

**AMERICAN CONSTITUTIONAL
DEVELOPMENT I
STRUCTURES AND PROCESSES
DR. ALAN SAGER**

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Syllabus

Required Books:

1. Lee Epstein and Thomas G. Walker, **Constitutional Law For A Changing America: Institutional Powers and Constraints**, Congressional Quarterly 2017 9th Edition
2. Burton Folsom, **New Deal, Raw Deal**
3. Larry Arnn **The Founder's Key**

Videos:

There will be a series of assigned videos to view on Youtube. I have collected a large number of relevant videos and they appear on the video page of this website. Not all the videos on this page are assigned. Many are there so interested students can explore either the cases or the context around the cases in more depth.

Biographies:

There are brief biographies of the Justices in Epstein and Walker. You should know something about each Chief Justice from Marshall to Roberts and another 12- 16 or so Associate Justices who will be identified as the course goes on.

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You should write a brief for each case covered in this course. These will help you learn a useful skill, keep up with the class discussion, get a passing grade on class participation and allow you to easily prepare for the exams.

For the briefing form for this course, [click here](#).

Note: each class I teach has a slightly different briefing form!!

For sample briefs read: The Antelope ([click here](#)) Cherokee Nation v. Georgia ([click here](#))

These cases have a section called arguments. You should try to create this section for your brief. However, this section will not be part of the briefing assignment. I will expect you to know these cases from their briefs when mentioned starting in about class 5.

There are a number of student briefs linked to cases assigned at the end of this course. These were handed in for the class brief writing assignment. **As a result, they are more extensive than you might need for your daily briefs.**

Note: Stay up with the assignments even if the class discussion falls behind. The exams will cover everything up to the date of the exam whether we have covered it in class or not.

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Home

Welcome to Dr. Alan Sager's Spring 2020 course.

GOV320K No: 38540 Tue-Thurs 3-4:45 pm

Room: Burdine 106

(Website: <http://sites.la.utexas.edu/amcondev1/>)

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About Dr.Sager

I look forward to teaching and working with you this semester in this live course. . In case you do not know me, I have a law degree and a Ph.d. in Political Science. I have done many things in my life including practicing law, teaching, being in the political polling and consulting business, working on the staff of Chief Justice Warren Burger among other things. I have taught part time at U.T. for more than 25 years. I also taught full-time back in the late 60's and early 70's before I went to the Supreme Court and then the Federal Judicial Center.

I continue teaching because I love doing it and I love the law, The Constitution, judicial process and politics. Finally, I have been involved in the judicial and legal process as a lawyer, administrator, scholar, politician and even a party during a 20 year long law suit involving my business.

Overview

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Development of American Constitutional Law in the areas of structures, e.g.

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federalism, and processes, e.g. how cases get to the Supreme Court. Most of the assignments involve reading and analyzing judicial opinions in actual cases. These opinions not only reveal what various justices, scholars and leaders think the Constitution says about the issues at hand, they also reveal how, and perhaps why, justices think and reason as they do. In reading and studying these opinions, we will also pay close attention to the theories and methods of interpretation embedded, often to the point of being purposely hidden, in all of these opinions.

In part due to the growth of Youtube, there are a large number of real and recreated historical videos related to actual cases. Many are assigned for students viewing. These can be found on the [videopage](#) which is also linked on the [schedule](#) page.

This course is designed for students who want to know more about role of the Constitution in structuring American political life, students who are planning to attend or think they want to attend law school, and future teachers of government and political science at any level of our educational system. It is also for students who want to expand their skills in reading and interpreting political texts.

Course Goals (promises)

There are four major goals for this course:

1. *To identify the major historical themes and controversies about our Constitution*
2. *To better understand Constitutionalism and our Constitution; what our Constitution is and is not and how it has changed and developed over the past 200 years.*
3. *To have students develop a high level of skill in reading, briefing and understanding Supreme Court opinions, with special attention on what questions to ask when reading an opinion. Part of this skill includes being able to see and understand the point of view of the person writing an opinion.*
4. *To raise participants' "cultural literacy" about the Supreme Court including important Justices and major cases, our Constitution and the historical, social, and cultural context in which the Court and Constitution exist.*

To fulfill these goals, some of the questions we will attempt to answer as we work through major Supreme Court cases in historical order include:

1. *What is a Constitution supposed to do and who is supposed to interpret it?*

2. *From where did our Constitution come and does that even matter today?*
3. *What differences, if any, have existed among the justices as to what the Constitution means?*
4. *How do various justices go about interpreting the Constitution? What accounts for their differences? In other words, what are the various theories of constitutional interpretation?*
5. *What impact does the Court and Constitution have on American society.?*

We will also be constantly searching for the unspoken or assumed premises of the justices and even ourselves as we study these materials.

Bringing such premises to light will sharpen and enhance your analytical skills and ability to create distinctions. Being able to see and create distinctions is the building block of learning and most efficient way to expand what understanding of the world around you.

What is required of students in the course:

- A. Keep up with reading and briefing for each class.
- B. Know the basics of the cases **before coming to class. This means know them in a way you can answer questions as to when, who, what and why.**
- C. A willingness to be an active participant in the class.
- D. A willingness to go beyond any self imposed academic limits.

Course Requirements

1. 3 hours exams approximately 65%(40% objective,60% essay)
2. 2 short papers 3-4 pages approximately 20%
3. Class attendance and participation approximately 15%

T.A. and Office Hours

My T.A. this semester is Mr. James O'Connor His office hours will be announced on the first day of class

Dr. Sager's office hours are: Tue-Thurs 2:15-3:15 LTD Food Court. Thurs 5:00-6:00 at least Cactus Cafe at the Union when it opens or other safe spaces

Also available by appointment.

Who Should Not Take This Course?

Anyone prone to putting everything off until the exam and not being willing to keep up with daily assignment—that is unrepentant and unchangeable **PROCRASTINATORS**.

How Can Students Make This Course Easier?

Spend all the time necessary in the first few weeks to do good to excellent briefs and put together a study group. Bring written briefs to class to use if called on. Can also commit briefs to memory.

Prizes

It is my custom to award prizes for the best scores on each exam and the highest average for the semester. For the highest individual exam scores the prize is a U.S. Supreme Court coffee mug. For the highest average, the prize is a personally engraved plaque with a gavel and the Supreme Court seal and a signed copy, to the winner, of Clarence Thomas's autobiography, My Grandfather's Son.

There are other prizes as well, e.g., for most improvement from one exam to another

SUGGESTION Students have found that study groups of from 4 to 8 classmates are extremely helpful in mastering this course.

Highlights:

(Current News & Opinion)

[This section](#) contains articles that directly or indirectly relate to this course. If any will be covered on the exam, it will be so noted in class.

1. Note: Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/> Please let me know what accommodations are needed as early in the semester as possible

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Assignments

American Constitutional Development I *Spring 2020*

First a caveat: the order and content of each assignment may change throughout the semester. Content changes are most likely as we get toward the end of the semester. The Supreme Court may issue an opinion in some area we are studying. For instance, that opinion may overrule an assigned opinion or provide more clarity on the issues than the previous opinion. At least 2 weeks notice will be given for changes in order of assignments.

Cases and readings are denominated in 3 ways. First, those for which you should have a written brief are marked 'brief' next to case. Second, those that you should read and just know issue and holding are not marked. Third, those Dr. Sager will discuss are marked "Dr. Sager will discuss".

In addition, cases in the online supplement and not in the text book are so marked. From time to time you may be asked to turn in some questions about the cases to be briefed for a particular day.

Your briefs should be on a written or printed page not on your computer. Recitation from your phone, ipad, computer etc will not be considered as being prepared. Recitation from memory will be fine.

Assigned cases that are in the book are not otherwise noted on the schedule. Assigned cases on the publisher's website for the Epstein and Walker are noted as being in the supplement. A few cases or

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-----, ...king the links in the schedule.

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Most assigned cases have relatively simple fact situations, e.g. Congress or a state passed a law about this or that and someone claims it violates the constitution or some administrator did this or that and someone claims they had no power to do that.

Lastly, Dr. Sager will discuss some cases as noted. You should know the facts of these cases when you come to class that day. Knowing the facts means you can state in a couple of sentence who did what to whom and why the case got to court. Asterisked cases are in the supplement. Other cases he will cover are neither in the main text nor on the website containing supplemental cases. You can find the facts on the web. Previous student briefs for some of the later cases assigned are so noted on the website and you are welcome to use these. There are also assigned videos usually with a number associated with them. The videos are numbered on the [video page](#). Not all of those videos are assigned. Some are there to provide additional context to the assigne

Again, check this page regularly for changes.

[For sample briefs and a description of how to brief a case, go to the Syllabus page of the class website.](#)

Class #1 Tuesday January 19th

Introduction: Over the first two weeks read Epstein and Walker 1-63 (This is introductory material. Some of you may already know much of this from high school and/or basic government classes or other government classes. Some is similar to parts of the Van Geel book on understanding supreme court opinions. Any parts of this Intro that will appear on exams will be covered in class. Same for Van Geel.) Begin reading Van Geel when you can. It will help you better understand the structure of the supreme court opinions you are briefing for class. Read the Declaration of Independence and begin reading the Constitution. Both are available in the Arnn book.

The Pre-Marshall and Marshall Courts 1787-1835

Property Rights and Transcendent Rights

1. Calder v. Bull(brief) ([click here for case](#)) **Note:** The Findlaw formatting for this case may have Justice Iredell's name tucked in at the end of Justice Paterson's opinion not heading his separate opinion (looks like this:"technical, which is also their common and general, acceptance, and are not to be understood in their literal sense. [3 U.S. 386, 398] " Iredell, Justice.

Though I concur in the general result of the opinions, which have been delivered, I cannot entirely adopt the reasons that are assigned upon the occasion."

Note: This is a pre-Marshall case, Each of the 4 Justices who heard the case wrote an opinion.

This was called seriatim opinions. This was the way the highest court in England delivered its

opinions. Supreme Court followed this procedure at its inception. It was not required by the Constitution or any federal law. Marshall started the custom of a single justice writing a majority opinion and attempting to get unanimous support. Those who disagreed could write a concurrence or dissent.

For some notes, revised on 01/19/15 on reading this case [click here](#). Quotes about the Constitution which will be cited in Class 1 ([click here](#))

2. Begin reading Arnn book, The Founder's Key. There may be references to it in this first class.

We will include more formally in our discussion by the 2nd class. The author has an interesting point of view and argument about the relationship between the Declaration of Independence and the Constitution. The first 20 pages or so of the book layout his basic argument. While Justices don't directly write about that relationship, as we go through the semester, you will see a number of opinions that don't necessarily agree with this point of view or fundamentally disagree with it.

As we go through this semester and next, if you are there, you can decide for yourself what you think that relationship is, if any, and what that means for both how you interpret the Constitution and its current relevance. Read a brief summary of two fundamental notions of how to interpret the Constitution and what it might mean during the current Supreme Court term, by a conservative writer([click here](#)). Van Geel calls this Originalism and Interpretivism. We will see many varieties of each of these two approaches. We will start with these two distinctions however you want to name it. Be clear about this dichotomy from the start and be able to state it in your own words.

Class #2 Thursdays January 21st

The Taxing Power

2. Hylton v. U.S.(brief)(supplement)([Findlaw](#))

Issue in this case relates to what is a direct versus and indirect tax, proportionate versus uniform taxes and what taxing power is given to Congress under the Constitution as of 1787? If you don't have supplement yet [click here](#) for full text about 10 pages. Make sure you understand distinction between a direct and an indirect tax.

Judicial Review

3. Marbury v. Madison (brief)([click here](#) for Section 13 of the Judiciary Act which Marshall held unconstitutional)

View Video: Marbury v. Madison.

For Joel Grossman's excellent analysis on the 200th Anniversary of

Marbury([click here](#)) Note Grossman's question at the end written in 2004 and may be answered in several ways by the end of this course. Also you should know his main points about why Marbury is still important.

How many different arguments can you find in Marshall's opinion in favor of judicial review by the Supreme Court. You should get at least 4.

How would you characterize the source or nature of Justice Marshall's arguments originalist, textualist, current policy needs or living constitution, or something other than these .

4. Eakin v. Raub(brief) (only dissenting opinion is given) If you can't find in your edition of text or supplement you can find it here([click here](#))

Read Federalist No. 78 in Epstein and Walker Appendix. *How many different arguments for judicial review of legislative acts can you find in Federalist 78?* If you do not have access to the Appendix because you bought a used book here is a link to Fed 78 on the web([click here](#)). While searching for a link to a full copy of Fed 78, I just found this summary of Fed 78 on a Tea Party website along with summaries of all of the Federalist Papers([click here](#))

Surprisingly, the website does not contain summaries of the Anti-Federalist Papers. Looks like there are other summaries available. (Might be interesting to compare them; perhaps a worthwhile project for a paper in a government course. Might take 2 or 3 major Federalist Papers, say 10 and 78 and see how accurate all the summaries are compared to your reading of them. Then see if there is an ideological content to the summaries.)

Videos 4, 5, 6

Van Geel Chart Multicolors ([click here](#))

Van Geel Chart Black and White([click here](#))

Class #3 Tuesday January 26th

Early Challenges To Judicial Supremacy

5. Impeachment Trial of Justice Samuel Chase (Dr. Sager to discuss in class) Baltimore Jury Charge ([click here](#))

If you want to delve into the life James Callender, the scandalmonger, who libeled and defamed both Adams and then Jefferson, William Safire wrote an historical novel entitled Scandalmonger. There is an interview with Safire on C-Span that covers the book. Safire is interviewed by "The Book Guys." They know this historical period well. [Click here](#)

6. U.S. v. Aaron Burr

To prepare this case see the description of Burr's Alleged Treasonous Activities and the story of the case ([click here](#))

For Marshall's opinion([click here](#)) Just skim it to get a sense of what he is saying. Linder summary which is linked above will be sufficient.

Watch the Burr video before class: U.S. v. Aaron Burr

(Youtube video in 2 parts on video page) #14 on the video page. Note: THIS VIDEO in total is 1 hour long.

Congressional Powers and the States

7. McCulloch v. Maryland(brief)(Note: There are two issues in this case and they are covered in different parts of the book. We will cover both issues: creating a bank and state taxing powers). Can you relate this case to the essence of the story of Ben Franklin telling Thomas Jefferson about the Hatter's sign?

For a critique of Marshall's view([click here](#))

View video: McCulloch v. Maryland which can be found on Youtube. The link is on the video page.

A number of Marshall quotes in McCulloch are among his most famous. Can you pick them out?

Videos 18, 19, 20, 21, 33(ESPN covers Burr/Hamilton Duel)

Class #4 Thursday January 28th

The Contracts Clause I

8. Fletcher v. Peck(Brief)

9. Dartmouth College v. Woodward(Brief)

The Commerce Power and National Economy

10. Gibbons v. Ogden(Brief)

View video: Gibbons v. Ogden

Using the Van geel chart compare McCullough as the precedent case and Gibbons as the main case. Which box?

Questions: Restate Marshall's definition of the following terms: commerce, among the several

states, regulate.

What is the source of these definitions?

What is difference between Justice Johnson's view and C.J. Marshall's?

Based on Marshall's view of the commerce clause, what are the limits?

What role do states have in commerce based on Marshall's views?

View Clip #30 on [video page](#), Justice Roberts on Justice Duval who appears in several of these early case

videos. Roberts calls him the most insignificant Justice ever. Might look at comments on video as well

Paper #1 This will be discussed in class. It is a brief of a Supreme Court case. Note in the past some students have mistakenly done the lower court opinion. All these cases were decided by the U.S. Supreme Court The brief is due Wednesday February 15th. For the list of case assignments by last name ([click here](#)) For the briefing form to use for this brief ([Click here](#)) Find your case through Findlaw or other online databases of Supreme Court cases and bring any questions about it to class on Wednesday. You are expected to do the case you are assigned so be sure you know how to find it.

Watch Folsom video about Robber Barons on video page. Also see Milton Friedman videos #36 and #37 Here To relate Gibbons to the steamship story in the video ([click here](#)).

Class #5 Tuesday February 2nd

Federal Judicial Power and the States

11. Chisholm v. Georgia(Brief)(supplement)

(Note this case came even earlier than Calder and really was not a Marshall Court case. It is a pre-Marshall Court case so it has what are called seriatim opinions) Per our class discussion of Justice Cushings opinion: here is the text I have found for the case. It looks like there is a Court Reporters error or someone else's error([click here](#))

12. Martin v. Hunter's Lessee(Brief)

(Take Marbury as precedent for Martin's. Attempt to figure out which box in the Van geel chart you would be in with Marbury as the precedent case and Martin as the main case. Did Martin narrow or broaden Marbury. What aspect of the Marbury case did Martin apply to? What do we remember most about the impact of Chisholm?)

13. Cohens v. Virginia(A summary appears in the text after Martin case. Read opinion in supplement to get some of the fine Marshall quotes)(Query:

what does Cohen case add to Martin? Attempt to figure out which box in the Van geel chart you would be in with Martin as the precedent case and Cohens as the main case. Did Martin narrow or broaden Cohens. To what aspect of the Martin case did Cohens apply to?)

[Click Here for Chisholm, Martin and Cohens cases in word form](#)

Class #6 Thursday February 4th

Federal Power and the State Taxation

14. Brown v. Maryland (supplement)([here is a sample brief for this case](#))

Note: This brief is not as extensive as the one you will be doing with your assigned Supreme Court case

The Bill of Rights and the States

15. Barron v. Baltimore(Brief)(supplement)([click here for another edited version](#))

B. Taney Court 1836-1864

The Commerce Clause and the National Economy

16. Mayor of City of New York v. Miln(Brief)(supplement)([click here for another edited version](#))

The Contracts Clause and the National Economy

17. Charles River Bridge v. Warren Bridge(Brief)

For a discussion related to Gibbons about competition between Vanderbilt and his crony capitalist competitors see the following lecture by Burt Folsom It also explains how crony capitalism worked in this case based on his research using the Congressional records from the 1800's. ([click here](#))

Class #7

Tues February 9th

Congressional Preemption –Federal Judicial Power and the States

18. Prigg v. Pennsylvania([click here for excellent edited version of case](#)) The following is a brief for this case. ([read sample brief](#)) Dr. Sager will discuss this case which is not in your text.

Federal Jurisdiction: Political Questions

19. Luther v. Borden([supplement](#))(brief)([click here for another edited version](#))For a discussion of Luther based on upholding or striking down a government policy ([click here](#))

The Commerce Clause and the National Economy**20. Cooley v. Board of Wardens(Brief)****Federal Jurisdiction, Congressional Power and Slavery****21. Dred Scott v. Sanford(Brief)**

Videos 7, 8, 23, 24 25 These will help you more fully understand the case. A couple are reenactments of parts of the Lincoln Douglas debates.

Be sure you have completed Arnn book through Chapter 6which is about the Founders and Slavery.

Class #8

Thursday February 11th

Executive Power: The War Power**22. The Prize Cases(Brief)****C. Chase Court 1864-1873****Executive Power During War****23. Ex Parte Milligan(Brief)****Federal Jurisdiction: Congressional Limitations****24. Ex Parte McCardle(Brief)****Federal Jurisdiction and State's Rights****25. Texas v. White(Not in book or supplement. Dr. Sager will discuss.)**

Paper #1 Due Today In Class Please bring 2 copies. Put your name on last page and your row and seat number in the upper right hand corner of front page.

Class #9 Tuesday February 16th**Executive Power****26. Mississippi v. Johnson(Brief)****Congressional Taxing Powers****27. Collector v. Day(supplement)****28. Springer v. U.S.(brief) (supplement)****The Bill of Rights and the States****29. The Slaughterhouse Cases(Brief)**

Read carefully the following article. Are you, or will you be or become, part of the narrative? Compare

to Dr. Arnn's views on the Declaration as it relates to the Constitution. This article suggests one reason I organize this course historically as well as what a larger purpose might be for being in this course.
|Yale Law Professor Jack Balkin's "The Declaration and the Promise of a Democratic Culture" ([click here](#))

Class #10 Thursday February 18th

Exam #1

Cases assigned from number 1 through number 28 may be covered on either on the objective or essay part

Federalist 78

For assigned videos on Exam 1([click here](#))

Arnn book and Balkin article will be covered on Exam 1

For note on van geel analysis for exam([Click here](#))

Declaration of Independence will be covered on exam

For sections of Constitution on Exam 1([Click here](#))

Class #11 Tuesday February 23rd

D. The Waite Court 1874-1888

State Police Powers, Due Process and Property Rights

30. Munn v. Illinois(Brief)

How, if in any way, does this opinion relate to the Miller, Field and Bradley opinions in the Slaughterhouse Cases?

What are the grounds of agreement and disagreement with each opinion.

The Contracts Clause

31. Stone v. Mississippi(Brief)

What is the status of the contracts clause after this case?

The Commerce Power, State Action and Individual Rights

32. The Civil Rights Cases(Dr. Sager to discuss in class. Not in book or supplement)

State Police Power, Property Rights and Due Process

33. Santa Clara County v. Southern Pacific Railroad(Dr. Sager to discuss in class. Not in book or supplement)

D. The Fuller Court 1888-1910**State Police Powers, Property Rights and Due Process****34. Chicago and Milwaukee RR. v. Minnesota(Brief)(supplement)**

How does this case add to or subtract from the Munn case. Be sure to read the text book notes before and after Munn.

New book assignment: Begin reading Burton Folsom, *New Deal, Raw Deal*. Available on Amazon for less than \$9.00. It should be finished right after Spring Break. It will provide some good background and context to the many of the cases we will cover in the Taft, Hughes and Stone Courts, especially Classes 16 and 17.

Class 12 Thursday February 25th**The Commerce Power, Taxing Power and the National Economy****35. U.S. v. E.C. Knight(Brief)**

What is the major distinction made by the Court and how does it differ from Gibbons and Miln?

36. Champion v. Ames(Brief) Same question as above

37. McCray v. United States(Brief) What does this case along with Champion potentially change about one of the fundamentals of the Constitution

The Taxing Power**38. Pollock v. Home Savings and Loan (Dr. Sager to discuss)****Federal Police Powers, Due Process and Property Rights****39. Adair v. U.S. (Dr. Sager to discuss)****Class 13 Tuesday, March 2nd****State Police Powers, Due Process and Property Rights**

40. Lochner v. New York(Brief)([Click here for votes](#)) (Votes at bottom of chart are totaled as uphold vs. strikedown. Vote on side are votes of Justice who was on the Court when Ellis was decided. Year is year that original Justice left the Court)Be sure you review chart carefully before coming to class.

How does this case relate to Adair, discussed by Dr. Sager and E.C. Knight.

What are the famous quotes in the Holmes dissent?

41. Muller v. Oregon(Brief)

F.The White Court 1910-21**The Commerce Clause, Due Process and Property Rights****42. Hammer v. Dagenhart(Brief)****The Commerce Clause****43. Shreveport Rate Cases Houston East & West Texas Railway Co. v. U.S.(Brief)**

(supplement)(also discussed in text) What is the criteria for determining if something is part of interstate commerce and how does this relate to Gibbons and previous commerce clause cases? Now go over actual case. <https://caselaw.findlaw.com/us-supreme-court/234/342.html>

The Commerce Clause and the Treaty Clause**44. Missouri v. Holland(brief)**

What are the important quotes by Justice Holmes.

Class 14 Thursday March 4th**G.The Taft Court 1921-30****Taxing Power****45. Bailey v. Drexel Furniture(Brief)****Federal Judicial Power: Standing****46. Frothingham v. Melon(Brief)(supplement)*****State Police Powers, Due Process and Property Rights****47. Adkins v. Children's Hospital(Brief)****48. Pierce v. Society of Sisters and 48a. Meyer v. Nebraska [Click here](#) for Pierce, [Click here for Meyer](#)**

(Dr. Sager to discuss)

Congressional Powers: Investigations**49. McGrain v. Daugherty(Brief)****Class 15****Tuesday March 9th****Executive Power:Removal****50. Myers v. U.S.(Brief)****The Takings Clause**

51. Euclid v. Ambler Realty (Dr. Sager to discuss. Not in book or supplement)

Sutherland “pull quote”

“Regulations, the wisdom, necessity, and validity of which as applied to existing conditions are now uniformly sustained, a century ago, or even half a century ago probably would have been rejected as arbitrary and oppressive.”

“and in this there is no inconsistency, for, while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations. In a changing world it is impossible that it should be otherwise.”

Here are some quotes by Chief Justice Hughes in Blaisdell (which is below, Case No. 52) and Justice Sutherland dissenting in Blaisdell and another case we will get to after Spring Break, West Coast Hotel v. Parrish. For class today read and carefully compare and contrast the two justices approach to understanding the Constitution and to constitutional interpretation. Which do you agree with and why? Now argue the other side. ([Click Here](#))

52. Pennsylvania Coal Company v. Mahon(Brief)(supplement)**H. The Hughes Court 1930-1941****The Contracts Clause****53. Home Building and Loan Assoc. v. Blaisdell(Brief)****Executive Powers: Removal****54. Humphrey’s Executor v. U.S.(Brief)****Class 16 Thursday March 11th**

(will begin referencing Folsom book in class today)

What is the relationship, if any, between the some or all of the book contents and what we are covering in class?

Conceptualize this as broadly as you can.

The Commerce Power, The National Economy and

55. Schechter Poultry v. U.S(Brief)

The Taxing Power**56. U.S. v. Butler(Brief)****State Police Powers, Due Process and Property Rights****57. Nebbia v. New York(Brief)****58. West Coast Hotel v. Parrish(Brief)****Paper #2 Assignment**

The assignment is to read 3 Supreme Court briefs that were filed in your case. Read both party's original briefs. Then read a brief for one of the numerous Amicus Curiae. You choose which amicus brief you read. Write a 3-4 page analysis, 1000 words max, comparing and contrasting the major arguments in the briefs with the arguments used by the majority in the Supreme Court in case you briefed for the 1st paper. You can find the complete set of briefs on Scotus Blog

Cases are order by Term of the Court and then by when the case was argued within that Term.

Best way to search: put name of your case then scotus blog in search bar.

Make sure you can find your case before you come to class on March 25

Better yet you can do the whole paper over Spring Break

We will discuss the assignment in class on March 25th. Be sure you have looked at the list of briefs for your case so can ask any questions that may come up.

Class 17 March 23

(Have Folsom book done by this class. We will discuss similarities and differences between what you knew before you read the book and what you may know now as well as what differences and similarities between Roosevelt and Trump.)

The Commerce Power and the National Economy**59. NLRB v. Jones and Laughlin Steel(Brief)****The Taxing and Spending Power****60. Steward Sewing Machine v. Davis(Brief)****Videos 1,1a, 2, 2a and 2b (these will be on 2nd exam)****Executive Powers: Treaty and War Power**

61. U.S. v. Curtis Wright(Brief)**Judicial Review, Due Process, Congressional Power and the National Economy****62. U.S. v. Carolene Products(Dr. Sager to discuss. Not in book or supplement)**

Chief Justice Stone's famous footnote 4 in **Carolene Products**:

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments....It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment...Nor need we enquire ...whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

62a. Ex Parte Grossman (brief) I have added this because of its contemporary relevance.

See if you can uncover what current situations, if any, it might apply to today. Also for it to apply a couple of things which are strong possibilities would have to happen. The current situation involves different facts-Grossman was about selling alcohol-but could be the same general legal situation down the road.

In case you have time for lighter reading, here is a set of letters about my and my teaching that appeared in the Daily Texas in 2001 with a minor post script from me about 8 or more years later. ([click here](#))

Class 18 Thursday March 25h**I. The Stone Court 1941-1946****The Commerce Power and the National Economy****63. U.S. v. Darby Lumber(Brief)****64. Wickard v. Filburn(Brief)****Executive Powers: The War Power****65. Ex Parte Quirin(Brief)****66. Korematsu v. U.S.(Brief)**

View #13 on Video page which is several short videos about the Korematsu case and Pearl Harbor.

The Commerce Power and the States: The Dormant Commerce Clause

67. Southern Pacific v. Arizona(Brief)

Class 19 Tuesday March 30th

J. The Vinson Court 1946-1953

Takings

68. U.S. v. Causby(Brief)

Executive Powers The War Power

69. Youngstown Sheet and Tube v. Sawyer(Brief)

Carefully read at least twice the Jackson concurrence in this case. It is considered much more important than

Black's majority opinion. In addition, you might find it applicable to many current issues and perhaps if followed determinative of some ongoing or potential Supreme Court cases.

K. The Warren Court

Takings: Public Use

70. Berman v. Parker(Brief)

Congressional Preemption

71. Pennsylvania v. Nelson (Dr. Sager to discuss)

Congressional Powers; Investigation

72. Watkins v. U.S.(Brief)

73. Barenblatt v. U.S. (Brief)

Class 20 Thursday April 1

Federal Judicial Power

74. Cooper v. Aaron(Dr. Sager to discuss. Not in book or supplement)

Federal Jurisdiction: Political Questions and Standing

75. Baker v. Carr(Brief)

76. Flast v. Cohen(Brief)

The Commerce Power and the National Economy

77. Heart of Atlanta Motel v. U.S.(Brief)

Modern Substantive Due Process

78 Williams v. Lee Optical**Class 21 Monday April 6****Congressional Power: Taxation****79. U.S. v. Kahringer(Brief)(Supplement)****Congressional Power: Privileges****80. Powell v. McCormack(Brief)****L. The Burger Court 1969-1986****Executive Powers: The War Power****81. New York Times v. U.S.(Dr. Sager to discuss. Not in book or supplement)****82. U.S. v. U.S. District Court(Dr. Sager to discuss. Not in book or supplement)****Takings****83. Hawaii Housing Authority v. Midkiff(Brief)****The Commerce Power****84. Hunt v. Washington State Apple Advertising(Brief)****Class 22 Thursday April 8th****EXAM 2**

What will be covered on exam #2

1. All cases that are numbered from Slaughterhouse #29 to #71 plus Cooper v. Aaron, Heart of Atlanta Motel v. U.S. Williams v. Lee Optical and hunt v Washington Apples. This includes numbered cases covered by Dr. Sager

A few cases covered this past Wednesday are not on the exam!

includes 62a Ex Parte Grossman In addition to the reasoning of the majority
you should know generally the concurrences and dissents

There will be a quotes part on the objective. This part can be done by some combinations of
knowing the quotes and figuring out logically who must be speaking if you know
something about the various justices' views.

2. Folsom book
3. Videos 1, 1a, 2, 2a and 2b and 13 and its subparts.
4. Voting chart for Lochner

5. Chief Justices from Morrison Waite to Fred Vinson
6. There will be no specific questions on parts of the Constitution like the ones on the first exam. You will still need to know the wording of the clauses we have covered this semester to do some parts of the exam.

Class 23 Tuesday April 13th

Congressional Powers: Privileges

85. Gravel v. U.S.(Brief)

Judicial Review and Executive Powers: Executive Privilege

86. U.S. v. Nixon(Brief)

Congressional Powers: Delegation and Legislative Veto

87. I.N.S. v. Chadha(Brief)

Congressional Powers: Delegation

88. Bowsher v. Synar(Dr. Sager to discuss)*

The Contracts Clause

89. Allied Structural Steel v. Spannus(Brief)

Class 24 Thursday April 15th

The Takings Clause

90. Penn Central Transportation Co. v. City of N.Y.(Brief)

91. Keystone Bituminous Coal v. Benedectin(Brief)(supplement)

Separation of Powers

92. Morrison v. Olson(Brief)

Now compare Bowsher, Chadha and Morrison. What are similarities and differences.

Also as best you can compare the voting behavior of justices who decided all 3 cases.

If you knew only how they voted in these cases and the similarities and differences

in these cases how might they vote in the following case: **Read the facts only in Mistretta v. U.S.**

Can you make a prediction about the newly appointed Justice Scalia based on what you think

his views were before he was appointed to the Court?

Federal State Relations

93. Pacific Gas and Electric v. State Energy Commission(Dr. Sager to discuss)

Executive Powers: War Power and Treaties

94. Dames and Moore v. Regan(Brief)

The Supreme Court and State Constitutions

95. Michigan v. Long(Dr. Sager to cover in class)

Class 25 Tuesday April 20th

At this point we will be covering more cases per class. We have now laid the foundation for reading cases. You should be

able to see where these cases fit into the threads of history. For instance, as we go through the commerce clause cases in the Rehnquist court, you should be able to read a fact situation and create the main arguments for both sides as well as perhaps create some of your own arguments.

The Commerce Power and the National Economy. The Tide Turns?

96. National League of Cities v. Usery(Dr. Sager to discuss)

97. Garcia v. San Antonio Metropolitan Transit Authority(Brief)

M. Rehnquist Court 1986-2005

The Commerce Clause, 10th Amendment and the National Economy, The Tide Turns Again?

98. U.S. v. Lopez(Brief)

99. Printz v. U.S.(Brief)

100. U.S. v. Morrison(Brief)

101. Granholm v. Heald(Brief)

The Taxing and Spending Power

102. South Dakota v. Dole(Brief)

Class 26 Wednesday April 22

State Powers and Federalism

103. Alden v. Maine(brief)

104. Gonzales v. Reich (brief)

106. Oregon Waste Systems v. Department of Environmental Quality of State of Oregon(brief)

107. U.S. Term Limits v. Thornton (Dr. Sager to discuss)

108. Virginia Community College v. Katz(Dr. Sager to discuss)

State Powers: Takings

109. Lucas v. South Carolina Coastal Authority(Brief)

110. Kelo v. City of New London(Brief)

Class 27 Monday April 27th

Congressional Power

111. Clinton v. New York(brief)

Formalist/Functionalist case/voting chart([Click here](#))

Executive Powers: Immunity

112. Clinton v. Jones(Brief)

Judicial Power Standing and other issues of judicial power

113. Hein v. Freedom from Religion Foundation(Dr. Sager to discuss)

114. Hamdi v. Rumsfeld(brief)

115. Clapper v. Amnesty International ([2 student briefs click here](#))

116. Zivotofsky v. Kerry ([click here for brief1](#))

M. Roberts Court 2005-??

Federal Preemption

117. Bond v. U.S. (Dr. Sager to discuss)

Commerce and Taxing Powers

118. NFIB v. Sebelius (brief)

Class 28 Wednesday April 29th

You can use student briefs instead of reading the case for this days assignments) Know students briefs well.

M. Roberts Court 2005-??

Separation of Powers

119. NLRB v. Noel Canning(Dr. Sager to discuss)

Some Old Issues Revisited: Treaty Power and Ex post Factor Clause

120. Peugh v. U.S. (Dr. Sager to discuss

Some Old Issues Revisited: Takings and government power

121 Horne v. Department of Agriculture ([Student brief](#))

State Powers Gambling, Interstate Commerce and State Taxation

122. Murphy v NCAA([student brief](#))

123. South Dakota v. Wayfair([student brief](#))

Executive Power and Immigration

124. Trump v. Hawaii ([student brief](#))([student brief2](#))

Dr. Sager will discuss some other very recent cases from the Roberts Court that may be decided by the the end of class. Some may be heading for decision rather than already being decided. There are some

exceptionally interesting cases presently working their way through the Supreme Court right now. Our study

of all that has gone before should give us some insight as to how the Court may handle such undecided cases.

Class 29 Tuesday May 4th

Recent cases from Roberts Court

Putting It All Together

Class 30 Thursday May 6th

3rd Hour Exam

There will be 3 parts: 1) Take home essay 2) Objective in class 3) In class essay or two
Last year the objective had many questions and it all fit on just 2 pages, rather than the usual 4 pages.

Cases Covered: All cases assigned since last exam starting with #85 Gravel v. United States through #124 Trump v. Hawaii. (Note the latter cases were recently renumbered) Plus the exam will cover following cases not covered on last exam: Watkins and Barenblatt, Baker v Carr , Flast, Powell v. McCormick and Hawaii Housing Authority v. Midkiff. Dames and Moore and Michigan v. Long will not be on this exam.

There are no supplementary book assignments for this exam. Also there are no videos for this exam.

Lastly, for some comparison questions it is expected you recall some of the major cases from

each era for example, **Calder, Gibbons, Marbury, Prigg, Dred Scott, Milligan, Munn, Lochner, NLRB v Jones and Laughlin, Wickard, Youngstown.** This is a not an exhaustive list.

[\(Edit\)](#)