AMERICAN CONSTITUTIONALISM

Volume I: Structures of Government

Howard Gillman, Mark A. Graber, and Keith E. Whittington

INDEX OF MATERIALS ARCHIVE

Part 1: Themes

1. Introduction to American Constitutionalism

Part 2: Development

- 2. The Colonial Era: Before 1776
 - I. Introduction
 - II. Judicial Power and Constitutional Authority
 - James Otis, Part of Speech before the Superior Court of Massachusetts on the Writs of Assistance
 - III. Powers of the National Government
 - i. Massachusetts Circular Letter
 - ii. The Speeches of His Excellency Governor Hutchinson . . . With the Answers of . . . the House of Representatives
 - IV. Separation of Powers
 - i. Thomas Pownall, The Administration of the Colonies
 - ii. A List of Infringements and Violations of Rights
 - iii. Richard Jackson, "An Historical Review of the Constitution and Government of Pennsylvania"
- 3. The Founding Era: 1776–1788
 - I. Introduction
 - II. Judicial Power and Constitutional Authority
 - A. Judicial Review
 - i. An Elector [James Iredell], "To the Public"
 - III. Powers of the National Government
 - i. James Madison, "Vices of the Political System of the United States"
 - ii. The Northwest Ordinance
 - IV. Federalism
 - A. Representation of State Interests
 - i. James Madison, "The Federalist No. 46"
 - B. Constitutional Amendment and Ratification
 - i. Thomas Jefferson, Notes on the State of Virginia
 - ii. Resolves of the Concord Town Meeting
 - V. Separation of Powers
 - i. John Adams, "Thoughts on Government"
 - ii. Debate in the Constitutional Convention

- iii. James Madison, "The Federalist No. 49"
- iv. James Madison, "The Federalist No. 57"
- v. James Madison, "The Federalist No. 62"
- vi. Alexander Hamilton, "Federalist No. 68"
- 4. The Early National Era: 1789–1828
 - I. Introduction
 - i. Alexander Hamilton, Report on Manufacturers
 - ii. Thomas Jefferson, First Inaugural Address
 - II. Judicial Power and Constitutional Authority
 - A. Judicial Review
 - i. Kamper v. Hawkins
 - ii. Hayburn's Case
 - iii. Vanhorne's Lessee v. Dorrance
 - iv. United States v. Callender
 - v. Eakin v. Raub
 - B. Judicial Supremacy
 - i. Attorney General Caesar Rodney, Letter to President Thomas Jefferson
 - C. Federal Review of the States
 - i. Fletcher v. Peck
 - ii. Cohens v. Virginia
 - iii. Algernon Sidney [Spencer Roane], "On the Lottery Decision"
 - D. Constitutional Litigation
 - i. John Jay, Letter to George Washington on Advisory Opinions
 - ii. Bank of United States v. Deveaux
 - E. Judicial Structure and Selection
 - i. Senate Debate on the Judiciary Act of 1801
 - ii. Stuart v. Laird
 - iii. Debate on the Impeachment of Justice Samuel Chase
 - iv. United States v. Worrall
 - III. Powers of the National Government
 - A. Necessary and Proper Clause
 - i. Quaker Petition on Slavery
 - ii. House Report on the Petitions Praying for a Repeal of the Sedition Act
 - iii. James Monroe, Proposal for a Military Draft
 - iv. Daniel Webster, Speech on the Proposed Military Draft
 - B. Territorial Acquisition and Governance
 - i. Senate Debate on the Louisiana Purchase
 - ii. House and Senate Debate on the Missouri Compromise
 - C. Power to Regulate Commerce
 - i. Josiah Quincy, Speech on Foreign Relations
 - ii. United States v. The William (D. Mass. 1808)
 - iii. Resolutions of the Hartford Convention
 - D. Taxing and Spending Power
 - i. Hylton v. United States
 - ii. James Madison, Internal Improvements Veto Message
 - iii. House Report on Internal Improvements

- James Monroe, Views of the President of the United States on the Subject of Internal Improvements
- E. Treaty Power
 - 1. Alexander Hamilton, "Camillus No. 36"
 - 2. James Madison, Speech on the Jay Treaty
- IV. Federalism
 - A. Constitutional Amendment and Ratification
 - i. Thomas Jefferson, Letter to Samuel Kercheval
 - B. State Authority to Interpret the Constitution
 - Massachusetts Resolution and Virginia Reply regarding the Virginia Resolutions of 1798
 - ii. Virginia Report of 1799
 - C. Police Powers
 - i. Corfield v. Coryell
 - D. States and the Commerce Clause
 - i. Brown v. Maryland
- V. Separation of Powers
 - A. Pardon Power
 - i. William Wirt, Pardons
 - B. Presidential Power to Execute the Law
 - i. William Wirt, Opinion on the President and Accounting Officers
 - C. Legislative Investigation Powers
 - i. Anderson v. Dunn
 - D. Legislative Speech and Debate
 - i. Thomas Jefferson, Letter on Cabell Case
 - E. Presidential War and Foreign Affairs Powers
 - i. James Madison, "Helvidius, No. 1"
 - ii. Martin v. Mott
 - F. Nondelegation of Legislative Powers
 - i. Wayman v. Southard
- 5. The Jacksonian Era: 1829–1860
 - I. Introduction
 - i. John Quincy Adams, First Annual Message
 - ii. The Democratic Review, "An Introductory Statement of the Democratic Principle"
 - II. Judicial Power and Constitutional Authority
 - A. Judicial Supremacy
 - i. Ableman v. Booth
 - B. Constitutional Litigation
 - i. Commonwealth v. Anthes
 - ii. Sheldon v. Sill
 - iii. Louisville, Cincinnati and Charleston Railroad Co. v. Letson
 - iv. Massachusetts Constitutional Convention, Debate on Advisory Opinions
 - C. Federal Review of the States
 - i. Barron v. Baltimore
 - ii. Swift v. Tyson

- III. Powers of the National Government
 - A. Necessary and Proper Clause
 - i. U.S. v. Haun
 - B. Taxing and Spending Power
 - i. President James Polk, Veto of Internal Improvements Bill
 - ii. Sharpless v. Mayor of Philadelphia
 - C. Territorial Acquisition and Governance
 - i. Congressional Debate on the Annexation of Texas
 - ii. Stephen A. Douglas, "Popular Sovereignty in the Territories"
 - iii. Foster v. Neilson
 - D. Federal Regulation of Elections
 - i. Congressional Debate on the Apportionment Act of 1842
- IV. Federalism
 - A. Comity
 - i. Commonwealth v. Aves
 - ii. Bank of Augusta v. Earle
 - B. State Authority to Interpret the Constitution
 - i. Andrew Jackson, Proclamation on Nullification
 - ii. John C. Calhoun, "Fort Hill Address"
 - iii. South Carolina Exposition and Protest
 - iv. South Carolina Protest and Instructions
 - v. Daniel Webster, Speech on Nullification
 - C. Representation of State Interests
 - i. Senate Debate on the Right of State Legislatures to Instruct U.S.
 Senators
 - D. States and the Commerce Clause
 - i. Willson v. Black Bird Creek Marsh Company
 - ii. City of New York v. Miln
 - iii. The Passenger Cases
 - iv. The License Cases
- V. Separation of Powers
 - A. Presidential Power to Execute the Law
 - i. Decatur v. Paulding
 - ii. Dissenting Democrats of Removal of the Federal Deposits
 - iii. Caleb Cushing, Relation of the President to the Executive Departments
 - B. Presidential War and Foreign Affairs Powers
 - i. Caleb Cushing, Opinion on Ambassadors and Other Public Ministers
 - C. Martial Law and Habeas Corpus
 - i. United States v. Jackson
 - D. Nondelegation of Legislative Powers
 - Cincinnati, Wilmington and Zanesville, Rail Road Company v. The Commissioners of Clinton County
 - ii. Rice v. Foster
 - E. Sharing the Legislative Power
 - i. House Debate on the Veto Power
 - ii. Daniel Webster, Speech on the Bank Veto
 - iii. William Henry Harrison, Inaugural Address

- iv. John Tyler, Statement upon Signing the Apportionment Act
- v. House Debate on Tyler's Signing Statement
- F. Appointment and Removal Power
 - i. Ex Parte Hennen
 - ii. Field v. People of Illinois, ex rel. McClernand
- G. Pardon Power
 - i. United States v. Wilson
- H. Impeaching and Censuring the President
 - i. Note: The Censure of President Andrew Jackson
 - ii. "The Colored Seamen's Acts": A Case Study
- 6. Secession, Civil War, and Reconstruction: 1861–1876
 - I. Introduction
 - II. Judicial Power and Constitutional Authority
 - A. Constitutional Litigation
 - i. Ex Parte Yerger
 - ii. Tennessee v. Davis
 - iii. Murdock v. City of Memphis
 - iv. Mississippi v. Johnson
 - III. Powers of the National Government
 - A. General Principles
 - i. Timothy Farrar, "Adequacy of the Constitution"
 - ii. Sidney George Fisher, "The Trial of the Constitution"
 - B. Necessary and Proper Clause
 - i. Congressional Debate on the Conscription Bill
 - ii. Kneedler v. Lane
 - iii. Kneedler v. Lane II
 - iv. Chief Justice Taney, Draft Opinion on the Conscription Law
 - v. Correspondence between Jefferson Davis and Joseph Brown on Conscription
 - C. Federal Power to Enforce Civil Rights
 - i. United States v. Reese
 - IV. Federalism
 - A. General Principles
 - i. Note: Federalism in the Confederate South
 - B. Status of Southern States During Reconstruction
 - i. Texas v. White
 - C. Territorial Integrity
 - i. Note: The Creation of West Virginia
 - D. Intergovernmental Immunity
 - i. Collector v. Day
 - ii. In re Tarble
 - E. States and the Commerce Clause
 - i. Railroad Co. v. Husen
 - ii. Reading Railroad Co. v. Pennsylvania
 - F. States and Native American Sovereignty
 - i. The New York Indians
 - G. Interstate Travel

- i. Crandall v. Nevada
- H. Secession
 - i. Jefferson Davis, "The Right of Secession"
 - ii. Abraham Lincoln, Fourth of July Message to Congress
- I. Constitutional Amendment and Ratification
 - i. John Alexander Jameson, A Treatise on Constitutional Conventions
 - ii. Wells v. Bain
 - iii. Wood's Appeal
- V. Separation of Powers
 - A. Martial Law and Habeas Corpus
 - i. Ex Parte Milligan
 - B. Pardon Power
 - i. United States v. Klein
 - C. Impeaching and Censuring the President
 - i. Note: The Impeachment of Andrew Johnson
- 7. The Republican Era: 1877–1932
 - I. Introduction
 - i. David J. Brewer, "The Nation's Safeguard"
 - ii. Woodrow Wilson, "The Meaning of Democracy"
 - II. Judicial Power and Constitutional Authority
 - A. Judicial Review
 - i. James Bradley Thayer, "The Origin and Scope of the American Doctrine of Constitutional Law"
 - ii. Stephen Field, "The Centenary of the Supreme Court of the United States"
 - iii. J. Allen Smith, The Spirit of American Government
 - iv. Mugler v. Kansas
 - v. Lochner v. New York
 - B. Federal Review of the States
 - i. Hurtado v. California
 - ii. Smyth v. Ames
 - C. Constitutional Litigation
 - i. United States v. Lee
 - ii. Fergus v. Marks
 - iii. Parker v. the State, ex rel. Powell
 - iv. Kadderly v. Portland
 - v. United States v. Texas
 - vi. Frothingham v. Mellon
 - III. Powers of the National Government
 - A. Power to Regulate Commerce
 - i. Correspondence between John Altgeld and Grover Cleveland on the Pullman Strike
 - ii. In Re Debs
 - iii. Stafford v. Wallace
 - iv. Hoke and Economides v. United States
 - v. House Report on Convict Labor
 - B. Taxing and Spending Power

- i. Hooe v. United States
- ii. McCray v. United States
- iii. Springer v. United States
- C. Territorial Acquisition and Governance
 - i. Insular Cases [Downes v. Bidwell]
- D. Immigration and Naturalization
 - i. Chae Chan Ping v. United States [Chinese Exclusion Case]
 - ii. Fong Yue Ting v. United States

IV. Federalism

- A. States and the Commerce Clause
 - i. Wabash, St. Louis and Pacific Railway Company v. Illinois
 - ii. Robbins v. Shelby County Taxing District
 - iii. Shreveport Rate Case
 - iv. Liesy v. Hardin
 - v. In re Rahrer
 - vi. Morgan's Steamship Co. v. Louisiana Board of Health
 - vii. Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health
 - viii. Missouri, Kansas & Texas Railway Co. v. Haber
 - ix. Smith v. St. Louis & Southwestern Railway Co.
- B. Constitutional Amendment and Ratification
 - i. David Jayne Hill, "The Crisis in Constitutionalism"
 - ii. Leser v. Garnett
 - iii. Dillon v. Gloss
- C. Sovereign Immunity
 - i. Hans v. Louisiana
 - ii. Ex parte Young
- D. Representation of State Interests
 - i. George F. Edmunds, "Should Senators Be Elected by the People?"
 - ii. George F. Hoar, "Direct Election of Senators"
- E. State Regulation of Federal Elections
 - i. McPherson v. Blacker
 - ii. State ex rel. Nebraska Republican State Central Committee v. Wait (NE 1912)
- F. Police Powers
 - i. Anderson v. Board of County Commissioners
 - ii. Lawton v. Steele
- G. Comity
 - i. Fauntleroy v. Lum
 - ii. Haddock v. Haddock
 - iii. Cunningham v. Cunningham
- V. Separation of Powers
 - A. Appointments and Removals
 - i. The Presidential Appointment Power in the Age of Congressional Government
 - B. Presidential Power to Execute the Law
 - i. In re Neagle
 - ii. Bates and Guild Co. v. Payne

- iii. United States v. Midwest Oil Company
- C. Nondelegation of Legislative Power
 - i. State of Minnesota ex rel. Railroad & Warehouse Commission v. Chicago, Milwaukee, & St. Paul Railway Company
 - ii. Blue v. Beach (IN 1900)
 - iii. Marshall Field & Co. v. Clark
 - iv. State ex rel. McBride v. Superior Court for King County (WA 1918)
 - v. Ex parte McGee (KS 1919)
 - vi. Rock v. Carney (MI 1921)
- D. Sharing the Legislative Power
 - William D. Mitchell, Constitutionality of Proposed Legislation Affecting Tax Refunds
- E. Legislative Investigation Powers
 - i. McGrain v. Daughterty
- F. Legislative Organization
 - i. House Report on Expulsion
- 8. The New Deal and Great Society Era: 1933–1968
 - I. Introduction
 - i. Franklin D. Roosevelt, Commonwealth Club Address
 - ii. Dwight Eisenhower, Letter to Edgar Newton Eisenhower
 - II. Judicial Power and Constitutional Authority
 - A. Constitutional Litigation
 - i. Ashwander v. Tennessee Valley Authority
 - ii. Poe v. Ullman
 - iii. Abbott Laboratories v. Gardner
 - B. Federal Review of the States
 - i. Adamson v. California
 - ii. Duncan v. Louisiana
 - III. Powers of the National Government
 - A. Power to Regulate Commerce
 - i. Carter v. Carter Coal Co.
 - ii. United States v. Darby
 - iii. Parker v. Brown
 - B. Necessary and Proper Clause
 - i. Wood v. Miller
 - C. Federal Power to Enforce Civil Rights
 - i. Katzenbach v. Morgan
 - D. Taxing and Spending Power
 - i. United States v. Kahriger
 - IV. Federalism
 - A. States and the Commerce Clause
 - i. Morgan v. Virginia
 - ii. Pennsylvania v. Nelson
 - iii. Southern Pacific Co. v. Arizona ex rel. Sullivan
 - iv. South Carolina v. Barnwell Bros.
 - v. Rice v. Santa Fe Elevator Corp.
 - vi. Dean Milk v. City of Madison

- vii. Edwards v. California
- B. Comity
 - i. Williams v. North Carolina—1942
 - ii. Williams v. North Carolina-1945
- C. State Regulation of Federal Elections
 - i. Smiley v. Holm
 - ii. In the Matter of the Application of William A. Thomas v. Cohen (NYS Kings Co. 1933)
 - iii. Rau v. Blair
 - iv. *In the Matter of the Application of William A. Thomas v. Cohen* (NYS Kings Co. 1933)
- D. Constitutional Amendment and Ratification
 - i. Opinion of the Court re. Constitutional Convention
- V. Separation of Powers
 - A. Presidential War and Foreign Affairs Powers
 - i. United States v. Pink
 - ii. United States v. Belmont
 - iii. Note: Lend-Lease
 - iv. Robert H. Jackson, Acquisition of Naval and Air Bases in Exchange for Over-Age Destroyers
 - v. State Department Memorandum, Authority of the President to Order the Armed Forces of the United States Abroad
 - vi. United States v. Reynolds
 - vii. Department of State Memorandum on the Authority of the President to Repel Attack in Korea
 - viii. United States v. Guy W. Capps, Inc. (4th Cir. 1953)
 - ix. Office of Legislative Counsel, Constitutional and Legal Basis for *So*-Called Covert Activities of the CIA
 - x. Nicholas Katzenbach, Memorandum on Presidential Authority in Vietnam
 - B. Legislative Investigation Powers
 - Robert H. Jackson, Position of the Executive Department Regarding Investigative Reports
 - ii. Barenblatt v. United States
 - iii. Watkins v. United States
 - C. Legislative Organization
 - i. Tennessee Constitutional Convention, Debate on Legislative Pay
 - ii. Senate Hearings on the Filibuster 1947
 - iii. Senate Hearings on the Filibuster—1957
 - D. Martial Law and Habeas Corpus
 - i. Ex parte Endo
 - ii. Ex parte Quirin et al.
 - iii. Hirabayashi v. United States
 - iv. Korematsu v. United States
 - E. Nondelegation of Legislative Powers
 - i. Panama Refining Co. et al. v. Ryan et al.
 - ii. Yakus v. United States

- iii. National Broadcasting Co. v. United States
- F. Sharing the Legislative Power
 - i. Herbert Brownell, Jr., Authority of Congressional Committees to Disapprove Action of the Executive Branch
 - ii. William P. Rogers, Authority of Congressional Committees to Disapprove Action of the Executive Branch
- G. Impeaching and Censuring the President
 - Hearings on Presidential Inability
- 9. Liberalism Divided: 1969-1980
 - I. Introduction
 - Barry Goldwater, Speech Accepting the Republican Presidential Nomination
 - ii. Richard Nixon, Speech Accepting the Republican Presidential Nomination
 - iii. Jimmy Carter, Inaugural Address
 - II. Judicial Power and Constitutional Authority
 - A. Constitutional Litigation
 - i. Goldwater v. Carter
 - ii. Massachusetts v. Laird
 - iii. Congressional Hearings on Attorney Fees and Public Law Litigation
 - iv. D&W Auto Supply v. Department of Revenue
 - v. United States v. Richardson
 - vi. North Carolina v. Rice
 - B. Judicial Supremacy
 - i. Kansas v. McClanahan (Kan., 1973)
 - C. Judicial Review
 - i. Commonwealth ex rel. Carroll v. Tate
 - III. Powers of the National Government
 - A. Taxing and Spending Power
 - i. Congressional Hearings on the Disclosure of the Intelligence Budget
 - IV. Federalism
 - A. States and the Commerce Clause
 - i. National Bellas Hess v. Department of Revenue of the State of Illinois
 - B. Police Powers
 - i. People v. Zelinski
 - C. Interstate Travel
 - i. Shapiro v. Thompson
 - D. States and Native American Sovereignty
 - i. United States v. Wheeler
 - E. Constitutional Amendment and Ratification
 - John M. Harmon, Memorandum on the Ratification of the Equal Rights Amendment
 - V. Separation of Powers
 - A. Presidential War and Foreign Affairs Powers
 - i. United States v. United States District Court [the "Keith Case"]
 - ii. William H. Rehnquist, The President and the War Powers: South Vietnam and the Cambodian Sanctuaries

- iii. John M. Harmon, Presidential Power to Use the Armed Forces Abroad without Statutory Authorization
- B. Presidential Power to Execute the Law
 - i. Ramsey Clark, "Power of President to Impound Funds"
 - ii. William H. Rehnquist, Presidential Authority to Impound Funds
 - iii. William H. Rehnquist, Testimony to Congress on Presidential Impoundment
 - iv. Congressional Hearings on Impoundment
 - v. Conrad C.M. Arensberg, Official Opinion No. 78-15 on Duty to Defend (PA 1978)
 - vi. Benjamin R. Civiletti, The Attorney General's Duty to Defend and Enforce Constitutionally Objectional Legislation
- C. Sharing the Legislative Power
 - i. Congressional Debate on Legislative Veto
 - ii. Antonin Scalia, Testimony on the Congressional Veto
- D. Nondelegation of Legislative Powers
 - i. Johnson v. Pearce (LA 1975)
- E. Immunity from Judicial Process
 - Robert G. Dixon, Jr., Amenability of the President, Vice President and Other Civil Officers to Federal Criminal Prosecution while in Office
- F. Executive Privilege
 - i. Nixon v. Administrator of General Services
 - ii. Kissinger v. Reporters Committee for Freedom of the Press
- G. Emoluments
 - Laurence H. Silberman, Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller
- H. Pardon Power
 - i. Mary C. Lawton, Presidential or Legislative Pardon of the President
 - ii. Congressional Hearings on the Pardon of Richard Nixon
- I. Legislative Speech and Debate
 - i. Hutchinson v. Proxmire
 - ii. Gravel v. United States
- J. Impeaching and Censuring the President
 - i. Constitutional Grounds for Presidential Impeachment
- Part 3: Contemporary Issues
 - 10. The Reagan Era: 1981–1993
 - I. Introduction
- 1. Ronald Reagan, First Inaugural Address
- II. Judicial Power and Constitutional Authority
 - A. Judicial Review
 - i. Abbott et al. v. Burke et al.
 - ii. Rose, et al. v. Council for Better Education
 - B. Constitutional Litigation
 - i. Allen v. Wright
 - ii. Lujan v. Defenders of Wildlife
 - iii. Heckler v. Chaney
 - C. Judicial Structure and Selection

- i. The Nomination of Robert H. Bork to the U.S. Supreme Court
- ii. Thomas v. Union Carbide Agricultural Products Co.
- III. Powers of the National Government
 - Taxing and Spending Power
 - i. Washington State Housing Finance Commission v. O'Brien
 - 2. Power to Raise Armies
 - i. Perpich v. Department of Defense
- IV. Federalism
 - 1. States and the Commerce Clause
 - i. West Lynn Creamery v. Healy
 - ii. Quill v. North Dakota
 - iii. Maine v. Taylor
 - 2. Constitutional Amendment and Ratification
 - i. Timothy E. Flanigan, Congressional Pay Amendment
- V. Separation of Powers
 - A. Emoluments
 - i. Larry L. Simms, President Ragan's Ability to Receive Retirement Benefits from the State of California
 - ii. Robert B. Shanks, Application of the Emoluments Clause of the Constitution and the Foreign Gifts and Decorations Act
 - iii. Samuel Alito, Emoluments Clause Questions Raised by NASA Scientist's Proposed Consulting Arrangement with the University of New South Wales
 - B. Nondelegation of Legislative Powers
 - i. Mistretta v. United States
 - ii. Lincoln v. Vigil
 - C. Sharing the Legislative Power
 - i. Ralph Tarr, Constitutionality of Line-Item Veto Proposal
 - ii. Congressional Hearings on Legislative Veto
 - D. Presidential Power to Execute the Law
 - William French Smith, The Attorney General's Duty to Defend the Constitutionality of Statues
 - ii. Theodore B. Olson, Prosecution for Contempt of Congress of an Executive Branch Official
 - iii. Bowsher v. Synar
 - E. Presidential War and Foreign Affairs Powers
 - i. Dames and Moore v. Regan
 - ii. Haig v. Agee
 - iii. Timothy Flanigan, Issuance of Official or Diplomatic Passports
 - iv. Final Report of the Independent Counsel for Iran/Contra Matters
 - v. Timothy Flanigan, Authority to Use United States Military Forces in Somalia
 - vi. Walter Dellinger, Deployment of United States Armed Forces into Haiti
 - F. Legislative Organization
 - House Report on the Expulsion of Representative Lederer
 - G. Immunity from Judicial Processes
 - i. Mitchell v. Forsyth

- ii. Harlow v. Fitzgerald
- iii. Nixon v. Fitzgerald

H. Executive Privilege

- i. William French Smith, Assertion of Executive Privilege in Response to Congressional Subpoena
- ii. William French Smith, Letter to Hon. John Dingell on Executive Privilege
- iii. Theodore Olson, Memorandum on the Confidentiality of Attorney General's Communications

11. The Contemporary Era: 1994-Present

- I. Introduction
 - A. Introduction to the 2012–2013 Term
 - B. Introduction to the 2013–2014 Term
 - C. Introduction to the 2012–2015 Terms
 - D. William J. Clinton, Fourth Annual Message
 - E. George W. Bush, First Annual Message
 - F. Barack Obama, First Inaugural Address
 - G. Donald J. Trump, Inaugural Address

II. Judicial Power

A. Constitutional Litigation

- i. Birmingham–Jefferson Civil Center Authority v. City of Birmingham et al.
- ii. Guinn v. Legislature of Nevada
- iii. Caperton v. A. T. Massey Coal Company, Inc.
- iv. Friends of the Earth v. Laidlaw Environmental Services
- v. John Roberts, "Year-End Report on the Federal Judiciary"
- vi. Elk Grove Unified School District v. Newdow
- vii. Hein v. Freedom from Religion Foundation
- viii. Arizona Christian School Tuition Organization v. Winn
- ix. Hertz v. Friend
- x. Raines v. Byrd
- xi. El Shifa Pharmaceuticals v. United States
- xii. Mohamed v. Jeppersen Dataplan
- xiii. Zivotofsky v. Clinton
- xiv. Windsor v. United States
- xv. Hollingsworth v. Perry
- xvi. Summers v. Earth Island Institute
- xvii. Al-Aulagi v. Obama (D.D.C. 2010)
- xviii. Al-Aulaqi v. Panetta (D.D.C. 2014)
- xix. In re Al-Nashiri (D.C.C. 2015)
- xx. Bank Markazi v. Peterson
- xxi. Armstrong v. Exceptional Child Center
- xxii. Spokeo, Inc. v. Robins
- xxiii. Zubik v. Burwell
- xxiv. Patchak v. Zinke
- xxv. Rucho v. Common Cause
- xxvi. Virginia House of Delegates v. Bethune-Hill

xxvii. Arizona v. California

xxviii. Committee on the Judiciary v. McGahn (D.C. Cir. 2020)

B. Judicial Structure and Selection

- i. The Nomination of Merrick Garland to the U.S. Supreme Court
- ii. Oil States Energy Services, LLC v. Greene's Energy Group, LLC

III. Powers of the National Government

- A. Necessary and Proper Clause
 - United States v. Kebodeaux
- B. Federal Power to Enforce Civil Rights
 - i. United States v. Morrison
 - ii. Nevada Department of Human Resources v. Hibbs

C. Taxing and Spending Power

- i. Rumsfeld v. Forum for Academic and Institutional Rights, Inc. (FAIR), et al.
- ii. Legal Services Corporation v. Velazquez, et al.
- iii. Maready v. City of Winston-Salem
- iv. Town of Beloit v. County of Rock
- v. United States v. International Business Machines
- vi. County of Santa Clara v. Trump (ND Ca. 2017)
- vii. Upstate Citizens for Equality, Inc. v. United States
- viii. City of Los Angeles v. Barr (9th Cir., 2019)

D. Power to Regulate Commerce

- i. United States v. Lopez
- ii. Gonzales v. Raich
- iii. National Federation of Independent Business v. Sebelius
- iv. King v. Burwell

E. Treaty Power

- i. Bond v. United States
- ii. Hearings on GATT Implementing Legislation
- iii. Walter Dellinger, Whether Uruguay Round Agreements Required Ratification as a Treaty

IV. Federalism

A. Intergovernmental Immunity

- i. Dawson v. Steager
- ii. United States v. State of California (9th Cir., 2019)

B. States and the Commerce Clause

- i. Crosby v. National Foreign Trade Council
- ii. United Haulers Association, Inc. v. Oneida–Herkimer Solid Waste Management Authority
- iii. Granholm v. Heald
- iv. Wyeth v. Levine
- v. South Central Bell Telephone Co. v. Alabama
- vi. Overstock v. New York State Department of Taxation
- vii. Comptroller of the Treasury of Maryland v. Wynne
- viii. South Dakota v. Wayfair, Inc.
 - ix. Tennessee Wine and Spirits Retailers Association v. Thomas

C. Non-Commandeering

i. Reno v. Condon

- ii. Lunn v. Commonwealth (MA 2017)
- iii. Murphy v. National Collegiate Athletic Association

D. Sovereign Immunity

- i. Alden v. Maine
- ii. Franchise Tax Board of the State of California v. Hyatt (Nev., 2014)
- iii. United Skagit Indian Tribe v. Lundgren
- iv. Franchise Tax Board of California v. Hyatt
- v. Allen v. Cooper

E. Police Powers

- i. Arizona v. United States
- F. States and the Regulation of Elections
 - i. Arizona v. Inter Tribal Council
 - ii. Arizona State Legislature v. Arizona Independent Redistricting Commission (U.S.D.C. AZ, 2014)
 - iii. Arizona State Legislature v. Arizona Independent Redistricting Commission
 - iv. Baca v. State of Colorado (10th Cir., 2019)
 - v. Chiafalo v. Washington
- G. States and Native American Sovereignty
 - i. Inyo County v. Paiute-Shoshone Indians
 - ii. Michigan v. Bay Mills Indian Community
- H. Interstate Travel
 - i. Saenz v. Roe
- I. Constitutional Amendment and Ratification
 - i. Steven A. Engel, Ratification of the Equal Rights Amendment

V. Separation of Powers

A. Emoluments

- Walter Dellinger, Applicability of Emoluments Clause to Employment of Government Employees by Foreign Public Universities
- ii. David J. Barron, "Applicability of the Emoluments Clause to the President's Receipt of the Nobel Peace Prize"
- iii. The Debate over Donald Trump's Business Arrangements
- B. Sharing the Legislative Power
 - Walter Dellinger, "The Legal Significance of Presidential Signing Statements"
 - ii. Senate Report on the Line Item Veto
 - iii. Ex parte Perry (TX 2016)
- C. Presidential Power to Execute the Law
 - i. Medellin v. Texas
 - ii. Andrew Fois, Letter to Orin G. Hatch on Duty to Defend
 - iii. Eric Holder, Non-Defense of the Defense of Marriage Act
 - iv. Hearings on the President's Constitutional Duty to Faithfully Execute the Laws
 - v. Perez v. Mortgage Bankers Association
 - vi. Karl R. Thompson, Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others

- vii. United States v. Juarez-Escobar (W.D. Penn., 2014)
- viii. Texas v. United States (S.D. Tex., 2015)
- ix. Vidal v. Nielsen (E.D. NY, 2018)
- x. Kirstjen M. Nielsen, On the Rescission of Deferred Action for Childhood Arrivals
- xi. Department of Commerce v. New York
- xii. Department of Homeland Security v. Regents of the University of California

D. Presidential War and Foreign Affairs Powers

- Randolph D. Moss, Authorization for Continuing Hostilities in Kosovo
- ii. Jay Bybee, Authority of the President to Use Military Force against Iraq
- iii. Memoranda on Standards of Conduct of Interrogation ("Torture Memos")
- iv. Department of Justice Paper on National Security Agency Activities
- v. Congressional Research Service, Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information
- vi. Letter from Scholars and Former Government Officials on National Security Agency Activities
- vii. John Yoo and Robert J. Delahunty, Authority of the President to Suspend Certain Provisions of the ABM Treaty
- viii. Walter Dellinger, Deployment of United States Armed Forces into Bosnia
- ix. Walter Dellinger, Deployment of United States Armed Forces into Haiti
- x. Walter Dellinger, Constitutionality of Legislative Provision Regarding ABM Treaty
- xi. Christopher Schroder, Validity of Congressional-Executive Agreements that Substantially Modify the United States' Obligations under an Existing Treaty
- xii. Department of Justice White Paper on Drone Strikes
- xiii. Congressional Hearings on Drone Strikes
- xiv. David J. Barron, Constitutionality of Restriction on Funds for the United Nations
- xv. Zivotofsky v. Kerry (D.C. Cir., 2013)
- xvi. Zivotofsky v. Kerry
- xvii. John Cornyn, Speech on Congressional Authorization for the Use of Military Force in Libya
- xviii. Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force
- xix. Stephen A. Engel, Airstrikes against Syrian Chemical-Weapons Facilities
- xx. Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force
- xxi. Mike Lee, Speech on Iran War Powers Resolution

E. Martial Law and Habeas Corpus

- i. Hamdan v. Rumsfeld
- ii. Boumediene v. Bush

F. Immunity from Judicial Process

- i. Karl R. Thompson, Immunity of the Assistant to the President from Congressional Subpoena
- ii. Ronald D. Rotunda, Indictability of the President
- iii. Randolph D. Moss, A Sitting President's Amenability to Indictment and Criminal Prosecution
- iv. Zervos v. Trump (NY Co. Sup. Ct. 2018)
- v. William Barr, Mueller's "Obstruction" Theory
- vi. Robert Mueller, Report on the Investigation into Russian Interference in the 2016 Presidential Election (Volume I)
- vii. Robert Mueller, Report on the Investigation into Russian Interference in the 2016 Presidential Election (Volume II)
- viii. Trump v. Vance

G. Executive Privilege

- i. In re Sealed Case (D.C.Cir. 1997)
- ii. Cheney v. United States District Court for the District of Columbia
- iii. Judicial Watch, Inc. v. Department of Justice (D.C.Cir. 2004)
- iv. Committee on the Judiciary v. Miers (D.D.C. 2008)
- v. Eric Holder, Assertion of Executive Privilege over Documents
- vi. Steven A. Engel, Testimonial Immunity Before Congress of the Former Counsel to the President
- vii. Emmet T. Flood, Letter to Attorney General William Barr on Mueller Report

H. Legislative Investigation Powers

- i. Robert Rubin, Letter to John Linder on Congressional Oversight
- ii. Curtis E. Gannon, Authority of Individual Members of Congress to Conduct Oversight
- iii. Charles E. Grassley, Letter on Requests for Information by Individual Members of Congress
- iv. IRS Office of Chief Counsel, Draft Memo on Congressional Access to Returns and Return Information
- v. Steven A. Engel, Congressional Committee's Request for the President's Tax Returns
- vi. Trump v. Mazars USA, LLP

I. Appointment and Removal Power

- i. Edmond v. United States
- ii. Doolin Security Savings Bank, FSB v. Office of Thrift Supervision (DC Cir., 1998)
- iii. Steven G. Bradbury, "Officer of the United States Within the Meaning of the Appointments Clause"
- iv. Virginia A. Seitz, "Lawfulness of Recess Appointments during a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions"
- v. Canning v. National Labor Relations Board
- vi. National Labor Relations Board v. Canning

- vii. Lucia v. Securities and Exchange Commission
- viii. Financial Oversight and Management Board for Puerto Rico v. Aurelius Investments, LLC
- ix. Seila Law LLC v. Consumer Financial Protection Bureau
- J. Nondelegation of Legislative Powers
 - i. Briefs in Whitman v. American Trucking Associations, Inc., et al.
 - ii. Free Enterprise Fund v. Public Fund Company Accounting Oversight Board
 - iii. Department of Transportation v. Association of American Railroads
 - iv. Gundy v. United States
 - v. Wisconsin Legislature v. Palm (WI 2020)
- K. Impeaching and Censuring the President
 - i. Charges and Reply in the Impeachment of President William Clinton
 - ii. Steven A. Engel, Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context
 - iii. Steven A. Engel, House Committees' Authority to Investigate for Impeachment
 - iv. Pat A. Cipollone, Letter to House Speaker Nancy Pelosi
 - v. Donald Trump, Letter to House Speaker Nancy Pelosi
 - vi. Trial Memorandum of the House of Representatives in the Impeachment of President Trump
 - vii. Trial Memorandum of President Donald J. Trump
 - viii. Committee on the Judiciary v. Department of Justice (D.C. Cir. 2020)
- L. Elections and Political Parties
 - ii. Elliott v. Cruz (PA 2016)