

AMERICAN CONSTITUTIONAL LAW AND DEVELOPMENT			
POSC 4241			
MARQUETTE UNIVERSITY, FALL 2013			
<u>Instructor Information:</u>	Professor Paul Nolette, J.D., Ph.D. paul.nolette@marquette.edu (414) 288-5821	<u>Class Time:</u>	Mondays & Wednesdays 3:30pm – 4:45pm
<u>Office:</u>	William Wehr Physics Room 454	<u>Class Location:</u>	Lalumiere Language Hall Room 114
<u>Office Hours:</u>	Tuesday: 1:30pm-4:00pm Wednesday: 1:30pm-3:00pm and by appointment		

COURSE DESCRIPTION:

This course is the first of a two-part series introducing the basic concepts in American constitutional law. This class surveys the development of American constitutional law, with an emphasis on how the structures of government (including separation of powers, federalism, and executive authority) have changed over time. However, this course is different than "traditional" constitutional law courses that often place a near-exclusive emphasis on United States Supreme Court legal doctrine. While we will explore the role of important decisions of the Supreme Court in the development of American constitutionalism, a chief theme of this course is that the Court is not alone in articulating constitutional rules and principles. Congress, the President, party agendas, constitutional tradition, and public opinion have also played a significant role in shaping the course of constitutional doctrine and practice throughout American history. As we shall see, the relative power and authority of these different forces and institutions has varied significantly from conflict to conflict and from era to era. Indeed, they have often been bitterly disputed.

Because this course examines the *development* of constitutional law over time, the course proceeds chronologically. We will address critical periods in the development of American constitutionalism, including the Founding, the early national and Jacksonian eras, the Civil War, the Progressive Era, the New Deal period, and the emergence of contemporary constitutionalism. In addition to reading important court decisions from these eras, we will also consider other political developments that have shaped the meaning and practice of the U.S. Constitution.

REQUIRED TEXTS: There are two required texts for this course, both available at Bookmarq:

- (1) Howard Gillman, Mark Graber, and Keith Whittington, American Constitutionalism, Volume I: Structures of Government (New York, NY: Oxford University Press, 2013) ("GGW")
- (2) Lucas A. Powe, Jr., The Supreme Court and the American Elite (Cambridge, MA: Harvard University Press, 2009) ("Powe")

In addition to these texts, additional required material will be made available on D2L.

COURSE EXPECTATIONS AND REQUIREMENTS:

- (1) **Class Participation and On Call Presentation (20%)**. Active participation will be an important component of your grade in this class. I expect everyone to come on time prepared for class and ready to actively discuss the readings and topics for the day. Quality participation includes engaging with the readings, expressing one's own opinions of relevant issues on the topic (while respecting other students' opinions and experiences), and asking questions when you need additional clarification. There will be several in-class writing assignments throughout the semester that will also help determine your class participation grade.

In addition to your participation during class, it will be to your benefit to frequently check the online class discussion area I will set up on D2L. This area will contain reading and discussion questions prior to each class to help focus your reading and the subsequent class discussion. You will have an opportunity to comment on my posts, as well as other students' comments, as a way to help your participation grade. These comments will be short (about 100-150 or so words) reactions to the discussion questions I post and/or any questions that you had about the readings. This will especially give students who are less comfortable speaking in class a chance to actively participate in the discussion. I certainly do not expect you to comment on every post, but I do expect that you will keep up with the online discussion. Your online comments will also be an additional way for you to demonstrate that you are engaging with the readings.

In addition to your regular participation in class and on D2L, you will be "on call" for one session. This means that on your on call day, I will primarily turn to you to explain the issues at stake in the case you are assigned. At least 24 hours before the start of class in which you are on call, you will submit a short legal brief (no more than 3 double-spaced pages) concerning your case to be covered that day. This written brief will identify the facts of the case, the arguments on both sides, the court's holding, the implications of the holding, and whether or not you thought the case was correctly decided (along with why or why not). The written portion will be posted on D2L so all students can review them. Your on call performance, together with the written portion, will be graded check-plus, check, or no credit. I will provide you with the on call schedule during the second week of class, though note that your on call day may be pushed to the following class period if we run out of time for your case on your assigned day.

- (2) **Two Short Essays (20%)**. During the course of the semester, you will write two short essays responding to a question relating to a set of readings. Each essay is worth 10% of your total grade and is designed to be answered in less than three double-spaced pages. You will have a choice between ten possible essay options, all of which are listed at the end of this syllabus. Each essay option has a different due date in order to give you some flexibility in your workload. The catch is that you must choose one essay from choices #1 to #5 and one essay from choices #6 to #10. Both of your short essays, which you will upload to Turnitin.com, will be due by the start of class on the designated due date.

- (3) **Quizzes (10%)**. There will be four quizzes throughout the semester, each containing a mix of multiple choice and fill-in-the-blank questions. Each quiz will be worth 2.5% of your final grade. The quizzes will take about 15 minutes at the start of class, and each quiz will be graded out of 25 points. The quizzes will be given in class on the following dates: (#1) Monday, September 16th, (#2) Monday, October 7th, (#3) Monday, November 4th, and (#4) Monday, November 25th.
- (4) **Midterm Exam (20%)**. There will be one closed-book midterm exam for this course containing a variety of question types. The midterm will be held on **Monday, October 14th**, and I will provide everyone with a case list to use during the exam. I will discuss the format of each exam in more detail in the first few weeks of class.
- (5) **Final Exam (30%)**. The final exam will be a closed-book exam consisting of several multiple choice, fill-in-the-blank, short answer identification, and longer essay questions. As with the midterm exams, I will provide a case list to use during the exam. The final exam will be cumulative and will take about two hours to complete. The final exam is scheduled for **Friday, December 13th from 3:30pm to 5:30pm**.

Late assignments:

I expect all students to complete required assignments when they are due. If you are unable to complete an assignment or take an exam for a compelling reason you must contact me **before** the assignment is due. Otherwise, the assignment will be marked down 1/2 of a letter grade for each day past the deadline.

SUMMARY OF GRADING COMPONENTS:

<u>Class Participation:</u>	20%
<u>Short Essays:</u>	20%
<u>Quizzes:</u>	10%
<u>Mid-Term Examination:</u>	20%
<u>Final Examination:</u>	30%

GRADING SCALE:

<u>Grade</u>	<u>Achievement</u>	<u>Grade Points</u>	<u>Cut-off</u>
A	Superior	4.0	93+
AB		3.5	87-92.9
B	Good	3.0	82-86.9
BC		2.5	77-81.9
C	Satisfactory	2.0	72-76.9
CD		1.5	67-71.9
D	Minimum Passing	1.0	60-66.9
F	Failing	0.0	Below 60

ELECTRONIC DEVICES: All cell phones and similar devices must be turned off before class.

STUDENTS WITH DISABILITIES: If you have a disability for which you are requesting an accommodation, you are encouraged to contact the University's Office of Disability Services within the first week of classes. For more information, contact the Office of Disability Services in Marquette Hall, Suite 005 or at (414) 288-1645. If you require any accommodations for exams or other assignments, you must notify me (along with all required documentation) at least one week in advance of the assignment due date.

ACADEMIC HONESTY: As noted in the Undergraduate Bulletin, Marquette University demands the strictest honesty and integrity of students in their various academic tasks. **Academic dishonesty of any type, including plagiarism, is completely unacceptable and will result in a failing grade for both the assignment and the course.**

- **What is Plagiarism?** The Undergraduate Bulletin defines plagiarism in the following manner: "Plagiarism is intellectual theft. It means use of the intellectual creations of another without proper attribution. Plagiarism may take two main forms, which are clearly related: 1. To steal or pass off as one's own the ideas or words, images, or other creative works of another and 2. To use a creative production without crediting the source, even if only minimal information is available to identify it for citation."
- If you use another person's writings or ideas in your own writing, you must provide a citation to the original material. If you have any doubt about the need to provide a citation to a source, it is better to be on the safe side and provide a citation. If you have any questions about this policy, please discuss it with me.

CLASS AND READING ASSIGNMENT SCHEDULE:

Disclaimer:

I reserve the right to change this syllabus as necessary throughout the semester. I expect that any such changes will be rare, but in this event I will notify the class of any and all changes well in advance.

NOTE:

In this schedule, "GGW" refers to the main textbook for the course and "Powe" refers to the second required book. An asterisk ("*") next to a reading indicates material I will post on D2L prior to class.

PART ONE: THE CONSTITUTION, THE COURT, AND AMERICAN POLITICS

Americans seem to have a love/hate relationship with politics. On the one hand, many Americans have fought for expansions of democracy in which more people can enter the political process. On the other hand, Americans retain a commitment to a Constitution that places a limit on democracy. Further, Americans have come to accept a major role for the least democratic branch of government – the judiciary – in the interpretation of this Constitution.

In the first few classes of the course, we'll be considering some of the fundamental questions about constitutionalism and the courts. First, why do we even have a constitution? Is it necessary for a democratic nation like the United States? Secondly, what role should the courts play in interpreting the Constitution? Do you think it was inevitable that the Court would take such a prominent role in constitutional interpretation? Why is it appropriate for the federal judiciary – the least democratic branch of government – to be able to veto legislation enacted by the states or by Congress?

8/26 (M): Course Introduction

No Reading Assignment

8/28 (W): The American Constitution and Early Alternatives

- (1) U.S. Constitution (GGW, pp. 715-727)
- (2) GGW, Chapter 1 (pp. 3-10)
- (3) GGW, Chapter 3 (pp. 49-56 and 64-91)

9/2 (M): Labor Day (No Class)

9/4 (W): The Judiciary and Its Critics

- (1) U.S. Constitution, Article III (GGW, pp. 719-720)
- (2) GGW, Chapter 1 (pp. 10-22)
- (3) GGW, Chapter 3 (pp. 56-61)
- (4) GGW, Chapter 8 (pp. 440-441)
 - **Cases:** *Cooper v. Aaron* (pp. 440-441)
- (5) Powe, Chapter 1 – "Very Modest Beginnings" (pp. 1-28)

9/9 (M): The Establishment of Judicial Review (Essay Option #1 Due)

- (1) GGW, Chapter 4 (pp. 93-99, 101-103, and 106-118)
 - **Cases:** *Marbury v. Madison* (pp. 106-112); *Martin v. Hunter's Lessee* (pp. 115-118)
- (2) **Cohens v. VA*
- (3) Powe, Chapter 2 – "The Court in a Two-Party Republic" (pp. 29-57)

PART TWO: DEBATING THE POWERS OF THE NATIONAL GOVERNMENT IN THE ANTEBELLUM ERA

Debates about the Constitution's meaning began just as soon as the Constitution was ratified. Controversies broke out not only about the judiciary's role in the new republic, but about the appropriate scope of the national government and the status of the states in the union. The question of the appropriate powers of the federal and state governments dominated political discourse for much of the early 19th century, and included disputes over commerce and development as well as the increasingly polarized issue of slavery.

During these two weeks, pay close attention to the justifications for the exercise of federal and state authority. Which justifications do you find most convincing? Least convincing? What similarities do these early debates share with contemporary arguments about the proper scope of government power?

9/11 (W): Debates Over the National Bank

- (1) GGW, Chapter 4 (pp. 118-137)
 - **Cases:** *McCulloch v. Maryland* (pp. 129-134)

9/16 (M): Taxing, Spending, and Commerce in the Early Republic (Essay Option #2 Due)

- (1) **QUIZ #1 TODAY**
- (2) GGW, Chapter 4 (pp. 145-156)
 - **Cases:** *U.S. v. The William* (pp. 146-148); *Gibbons v. Ogden* (pp. 149-153)
- (3) Powe, Chapter 3 – "The States and the Republic" (pp. 58-84)

9/18 (W): The States and the Early Republic

- (1) GGW, Chapter 4 (pp. 156-163)
 - **Cases:** *Chisholm v. Georgia* (pp. 159-162)
- (2) **Fletcher v. Peck*
- (3) **Dartmouth College v. Woodward*

9/23 (M): The Continuing Debate over National Power (Essay Option #3 Due)

- (1) GGW, Chapter 4 (pp. 163-166)
- (2) GGW, Chapter 5 (pp. 185-193; 200-206)
- (3) *Andrew Jackson's Veto of the Maysville Road Bill and Henry Clay's Speech on the Veto

9/25 (W): Dual Federalism in the Jacksonian Period

- (1) GGW, Chapter 5 (pp. 221-231)
 - **Cases:** *Willson v. Black Bird Creek Marsh Co.* (pp., 223-224);
City of New York v. Miln (pp. 224-226); *Cooley v. Board of Wardens* (pp. 226-227)
- (2) **Charles River Bridge v. Warren Bridge*
- (3) Powe, Chapter 4 – "The Sectional Crisis and the Jacksonian Court" (pp. 85-91 only)

9/30 (M): Slavery, the Courts, and the Constitution

- (1) GGW, Chapter 5 (pp. 193-198; 206-221)
 - **Cases:** *Prigg v. Pennsylvania* (pp. 208-211); *Dred Scott v. Sandford* (pp. 216-220)
- (2) Powe, Chapter 4 – "The Sectional Crisis and the Jacksonian Court" (pp. 91-115 only)

PART THREE: NATIONAL POWER DURING THE CIVIL WAR AND RECONSTRUCTION

In Dred Scott v. Sandford, the Supreme Court thought it would settle the issue of slavery once and for all. Instead, the resolution to the issue was left to a long and bloody Civil War. In addition to formally ending the institution of slavery, the Civil War and the Reconstruction period, which together spanned 1861 to 1877, witnessed a major expansion in national power. It also resulted in three critically important constitutional amendments – the Thirteenth (banning slavery), the Fourteenth (guaranteeing Equal Protection and Due Process), and the Fifteenth (establishing that the right to vote cannot not be abridged on account of race).

Shortly after the Civil War, however, the most controversial political issues were no longer civil rights but rather economic policy. What helps explain this different emphasis in the late nineteenth and early twentieth centuries? What were the competing constitutional visions at this time?

10/2 (W): Secession, Executive Power, and National Emergency

- (1) GGW, Chapter 6 (pp. 249-251, 277-282, and 295-313)
 - **Cases:** *Ex Parte Merryman* (pp. 299-301); *The Prize Cases* (pp. 311-313)

10/7 (M): National Power and Civil Rights During Reconstruction (Essay Option #4 Due)

- (1) **QUIZ #2 TODAY**
- (2) GGW, Chapter 6 (pp. 262-276)
 - **Cases:** *Legal Tender Cases* (pp. 269-272)
- (3) Amendments 13, 14, and 15 (GGW, pp. 724-725)
- (4) Powe, Chapter 5 – "Civil War and Reconstruction" (pp. 116-134 only)

10/9 (W): The Civil War Amendments in the Republican Era

- (1) GGW, Chapter 7 (pp. 319-344; 346-352)
 - **Cases:** *Slaughterhouse Cases* (pp. 333-342); *Civil Rights Cases* (pp. 347-352)
- (2) Powe, Chapter 5 – "Civil War and Reconstruction" (pp. 134-147 only)

10/14 (M): MIDTERM EXAM

10/16 (W): The Court Against the Political Tide

- (1) GGW, Chapter 7 (pp. 354-377)
 - **Cases:** *U.S. v. E.C. Knight Co.* (pp. 359-362); *Champion v. Ames* (pp. 363-364); *Hammer v. Dagenhart* (pp. 365-367); *Pollock v. Farmers' Loan & Trust Co.* (pp. 368-376); *Bailey v. Drexel Furniture Co* (pp. 376-377)

10/21 (M): The Court Against the Political Tide, continued (Essay Option #5 Due)

- (1) GGW, Chapter 7 (pp. 389-401)
 - **Cases:** *Wabash, St. Louis, and Pacific Railway Co. v. Illinois* (pp. 393-396); *Munn v. Illinois* (pp. 397-401)
- (2) **Lochner v. New York*
- (3) Powe, Chapter 6 – "Industrializing America" (pp. 148-170 only)

PART FOUR: THE NEW DEAL REVOLUTION AND THE TRIUMPH OF LIBERALISM

Along with the Founding and the Civil War, the New Deal period is often referred to as one of the most important "constitutional moments" in American history. The conservative constitutional vision, exemplified by the "Lochner Court," collapsed. In its place was a liberal vision of constitutionalism that was much more comfortable with the use of governmental power. As you read these materials, think about the various reasons why liberals embraced governmental power. What was different between liberal constitutional commitments in the 1930s and 40s as compared to the 1960s? Do you think the expansion of governmental power was justified?

10/23 (W): FDR's Court Packing Plan and the New Deal Revolution

- (1) GGW, Chapter 8 (pp. 417-425, 431-438, and 458-471)
 - **Cases:** *Schechter Poultry Corp. v. U.S.* (pp. 461-464); *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (pp. 464-467); *Wickard v. Filburn* (pp. 467-469)
- (2) Powe, Chapter 7 – "Progressivism, Normalcy, and Depression" (pp. 200-212 only)

10/28 (M): The New Deal Revolution, continued (Essay Option #6 Due)

- (1) GGW, Chapter 8 (pp. 480-488)
 - **Cases:** *U.S. v. Butler* (pp. 480-484); *Steward Machine Co. v. Davis* (pp. 484-488);
- (2) **West Coast Hotel v. Parrish*
- (3) Powe, Chapter 8 – "After the New Deal Constitutional Revolution" (pp. 213-217 only)

10/30 (W): Civil Rights and National Power

- (1) GGW, Chapter 8 (pp. 425-431; 471-480)
 - **Cases:** *U.S. v. Carolene Products* (pp. 429-431); *Heart of Atlanta Motel v. U.S.* (pp. 474-476); *South Carolina v. Katzenbach* (pp. 477-480)

PART FIVE: THE CONSTITUTION AND THE MODERN PRESIDENCY

One of many legacies of Franklin D. Roosevelt's lengthy time in office has been a significant change in the nature of the American presidency. The modern president is expected to accomplish far more than his predecessors in the nineteenth century. This popular expectation places a great deal of pressure on presidents to act to solve contemporary problems. This, in turn, has led to the president seeking to expand the capacity of the presidency to deal with these contemporary problems.

The following readings explore several issues concerning the constitutional role of the modern president, including presidential war powers, executive privilege, and the relationship between the president and the modern administrative state. Think about how you would define the powers of the modern American president. What do you think is more dangerous to American democracy: a president overstepping his constitutional bounds or a president too constitutionally constrained to adequately deal with emergencies?

11/4 (M): The New Deal and the Emergence of the Modern Presidency (Essay Option #7 Due)

(1) **QUIZ #3 TODAY**

(2) U.S. Constitution, Article II (GGW, pp. 718-719)

(3) GGW, Chapter 8 (pp. 490-502)

- **Cases:** *Youngstown Sheet & Tube Co. v. Sawyer* (pp. 493-502)

(4) **Korematsu v. United States*

11/6 (W): Executive Powers in Times of War

(1) GGW, Chapter 9 (pp. 543-553)

- **Cases:** *U.S. v. United States District Court* (pp. 550-553)

(2) GGW, Chapter 11 (pp. 686-708)

- **Cases:** *Hamdi v. Rumsfeld* (pp. 701-708)

11/11 (M): Executive Privilege and Presidential Immunity (Essay Option #8 Due)

(1) GGW, Chapter 9 (pp. 553-558)

- **Cases:** *U.S. v. Nixon* (pp. 553-558)

(2) GGW, Chapter 11 (pp. 711-714)

- **Cases:** *Clinton v. Jones* (pp. 711-714)

11/13 (W): The President and the Modern Administrative State

(1) GGW, Chapter 10 (pp. 596-603)

- **Cases:** *INS v. Chadha* (pp. 597-603)

(2) GGW, Chapter 11 (pp. 676-686)

- **Cases:** *Clinton v. City of New York* (pp. 678-681)

PART SIX: THE RISE OF CONSTITUTIONAL CONSERVATISM

During the period of the New Deal and the Great Society – roughly 1933 to 1968 – liberals largely dominated the political and constitutional scene. This began to change with the narrow election of Richard Nixon in 1968. Conservatives, mobilized in part by controversial decisions of the liberal Warren Court, began articulating a different political and constitutional vision. This vision included a more limited role for the federal government, an emphasis on "states' rights", and a reinvigoration of economic liberties.

Ronald Reagan's election in 1980 helped to cement conservative political and constitutional thought into the mainstream. In the contemporary era, however, conservatives have met with only mixed success. The increasingly polarized political system has produced a number of victories for both liberals and conservatives in recent years. In the readings for this section, consider how successfully conservatives have changed the terms of the debate from the time of the New Deal era. Do today's conservatives have anything in common with yesterday's liberals when it comes to their views about the Supreme Court's power to determine what the Constitution means?

11/18 (M): Nixon, Reagan, and Modern Constitutional Conservatism

- (1) GGW, Chapter 10 (pp. 563-587)
 - **Cases:** *South Dakota v. Dole* (pp. 585-587)

11/20 (W): National Power in the Contemporary Era

- (1) GGW, Chapter 11 (pp. 615-619; 637-657)
 - **Cases:** *U.S. v. Lopez* (pp. 640-647); *Gonzales v. Raich* (pp. 647-652);
U.S. v. Morrison (pp. 653-657)

11/25 (M): Federalism in the Contemporary Era

- (1) **QUIZ #4 TODAY**
- (2) GGW, Chapter 11 (pp. 657-658; 664-676)
 - **Cases:** *Printz v. U.S.* (pp. 664-670); *Alden v. Maine* (pp. 670-676)

11/27 (W): Thanksgiving Break (No Classes)

12/2 (M): Economic Liberties in the Contemporary Era (Essay Option #9 Due)

- (1) **Kelo v. City of New London*
- (2) **Lucas v. South Carolina Coastal Commission*

12/4 (W): Obamacare in the Courts/Wrap-Up (Essay Option #10 Due By Noon on 12/9 (M))

- (1) **National Federation of Independent Business v. Sebelius*
- (2) *Adam Winkler, "The Roberts Court is Born" (from SCOTUSblog)
- (3) *Bradley Joondeph, "A *Marbury* for Our Time" (from SCOTUSblog)
- (4) *Jonathan Adler, "Lose the Battle, Win the War?" (from SCOTUSblog)

12/13 (F): FINAL EXAM (3:30pm-5:30pm)

Short Essay Options

As part of the requirements of this course, you will complete two short essays over the course of the semester. Each essay will respond to one of the following questions listed below, and each option has a different due date. You will respond to one of the first-half essays **AND** one of the second-half essays. You must submit your essays to Turnitin.com and provide a hard copy of each essay by the start of class on the listed due date.

Each essay should be completed in three double-spaced pages or less, using standard fonts (e.g. 12-point Times New Roman, Calibri, etc.) and margins (1"). Most importantly, each essay should demonstrate your close reading of, and active engagement with, the cases and texts that are relevant to answering the questions. None of these essays requires any additional or outside reading. What I am looking for is a clear argument of your own that responds to the assigned question and that is supported by a careful, detailed, and thoughtful discussion of the materials we have read. This support should include specific references and quotations to the readings, and you should be sure to provide page citations for each one.

FIRST-HALF ESSAY OPTIONS

Essay option #1: Read the Articles of Confederation and the U.S. Constitution. What were some of the key ways in which the Constitution differed from the Articles? In your own words, discuss the main points of contention in the debates concerning the drafting and ratification of the Constitution. Which arguments do you find most persuasive? **Essay due on Monday, 9/9.**

Essay option #2: Briefly summarize, in your own words, Chief Justice Marshall's argument for the Supreme Court's power of judicial review. On what basis did Marshall conclude that the Court has the authority to strike down a law that has been enacted by Congress or a state legislature? How persuasive was his argument? Did the Marshall Court's use of this power give us any reason to be concerned about its scope? **Essay due on Monday, 9/16.**

Essay option #3: Read Chief Justice Marshall's opinion in *McCulloch v. Maryland* (1819). On what basis did he conclude that the federal statute authorizing the creation of a national bank was constitutional? Put another way, where did he find the congressional authority to enact this law? Who had the better of the argument between Jefferson and Hamilton on the constitutionality of the bank? How are these arguments echoed in contemporary debates over American politics? **Essay due on Monday, 9/23.**

Essay option #4: Read *Prigg v. Pennsylvania* (1842) and *Dred Scott v. Sandford* (1857). Did the increasingly bitter political and legal conflicts over slavery in the 1840s and 50s warp what was otherwise a fair and just Constitution? Or did they reveal fundamental defects in a Constitution that was pro-slavery from the start? **Essay due on Monday, 10/7.**

Essay option #5: Read the 1873 *Slaughterhouse Cases* and the 1883 *Civil Rights Cases*. What was the central purpose of the Reconstruction Amendments? Did the Supreme Court live up to that purpose in its early interpretations of those amendments? Do these questions have any implications for twenty-first century constitutional conflicts? How so? **Essay due on Monday, 10/21.**

SECOND-HALF ESSAY OPTIONS

Essay option #6: Read FDR's undelivered speech on the Gold-Clause Cases and his fireside chat on the Court-packing plan. Was the president's criticism of the Supreme Court justified? Why or why not? What would the Roberts Court have to do to justify similar criticism from President Obama? **Essay due on Monday, 10/28.**

Essay option #7: Explain why the Supreme Court accepted the more extensive use of governmental power in the New Deal and Great Society Eras. Was it appropriate for the Court to do so? Do you think this development was consistent with John Marshall's earlier view of national power? **Essay due on Monday, 11/4.**

Essay option #8: Presidents in the twentieth century have been willing to make broad claims of executive power. How has the legislature and the judiciary reacted to these claims? To what extent do you think the executive should be free to take decisive actions to address emergencies confronting the nation? **Essay due on Monday, 11/11.**

Essay option #9: In your own words, describe how contemporary conservatives have approached questions concerning (1) the judiciary's role in interpreting the Constitution and (2) the relative powers of the state and federal governments. To what extent has the Supreme Court shared this vision? How does the contemporary debate mirror earlier conflicts in American history? **Essay due on Monday, 12/2.**

Essay option #10: Read *National Federation of Independent Business v. Sebelius* (2012). On what basis did the Court conclude that Congress had the power to enact the Affordable Care Act? Why do you think that Chief Justice Roberts, generally thought of as one of the Court's conservatives, joined the liberal justices in upholding most of the law? Based upon other cases and events you read for this course, do you think the case was rightly decided? **Essay due on Monday, 12/9.**