CONSTITUTIONAL LAW I

Jon Weinberg
Winter 2007

Course Materials

The casebook this year is BREST ET AL., PROCESSES OF CONSTITUTIONAL DECISIONMAKING: CASES AND MATERIALS, (5th ed. 2006), with the 2006 supplement.

Course philosophy

The generally-accepted meaning of the Constitution is not static. The Constitution today is understood to mean something far different from what it was understood to mean fifty years ago, and far different from what it will likely be understood to mean fifty years from now. I expect you to learn current doctrine in this course, but that doctrine is guaranteed to change. At least as importantly, I want you to acquire an understanding of what it means to “do constitutional law.” What does constitutional-law reasoning consist of, and how does it differ from other forms of legal reasoning? How is reading the Constitution different from reading another legal document? Why? Should it be different?

Office Hours

My phone number is 7-3942. You can reach me most easily at <weinberg@wayne.edu>. My (tentative) office hours this semester will be Monday 12:00-1:00, Tuesday 3:00-4:30 p.m., and Thursday 3:00-4:30 p.m.

Attendance and Grading Policy

Before each class meeting, I will set out a copy of the seating chart, dated for that day. If you are prepared and ready to participate in class discussion, you can circle your name on the chart. If you do so for five-sixths of our classes, starting on January 11, I will automatically raise your final grade. (Translation: In order to get the bump, there can be no more than four classes, after the first day, when you don’t circle your name.) If you circle your name on a given day, of course, you must actually be prepared; if it turns out that you weren’t, you forfeit your eligibility for the bump. Whether or not you circle your name, please sit in the seat you've selected on the chart, so that I can monitor attendance (as the ABA requires). I reserve the right to lower grades in egregious cases.

You'll find that I'll often ask you to read more pages in preparation for a Tuesday class than for a Thursday class; some of the Tuesday assignments are pretty long, with the Thursday assignments shorter. Start the Tuesday assignments early enough over the weekend to get them done. It's possible that we may not get to some of the material assigned for a Tuesday class until Thursday.

Examination
The final exam, on April 26, will be limited open-book. That is, you will be allowed to consult only the casebook, the supplement, class handouts, an English-language dictionary, and any materials prepared by you. You will have three hours to write your answers. The final examination will determine your grade, subject to the adjustment I described above.

January 9    Casebook 1-51

Start by reading the Constitution, and then we'll move to our first problem: Shortly after the Constitution came into effect in 1789, a dispute arose over whether the new federal government had power to charter a “Bank of the United States.” How were government officials to decide that question? What was the relevance of the new constitution, and how was it to be read?

January 11    Casebook 51-81

More on the Bank of the United States. Did the Constitution prohibit the states from taxing the Bank? (Where does it say so?) Whose job was it to decide questions of the Bank's constitutionality?

January 16    Casebook 97-136

Why should the Court’s understanding of the Constitution override Congress’s? Are the courts a “countermajoritarian” institution? Does it matter?

January 18    Casebook 140-56

How should judges protect the “absolute rights of individuals”? (And what are they?)

January 23    Casebook 212-13, 226-71

The Constitution as pro-slavery document (or was it?). *Dred Scott* and secession.

January 25    Casebook 271-99

President Lincoln, the Civil War, and Emancipation; the problem of legal tender.

January 30    Casebook 319-37, 412-31

Entering the post-Civil War world. What constitutional changes did the Civil War bring? How should judges understand the fourteenth amendment? The due process clause and economic regulation: *Lochner*.

February 1    Casebook 435-56.

Working out the scope of congressional power: What should be the extent of federal legislative power in the industrializing economy?
February 6 Casebook 499-527

The due process clause and economic regulation: The decline of judicial intervention.

February 8 materials (to be distributed) on incorporation of the Bill of Rights

To what extent should (and does) the Bill of Rights constrain the states?

February 13 Casebook 530-654

The takings clause. The extent of federal legislative power: the new era of federal commerce-clause supremacy.

February 15 Casebook 564-87 top

The taxing and spending power; federal power under the reconstruction amendments.

February 20 Casebook 591 bottom - 629

Reviving the judicial role: the Court imposes new limits on the commerce-clause power.

February 22 Casebook 629-49

The Court revisits federal power under the Reconstruction amendments.

February 27 Casebook 649 - 705 bottom

To what extent does Constitutional federalism limit Congress' power to regulate state governments?

March 1 Materials (to be distributed) on state regulation of interstate commerce

To what extent does Constitutional federalism limit state power to regulate interstate commerce?

March 3 Casebook 819-71

To what extent can the President act independently of Congress? National security and executive detention.

March 8 Casebook 871-81, Supplement 1-51

Military tribunals; domestic surveillance and presidential power.

March 20 Casebook 1339-70

The fourteenth amendment due process clause redux: What “fundamental” rights can, or should, the courts seek to protect in the modern era?
March 22    Casebook 1370-87

“Fundamental rights” and the family.

March 27    Casebook 1387-1409

Roe v. Wade

March 29    Casebook 1409-19

Roe v. Wade (con't).

April 3     Casebook 1419-57

The due process clause and reproductive rights: decisions after Roe.

April 5     Casebook 1457-65

The due process clause and reproductive rights: decisions after Roe (con't).

April 10    Casebook 1465-1505

The due process clause and sexual orientation.

April 12    Casebook 1569-92

The “right to die.”