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## **Constitutional Law I**

### **Fall 2009**

#### **Course Time and Location**

Tuesday and Thursday: 6-7:50 PM  
Room 225

#### **Reading Materials**

Textbook: Brest, Levinson, Balkin, Amar, and Siegel, *Processes of Constitutional Decisionmaking* (5th Ed. 2006) (BLBAS) & 2009 Supplement (Supp). Available at GMU Book Store. The 2009 Supplement will not be published until some time between August 7 and August 14, which may mean that it won't be available at the GMU book store until after the start of classes. If you want to purchase it beforehand, I suggest ordering it at the Amazon or Barnes & Noble website. Because the supplement has not been published yet, I do not have the page numbers for the assignments from it. I will make those available to the class in an updated version of the syllabus, probably by late August.

Some recent cases are available at a website put together by the Book's authors (listed as BLBAS Website). The website address is:

<http://www.yale.edu/lawweb/conlaw/supp1.htm>

Packet of Supplementary Readings: Available at the GMU copy center (Packet). Some readings are instead available on the class TWEN site. When specific pages are assigned in cases not in the textbook or supplement, you should assume that the page numbers referred to are those in the U.S. reports.

## **Grading**

Grades will be based on a combination of the final exam and class participation. Specifically, the course grade will be the final exam grade plus a bonus for good class participation as high as approximately 1/2 of a letter grade (e.g. – a B+ might become an A-). Details of the final exam will be announced later in the semester. Class participation will be assessed on a combination of quantity and quality.

## **Assignments**

Although I will try to stick to the schedule, we may occasionally fall behind. In such an unfortunate case, we will begin the next class with the next case on the syllabus, unless I say otherwise.

Note: In a few cases, I have included a complete case or article in the packet, but the syllabus indicates specific pages for you to read. You are only responsible for the pages noted in the syllabus, though you may wish to skim the rest. Pages noted in the syllabus refer to page numbers in the US reports (for cases) or journal (for articles), NOT to other page numbers that may be present in the packet.

### **August 25: Introduction (Note: this, not Aug. 20 is our first day of class).**

Constitution of the United States BLBAS 1-15  
Declaration of Independence (Packet)  
Articles of Confederation (Packet)  
BLBAS 19-26

### **August 27: Modes of Constitutional Interpretation: *McCulloch v. Maryland* and the Bank of the United States**

*McCulloch v. Maryland* BLBAS 27-51  
Phillip Bobbitt, Modalities of Constitutional Argument (Packet)

### **August 31 (Make-up Class, held 8-9:50, Rm. 120): *McCulloch v. Maryland* (continued)**

*McCulloch* (continued) BLBAS 51-64, 66-81  
Constitutionality of the Louisiana Purchase BLBAS 64-66

### **September 1: The Power of Judicial Review**

*Marbury v. Madison* BLBAS 108-135  
*Cooper v. Aaron* 358 U.S. 1 (1958) (TWEN)

### **September 3: Theories of Constitutional Interpretation**

John Hart Ely, Policing the Process of Representation (Packet)  
Laurence Tribe, The Puzzling Persistence of Process-Based Constitutional Theories (Packet)  
David Strauss, Common Law Constitutional Interpretation (Packet)  
Randy Barnett, An Originalism for Nonoriginalists (Packet)

### **September 8: Federalism I: Congressional Power and Minority Rights**

*Dred Scott v. Sandford* BLBAS 229-60  
*Prigg v. Pennsylvania* BLBAS 217-26  
*Reynolds v. United States* BLBAS 405-11

### **September 10: Federalism I: Congressional Power and Minority Rights (continued)**

The Adoption of the Fourteenth Amendment BLBAS 301-19  
*Civil Rights Cases* BLBAS 373-85  
*South Carolina v. Katzenbach* BLBAS 572-76  
*Katzenbach v. Morgan* BLBAS 576-82

### **September 15: Federalism I: Congressional Power and Minority Rights (continued)**

*City of Boerne v. Flores* BLBAS 629-642  
*United States v. Morrison* BLBAS Website (Read only the part about the Section 5 issue, plus the first 2-3 pages of the Commerce Clause portion of the opinion, which states the facts of the case)

### **September 17: Federalism II: The Commerce Power**

*Gibbons v. Ogden* BLBAS 168-80  
*United States v. E.C. Knight* 156 U.S. 1, 15 S.Ct. 249 (TWEN) focus on pp. 1-19 (majority opinion)  
*Champion v. Ames* BLBAS 437-41  
*Hammer v. Dagenhart* BLBAS 441-47

**September 22: Federalism II: The Commerce Power (continued)**

*NLRB v. Jones & Laughlin Steel* BLBAS 549-51

*United States v. Darby* BLBAS 551-53

*Wickard v. Filburn* BLBAS 553-56

**September 24: Federalism II: The Commerce Power (continued)**

*Heart of Atlanta Motel* BLBAS 560

*Katzenbach v. McClung* BLBAS 560-62

*United States v. Lopez* BLBAS 601-26

**September 29: Federalism II: The Commerce Power (continued) & Treaty Power**

*United States v. Morrison* BLBAS Website (Commerce Clause part only)

*Gonzalez v. Raich* BLBAS Website

*Missouri v. Holland* BLBAS 456-60 (The Treaty Power and Federalism)

**October 1: Federalism III: State Sovereignty as an Affirmative Limit on Federal Power**

*Garcia v. San Antonio Metropolitan Transit Authority* BLBAS 653-63

*New York v. United States* BLBAS 674-93

*Printz v. United States* BLBAS 693-704

**October 6: Federalism IV: The Eleventh Amendment**

*Seminole Tribe of Florida v. Florida* 517 U.S. 44 (1992) (TWEN) pp. 47-54, 64-92

*Board of Trustees v. Garrett* BLBAS Website

*Nevada v. Hibbs* BLBAS Website

*Alden v. Maine* 527 U.S. 706 (1999) (TWEN) pp. 711-35, 760-80

**October 8: The Contract Clause**

*Fletcher v. Peck* BLBAS 140-48

*Home Bldg. & Loan Association v. Blaisdell* BLBAS 501-10

### **October 15: The Spending Power**

*Seward Machine Co. v Davis*. BLBAS 565-70  
*Massachusetts v. Mellon*, 262 U.S. 447 (1925) (TWEN)  
*South Dakota v. Dole*, 483 U.S. 203 (1987) (TWEN)  
*Sabri v. United States*, 541 U.S. 600 (2004) (TWEN)

### **October 20: Executive War Powers during the Civil War**

*Prize Cases* BLBAS 271-76  
*Ex Parte Merryman* BLBAS 276-79  
Abraham Lincoln, Letter to Erastus Corning (Packet)  
*Legal Tender Cases* BLBAS 291-300

### **October 22: Executive War Powers (Continued)**

*Korematsu v. US* BLBAS 966-79  
*Ex Parte Quirin* BLBAS 871-78  
*Youngstown Sheet & Tube v. Sawyer* BLBAS 823-40

### **October 27: Executive War Powers – The Guantanamo Cases**

*Hamdi v. Rumsfeld* BLBAS 841-62  
*Rasul v. Bush* BLBAS 868-71  
*Hamdan v. Rumsfeld* Supp

### **October 29: Executive War Powers (Continued) & Separation of Powers I: The President and Congress**

*Boumediene v. Bush* Supp.  
Michael Stokes Paulsen, The Constitution of Necessity, 79 Notre Dame L. Rev. 1257 (2004)  
pp. 1257-68, 1289-96 (TWEN)  
Saikrishna Prakash, The Constitution as Suicide Pact, 79 Notre Dame L. Rev. 1299 (2004)  
pp. 1299-1308, 1312-20 (TWEN)

### **November 3: Separation of Powers I: The President and Congress (Continued)**

*United States v. Nixon* BLBAS 749-61  
*Bowsher v. Synar* (Packet)  
*INS v. Chadha* BLBAS 795-811

## **November 5: Separation of Powers I: The President and Congress (continued)**

*In re Sealed Case* BLBAS 761-73  
*Morrison v. Olson* BLBAS 773-92  
*Edmond v. United States* BLBAS 792-5

## **November 10: Separation of Powers II: The Judiciary and the Political Branches**

*Ex Parte McCardle* (Packet)  
*Walter Nixon v. United States* (Packet)  
*Missouri v. Jenkins III*, 515 U.S. 70 (1995) (TWEN), pp. 73-101

## **November 12: Separation of Powers III: Standing**

*Allen v. Wright* (Packet)  
*Lujan v. Defenders of Wildlife* (Packet)  
*Friends of the Earth v. Laidlaw* (Packet)  
*Massachusetts v. EPA*, 549 U.S. 497 (2008), Supp (possibly) & (TWEN)

## **November 17: Separation of Powers IV: The Political Questions Doctrine**

*Baker v. Carr* (Packet)  
*Dames & Moore* (Packet)  
*Goldwater v. Carter*, 444 U.S. 996 (1979) (TWEN)

## **November 19: The Constitutional Amendment Process**

Reread US Constitution, Article V  
*Coleman v. Miller* 307 U.S. 433 (1939) (TWEN) pp. 433-60  
Bruce Ackerman, *We the People* (Packet)  
Richard A. Posner, *This Magic Moment* (Packet)  
Reread BLBAS 301-19 (adoption of the Fourteenth Amendment)

## **November 24: Control of the Electoral Process**

*US Term Limits v. Thornton* BLBAS 712-27  
*Bush v. Gore* BLBAS Website.  
Cass Sunstein, *Of Law and Politics* (Packet), pp. 1-8  
Richard A. Epstein, "In such a Manner as the Legislature Thereof May Direct:" The Outcome in  
*Bush v. Gore* Defended (Packet)  
Cass Sunstein, *Order Without Law* (Packet)

## **December 1: Conclusion & Questions about the Final Exam**

Questions about Final Exam

Thomas Jefferson, Letter to James Madison (Packet)

James Madison, Letter to Thomas Jefferson (Packet)

Summary and Conclusion