

CALIFORNIA INSTITUTE OF TECHNOLOGY

H/PS 148a
 The Supreme Court in U.S. History
 Winter, 2003

Tue 7:30 PM, Baxter 210
 Prof. J. Morgan Kousser
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SYLLABUS

Warning: Although I am happy to have in this class any student who accepts its challenges, I should warn you that **this is a demanding and intellectually rigorous course**. Each student must make two oral presentations and submit a paper on the topics of each of the oral presentations. There will be no mid-term, but the 3-hour essay final will cover all the material assigned from the O'Brien casebooks, all the opinions in *Bush v. Gore*, the assigned oral arguments, and anything said by me or your fellow students in class. Supreme Court opinions are not easy going, and we're going to read a lot of them in a short time. Note, please that this is **NOT** available on a Pass/Fail basis. You may take the winter term of this course whether or not you take the spring term (which will cover the First Amendment, privacy, and criminal procedure). But H.148a is a prerequisite for H.148b.

The only books assigned to everyone in the class are David M.. O'Brien's *Constitutional Law & Politics*, both volumes, **fifth edition**, 2003, and his *Supreme Court Watch*, 2002. Because the Supreme Court's opinions in *Bush v. Gore* encapsulate nearly all of the important issues that we will take up this term, and because it is of great immediate interest, we will pay special attention to that case. In addition, each week you should listen to recordings of the assigned oral arguments, which are available at <http://oyez.nwu.edu>. You will have to download a free copy of RealAudio to listen to each oral argument. Listening to them will give you a better sense of the atmosphere of the Court, as well as of the issues of the cases.

Date	Topic	Assignment	Oral Argument
Jan. 7	Judicial Review	Vol. II, Ch. 1	
Jan. 14	Input/Output	Vol. II, Ch. 2	<i>Baker v. Carr</i>
Jan. 21	Presidential Powers, Contract Clause	Vol. I, Section D; Vol. II, Ch. 3	<i>Nollan v. CA</i>
Jan. 28	Economic Regulation, New Deal Crisis	Vol. I, Ch. 6 Vol. I, Ch. 4, Sections B & C	<i>U.S. v. Lopez</i>
Feb. 4	Federalism	Vol. I, Ch. 7	<i>Printz v. U.S.</i>
Feb. 11	Equal Protection	Vol. II, Ch. 12, pp. 1308-62	<i>Moose Lodge v. Irvis</i>
Feb. 18	Equal Protection	Vol. II, Ch. 12, Sections B & C	<i>Swann v. Mecklenburg</i>
Feb. 25	Equal Protection	Vol. II, Ch. 12, Section D	<i>Romer v. Evans</i>
Mar. 4	Reapportionment, Voting Rights	Vol. I, Ch. 8	<i>Shaw v. Reno</i>
Mar. 11	Millennium Crisis	<i>Bush v. Gore</i>	<i>Bush v. Gore,</i> <i>Bush v. Palm Beach County</i>

Book Reports

Students learn best actively. The “book reports” will give you the chance to make two topics your own and to inform us all about them. Each student is to read one book basically about doctrines or issues and one which is more biographical or popular. In each instance, pick something from the book--it may be the whole book -- that interests you and that you can tell the class about in approximately 15 minutes. It has become customary (and now mandatory) for each oral report to be accompanied by **typed and photocopied outlines for the other class members**, including notes on relevant cases, if appropriate to the topic. The class may have questions to ask you, as I may. Be prepared. A week after the oral report, you should hand in to me a written report of about 8-10 pages in length on the material. Try to choose something from the books of human and intellectual interest.

The following is a list of books, their call numbers, the number of pages in each book (I’ll try to equalize reading roughly), and the week when the oral report should be presented:

Issue Books

KF4749.L488.1999	Leonard Levy, <i>Origins of the Bill of Rights</i>	260 pp.	Jan. 14
KF4575.C554.1989	Robert L. Clinton, <i>Marbury vs. Madison & Judicial Review</i>	225 pp.	Jan. 14
KF4515.F44.1998	John P. Kaminski and Richard Leffler, <i>Federalists and Antifederalists: The Debate Over the Ratification of the Constitution</i>	219 pp.	Jan. 14
KF4575.L47.2000	Robert Lipkin, <i>Constitutional Revolutions</i>	240 pp.	Jan. 21
KF4606.B38	Maurice Baxter, <i>The Steamboat Monopoly: Gibbons v. Ogden</i>	130 pp.	Jan. 21
KF8748.S875.1999	Cass Sunstein, <i>One Case at a Time: Judicial Minimalism on the Supreme Court</i>	263 pp.	Jan. 21
KF5060.F57.1995	Louis Fisher, <i>Presidential War Power</i>	200 pp.	Jan. 21
KF228.L63.K46.1990	Paul Kens, <i>Judicial Power & Reform Politics: The Anatomy of Lochner v. N.Y.</i>	150 pp.	Jan. 28
KF366.N68.1996	William J. Novak, <i>The People’s Welfare: Law and Regulation in 19th Century America</i>	248 pp.	Jan. 28
KF3552.W6	Stephen B. Wood, <i>Constitutional Politics in the Progressive Era: Child Labor & the Law</i>	300 pp.	Jan. 28
KF8748.P72.1963	C.H. Pritchett, <i>The Roosevelt Court</i>	287 pp.	Jan. 28
KF6011.Z9.L38.1990	M. Dubovsky and S. Burwood, <i>The Law and the New Deal</i>	270 pp.	Jan. 28
JK1541.J27.1941	Robert H. Jackson, <i>Struggle for Judicial Supremacy</i>	327 pp.	Jan. 28
KF4541.C873.1998	Barry Cushman, <i>Rethinking the New Deal Court</i>	225 pp.	Feb. 4
KF5599.E67.1985	Richard Epstein, <i>Takings: Private Property & the Power of Eminent Domain</i>	340 pp.	Feb. 4
KF8742.U76.1997	Melvin Urofsky, <i>Division and Discord: The Supreme Court Under Stone and Vinson, 1941-1953</i>	260 pp.	Feb. 4

KF4545.S5.F432	Don Ferenbacher, <i>Slavery, Law, & Politics: The Dred Scott Case</i>	300 pp.	Feb. 11
E185.61.N5.1991	Donald G. Nieman, <i>Promises to Keep: African-Americans and the Constitutional Order</i>	227 pp.	Feb. 11
KF224.S34.C3	Dan T. Carter, <i>Scottsboro</i>	415 pp.	Feb. 11
LC214.23.L56.U53.1999	Elizabeth Jacoway, <i>Understanding the Little Rock Crisis</i> and		
F419.L7.B3.1986	Daisy Bates, <i>The Long Shadow of Little Rock</i>	365 pp. together	Feb. 11
KF4155.R46.1992	Mark Whitman, ed., <i>Removing a Badge of Slavery The Record of Brown v. Board of Education</i>	345 pp.	Feb. 18
LC 214.23.C43.D68.1995	Davison M. Douglas, <i>Reading, Writing, and Race: The Desegregation of the Charlotte Schools</i>	250 pp.	Feb. 18
KF4757.B33.1983	Catherine Barnes, <i>Journey From Jim Crow: The Desegregation of Southern Transit</i>	200 pp.	Feb. 18
KF228.B34.D74	Joel Dreyfuss, <i>The Bakke Case</i>	260 pp.	Feb. 25
KF8700.835.1988	Herman Schwartz, <i>Packing the Courts: The Conservative Campaign to Rewrite the Constitution</i>	178 pp.	Feb. 25
KF4754.R53.1998	David Richards, <i>Women, Gays, and the Constitution: The Grounds for Feminism and Gay Rights in Culture and Law</i>	467 pp.	Feb. 25
KF4755.D38.1995	Abraham L. Davis and Barbara Luck Graham, <i>The Supreme Court, Race, and Civil Rights</i> , chapters 4, 5	240 pp.	Feb. 25
KF4758.H64.1990	Joan Hoff, <i>Law, Gender, and Injustice: A Legal History of U.S. Women</i> ,	375 pp.	Feb. 25
KF4886.A5.U17.2000	David K. Ryden, ed., <i>The U.S. Supreme Court and the Electoral Process</i>	285 pp.	Mar. 4
JK1991.C345.1997	Anthony Corrado <i>et al.</i> , <i>Campaign Finance Reform: A Sourcebook</i> (documents and essays)	392 pp.	Mar. 4
JK529.L63.1996	Lawrence Longley and Neal Pierce, <i>The Electoral College Primer</i> , with		(with Best below)
JK529.B45.1996	Judith A. Best, <i>The Choice of the People? Debating the Electoral College</i>	325 pp.	Mar. 4
KF8742.528.1992	David Savage, <i>Turning Right: The Making of the Rehnquist Supreme Court</i>	458 pp.	Mar. 11
KF8742.S55	James Simon, <i>The Center Holds: The Power Struggle Inside the Rehnquist Court</i>	304 pp.	Mar. 11
KF8742.Y37.2000	Tinsley Yarbrough, <i>The Rehnquist Court and the Constitution</i>	269 pp.	Mar. 11

Biographies, Popular

KF4748.I76.1988	Peter Irons, <i>The Courage of Their Convictions</i>	400 pp.	Jan. 14
KF8742.S47.1998	S.D. Gerber, ed., <i>Seriatim: The Supreme Court Before John Marshall</i>	350 pp.	Jan. 14
KF8744.W5.HUM	G. Edward White, <i>The American Judicial Tradition: Profiles of Leading American Judges</i>	400 pp.	Jan. 21
KF228.C43.C73.1988	Barbara Craig, <i>Chaddha: The Story of An Epic Constitutional Struggle</i>	250 pp.	Jan. 21
KF8742.W66	Bob Woodward, <i>The Brethren</i>	444 pp.	Jan. 21
KF8745.H6.A66.2000	Albert Alschuler, <i>Law Without Values: The Life, Work, and Legacy of Justice Holmes</i>		Jan. 21
KF8742.L48	William Leuchtenburg, <i>The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt</i>	258 pp.	Jan. 28
KF8745.B67.S78.1984	Phillipa Strum, <i>Louis D. Brandeis</i>	400 pp.	Jan. 28
KF8745.T3.M3.1965	Alpheus T. Mason, <i>William Howard Taft</i>	305 pp.	Jan. 28
KF373.J55.Y37	Tinsley Yarbrough, <i>Judge Frank Johnson & Human Rights in Alabama</i>	225 pp.	Feb. 4
KF373.J87.K46.1991	Frank R. Kemerer, <i>William Wayne Justice</i>	400 pp.	Feb. 4
KF8742.B76.1991	Lamb & Halpern, <i>The Burger Court</i>	460 pp.	Feb. 4
KF8745.P69.J44.1994	John C. Jeffries, Jr., <i>Justice Lewis F. Powell, Jr.</i>	560 pp.	Feb. 4
KF8742.S29.1990	Bernard Schwartz, <i>The Ascent of Pragmatism: The Burger Court in Action</i>	482 pp.	Feb. 4
KF4850.K87.1982	Stanley I. Kutler, <i>The American Inquisition</i>	246 pp.	Feb. 11
KF8745.F7.U76.1991	Melvin Urofsky, <i>Felix Frankfurter</i>	179 pp.	Feb. 11
KF8745.B55.B298.1996	Howard Ball, <i>Hugo L. Black</i>	251 pp.	Feb. 11
KF8745.W3.W45.1982	Edward White, <i>Earl Warren</i>	370 pp.	Feb. 11
KF8745.F65.K35.1990	Laura Kalman, <i>Abe Fortas</i>	400 pp.	Feb. 11
HV9475.M72.M576.1997	David Oshinsky, "Worse Than Slavery": <i>Parchman Farm and the Ordeal of Jim Crow Justice</i>	255 pp.	Feb. 11
KF373.W332.Y37.1987	Tinsley Yarbrough, <i>A Passion for Justice: J. Waites Waring & Civil Rights</i>	250 pp.	Feb. 18
KF7224.5.J87.1989	Peter Irons, <i>Justice Delayed: The Record of the Japanese American Internment Cases</i>	400 pp.	Feb. 18
KF4757.L64.1987	Charles Lofgren, <i>The Plessy Case</i>	200 pp.	Feb. 18

HV9950.M26.1993	Coramae Richey Mann, <i>Unequal Justice: A Question of Color</i>	254 pp.	Feb. 18
HV9950.T66.1995	Michael Tonry, <i>Malign Neglect – Race, Crime, And Punishment in America</i>	210 pp.	Feb. 18
KF373.H644.M3.1983	Genna McNeil, <i>Groundwork: Charles Hamilton Houston & The Struggle for Civil Rights</i>	225 pp.	Feb. 25
KF373.M64.A34	Constance Baker Motley, <i>Equal Justice Under Law: An Autobiography</i>	245 pp.	Feb. 25
KF4755.M34. T87.1997	Mark Tushnet, <i>Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991</i>	200 pp.	Feb. 25
KF4155.P38.2001	James T. Patterson, <i>Brown v. Board</i>	223 pp.	Feb. 25
LC212.62.O72.1996	Gary Orfield and Susan Eaton, <i>Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education</i>	360 pp.	Feb. 25
KF538.E85.1996	William Eskridge, <i>The Case for Same-Sex Marriage</i>	296 pp.	Feb. 25
KF9325.A7.L46.1993	Arthur S. Leonard, <i>Sexuality and the Law: An Encyclopedia of Major Legal Cases</i> , chapters 2, 5	230 pp.	Feb. 25
KF4758.R48.1989	Deborah L. Rhode, <i>Justice and Gender: Sex Discrimination and the Law</i>	320 pp.	Feb. 25
KF228.J64.U758.1997	Melvin I. Urofsky, <i>Affirmative Action on Trial: Sex Discrimination in Johnson v. Santa Clara</i>	185 pp.	Feb. 25
E185.93.m6.p37.1990	Frank R. Parker, <i>Black Votes Count: Political Empowerment in Mississippi after 1965</i>	210 pp.	Mar. 4
JK1929.A2.L3	Steven Lawson, <i>Black Ballots: Voting Rights in the South, 1944-69</i>	350 pp.	Mar. 4
JK1929.A2.Q54.1994	Chandler Davidson and Bernard Grofman, eds., <i>Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990</i>	387 pp.	Mar. 4
KF8742.B74.1989	Ethan Bronner, <i>Battle for Justice: How the Bork Nomination Shook America</i>	350 pp.	Mar. 11
KF8745.T48.M39.1994	Jane Mayer and Jill Abramson, <i>Strange Justice: The Selling of Clarence Thomas</i>	360 pp.	Mar. 11
KF8745.T48.G47.1999	Scott Gerber, <i>First Principles: The Jurisprudence Of Clarence Thomas</i>	200 pp.	Mar. 11
KF8745.S33	Richard Brisbin, <i>Justice Antonin Scalia and the Conservative Revival</i>	347 pp.	Mar. 11
KF5074.2.B87.2001	E.J. Dionne and William Kristol, eds., <i>Bush v. Gore: The Court Cases and Commentary</i>	340 pp.	Mar. 11
KF5074.2.G55	Howard Gilman, <i>The Votes that Counted</i>	221 pp.	Mar. 11
KF5074.2.B874.2002	Bruce Ackerman, ed., <i>Bush v. Gore</i>	228 pp.	Mar. 11