Welcome
to ConLaw I. We will use, and you will have to purchase, the following textbook: Michael Stokes Paulsen et al., The Constitution of the United States (NY: Foundation Press, 2010). ISBN 978-1-58778-880-2. All readings/page references (unless otherwise indicated) from this book and 2011 Supplement; additional readings will be posted on TWEN.

No further readings are required. However, you may want to purchase, peruse, bring to class, and even think about The Federalist. (Paulsen et al. are pretty good at excerpting relevant passages; but there’s plenty more, and I’ll revert to Publius’s teaching on the Constitution throughout.) If you want to look at a broad-sweep history of the Supreme Court and the major themes of constitutional law, check out Robert McCloskey, The American Supreme Court (UChicago Press 2004).

There are at least two sides to the cases we will study, and I’ll do my best to present them. For my true (and correct) views on many of the cases and constitutional interpretation in general see Greve, The Upside-Down Constitution (Harvard UP 2012). (I do not recommend this book as an introductory text: it’s tough sledding.) Candor further compels the admission that I’ve had a modest hand in two of the cases: U.S. v. Morrison; Free Enterprise Fund v. PCAOB. Unsurprisingly, I believe them to be rightly decided. However, Paulsen et al. do not agree, and neither need you.

Syllabus

Note: The syllabus is subject to change, depending on our progress. I will also add reading instructions as we move along.

Constitutional Structure

1. Reading the Constitution

Bank Controversy/M’Culloch (67-79; 220-236)

[Think carefully about the editors’ nn. 2-5 following the opinion]
2. Constitutional Structure

Article of Confederation (xvi-xxii); U.S. Constitution (1-15); pp. 37-51

3. Constitutional Supremacy (I)

*Marbury v. Madison, Stuart v. Laird* (164-179); *Federalist*, editors’ notes (144-164)

[Read *Marbury* first; then, the background materials]

4. Constitutional Supremacy (II)

Alien & Sedition Act (114-139); *Martin v. Hunter’s Lessee* (TWEN)

**Separation of Powers; Legislative Power**

5. Legislative/Enumerated/Inherent Powers

*Youngstown Sheet & Tube Co.* (204-219); *Legal Tender Cases* (783-790)

[I’ll summarize the *Chinese Exclusion* and *Selective Draft Cases* (791-809); reading optional]

6. Delegated Powers

Post Roads Debate, *Field v. Clark, Mistretta* (238-259); *Schechter Poultry, ATA v. Whitman* (TWEN)

7. Legislative Qualifications

*Powell v. McCormack, U.S. Term Limits* (259-282)

[**Term Limits** is the more important and difficult case; read carefully in light of *M’Culloch*]

8. Bicameralism, Presentment, Veto

*INS v. Chadha, Clinton v. New York* (301-322)

**Executive Power**

9. Executive Power

*Federalist; In Re Neagle* (346-372)
10. Appointment power

*Federalist; Buckley v. Valeo, Weiss, Morrison v. Olson, Woodley* (453-479)

11. Removal

*Myers, Humphrey’s Executor; Morrison v. Olson* (395-427); *Free Enterprise Fund v. PCAOB* (Supp. 11-33)

12. Take Care Clause

*Princess of Orange, U.S. v. Cox* (372-395); *Kendall* (428-437)

13. Foreign Affairs

Neutrality Controversy (99-114); *Curtiss-Wright, Dames & Moore, Goldwater v. Carter, Missouri v. Holland* (479-505)

14. War Powers; Emergency

War Powers Act; *Prize Cases; Dellums v. Bush* (505-530); *Korematsu; Ex Party Quirin; Boumedienne* (530-564)

**Judicial Power**

15. Article III


16. Federal Common Law

*Swift v. Tyson, Erie RR v. Tompkins* (672-679); *Sosa v. Alvarez-Machain* (TWEN)

17. Sovereign Immunity

*Chisholm v. Georgia, Hans v. Louisiana* (653-672); *Ex Parte Young, Seminole Tribe* (TWEN)
Federalism

18. Federal (Commerce) Power


19. Commerce Continued

*Hammer v. Dagenhart, Wickard v. Filburn* (712 n.2-728); *Lopez* (693-711); *U.S. v. Morrison* (728-737); *NFIB v. Sebelius* (Commerce) (TWEN)

[read cases in listed order. *Gonzales v. Raich* (744-761) recommended but not required; I’ll summarize]

20. Dormant Commerce; Preemption

*Tyler Pipe Ind’s, Camps Newfound* (TWEN); *Wyeth v. Levine, Arizona v. U.S.* (TWEN)

[read cases and opinions in light of *Gibbons* and the second holding in *M’Culloch*]

21. Taxing & Spending


22. Commandeering

*New York v. U.S., Printz v. U.S.* (810-841); Affordable Care Act (selected provisions) (TWEN)

23. Horizontal Federalism I (Contract Clause; Privileges & Immunities)


[read materials in listed order. One hour class time on each of the two topics]

24. Horizontal Federalism II (Full Faith & Credit; Extradition)

*Sommerset’s Case, Lemmon, Prigg v. Pennsylvania* (841-867)
Civil War Amendments

25. Slavery

“Slavery” (83-95); *Dred Scott* (867-913)

26. Reconstruction

*Slaughter-House Cases* (1326-1353 n.7)

27. Enforcement

*Civil Rights Cases, U.S. v. Morrison, City of Boerne* (1368-1399)