

Constitutional Law

Fall 2017

Professor Matthew Lindsay

Course Overview

This course provides an introduction to United States constitutional law and constitutional theory. Topics include judicial review and the scope of the federal judicial power; the constitutional allocation of powers among the legislative, executive, and judicial branches of the federal government; the relationship between the federal government and the states; and constitutional rights, including equal protection and due process of law.

Class Meetings

Section A: Tuesday & Thursday, 10:00–11:45 a.m., in 905

Section B: Tuesday & Thursday, 1:00–2:40 p.m., in 241

Required Materials

- Kathleen Sullivan and Noah Feldman, Constitutional Law (19th ed. 2016).
- Linda Greenhouse, A Very Short Introduction to the U.S. Supreme Court (2012).
- A series of supplemental readings, which will be distributed in class and posted on the course D2L page throughout the semester.
- *Supplemental Materials*: In addition to the assigned reading, I encourage you to acquire Erwin Chemerinsky, Constitutional Law: Principles and Policies (5th ed. 2015). This is a widely used constitutional law treatise/hornbook, and a helpful source of clear, accurate, readable explanations of constitutional doctrine. It is available for purchase at the Campus Bookstore, as well as on amazon.com and other online booksellers.

Instructors

Professor Matthew Lindsay

Office: Lewis 743

MLINDSA6@depaul.edu

Phone: TBA

Office Hours: Wednesday, 3:00–5:00, and by appointment

Cameron Custard, Teaching Assistant

Office: TBA

cameroncustard@gmail.com

Office Hours: Thursday, 12:00–1:00.

Zachary Reynolds, Teaching Assistant

Office: TBA

zack.reynolds14@gmail.com

Office Hours: TBA

{Additional Teaching Assistant(s) TBA}

Course Website: This course has a D2L page, where I will post updated versions of the course syllabus, assignments, and other course materials. I also expect to use the D2L email function to communicate reading assignments and other important course information.

Course Objectives—At the conclusion of this course, students will be equipped to:

- Understand the fundamental premises and design of the Constitution of the United States;
- Identify the principles, doctrines, and policies governing select subfields of U.S. constitutional law, and apply them to varied factual situations;
- Recognize, define, and analyze latent constitutional issues;
- Think critically about the principles, doctrines, and policies that inform U.S. constitutional law;
- Recognize and evaluate extra-legal influences on constitutional argument and interpretation, including political, economic, ideological, religious, cultural, or moral influences.

Course Grades

Grades will be based on the following *four assessment items*:

- (1) A three-hour, open-book, in-class **Final Examination** will count for **either 100% or 75%** of your final course grade. (See #2, below.) The Final Exam will be administered on Tuesday, December 19, at 9:30 a.m. All of the assigned readings and anything that we discuss in class is eligible for inclusion on the Final Exam. I will distribute practice exam questions throughout the semester, and will hold an exam review session at the end of the semester.
- (2) An in-class **Midterm Examination** administered between the 7th and 9th week of the semester will count for **either 25% or 0%** of your final course grade. Because the pace of the course will vary according to the needs of each particular class, I cannot set a specific exam date until the semester is well underway. However, I will provide at least two weeks' notice of the Midterm Exam date. The Midterm Exam is **redeemable**. This means that if the combined score of your Midterm and Final Examinations is lower than your Final Examination score standing alone, your Midterm score will not count toward your course grade.

For example: If you receive an 88 on the midterm and an 80 on the Final, your combined score for the course will be an 82 (i.e. the average of the two scores, with the Midterm weighted .25 and the Final .75). If you receive a 78, 68, or 58 on the Midterm and an 80 on the Final, your combined score for the course will be an 80.

I will discuss the Midterm Exam in more detail as the exam date approaches.

- (3) An **Assignment** consisting of 30 questions designed to compel you to read the Constitution carefully. You can find the assignment under the “Assignments” link on the course D2L webpage. The assignment does not require any research beyond carefully reading the Constitution itself. You may work individually or in groups of up to six people. Written (i.e. typed) answers to the questions should be submitted to a TA by Wednesday, September 6. Only hardcopies (i.e. no email) will be accepted. The Assignment will be graded on a pass/fail basis, but you must complete the assignment to be eligible for a grade in the course.

- (4) **Participation** in class discussion is mandatory. Excellent class participation—regular attendance plus contributions to class discussions that reflect careful preparation—may result in a third-of-a-grade increase (e.g., from a B+ to an A-). Poor class participation—frequent absences and/or lack of informed participation—may result in a third-of-a-grade reduction (e.g., from an A- to a B+).

Classroom Policies and Expectations

Attendance: Attendance is mandatory for all law school classes. An attendance sheet will be circulated at the beginning of every class. Students who do not sign in will be counted absent. Students who accrue more than three unexcused absences (including discussion exemptions—see immediately below) may have their course grades reduced. Arriving late to class can be disruptive and distracting for other students. At my discretion, persistent late arrival to class may be counted as an absence, and may factor into your participation grade.

Discussion: I call on students in class, by name, and without warning. If you are unprepared for a given class you may notify me before class begins by writing your name on the sign-in sheet available at in the front of the classroom. This will exempt you from being called on that day. You may avail yourself of three such exemptions over the course of the semester. If you sign in more than three times, your course grade may be reduced. If you do not sign in and are unprepared when called on, your grade may likewise be reduced. An unexcused absence from class will count as one of your three free passes.

Computers: Students are permitted to use laptops for note-taking and encouraged to use them for exams. However, computer use must be respectful of others and should not interfere with your engagement in class. Using your computer in class for purposes other than note-taking and class-related research is highly distracting—to you and, more importantly, to your classmates—and is prohibited. I reserve the right to ban the use of the internet, or to ban laptops entirely, in the event that computer use becomes disruptive.

Professionalism: Because unprofessional and uncivil behavior inhibits learning, I expect your conduct in class to conform to basic professional norms. This includes arriving to class on time and prepared to participate; not leaving the room in the middle of class; turning off your cell phone; and avoiding computer use that is unrelated to class. I encourage you to voice reasoned disagreement with each other and/or with me, but it is essential that you do so with courtesy and respect. Constitutional law often touches on deeply held personal beliefs and moral or political commitments. It is important that all students feel secure in voicing sincerely held views that are relevant to constitutional interpretation, even when such views are unpopular and potentially provocative.

Recording: Students may not record any class without my prior permission. This includes tape recordings and digital recordings made with a smartphone or laptop. Any student who is found recording without permission will reported for an Honor Code violation.

Academic Integrity: DePaul University is a learning community that fosters the pursuit of knowledge and the transmission of ideas within a context that emphasizes responsibility for oneself, for others, and for society at large. Violations of academic integrity are detrimental these values, to the pursuit of knowledge and transmission of ideas, and to students' development as responsible members of the DePaul community. Violations of academic integrity include but are not limited to the following: cheating, plagiarism, fabrication, falsification or sabotage of research data; destruction or misuse of the University's academic resources; alteration or falsification of academic records; and academic misconduct. Conduct that is punishable under the Academic Integrity Policy could result in additional disciplinary actions by other university officials and possible civil or criminal prosecution. Please refer to your Student Handbook or visit Academic Integrity at DePaul University (<http://academicintegrity.depaul.edu>)

Students with Disabilities: Students seeking disability-related accommodations are required to register with DePaul's Center for Students with Disabilities (CSD), which can enable you to access accommodations and support services. There are two office locations:

Loop Campus: Lewis Center #1420; (312) 362-8002

Lincoln Park Campus: Student Center #370; (773) 325-1677

Students may also contact me privately to discuss disability-related challenges, and how I might assist in facilitating the accommodations you will use in the course. This is best done early in the term. Our conversation will remain confidential.

Syllabus

Reading Assignments: I will generally assign ten to twenty pages of reading per class. Sometimes it will be less, and sometimes more. Because the material—typically excerpts from U.S. Supreme Court cases—is often quite challenging, please allow yourself sufficient time to read it carefully. (As a rough guideline, if I were reading this material for the first time in preparation for class, I would expect to spend, on average, between five and eight minutes per page.) Reading case excerpts “carefully” includes the following:

- Note the key *facts* of the case. I will often begin our discussion of a case by asking one of you to summarize the facts. This includes both the “background” facts that gave rise to the lawsuit, as well as the legally important facts—often called “material” or “determinative” facts—that bear on the court’s analysis of the legal issue(s) under consideration.
- Identify the legal *issue* that the case is addressing. Sometimes the court will announce the issue explicitly, but sometimes it will not. If the case excerpt describes the dispositions of the lower (i.e., trial and intermediate appellate) courts that have heard this case, make a note of those. If the case excerpt describes the parties’ legal arguments on appeal, make a note of those, too.
- Identify the *rule of law* that the court applies in the case. This means not only identifying the constitutional provision at issue, but also the court’s explanation of what that provision means, and how it applies to different factual situations.
- Identify the *holding* of the case. What is the court’s legal conclusion, based on how the rule of law applies to the specific facts of this case?
- Understand the court’s *reasoning*. How does applicable rule of law apply to the facts? Are there other values or considerations—e.g., fairness, justice, judicial administrability, economic efficiency, public policy, constitutional principle, etc.—that inform the court’s analysis?
- Identify the *disposition* of the case: What did the court do? Affirm the lower court, reverse it, vacate its decision and remand the case for further proceedings?

This Syllabus indicates the order of the readings, but does not designate specific readings for specific dates. This is because the pace with which we cover various topics is often influenced by the particular needs of and dynamics within each section. I will email the reading assignment for each week by the Friday morning preceding that week. Students who wish to read more than one week ahead to manage competing demands on their time may confer with me about upcoming reading assignments. As a general guideline, however, expect that we will cover approximately 30 pages per week. Although I realize that this approach can feel indefinite, I have found that it is better to preserve some flexibility in the pace of the course than to set fixed dates and then “fall behind.”

The Syllabus uses the following abbreviations:

S & F = Sullivan and Feldman, Constitutional Law

Greenhouse = Greenhouse, A Very Short Introduction to the U.S. Supreme Court

Supp. = Supplemental readings posted on D2L.

t, m, & b = top, middle, and bottom (of the page in your casebook)

I. Introduction to the American Constitutional System

- A. Introduction to the U.S. Constitution
 - 1. Major Themes of the U.S. Constitution—Supp. #1.
 - 2. A Brief History of the Adoption of the U.S. Constitution—Supp. #2.
- B. The U.S. Constitution
 - 1. The Constitution of the United States—S & F, pp. lix–xxiii.
 - 2. Constitutional Map—Supp. #3.

II. The Federal Judicial Power

- A. The Concept of Judicial Review
 - 1. The Federal Judiciary—U.S. Constitution, Art. II, p. lxxv.
 - 2. Origins of Article III Courts and of the Judicial Power—Greenhouse, pp. 1–12.
- B. The Establishment of Judicial Review
 - 1. Review of Federal Actions
 - a. Primer on *Marbury v. Madison*—Supp. #4.
 - b. *Marbury v. Madison*, S & F, pp. 2–11.
 - 2. Review of State Actions
 - a. *Fletcher v. Peck*—Supp. #5.
 - b. *Martin v. Hunter's Lessee*—S & F, pp. 17–19.
 - c. *Cobens v. Virginia*—S & F, pp. 19 – 20t. (n. 1)
 - d. *Cooper v. Aaron*—S & F, pp. 21–22m (and Introduction on pp. 20–22).
- C. Limitations on the Federal Judicial Power
 - 1. Overview—Greenhouse, 48–58.
 - 2. *Certiorari*—Supp. #6.
 - 3. Justiciability
 - a. General—S & F, 34b–35t.
 - b. Advisory Opinions—S & F, pp. 35t–36b (nn. 1–3).
 - c. Mootness and Ripeness
 - (i) General—58m–60t (nn. 1, 2).
 - (ii) *DeFunis v. Odegaard*—Supp. #7
 - d. Standing
 - (i) Constitutional Standing—General Principles—S & F, pp. 47b–48b
 - (ii) The Injury Requirement
 - *Lujan v. Defenders of Wildlife*—S & F, pp. 38–43.

- *Clapper v. Amnesty Intl. USA*—S & F, pp. 48b–50t.
 - *Massachusetts v. EPA*—S & F, pp. 44–47.
 - *City of Los Angeles v. Lyon*—Supp. #8.
 - *Duke Power v. Carolina Environmental Study Group*—Supp. #9.
- (iii) Causation; Redressability; Generalized Grievances—S & F, pp. 50t–54m. (nn. 2–7).
- (iv) Statutory Standing—S & F, pp. 54b–55b (n. 8).
- (v) Democracy & Constitutional Principle—S & F, pp. 55b–58m (nn. 9–12).
4. Political Question Doctrine
- a. General—S & F, pp. 60–61t.
 - b. *Baker v. Carr*—S & F, pp. 61–67
 - c. *Powell v. McCormack*; *Goldwater v. Carter*; *Nixon v. U.S.*—S & F, pp. 67m–70t (nn. 1–3).
 - d. *Bush v. Gore*—S & F, pp. 70m–74b (n. 5).
 - e. *Gill v. Whitford*—Supp. #10.
5. Political Constraints
- a. General Overview—Greenhouse, pp. 25–37.
 - b. Appointment and Removal—S & F, pp. 30m–31b (nn. 1–3).
 - c. Jurisdiction Stripping—S & F., pp. 31b–33t (n. 4).
 - d. Amendment—S & F, pp. 33t–34b (n. 5).

III. Federal Legislative Power

A. American Federalism: An Introduction

1. U.S. Constitution, Art. I, §§ 8–10.
2. Historical Background
 - a. The National Bank Controversy—Supp. #11.
 - b. *McCulloch v. Maryland*—S & F, pp. 79–89.
3. The Necessary and Proper Clause
 - a. General—S & F, pp. 101–04t.
 - b. *United States v. Comstock*—S & P, pp. 104–06.
 - c. Federalism Limits on the Necessary & Proper Clause—S & F, pp. 106t–107b (nn. 1 & 2).

B. Enumerated Powers

1. The Commerce Power
 - a. The Commerce Power Before 1937
 - (i) *Gibbons v. Ogden* (plus Introduction)—S & F, pp. 115–17.
 - (ii) Regulating Commerce in Industrial America—S & F, pp. 118–122 (nn. 1–4).

- (iii) *Hammer v. Dagenhart*—S & F, pp. 123–24.
- (iv) The Early New Deal—S & F, pp. 124b–131t (nn. 1–3).
- b. The Commerce Power After 1937
 - (i) National Labor Relations Act—Supp. #12.
 - (ii) *NLRB v. Jones and Laughlin Steel Corp.*—S & F, pp. 131–33.
 - (iii) *United States v. Darby*—S & F, pp. 133–36.
 - (iv) *Wickard v. Filburn*—S & F, pp. 136–37.
- c. The Commerce Power and Civil Rights—S & F, pp. 139t–141b (n. 6).
- d. The Commerce Power and Criminal Law—S & F, pp. 141b–142m (n. 7).
- e. The Contemporary Commerce Power
 - (i) *United States v. Lopez*—S & F, pp. 143–49.
 - (ii) *United States v. Morrison*—S & F, pp. 151–54.
 - (iii) *Gonzales v. Raich*—S & F, pp. 155–60.
 - (iv) The Commerce Clause & the Affordable Care Act—S & F, pp. 161–63m (nn. 1–6).
 - (v) *NFIB v. Sebelius*—S & F, pp. 163–69.
- 2. Taxing Power
 - a. *Child Labor Tax Case*—S & F, pp. 195–97.
 - b. Federal Excise and License Taxes—S & F, pp. 198m–200t (n. 3).
 - c. *NFIB v. Sebelius*—S & F, pp. 201–03.
- 3. Spending Power
 - a. *United States v. Butler* (plus Introduction)—S & P, pp. 204m–208.
 - b. *Steward Machine Co. v. Davis*—S & F, pp. 208m–210b.
 - c. *South Dakota v. Dole*—S & F, pp. 212–15.
- C. Tenth Amendment Limits on Congressional Power
 - 1. Overview and Background—S & F, pp. 171m–177m (nn. 1–3).
 - 2. *New York v. United States*—S & F, pp. 177–181.
 - 3. *Prinz v. United States*—S & F, pp. 182m–85m (n. 2).
 - 4. *Reno v. Condon*—S & F, pp. 185b–186 (n. 3).
- D. Federal Limits on State Regulation
 - 1. The Dormant Commerce Clause
 - a. Overview and History—S & F, pp. 227–29b; 231b; 234–36b (nn. 1–4).
 - b. *Philadelphia v. New Jersey*—S & F, pp. 237–39.
 - c. *Kassel v. Consolidated Freightways Corp.*—S & F, pp. 269–74.
 - 2. Federal Preemption of State Law

- a. Introduction—S & F, p. 285b.
- b. *P G & E v. State Energy Res. Cons. & Devt. Comm.*—F & G, pp. 286–90.
- c. Modes of Preemption Analysis—S & F, pp. 290b–92t.
- d. *Arizona v. United States*—Supp. #13.
- e. Preemption and Foreign Affairs—S & F, pp. 293–94m (n. 2).

IV. Executive Power

A. Introduction

1. Separation of Powers—Overview—S & F, pp. 303–04m.
2. U.S. Constitution, Article II.
3. *Youngstown Sheet & Tube Co. v. Sawyer*—S & F, pp. 304–12.
4. Note on *Youngstown*—S & F, pp. 313b–14m (n. 3).

B. Executive Authority over Foreign Affairs

1. *Zivotofsky v. Kerry*—S & F, pp. 314–21.
2. *Dames & Moore v. Regan*—S & F, pp. 323–27.

C. War and Terrorism

1. Introduction and Background—S & F, pp. 330b–33b.
2. Noe on Emergency Constitutionalism—S & F, pp. 333b – 36t (nn. 1–3)
3. *Ex parte Milligan*—S & F, 239t–41t.
4. *Ex parte Quirin*—S & F, 341–44.
5. *Johnson v. Eisentrager* and the Executive Response to the 9/11 Attacks—S & F, 345–47m.
6. *Hamdi v. Rumsfeld*—S & F, pp. 349–58.
7. *Boumediene v. Bush*—S & F, pp. 369–77.

D. Immigration

1. Historical Foundations—Supp. #14 (*Fong Yue Ting v. United States*).
2. Immigration and National Security
 - a. *Reno v. Arab-American Anti-Discrimination Comm'n*—Supp. #15.
 - b. *Trump v. International Refugee Assistance Project*—Supp. #16.

E. Congressional Authority to Restrain and Enable the Executive

1. Introduction—S & F, pp. 380b–82b.
2. *INS v. Chada*—S & F, pp. 383–89.
3. *Morrison v. Olson*—S & F, pp. 403–07.
4. Independent Counsel/Special Prosecutor—Supp. #17.

F. Executive Privileges and Immunities, and Congress' Power of Impeachment

1. Introduction—S & F, pp. 421b–22m.
2. *United States v. Nixon*—S & F, pp. 422–24.
3. *Clinton v. Jones*—S & F, pp. 427–32.
4. Criminal Indictment of a Sitting President—S & F, pp. 433b–34b (n. 3).
5. Impeachment—S & F, pp. 434–38b.

VI. Individual Rights

A. Introduction to Individual Rights and the Fourteenth Amendment

1. Introduction—S & F, pp. 441–42m.
2. *Baron v. City of Baltimore*—S & F, pp. 442–44.
3. *Dred Scott v. Sanford*—S & F, pp. 445–47.
4. Historical Background of 14th Amendment—Supp. #18.
5. The Reconstruction Amendments and the *Slaughterhouse Cases*—S & F, pp. 449t–53.

B. Incorporation (In-class lecture; no readings)

C. The State Action Requirement

1. *Civil Rights Cases*—S & F, pp. 854–58t.
2. “Public Function” as State Action—S & F, 858m–61t (n. 2).
3. *Shelley v. Kraemer*—S & F, pp. 861–63.
4. What qualifies as “state action”?—S & F, 864m–66b (nn. 3 & 4); 870b–75b (nn. 1–4).

D. Equal Protection

1. Overview of Equal Protection Analysis—Tiers of Review—Supp., #19.
2. Racial Discrimination
 - a. Facially Discriminatory Laws
 - (i) *Strauder v. West Virginia*—S & F, pp. 658–59 (n. 1).
 - (ii) *Korematsu v. United States*—S & F, pp. 678m–81b (n. 1).
 - b. “Separate but Equal”?
 - (i) Introduction, including *Plessy v. Ferguson*—S & F, pp. 659m–61b (n. 2).
 - (ii) Segregation in Public Education—S & F, pp. 661b–63t (n. 3).
 - (iii) *Brown v. Board of Education (Brown I)*—S & F, pp. 663–65.
 - (iv) *Bolling v. Sharpe*—S & F, pp. 665m–66t (n. 1).
 - (v) Notes on the *Brown I*—S & F, pp. 666t – 69t (nn. 2–8).
 - (vi) *Brown v. Board of Education [Brown II]*—S & F, p. 669–70 (n. 1).
 - (vii) Notes on Desegregation—S & F, pp. 670m–73m (nn. 2–6).
 - (viii) *Loving v. Virginia*—S & F, pp. 674–75.

- c. Facially Neutral Laws
 - (i) *Washington v. Davis*—S & F, pp. 686–89.
 - (ii) *Arlington Heights v. Metro. Housing Corp.*—S & F, pp. 689–91 (n. 1).
 - (iii) Note on Proving Discriminatory Purpose—S & F, pp. 191m–92b (n. 2).
 - (iv) Notes on Racially Discriminatory Purpose and Application of Facially Neutral Laws—S & F, pp. 282b–85m (nn. 1 & 2).
- d. Affirmative Action
 - (i) *Regents of Univ. of California v. Bakke*—S & F, pp. 693–700.
 - (ii) *Adarand Constructors, Inc. v. Peña*—S & F, pp. 706–11.
 - (iii) *Grutter v. Bollinger*—S & F, pp. 712–21.
 - (iv) *Gratz v. Bollinger*—S & F, pp. 721–24.
 - (vii) *Parents Involved in Community Schools v. Seattle School Dist.*—S & F, pp. 735–45.
- 3. Sex Discrimination
 - a. History and Overview—S & F, pp. 756b–60t (nn. 1 & 2).
 - b. The Path to Heightened Scrutiny—S & F, pp. 760m–62b (nn. 3–5).
 - c. *Craig v. Boren*—S & F, pp. 763–66.
 - d. *United States v. Virginia*—S & F, pp. 769–77.
 - d. Pregnancy—S & F, 778b–79b (n. 3).
 - e. *Personnel Administrator of Mass. v. Feeney*—S & F, pp. 786t–89t.
- 4. Alienage Discrimination
 - a. Heightened Scrutiny of Alienage Classifications—S & F, pp. 794b–95m (n. 1)
 - b. The “Government Function” Exception—S & F, pp. 795m–96m (n. 2).
 - c. *Plyler v. Doe*—S & F, pp. 846–49.
 - d. Federal Alienage Discrimination—S & F, pp. 797–98m (n. 4).
- 5. Rational Basis Review
 - a. Economic Regulation
 - (i) Introduction—S & F, pp. 644m–45m.
 - (ii) *Railway Express Agency v. New York*—S & F, pp. 645–47.
 - (iii) *Williamson v. Lee Optical*—S & F, pp. 648.
 - (iv) *U.S. Railroad Retirement Bd. v. Fritz*—S & F, pp. 652–56.
 - (v) Classifications Based on “Animus”—S & F, pp. 649m–50t (n. 3); *Cleburne v. Cleburne Living Center, Inc.*—S & F, pp. 799–803.
 - b. Sexual Orientation
 - (i) Introduction, including *Bowers v. Hardwick*—S & F, pp. 551–53m.
 - (ii) *Romer v. Evans*—S & F, pp. 553–58.

- (iii) *Lawrence v. Texas*—S & F, pp. 561–68.
 - (iv) *United States v. Windsor*—S & F, pp. 572–79.
6. Equal Protection and the Fundamental Interest in Voting
- a. Introduction—S & F, pp. 805m–06m.
 - b. *Harper v. Virginia State Board of Elections*—S & F, pp. 806–08.
 - c. *Kramer v. Union Free School District No. 18*—S & F, pp. 808–09.
 - d. Felons—S & F, p. 810 (n. 2).
 - e. Voter ID Requirements
 - (i) *Crawford v. Marion County Election Board*—810b–13t (n. 3).
 - (ii) *North Carolina, et al. v. North Carolina State Conference of the NAACP*—Supp. #20
 - f. Partisan Gerrymandering: *Gill v. Whitford*—Supp. #21
- E. Substantive Due Process
- 1. Note on Procedural Due Process—S & F, pp. 607–09t.
 - 2. Economic Liberty and the Origins of Substantive Due Process
 - a. *In re: Jacobs*—Supp. #22
 - b. *Lochner v. New York*—S & F, pp. 487–93.
 - c. *Lochner's Progeny*—S & F pp. 494b–96b (n. 4).
 - d. The End of the “*Lochner* Era”
 - (i) *Nebbia v. New York*—S & F, pp. 498–99.
 - (ii) Notes on the New Deal and the Demise of *Lochner*—S & F, pp. 499b–502b.
 - 3. Substantive Due Process and the Right to Privacy
 - a. Introduction—S & F, pp. 508–10t.
 - b. Contraception and Childbearing
 - (i) *Skinner v. Oklahoma*—S & F, pp. 509–10t.
 - (ii) *Griswold v. Connecticut*—S & F, pp. 510–16.
 - (iii) *Eisenstadt v. Baird*—S & F, p. 518 (n. 4).
 - c. Abortion
 - (i) *Roe v. Wade*—S & F, pp. 520–23.
 - (ii) Note on the Meaning and Implications of *Roe*—S & F, pp. 524–31.
 - (iii) *Planned Parenthood of Southeastern Pa. v. Casey*—S & F, pp. 532–38.
 - (iv) *Gonzales v. Carhart*—S & F, pp. 541–44.
 - (v) *Whole Women's Health v. Hellerstedt*—Supp. #23.

d. Sexuality

- (i) Review *Bowers v. Hardwick*—S & F, pp. 551–53; and *Lawrence v. Texas*—S & F, pp. 561–68.
- (ii) *Obergefell v. Hodges*—S & F, pp. 581–88.

e. Death

- (i) *Cruzan v. Director, Missouri Dept. of Health*—S & F, pp. 590–93.
- (ii) *Washington v. Glucksberg*—S & F pp. 593–600.

G. The Right to Keep and Bear Arms [Time Permitting]

- 1. *District of Columbia v. Heller*—S & F, pp. 470m–73m (n. 3).
- 2. *McDonald v. City of Chicago*—S & F, pp. 473–80.