Constitutional Studies
Comprehensive Exam and Reading List

Revised
March 2012

The Constitutional Studies comprehensive examination is an open-book, written exam, to be completed and submitted no later than 6 hours after the exam is distributed. The 6-hour limit is firm, with exceptions at the discretion of the Director of Graduate Studies only for physically or linguistically handicapped students and documented events of an extraordinary nature, not including equipment problems for which the student is presumed responsible. Failure to meet the deadline means failure on the exam.

The exam will consist of three questions. No answer can be longer than 1,700 words. Answers must be the student’s own, and students are urged to take special care to avoid suspicion of plagiarism. All quotes, paraphrases, and copied material (charts, tables, etc.) must be accompanied with full references. Answers sent PDF must be doubled-spaced; students must save copies of their answers in PDF for future production as the DGS may request.

The field of Constitutional Studies at Notre Dame is divided into four subfields: (1) Philosophy of Law and Constitutional Interpretation; (2) American Constitutional Law and Judicial Politics; (3) Comparative Constitutional Systems and Law; (4) International Law and Human Rights. Students must answer at least one question in (a) Philosophy of Law and Constitutional Interpretation, and (b) American Constitutional Law and Judicial Politics. For their third answer, students choose to answer a question from either (c) Comparative Constitutional Systems and Law or (d) International Law and Human Rights.

The field faculty will make every effort to grade the comps within three weeks of completion.
Constitutional Studies Subfield Reading Lists

(1) Philosophy of Law and Constitutional Interpretation
John Austin, *The Province of Jurisprudence Determined*
Sotirios Barber and James Fleming, *Constitutional Interpretation: The Basic Questions*
Sotirios Barber, *Welfare and the Constitution*
John Hart Ely, *Democracy and Distrust*
Ronald Dworkin, *Freedom’s Law: The Moral Reading of the American Constitution*
H.L.A. Hart, *The Concept of Law*
Ronald Dworkin, *Law’s Empire*
Clement Fatovic, *Outside the Law: Emergency and Executive Power*
John Finnis, *Natural Law and Natural Rights*
Oliver Wendell Holmes, “The Path of the Law,” “The Natural Law”
Sanford Levinson, *Constitutional Faith*
Neil MacCormick, *Legal Reasoning and Legal Theory*
Michael S. Moore, “Law as a Functional Kind”
Michael S. Moore, “A Natural Law Theory of Interpretation”
Joseph Raz, *The Authority of Law*
Leo Strauss, “On the Interpretation of Genesis”
Herbert Weschler, “Toward Neutral Principles of Constitutional Law”
Keith Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review*
Christopher Wolfe, *The Rise of Modern Judicial Review*

(2) American Constitutional Law and Judicial Politics
- *Marbury v. Madison* (1803)
- *McCulloch v. Maryland* (1819)
- *Gibbons v. Ogden* (1824)
- *Dred Scott v. Sandford* (1856)
- *Ex Parte Milligan* (1860)
- *The Slaughterhouse Cases* (1873)
- *Civil Rights Cases* (1883)
- *Plessy v. Ferguson* (1896)
- *Schenck v. United States* (1919)
- *West Coast Hotel v. Parrish* (1937)
- *NLRB v. Jones & Laughlin Steel Corporation* (1937)
- *Wickard v. Filburn* (1942)
- *Ex Parte Quirin* (1942)
- Adamson v. California (1947)
- Everson v. Board of Education (1947)
- Sweatt v. Painter (1950)
- Youngstown Sheet & Tube Co. v. Sawyer (1952)
- Brown v. Board of Education (1954)
- Baker v. Carr (1962)
- Griswold v. Connecticut (1965)
- Brandenburg v. Ohio (1969)
- Lemon v. Kurtzman (1971)
- Roe v. Wade (1973)
- Buckley v. Valeo (1976)
- DeShaney v. Winnebago (1989)
- Employment Division v. Smith (1990)
- Planned Parenthood v. Casey (1992)
- Boerne v. Flores (1997)

Bruce Ackerman, We the People: Foundations
Akhil Amar, The Constitution: A Biography
Lawrence Baum, Judges and Their Audiences: A Perspective on Judicial Behavior
Alexander Bickel, The Least Dangerous Branch
Cornell Clayton and Howard Gillman, eds., Supreme Court Decision Making: New Institutionalist Approaches
Lee Epstein and Jack Knight, The Choices Judges Make
Robert Goldwin, From Parchment to Power
Walter Murphy, Elements of Judicial Strategy
Richard Posner, How Judges Think
Publius, The Federalist Papers: 1, 6, 9, 10, 14-17, 23, 25, 37, 39-49, 51, 57, 62-63, 70-72, 78, 84
Gerald Rosenberg, The Hollow Hope: Can Courts Bring About Social Change?
Jeffrey Segal and Harold Spaeth, The Attitudinal Model Revisited
Sotirios Barber, “Normative Theory, the New Institutionalism, and the Future of Public Law”
Herbert Storing, What the Anti-Federalists Were For
Keith Whittington, Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History
Woodrow Wilson, Constitutional Government in the United States

(3) Comparative Constitutional Systems and Law
Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe*
Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*
Gary Jacobson, *The Wheel of Law: India’s Secularism in Comparative Constitutional Context*
Donald Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*
Walter Murphy, *Constitutional Democracy: Creating and Maintaining a Just Political Order*
Martin Shapiro, *Courts: A Comparative and Political Analysis*
Alex Sweet Stone, *Governing with Judges*
Opolot, James S.E. *An Analysis of World Legal Traditions*
Glenn, H. Patrick. *Legal Traditions of the World: Sustainable Diversity in Law*
Tom Ginsburg and Rosalind Dixon, eds., *Comparative Constitutional Law*

(4) International Law and Human Rights
Jack Goldsmith and Eric Posner, *The Limits of International Law*
Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe”
Mary Ellen O’Connell, *The Power and Purpose of International Law*
Eric Posner, *The Perils of Global Legalism*
Benjamin Schiff, *Building the International Criminal Court*
Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*
Sara McLaughlin Mitchell and Emilia Justyna Powell *Domestic Law Goes Global: Legal Traditions and International Courts*
Andrew Guzman, *How International Law Works: A Rational Choice Theory*
Paul Diehl and Charlotte Ku *The Dynamics of International Law*