This course covers the development of constitutional law from Reconstruction to the Warren Court. Constitutional Law I is not a prerequisite, but a good background in American history is strongly recommended. We will focus on the development of modern civil liberties doctrine and the emergence of the federal courts as the primary guarantor of civil rights, examining not only constitutional doctrine but also the broader intellectual and political context in which it evolved. Topics will include adoption of the Reconstruction amendments, the struggle over economic regulation and the doctrine substantive due process, FDR’s battle with the Supreme Court and the expansion of civil liberties under the Warren Court.

Texts:

Kelly, Harbison, Belz, Vol. II
Ely, Democracy and Distrust
***Additional readings in coursepack [CP]

Course requirements: I will use the socratic method in this class. Each student should be prepared to answer searching questions about the assigned case every day. Students should be able to summarize the facts of the assigned case(s), explain the Court’s reasoning and the holding, explain the reasoning of the dissenting opinions, if any, and critique the Court’s decision.

Because this in-class discussion is a critical part of learning to read and analyze cases, attendance is mandatory. You may have no more than three excused absences (an absence may be excused if it is due to serious illness, a real family emergency, or a school activity.) Each unexcused absence will result in your grade being lowered by 5%.

Your grade will be computed as follows:

Midterm: 25%
Case Note: 25%
Final: 35%
Participation: 15%

Case Note: You will choose a significant constitutional case from the modern era (1865 to present) and write a case note of no more than 15 pages (12-pt font, 1 inch margins). Case notes are designed to explain the facts, reasoning and holding in a case in a concise and simple fashion. They follow a standard format:

I. Introduction

This should be brief and to the point.

II. Background

This section will discuss the specific facts of the case as well as any political, social, legal, or cultural contextual factors that you think will help to illuminate the case. It should conclude by telling us how the
case got to the Supreme Court and what the major legal issues were.

III. Analysis of the Decision

This section will take us carefully, in a step-by-step analysis, through the reasoning in the Court’s opinion and the concurring and dissenting opinions. You may ignore or only touch on the minor or technical issues; focus on the important ones.

IV. Critique

This section should evaluate the Court’s decision, explaining its strengths and weaknesses. Don’t just state your opinion; persuade your reader of your position. You may also discuss the decision’s broader significance.

V. Conclusion

A separate conclusion is optional.

You will turn in sections of the case note for me to comment on as indicated on the syllabus. You will then revise these sections and turn in a complete, polished case note on May 29.

Documenting sources: I expect you to do a significant amount of research on your case. Your bibliography should demonstrate that you’ve explored the best scholarship (which will typically mean that you should not rely on Internet sources, unless you can make the case that it’s reliable and respected.) You should cite your sources; the conventions of legal scholarship demand that you carefully document your factual assertions. You may use Chicago Manual of Style or MLA format, as long as you’re consistent.

Citing to the opinion: You must cite to the text of the opinion when you discuss the Court’s analysis. This can present a problem, since the opinions are published in many different places, all of which will have different page numbers. Standard practice is to cite to the pages of the official reporter, which is the U.S. Supreme Court Reports. You will find this in the library in the Government Documents section. You can also find the case on Lexis. The Lexis case will indicate the page numbers of the official reports (they are designated with a single *).

A cite to an opinion should look like this: Lockett v Ohio, 438 U.S. 586, at 590. After the first citation, or if the name of the case is already mentioned in the text, you can cite it thus: 438 U.S. at 602.

I recommend that you choose your case from the following list. If you want to work on a case not on this list, please clear it with me first:

The Slaughterhouse Cases, 83 US 36 (1873) [equal protection]
The Civil Rights Cases, 109 US 3 (1883) [equal protection]
Lochner v New York, 198 US 45 (1905) [econ regulation]
Munn v Illinois, 94 US 113 (1877) [labor]
Muller v Oregon, 208 US 412 (1908) [labor]
Schenck v US, 249 US 47 (1919) [free speech]
West Coast Hotel v Parrish, 300 US 379 (1937) [labor]
Palko v Connecticut, 302 US 219 (1937) [due process]
West Virginia State Board of Education v Barnette, 319 US 624 (1943) [church & state]
Korematsu v US, 323 US 214 (1944) [equal protection]
Brown v Board of Education, 347 US 483 (1954) [equal protection]
Mapp v Ohio, 367 US 643 (1961) [rights of accused]
Griswold v Connecticut, 381 US 479 (1965) [privacy rights]
Brandenburg v Ohio, 395 US 444 (1969) [free speech]
US v O’Brien, 391 US 367 (1968) [free speech]
Miranda v Arizona, 384 US 436 (1966) [rights of accused]
Roe v Wade, 410 US 113 (1973) [abortion rights]
Regents of the Univ. of California v Bakke, 438 US 265 (1978) [aff. action]
Bowers v Hardwick, 478 US 186 (1986) [gay rights]
Nollan v California Coastal Commission, 483 US 825 (1987) [takings; env\textsuperscript{tal regulation}]
McClesky v Kemp, 481 US 279 (1987) [capital punishment]
Penry v Lynaugh, 492 US 302 (1989) [capital punishment]

I. Introduction

Class 1: Introduction to the course

US Constitution, Article III

Class 2: Judicial Review

Marbury v Madison

II. Reconstruction & the Nationalization of the Bill of Rights

Class 3: Incorporation controversy

Douglas\textsuperscript{\textbullet} Appendix to Adamson v California
Civil Right Bill of 1866
13th, 14\textsuperscript{th}, 15\textsuperscript{th} amendments
Corfield v Coryell
KHB Ch. 17

Class 4: Due Process

Hurtado v California
Palko v Connecticut
Rochin v California

*Topic of case note and preliminary bibliography due

III. Race and citizenship

Class 5: Slaughterhouse Cases

KHB Ch. 18

Class 6: Civil Rights Cases

Class 7: Plessy v Ferguson

IV. Labor vs Capital

Class 8: Munn v Illinois

KHB Ch. 19, 20

*Introduction and Background section of case note due

Class 9: Lochner v New York

KHB Ch. 21, 23
Class 10: Muller v Oregon

Class 11: Debs v US
Schenck v US
Abrams v US
KHB Ch. 26

V. FDR vs the Court

Class 12: Adkins v Childrens Hospital
West Coast Hotel v Parrish
Carolene Products footnote 4
KHB Ch. 24, 25

Class 13: MIDTERM EXAM

VI. Desegregation

Class 14: Brown v Board of Education
KHB Ch. 29

Class 15: Heart of Atlanta Motel v US, Katzenbach v McClung
US v Morrison

VII. Justifying Judicial Activism

Class 16: The Warren Court and Civil Rights
KHB Ch. 30

*Analysis section of case note due

Class 17: Ely, Ch. 1-4

Class 18: Ely, Ch. 5-8

VIII. Modern Civil Liberties

Class 19: 42 USC 1983

Class 20: Freedom of Speech
Brandenburg v Ohio
US v O'Brien

*Critique section of case note due

Class 21: Free exercise of Religion
Sherbert v Verner
Wisconsin v Yoder
Class 22: Free exercise cont.

Oregon v Smith
Boerne v Flores

Class 23: Disestablishment

Lemon v Kurtzman
Wallace v Jaffree

Class 24: Right to Privacy

Griswold v Connecticut
Roe v Wade

Class 25: Rights of the Accused

Mapp v Ohio
Miranda v Arizona

*Complete case note due

Class 26: Cruel and Unusual Punishment

Estelle v Gamble
Furman v Georgia

Class 27: The Limits of Civil Liberties

Bowers v Hardwick

Class 28: Conclusion

Final Exam: Friday, June 7, 12:00-2:00 or self-scheduled