This course covers the development of constitutional law from Reconstruction to the contemporary era. 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 of 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
Keck, The Most Activist Supreme Court in History

***Additional readings in coursepack [CP]

Course requirements: This course requires a great deal of participation. 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.

Your participation grade will reflect the quality and quantity of your contribution to class discussion. Because this in-class discussion is a critical part of learning to read and analyze cases, attendance is mandatory. Absences will substantially lower your grade.

Your grade will be computed as follows:

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<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tr>
<td>Moot Court</td>
<td>15%</td>
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<tr>
<td>Judicial opinion</td>
<td>5%</td>
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<tr>
<td>Midterm</td>
<td>20%</td>
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<tr>
<td>Final</td>
<td>25%</td>
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<tr>
<td>Research Paper</td>
<td>25%</td>
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<tr>
<td>Participation</td>
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Research Paper: Case Note

Your assignment is to research a significant constitutional case and explain why it’s important to the development of constitutional law, to constitutional politics, and to the development of the Court as a political institution. Your paper should be 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 are usually read by legal professionals, but they should be easily understood by an intelligent layperson. They follow a standard format:

I. **Introduction**: This should be brief and to the point. It should state your thesis.

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. **Significance**: This section should discuss the important impacts of the decision, which may be social, economic, political or legal. Your research should alert you to a range of important consequences; this section should demonstrate your deep engagement with the scholarly literature.

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 in class on Wed. March 9.

Documenting sources: I expect you to do a significant amount of research on your case. A thoroughly researched paper will rely on many sources, drawing on both books and periodicals. Your bibliography should demonstrate that you’ve explored the best scholarship on the subject (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.

The following are recommended cases. You can choose a case not on this list; just clear it with me first:

- The Slaughterhouse Cases, 83 US 36 (1873) [equal protection]
- The Civil Rights Cases, 109 US 3 (1883) [equal protection]
- Geer v Connecticut, 161 US 519 (1895) [wildlife 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]
- Missouri v Holland, 251 US 416 (1920) [environmental protection]
- 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]
- 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]
- Grutter v Bollinger, 539 U.S. 306 (2003) [aff action]
- Romer v Evans 517 US 620 (1996) [gay rights]
- Lawrence v Texas, 539 US 558 (2003) [gay rights]
- Atkins v Virginia, 536 US 304 (2002) [capital punishment]
- Obergefell v Hodges, 576 US ____ (2015) [gay rights]
Moot Court

Each group will be assigned one case or one issue from a case. The group’s task is to research and develop an argument for each side of the case/issue. The presentation will take the form of an oral argument: one student should serve as “lead counsel” for the affirmative side, a second student should serve as “lead counsel” for the negative side. A third student should be prepared to offer a rebuttal for the affirmative side and the fourth student should do the rebuttal for the negative side. The rest of the class will judge the winner and write up individual 2-page opinions justifying their decision (see below).

You will receive 10 minutes to present each side, and 5 minute for each rebuttal (30 minutes total). **Be prepared for the judge to interrupt your presentation with questions.**

Cases:

- Gill v. Whitford: Gerrymandering
- Trump v International Refugee Assistance Project: Travel ban
- Masterpiece Cakeshop v Colorado Civil Rights Division: Gay rights vs religious liberty
- Carpenter v. U.S.: Whether the warrantless seizure and search of historical cellphone records revealing the location and movements of a cellphone user over the course of 127 days is permitted by the Fourth Amendment.
- CREW v. Trump—emolument clause

Peer evaluation: Please note that your grade for this assignment will rest in part on your group participation. I will be asking everyone to fill out a peer evaluation and self-evaluation form, which will inform my grading. Do not assume that everyone in the group will get the same grade.

**Judicial Opinion**

You will write two judicial opinions:

- You will write up a formal judicial opinion after one of the first two moot court presentations. I will tell you which case to write up. This first opinion will be ungraded; I will simply give you feedback on it. This opinion will be due in the class session after the presentation.

- Everyone must write up a judicial opinion on one of the final three moot court presentations. You may choose which case to write up. This opinion will be graded.

A judicial opinion follows a standard format, often called the “IRAC” format:

**Issue:** After briefly explaining the facts, state clearly and concisely the legal issue in the case.

**Rule:** Explain what legal rule or rules apply to this case. (The legal rule is usually a holding in a precedential case.)

**Analysis:** Explain how the rule applies to the facts of this case

**Conclusion:** What is your decision on this case?

I expect the opinion to be about 1000 words (two single-space pages).
**Introduction**

Class 1: Introduction

Class 2: The Supreme Court and Individual Rights

Marbury v Madison
Barron v Baltimore

KHB Ch. 17

I. **Reconstruction & the Nationalization of the Bill of Rights**

Class 3: Incorporation controversy

Black’s Appendix to Adamson v California
Civil Right Bill of 1866
13th, 14th, 15th amendments

Corfield v Coryell

Class 4: Due Process

Hurtado v California
Palko v Connecticut
Rochin v California

*Topic of case note and preliminary bibliography due*

**EXTRA SESSION: Tues Jan. 12, 7:00-8:00:** Legal Research Workshop (Lib 306)

***This session is mandatory unless you’ve taken Con Law I***

II. **Race and citizenship**

Class 5: Slaughterhouse Cases

KHB Ch. 18

Class 6: Civil Rights Cases

Class 7: Plessy v Ferguson

Class 8: The Color-Blind Constitution?

Anderson, Race-Conscious Educational Policies Versus A Color-Blind Constitution [R]
Turner, The Dangers of Misappropriation [R]

III. **The “Lochner Era”**

Class 9: Munn v Illinois

KHB 19, 20

Class 10: Lochner v New York

Muller v Oregon

KHB Ch. 23

*Background section of case note due, properly documented*
Class 11: Adkins v Childrens Hospital  
   West Coast Hotel v Parrish  
   Carolene Products footnote 4  
   KHB Ch. 24, 25

IV. Toward the Modern Court

Class 12: War and Presidential Power  
   Korematsu v. U.S.  
   KHB Ch. 27

Class 13: Brown v Board of Education  
   Brown II  
   KHB Ch. 29

Class 14: Heart of Atlanta Motel v US, Katzenbach v McClung  
   US v Morrison

Class 15: MIDTERM

***BREAK***

[Extra class]

V. Contemporary Conflicts

Class 17: The Warren Court and Civil Rights  
   KHB Ch. 30

*Analysis and revised background sections of case note due, both sections properly documented

Class 18: Privacy I: Reproductive Rights  
   Griswold v Conn., Roe v. Wade, Casey v. Planned Parenthood

Class 19: Privacy II: Search and Seizure  
   Katz v. United States  
   Smith v. Maryland

Class 20: Redistricting  
   Reynolds v Sims  
   Vieth v. Jubelirer

Class 21: Moot Court: Carpenter v. US, Gill v Whitford

Class 22: Religion I: Establishment Clause  
   Lemon v Kurtzman  
   Lynch v Donnelly

   *Carpenter, Gill opinions due

Class 23: Religion II: Free exercise  
   Oregon v Smith
Boerne v Flores

Class 24: Gay rights
   Bowers v Hardwick, Lawrence v Texas,
   Obergefell v Hodges

Class 25: Moot Court: Masterpiece Cakeshop v. Colorado Civil Rights Division; Trump v. International Refugees Assistance

Class 26: Moot Court: CREW v. U.S.

Class 27: .............
   *Masterpiece, Trump, Crew Opinions due

Class 28: Conclusion and Review
   *Final draft of case note due in class today
   *Peer and self-evaluation form due in class

Final Exam: self-scheduled