 24 hours a day, seven days a week. This site has been set up for the following purposes: (1) on-line distribution of additional course materials, including study aids and case study hypotheticals, (2) discussion with the instructor and other members of the course on topics and themes of the course, and (3) announcements regarding any changes to the calendar or assignments required for the course.

STUDENTS IN THIS COURSE ARE REQUIRED TO LOG ON AND REGISTER AT THE WEB ADDRESS FOR THE COURSE. Students should register for the website by going to <http://lawschool.westlaw.com> with their Westlaw password. If you have not already received your Westlaw password, or have forgotten it, please contact the Computer Services/Reference Librarian at the Hamline Law Library. There is also a password for the course site that will be sent to each student by the instructor via e-mail.

It is particularly important for students to ***check the website frequently and no less than weekly***, to receive additional course materials, and any updates needed to the reading and discussion schedule for the course, as well as to monitor the on-line discussion at the website which provides a forum for conversation about themes that emerge in the classroom throughout the semester.

**3. Class Discussion Preparation & Attendance:** Students are expected to *prepare for and actively participate in class discussion*. “Preparation,” in the context of this course, means that the student has read the reading assigned for the day, in advance of class, and is ready to actively participate in class discussion on that reading when called upon in class to do so. *Students who are unprepared to actively participate in class discussion when called upon shall be required to submit to the instructor a written memo of 1-3 pages in length in which they discuss their constructive response to the issues raised by the reading assignment for the day.*

The course will meet forty-two times, for 50 minutes (one semester hour), three times each week, over a sixteen week period. This period includes the week of SpringBreak. The first session of the course will be held Wednesday, January 19th and the last will be held Tuesday, May 3rd. The

class will not meet during the week of March 7th through March March 11th (SpringBreak) or on Friday, April 22nd (Easter Break).

Students are expected to attend the full session of each class session scheduled for the course. Students should review the full text of the Attendance Policy as set forth in Rule AR-108 of the Hamline University School of Law Academic Rules posted on the Registrar's page of the Hamline University School of Law website. In compliance with that policy, the instructor will maintain a weekly record of attendance.

Students who accumulate absences totaling SIX SEMESTER HOURS (e.g. six 50 minute sessions of class time) are expected to MEET WITH THE INSTRUCTOR to discuss problems in attending class. Note that in this course MORE THAN SIX SEMESTER HOUR ABSENCES are considered EXCESSIVE and constitute grounds for withdrawal from the course, unless extenuating circumstances exist and arrangements are made with the instructor to address the missed work.

**4. Classroom Technology Policy:** You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies and respect due to your classmates, please refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

**Examination & Grade Reports:** The entire grade for the course will be based on a *closed book* examination to be given at the end of the semester on Friday May 6th at a time to be announced by the Registrar. A copy of the United States Constitution will be provided to each student at the time of examination for use during the examination. You may not bring any materials to the examination other than writing instruments or your computer if you type the examination. The examination will test your ability to address doctrinal issues in hypothetical problems as well as issues of interpretive theory and historical development of both doctrine and theory. Further details on the examination will be announced in class later in the semester. Grade Reports are released to students only by the Registrar.

## WEEKLY READING ASSIGNMENTS & CLASS SESSION DISCUSSION THEMES

*Modifications to the order set out below as required by the flow of class discussion, if any, will be posted as needed on the TWEN website for the course.*

**Note:** Class Session Discussion Themes are noted in *italics* below. Instructors' Comments planned for other themes are noted in roman type below.

### Key to Abbreviations

- (1) Pages assigned from the casebook for the course, Paul Brest, Sanford Levinson, J. M. Balkin, Akhil Amar & Reva Siegel, *Processes of Constitutional Decisionmaking – Cases and Materials, 5th Edition* (Aspen Publishers 2006), are indicated below by the initials “**CB**”
- (2) Pages assigned from the casebook authors' supplement for the casebook, *2010 Supplement to Paul Brest, Sanford Levinson, J. M. Balkin, Akhil Reed Amar & Reva Siegel, Processes of Constitutional Decisionmaking: Cases and Materials* (5th ed. Aspen L. & Bus. 2006)(Prepared by Jack M. Balkin), are indicated below by the initials “**CB Supp**”.
- (3) Assignments from the on-line set of supplementary materials prepared by the instructor will be posted from time to time at the “*Instructor's Course Supplement*” link of the TWEN site for the course and are indicated below by the initials “**TWEN Supp**”.
- (4) Assignments from the on-line set of study aids prepared by the Instructor will be posted from time to time at the “*Study Guide*” link of the TWEN site for the course and are indicated below by the initials “**TWEN SG**”.

**WEEK 1 January 17th-21st - READ:** TWEN SG Tab A; CB19-84 to “VII. Freedom etc.”

### **PART ONE: THE MEANING OF CONSTITUTIONAL POWER AND CONSTITUTIONAL RIGHTS IN HISTORICAL PERSPECTIVE - 1787 - 1937**

#### **MARTIN LUTHER KING, JR. HOLIDAY - No Class - January 17th**

**Session 1** - Instructor's Opening Comment: Introducing the Craft of Constitutional Law - TWEN SG Tab A

*The Debate over the Bank of the United States & the Scope of Federal Power in the Marshall Court Era* (McCulloch v. Maryland: Part I-The First Issue) - CB 19-51 to “A. The Reaction etc.”

**Session 2** - *The Challenge of Interpretation: The Persistently Recurring Issues* - (1) *What is the Constitution; and (2) How Should it be Interpreted?* - CB 51 from “A. The Reaction etc.”-67 to “V. The States' etc.”

*The Problem of “Federalism” in the Marshall Court Era (McCulloch v. Maryland: Part II-The Second Issue) - CB 67 from “V. The States’ etc.”-84 to “VII. Freedom etc.”*

**WEEK 2 January 24th-28th - READ:** TWEN SG Tab B; CB 84 from “VII. Freedom etc.”-124 to “C. The Precedents etc.”; 136 from “IV. ‘The Marshall Court,’”-161 to “Note etc.”; 164 from “Women’s etc.”-168 to “VIII. Regulation etc.”; [OPTIONAL as Background for Instructor’s Comment on “The Power of the Judiciary: Judicial Review, Jurisdiction & Justiciability,” CB 124 from “C. The Precedents etc. - 136 to “IV. ‘The Marshall Court,’” and CB 887 from “VI. Some Limits etc.” - 892][OMIT CB 161 from “Note etc.”-164 to Women’s etc.”]

**Session 3 - States’ “Rights” & The Challenge of Interpretation (The Kentucky & Virginia Resolutions) - TWEN SG Tab B; CB 84 from “VII. Freedom etc.”-95**

**Session 4 - Judicial Review, Jurisdiction & Justiciability (Marbury v. Madison) - CB 97-124 to “C. The Precedents etc.”; [OPTIONAL as Background for Instructor’s Comment on “The Power of the Judiciary: Judicial Review, Jurisdiction & Justiciability,” CB 124 from “C. The Precedents etc.” - 136 to “IV. ‘The Marshall Court,’” and CB 887 from “VI. Some Limits etc.” - 892]**

**Session 5 - Presidential Power in Wartime (Little Barreme) - CB 136 from “IV. ‘The Marshall Court’”-140 to “V. The Protection etc.”**

*Property, the Idea of Vested Rights & the Natural Law Tradition (Fletcher v. Peck; Calder v. Bull) - CB 140 from “V. The Protection etc.”-153 to “Note etc.”*

*The Status of African Americans & the International Slave Trade (The Antelope) - CB 153 from “Note etc.”-156 to “VI. American etc.”*

*The Status of Native Americans & the “Marshall Trilogy” (Johnson’s and Graham’s Lessee v. William M’Intosh; Cherokee Nation v. Georgia) - CB 156 from “VI. American etc.”-161 to “Note etc.” [OMIT CB 161 from “Note etc.”-164 to Women’s etc.”]*

*The Status of Women & the Declaration of Seneca Falls - CB 164 from “Women’s etc.”-168 to “VIII. Regulation etc.”*

**WEEK 3 January 31st-February 4th - READ:** CB 168 from “VIII. Regulation etc.”-210 to “2. Interstate etc.”; TWEN Supp Tab A; CB 212 from “II. Slavery etc.”-226 to “C. Prelude etc.”; [SKIP FOR NOW - CB 210 from “2. Interstate etc.”-212 to “II. Slavery etc.”

**Session 6 - The Foundation of Commerce Power in the Marshall Court Era (Gibbons v. Ogden) - CB 168 from “VIII. Regulation etc.”-180 to “Note etc.”**

*The Challenge of Interpretation - CB180 from “Note etc.”-186*

**Session 7 - Commerce Power & the Interstate Slave Trade: Gibbons v. Ogden in its Social Context** - Video in Class - Review (Gibbons v. Ogden) CB 168 from “VIII. Regulation etc.”-180 to “Note etc.”

**Session 8 - The Reserved Power of the States** (New York v. Miln) - CB 187-203 to “B. The Cooley etc.”

*State Power over Interstate Commerce?: Gibbons v. Ogden in the Taney Court Era* (Cooley v. Board of Wardens) - CB 203 from “B. The Cooley etc.”-208 to “C. The Privileges etc.”

*The Idea of Fundamental Rights & the Privileges and Immunities of State Citizens under Article IV* (Corfield v. Coryell) - CB 208 from “C. The Privileges etc.”-210 to “2. Interstate etc.” [SKIP FOR NOW - CB 210 from “2. Interstate etc.”-212 to “II. Slavery etc.”]

*Slavery at the Constitutional Convention, the Interstate Slave Trade & State Power* (Groves v. Slaughter) - TWEN Supp Tab A, Review - CB 212 from “II. Slavery etc.”-217 to “B. Fugitive etc.”

*Fugitive Slaves & Federal Preemption of State Law* (Prigg v. Pennsylvania) - CB 217 from “B. Fugitive etc.”-226 to “C. Prelude etc.”

**WEEK 4 February 7th-11th - READ:** CB 226 from “C. Prelude etc.”-291 to “F. The Legal etc.”; 301-319 to “B. The Fourteenth etc.”; 210 from “2. Interstate etc.”-212 to “II. Slavery”; [OMIT CB 291 from “F. The Legal etc.”-300]

**Session 9 - The Status of Slaves & Congressional Power** (Dred Scott v. Sandford) - CB 226 from “C. Prelude etc.”-253 to “Frederick etc.”

*Frederick Douglass & the Anti-Slavery Campaign* - CB 253 from “Frederick etc.”-257 to “D. Judicial etc.”

**Session 10 - The Presidency during Wartime** (Lincoln and the Civil War) - CB 257 from “D. Judicial etc.”-291 to “F. The Legal etc.”; [OMIT CB 291 from “F. The Legal etc.”-300]

**Session 11 - The Civil War Amendments & The “Second Constitution” after the Fourteenth Amendment** - CB 301-319 to “B. The Fourteenth etc.”

*The Possibilities of Constitutional Law after the Civil War - Part 1: Interstate Travel* (Crandall v. Nevada) - CB 210 from “2. Interstate etc.”-212 to “II. Slavery”

**WEEK 5 February 14th-18th - READ:** CB 319 from “B. The Fourteenth etc.”-385 to “B. The Fourteenth etc.”; [OPTIONAL for Instructor’s Comment on Diversity in an Expanding Republic - CB 385 from “II. Creating etc.”-411]

**Session 12 - *The Possibilities of Constitutional Law after the Civil War - Part 2: The Civil War Amendments in the Supreme Court with Special Attention on the Privileges or Immunities of United States Citizens under the Fourteenth Amendment*** (The Slaughterhouse Cases) - CB 319 from “B. The Fourteenth etc.”-337 to “Bradwell etc.”

*The Possibilities of Constitutional Law after the Civil War - Part 3: The Status of Women & the Practice of Law* - CB 337 from “Bradwell etc.”-346 to “Note”

**Session 13 - *The Possibilities of Constitutional Law after the Civil War -Part 4: The Status of African Americans After the End of Slavery*** (Strauder v. West Virginia & Plessy v. Ferguson) - CB 351 from “C. Early etc.”-373 to “E. Creation etc.”; [SKIP FOR NOW CB 346 from “Note etc.”-351 to “C. Early etc.”]

**Session 14 - *The Possibilities of Constitutional Law after the Civil War - Part 5: The Status of African Americans After the End of Slavery & State Action*** (The Civil Rights Cases) - CB 373 from “E. Creation etc.”-385 to “II. Creating etc.”

*The Possibilities of Constitutional Law after the Civil War - Part 6: The Status of Native Americans* - CB 346 from “Note”-351 to “C. Early etc.”

The Possibilities of Constitutional Law after the Civil War - Part 7: Diversity in an Expanding Republic (Downes v. Bidwell, Chae Chan Ping v. United States & Reynolds v. United States) - [OPTIONAL for Instructor’s Comment on Diversity in an Expanding Republic - CB 385 from “II. Creating etc.”-411]

**WEEK 6 February 21st-25th - READ:** CB 412-460 to “V. When etc.”; 485-493; TWEN Supp Tab B; [OPTIONAL as Background for Instructor’s Comment on Amending the Constitution during the Progressive Era, CB 471 from “VI. Constitutional etc.”- 483][OMIT CB 460 from “V. When etc.”-471 to “VI. Congressional etc.”]

**Session 15 - *The Rise of Pressure to Protect Economic Rights in an Industrial Nation in the Era of Laissez Faire: 1876-1897*** - CB 412-416

*Judicial Intervention in the Era of Laissez Faire: The “Lochner Era” & the Lochner Case- An Important Distinction* (Lochner v. New York) - CB 417-422 to “1. The Transformation etc.”

*The Challenge of Interpretation: Involuntary Servitude after the End of Slavery* (Bailey) - CB 422 from “1. The Transformation etc.”-435 to “IV. Congressional etc.”

**Session 16** - *Congressional Regulation of the Economy & Its Limits: The Stream of Commerce Approach to the Commerce Clause* (The Shreveport Rate Case; *Champion v. Ames*; *Hammer v. Dagenhart*) - CB 435 from “IV. Congressional etc.”-449 to “Note etc.”

*Congressional Power to Tax & Spend* (*United States v. Butler*) - CB 449 from “Note etc.”-456 to “Note etc.”

*Congressional Treaty Power & the States* (*Missouri v. Holland*) - CB 456 from “Note etc.”-460 to “V. When etc.”

The Amendments of the Progressive Era - [OPTIONAL as Background for Instructor’s Comment on Amending the Constitution during the Progressive Era, CB 471 from “VI. Constitutional etc.” - 483][OMIT CB 460 from “V. When etc.”-471 to “VI. Congressional etc.”]

## **PART TWO: THE CONTEMPORARY DOCTRINAL MEANING OF CONSTITUTIONAL POWER AND CONSTITUTIONAL RIGHTS -- 1937 - 2010**

**Session 17** - *The Legacy of the Selective Incorporation Debate & the Fundamental Rights Tradition in the Twentieth Century* (*Palko v. Connecticut*) - CB 485-493; TWEN Supp Tab B

**WEEK 7 February 28th-March 4th - READ:** CB Supp 11-93; CB 499-527 to “D. Modern etc.”

**Session 18** - *A Case Study on the Challenge of Interpretation under the Roberts Court - Part 1: The Right to Keep and Bear Arms: Part 1* (*District of Columbia v. Heller*) - CB Supp 11-59 to “McDonald etc.”

**Session 19** - *A Case Study on the Challenge of Interpretation under the Roberts Court - Part 2: The Right to Keep and Bear Arms: Part 2* (*McDonald v. City of Chicago*) CB Supp 59 from “McDonald etc.”-93

**Session 20** - *The Decline of Judicial Intervention in Government Regulation of the Economy: 1934-37* (*Home Building & Loan Association v. Blaisdell*; *West Coast Hotel v. Parrish*; *United States v. Carolene Products*) - CB 499-520 to “Williamson etc.”

*Redefining the “Rational Basis Test” after the Collapse of the “Lochner Era”?* (*Williamson v. Lee Optical*) - CB 520 from “Williamson etc.”-527 to “D. Modern etc.”

**SPRING BREAK - No Class - March 7th-March 11th**

**WEEK 8 March 14th-18th - READ:** CB 527 from “D. Modern etc.”--600 to “B. The Rehnquist etc.”]

**Session 21 - Property Rights after the Collapse of the “Lochner Era”** (Contracts Clause; Takings Clause) - CB 527 from D. Modern etc.”-548

**Session 22 - Congressional Power over Commerce after the Collapse of the “Lochner Era”** (NLRB v. Jones & Laughlin; United States v. Darby; Wickard v. Filburn; Heart of Atlanta Motel v. United States; Katzenbach v. McClung) - CB 549-564 to “2. The Taxing etc.”

**Session 23 - Congressional Power over Taxing & Spending** (Steward Machine Co. v. Davis) - CB 564 from “2. The Taxing etc.”-570 to “3. The Reconstruction etc.”

*Congressional Reconstruction Power under the Civil War Amendments* (South Carolina v. Katzenbach; Katzenbach v. Morgan; Jones v. Alfred Mayer; Oregon v. Mitchell) - CB 570 from “3. The Reconstruction etc.”-600 to “B. The Rehnquist etc.”]

**WEEK 9 March 21st-25th - READ:** CB 600 from “B. The Rehnquist etc.”-627 to “2. The Taxing etc.”; CB Supp 95-105 to “Insert etc.”; TWEN Supp Tab C; CB 627 from “2. The Taxing etc.”-649 to “III. Affirmative etc.”

**Session 24 - The Rehnquist Court & the Move to Limit Federal Power - Part 1: Commerce** (United States v. Lopez (citing & quoting United States v. Morrison); Raich v. Gonzales; Spending- CB 600 from “B. The Rehnquist etc.”-627 to “2. The Taxing etc.”

*The Constitutional Debate over Health Care Reform in the Twenty-First Century* - CB Supp 95-105 to “Insert etc.”; TWEN Supp Tab C

**Session 25 - The Rehnquist Court & the Move to Limit Federal Power - Part 2: Taxing and Spending Power** (South Dakota v. Dole) - CB 627 from “2. The Taxing etc.”-629 to “3. The Reconstruction etc.”

**Session 25 - The Rehnquist Court & the Move to Limit Federal Power - Part 3: Reconstruction Power under the Civil War Amendments** (Boerne v. Flores) - CB 629 from “3. The Reconstruction etc.”-649 to “III. Affirmative etc.”

**WEEK 10 March 28th-April 1st - READ:** CB Supp 105 from “Insert etc.”-111 to “Insert etc.”; CB 663 from “B. The Rehnquist etc.”-711 to “9. Limiting etc.”; 729 from “IV. Interstate etc.”-736 to “V. The Executive etc.”; [OPTIONAL for Instructor’s Comment on Twentieth Century Antecedents to the Work of the Rehnquist Court to Establish Affirmative Limits on Federal Power to Protect States’ Interests - CB 649 from “III. Affirmative etc.”-663 to “B. The Rehnquist etc.”and OPTIONAL for Instructor’s Comment on Power over Term Limits, CB 711 from “9. Limiting etc.”-729 to “IV. Interstate etc.”]

**Session 27 - *The Rehnquist Court & the Move to Limit Federal Power - Part 3: Reconstruction Power under the Civil War Amendments*** (continued) (Northwest Austin Municipal Utility District Number One v. Holder) - CB Supp 105 from “Insert etc.”-111 to “Insert etc.”

The Rehnquist Court & Affirmative Limits on Federal Power to Protect States’ Reserved Power - Part 1: Twentieth Century Antecedents to the Work of the Rehnquist Court (Garcia v. San Antonio Metropolitan Transit Authority) - [OPTIONAL for Instructor’s Comment on Twentieth Century Antecedents to the Work of the Rehnquist Court from “III. Affirmative etc.”-663 to “B. The Rehnquist etc.”]

**Session 28 - *The Rehnquist Court & Affirmative Limits on Federal Power to Protect States’ Reserved Power - Part 2: The Tenth Amendment*** (Gregory v. Ashcroft; New York v. United States; Printz v. United States) - CB 663 from “B. The Rehnquist etc.”-711 to “9. Limiting etc.” [OPTIONAL for Instructor’s Comment on Power over Term Limits (U.S. Term Limits v. Thornton) - CB 711 from “9. Limiting etc.”-729 to “IV Interstate etc.”]

**Session 29 - *State Power to Regulate Interstate Commerce: The Dormant Commerce Clause & the Privileges and Immunities of State Citizens under Article IV - Part 1*** - Review Cooley v. Board of Wardens - CB 203 from “B. The Cooley etc.”-208 to “C. The Privileges etc.”; Review Corfield v. Coryell - CB 208 from “C. The Privileges etc.”-210 to “2. Interstate etc.”; **New Assignment** CB 729 from “IV. Interstate etc.”-736 to “V. The Executive etc.”

**WEEK 11 April 4th-8th - READ:** Review CB 729 from “IV. Interstate etc.”-736 to “V. The Executive etc.”; New Assignment CB 795 from “C. The Veto etc.” - 841 to “2. Executive etc.”; [OMIT CB 736 from “V. The Executive etc.”-795 to “C. TheVeto etc.”]

**Session 30 - *State Power to Regulate Interstate Commerce: The Dormant Commerce Clause & the Privileges and Immunities of State Citizens under Article IV - Part 2*** - Review CB 729 from “IV. Interstate etc.”-736 to “V. The Executive etc.”; [OMIT CB 736 from “V. The Executive etc.”-795 to “C. TheVeto etc.”]

**Session 31 - *Selected Aspects of Executive Power - Part 1 -:The Veto Power*** (Immigration and Naturalization Service v. Chadha) CB 795 from “C. TheVeto etc.”-819 to “D. The Power etc.”

**Session 32 - *Selected Aspects of Executive Power - Part 2: During Wartime - The Korean Conflict*** (Youngstown Sheet & Tube Co. v. Sawyer) - 819 from “D. The Power etc.”-841 to “2. Executive etc.”

**WEEK 12 April 11th-15th - READ:** CB 841 from “2. Executive etc.”-871 to “3. Military etc.”; CB Supp 119 from “Insert etc.”-144 to “Insert etc.”; CB 871 from “3. Military etc.” - 878 to “Note: Torture etc.”; CB Supp 144 from “Insert etc.”-174 to “Insert etc.”; CB 878 from “Note: Torture etc.”-881 to “E. Presidential etc.”; CB Supp 174 from “Insert etc.”-182; CB 1339-1342 to “II. Methods etc.”; CB 893-915 to “3. The Fourteenth etc.”; CB 1342 from “II. Methods

etc.”-1370 to “IV. The Family etc.”; [OPTIONAL for Instructor’s Comment on Presidential Privileges & Immunities and Presidential Selection - CB 881 from “E. Presidential etc.”-887 to “VI. Some Limits etc.”]

**Session 33** - *Selected Aspects of Executive Power - Part 3: Executive Detention - The War on Terrorism* - CB 841 from “2. Executive etc.”-871 to “3. Military etc.”; CB Supp 119 from “Insert etc.”-144 to “Insert etc.”

**Session 34** - *Selected Aspects of Executive Power - Part 4: Military Tribunals - The War on Terrorism* - CB 871 from “3. Military etc.”-878 to “Note etc.”; CB Supp 144 from Insert etc.”-174 to “Insert etc.”; CB 878 from “Note etc.”-881 to “E. Presidential etc.”; CB Supp 174 from “Insert etc.”-182

A Note on Presidential Privileges & Immunities and Presidential Selection - [OPTIONAL for Instructor’s Comment on Presidential Privileges & Immunities and Presidential Selection - CB 881 “E. Presidential etc.”-887 to “VI. Some Limits etc.”]

**Session 35** - *The Revival of Substantive Due Process - Part 1: Remnants from the Lochner Era of Enduring Value* (Meyer v. Nebraska; Pierce v. Society of Sisters; Skinner v. Oklahoma) CB 1339-1342 to “II. Methods etc.”

*The Role of the Court in a Democracy: The Legacy of the Judicial Attack on Racial Segregation* (Brown v. Board of Education; Bolling v. Sharpe) - CB 893-915 to “3. The Fourteenth etc.”

*The Revival of Substantive Due Process - Part 2: Privacy* (Griswold v. Connecticut; Eisenstadt v. Baird) - 1342 from “II. Methods etc.”-1355 to “III. Theories etc.”

*The Challenge of Interpretation & Fundamental Rights* -1355 from “III. Theories etc.”-1370 to “IV. The Family etc.”

**WEEK 13 April 18th-22nd - READ:** CB 1370 from “IV. The Family etc.”-1457 to “Stenberg etc.”

**Session 36** - *Family Autonomy* (Michael H. v. Gerald D.; Troxel v. Granville) - 1370 from “IV. The Family etc.”-1386

**Session 37** - *Abortion - Part 1: The Power of Precedent and the On-Going Debate* (Roe v. Wade; Planned Parenthood of Pennsylvania v. Casey) - 1387-1457 to “Stenberg etc.”

**EASTER HOLIDAY - No Class - Friday, April 22nd**

**WEEK 14 April 25th-29th - READ:** CB 1457 “Stenberg etc.”-1465 to “VI. Sexuality etc.”; CB Supp 235-258 to “Add etc.”; CB 1465 from “VI. Sexuality etc.”-1505 to “B. Sexual etc.”; CB

1536 from “D. Military etc.”-1545 to “E. Same-Sex etc.”; [OMIT 1505 from “B. Sexual etc.-1536 to “D.Military etc.”]

**Session 38** - *Abortion - Part 2: Rights & Regulation in Late Term Procedures* (Carhart I; Carhart II) - 1457 from “Stenberg etc.- 1465 to “VI. Sexuality etc.”; CB Supp 235-258 to “Add etc.”

**Session 39** - *Sexual Orientation & Expression* (Bowers v. Hardwick; Lawrence v. Texas) - 1465 from “VI. Sexuality etc.”-1505 to “B. Sexual etc.”; [OMIT 1505 from “B. Sexual etc.”-1536 to “D. Military etc.”]

**Session 40** - *Sexual Orientation & Military Service* - 1536 from “D. Military etc.”-1545 to “E. Same-Sex etc.”

**Week 15 May 2nd-6th - READ:** CB 1545 from “E. Same-Sex etc.”-1592

**Session 41** - *Same-Sex Marriage* - 1545 from “E. Same-Sex etc.”- 1568

**Session 42** - *Fundamental Rights in the Face of Death* (Cruzan v. Director, Missouri Department of Health; Washington v. Gluksberg) - 1569-1592

**EXAMINATION Friday, May 6th at a time to be set and announced by the Registrar**

-- THE END --