Economics 1700. Prosem:
The Economic Constitution

Semester: Fall, 2011
Place: 4716 WWPH
Time: Mondays, 3-5:30
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Course Website

http://www.econ.pitt.edu/courses/coursepage.php?cid=184

Course Description

The course explores the question: how has the Constitution affected American economic development over the past two hundred years? Particular attention will be paid to the economic impact of the following constitutional provisions and legal doctrines: the Contract Clause (Art. 1, Sec. 10); federalism; the Commerce Clause (Art. 1, Sec. 8); the Takings Clause (5th Amendment); Substantive Due Process and equal protection (14th Amendment); and the General Welfare Clauses. The course will also consider how the structure of American political institutions influenced levels of corruption, state constitutional change, capital formation, and judicial independence.

Two examples illustrate. First, throughout American history, farmers have used mortgages to finance purchases of land and capital. In moments of deflation and widespread financial crisis, those same farmers sometimes turned to their political representatives and requested legislation relieving them of their debt obligations. For the first 150 years of American history, the Contract Clause barred this sort of legislation. Economic theory suggests that such a prohibition would have encouraged lending, promoted the expansion of capital markets, and reduced the costs of borrowing to future debtors. Although this example focuses on the American experience, the problem of debtors mobilizing to escape their commitments is not unique to America. As we shall see, protecting creditors against populist legislatures is key to promoting capital accumulation and growth in the developing world.

The second example transplants the problem of populism to an urban setting. Between 1880 and 1925, consumers throughout the United States grew increasingly dissatisfied with the rates and quality of service provided by local gas, electric, and water companies, most of which were privately owned. In response, local governments sometimes initiated proceedings to municipalize private utility companies. Because the plants and capital of these enterprises were valuable and costly, city officials often tried to acquire the capital at below-market prices, or at no price at all. When this occurred, the utilities sued for, and received, Fifth Amendment protection (eminent domain) guaranteeing them adequate compensation for their property.

To appreciate the significance of eminent domain, imagine a world without it, a place

where the courts simply allowed municipal governments to seize capital without compensation. Fearful that their properties would be next, the owners of existing land, plant, and machinery would allow their assets to deteriorate. As for new investments, what rational economic agent would build a new factory, hotel, office building, or home knowing that at any moment the state could take the capital without paying a market rate for it? Private investment would cease.

An Organizational Narrative

Three historical narratives inform and organize the course: the libertarian; the neo-Marxist; and the revisionist. Of these, the course places the greatest emphasis on the libertarian story. This is done for two reasons. First, because libertarian writers rely heavily on mainstream economic analysis, students can readily apply the concepts, tools, and statistical techniques they have learned elsewhere. Second, the libertarian perspective is provocative and creative. This is not to say that the libertarian view is correct, or even partially correct. It is only to say that, whatever one's ideological priors, the narrative offers a promising starting point from which to launch a broader inquiry.

Libertarian scholars argue that the Constitution established secure property rights for American entrepreneurs, farmers, laborers, and manufacturers. Secure property rights meant that investments in capital and risk-taking were protected against the capricious and arbitrary actions of the state. The state could not regulate, seize, or otherwise damage personal property whenever it was expedient. Its actions were subject to the review of the courts, and even when the courts acceded to the wishes of the legislature and the executive, the state could be forced to compensate the aggrieved parties. Because people were free to use and alienate their property as they saw fit, and because they could keep the fruits of their labors, the market flourished. Factories were built; new technologies were introduced; and new organizational structures were developed making both management and labor more productive. Owners grew rich, and by 1900, American workers were the wealthiest workers in the world. Labor and capital from other countries flooded into the United States. In short, the Constitution created a system that allowed all Americans to prosper.

For libertarians, the golden age of American Constitutionalism was the nineteenth and early twentieth century. It was then that judiciary held true to the tenants of the Founding Fathers. Beginning with the foundational decisions of the Marshall Court in the early 1800s, judges used provisions such the contract clause and the commerce clause to protect investors and creditors against the populist impulses of legislators. For example, state laws relieving various organizations from their contractual obligations were struck down as unconstitutional, as were various state laws that inhibited interstate trade. Later, the courts used an expansive reading of the Fifth and Fourteenth Amendments to create the doctrine of substantive due process. Beholden to this doctrine, the courts struck down laws regulating prices, wages, working conditions, and product safety. Substantive due process went so far in promoting the cause of free trade and unfettered markets, some have called this the era of laissez-faire

constitutionalism.

Laissez-faire constitutionalism came to an end during the late 1930s. With the culmination of President Roosevelt's New Deal, the Supreme Court abandoned its formerly strict reading of the Constitution. No longer did the contract clause bar state governments from relieving debtors of their obligations to creditors; no longer did the Commerce Clause prevent the federal government from promoting the interests of organized labor; and no longer did substantive due process limit regulation to a narrow class of industries such as railroads and public utilities. After 1937, the constitutional provisions that had once hindered the development of a regimented welfare state were removed. Minimum wage laws were passed and sustained by the courts; wholesale regulation of agriculture and the financial sector was introduced and supported by the judiciary; social security and other safety nets were created to protect workers in exigent circumstances. For libertarians, these changes violated the principles of freedom and individual responsibility espoused by the Founders and embodied in the Constitution. For neo-Marxists and revisionists, they partially fulfilled a promise long overdue in American history: the promise of equality and justice in outcomes.

Aside from their differences in interpreting the New Deal, the three schools of thought also diverge in their factual assessments economic growth and law during the nineteenth and early twentieth centuries. While neo-Marxists typically concede that there was growth during the 1800s, they believe that the benefits of that growth were not equally distributed: capital and management internalized most or all of the gains, leaving little or nothing for workers. American legal institutions might have promoted growth, but it was an immiserating kind of growth, leaving labor impoverished and alienated.

From the neo-Marxist perspective, the apotheosis of the laissez-faire constitutionalism was the Supreme Court's decision in *Lochner v. New York*. Decided in 1905, *Lochner* struck down a New York law limiting the number of hours bakers could work to ten hours per day and sixty hours per week. Revisionists tend to agree with neo-Marxists about the unequal nature of nineteenth-century American prosperity, but argue that the neo-Marxists and libertarians are wrong in their portrayal of Constitutional law during the pre-New Deal period. Revisionists maintain that from its inception, governments at all levels (federal, state, and local) were active in regulating market activity and private property. The New Deal might have expanded the scale and scope of market interventions, but it did not create the regulatory state *de novo*.

There is, however, one issue on which nearly all scholars seem to agree: for 150 years the judiciary betrayed the Constitution in its treatment of African Americans. For example, enshrining the principle of separate-but-equal in *Plessy v. Ferguson*, American courts distorted the meaning of the equal protection clause of the Fourteenth Amendment, while a host of lesser known decisions denied blacks (as well as other racial minorities) a whole range of personal liberties enumerated in the Bill of Rights. Not until the Supreme Court's landmark decisions in *Shelley v. Kraemer* and *Brown v. Board of Education* after World War II did the constitutional protections so long enjoyed by other Americans begin to reach racial and ethnic minorities. While most scholars have portrayed the constitutional history of race as orthogonal

to the constitutional history of property rights, we will explore a small but growing body legal research that suggests scholars have been too quick to separate those histories. The idea behind this research is simple: whatever the antecedent, economic liberty and civil liberty aspire to the same ideal: liberty.

Broader Significance

In the process of considering the economic impact of the American Constitution, this course addresses two larger questions. The first has do to with origins of economic growth, the second with solving a dilemma that confronts all democratic polities.

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A question of great concern to economists today is why some nations are rich, while others are poor. For example, GDP per capita in the United States today is just over $47,000, while in Zimbabwe it is only $268. Put another way, the average person in the U.S. earns 175 times more income per year than the average person in Zimbabwe. It was not always this way. Two-hundred-and-fifty years ago, the world was a much more equal place: everyone was equally poor, or close to it. What happened over the past two centuries that allowed the U.S. and Western Europe to flourish, while sub-Saharan Africa stagnated? Economists offer many of answers. Some say poor countries have too few natural resources; others that poor countries have too many. Still others argue that eradication of disease holds the key: Africa would develop if we could only eliminate AIDS, malaria, and various other maladies. Another line of thought says that wealthy nations have conspired to keep Africa and much of Asia poor by burdening these areas with heavy debts and the unfavorable legacies of colonialism. More traditional economic thinking focuses on capital formation of all kinds, increasing returns to scale, and technological change.

The central economic hypothesis of classical liberalism, call it "hypothesis *Y*", is that the West grew rich not because of colonialism, natural resource endowments, or increasing returns, but because it embraced the ideals freedom and individual liberty. Although hypothesis *Y* is often bastardized and cheapened by pundits across the political spectrum, it enjoys a long and venerable lineage. That lineage began with the writings of the Scottish Enlightenment, especially those of Adam Smith, and reached its political fruition in the new American republic, where men like James Madison, Thomas Jefferson, and Alexander Hamilton appealed to *Y* in pushing for adoption of the federal Constitution. More recently, in work that garnered him a Nobel Prize, Douglass North has used the broad sweep of human history and basic economic reasoning to show how political institutions in general, and individual liberty in particular, foster economic growth. Over the past thirty years, other economists have repackaged *Y* using a variety of theoretical models, historical episodes, and econometric techniques. While recent approaches might exhibit greater mathematical sophistication than say *The Wealth of Nations* or *The Federalist Papers*, they all speak to the same basic question: how do political institutions affect economic development?

Maintaining that the Constitution was the crucible of American prosperity, the narrative outlined above offers us a rich setting in which to ponder and critically evaluate *Y*. In particular, that narrative can help us frame, and answer, four sets of questions.

- What the institutional foundations of freedom and liberty? Why are some institutions and freedoms stable, while others ebb and flow?

- How and why does individual liberty promote growth? What, exactly, are the mechanisms that link freedom and economic activity? Do some sorts of freedoms and constitutional protections matter more for growth than others? Are freedom of speech and religion as important as, say, the right to due process and equal protection?

- Why has the American economy continued to flourish despite the abrogation of many of the liberties and protections some believe were originally specified in the Constitution? The New Deal, for example, brought an end to most of the economic freedoms and constitutional protections classical liberals hold sacred, yet the American economy flourished over the next half century. Given this, how can one argue that such constitutional provisions are critical for growth?

- Along the same lines, most legal scholars today universally believe that the Constitution contains no limits on the power of the federal government to levy and collect taxes, yet hypothesis *Y* suggests that taxes on private income and wealth are inimical to growth. How does one reconcile such a basic contradiction? Are the proponents of hypothesis *Y* wrong to suggest that low marginal tax rates are conducive to high growth, or are legal scholars mistaken in their Constitutional interpretation? Is there any historical evidence to suggest that at early points in time, federal and state governments recognized and respected constitutional limitations on the power to tax? What, if anything, did the Founders have to say about taxes, and what might we learn from this?

The advocates of hypothesis *Y* must answer these and other questions before they can begin to claim that individual liberty is the fount of economic prosperity.

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Democracies are governed by the preferences of the majority. Although this mode of governance avoids the despotism associated with oligarchy and monarchy, it is vulnerable to another form of oppression, what Alexis de Tocqueville termed "the tyranny of the majority." In *Democracy in America* (*DIA*), Tocqueville argued that the power of an enfranchised majority could pose a greater threat to individual liberty than that of the most rapacious king. The king,

he explained, ruled by force alone, while the majority possessed both force and a claim to moral legitimacy and suasion. The king could never control the hearts and minds of his people, while the democratically-inspired legislature was the political embodiment of those same hearts and minds. In Tocqueville's words: "The authority of a king is purely physical, and it controls the actions of the subject without subduing his private will; but the majority possesses a power which is physical and moral at the same time; it acts upon the will as well as upon the actions of men, and it represses not only all contest, but all controversy (*DIA*, p. 267)."

While Tocqueville coined the phrase tyranny of the majority, the idea that legislative majorities might violate the rights and interests of less powerful minorities has a long history and was recognized by both the ancient Greeks and the Founding Fathers. In a widely quoted to letter (March 15, 1789), Thomas Jefferson wrote: "The executive power in our Government is not the only, perhaps not even the principal, object of my solicitude. The tyranny of the Legislature is really the danger most to be feared, and will continue to be so for many years to come." Better yet, in Federalist Paper No. 10, Madison provided his well-known indictment of factions, particularly factions based on a majority. "A pure democracy," he wrote, "can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or with rights of property; and have, in general, been as short in their lives, as they have been violent in their deaths." (See also *The Federalist*, No.'s 11 and 48-51.)

Like other modern states, the American solution to the problem of the tyranny of the majority was to create institutional rules that limited the powers of the legislature and ostensibly protected individual liberties from encroachment by the legislative branch. The Constitution, for example, provides for an appointed judiciary, immune to electoral pressures and capable of checking the actions of both the executive and legislative branches. The Constitution also contains explicit limitations on the power of the federal government. As alluded to earlier, the Commerce Clause limits the ability of the federal government to regulate matters that do not involve interstate trade; the Contract Clause prohibits the state and federal governments from impairing the obligation of contracts; and the electoral college and the structure of the Senate were intended to prevent densely populated areas from praying on less populous states. Finally, the Bill of Rights and the Thirteenth, Fourteenth, and Fifteenth Amendments to the Federal Constitution are designed to prevent majoritarian legislatures from violating individual rights and liberties.

The difficulty with institutional solutions to the tyranny of majority is that such solutions are themselves creatures of democracy. Should a sufficiently large and powerful majority decide to abrogate or change the institutions that constrain it, those institutions would surely crumble. It is true that altering constitutions typically requires legislative super-majorities, but this only raises the costs of altering constitutions beyond those associated with more ordinary forms of legislation; it does not make altering them impossible. For his part, de

Tocqueville was deeply skeptical of the idea that anything could be done to reign in the power of the majority, particularly an American majority. "The very essence of democratic government," he wrote, "consists in the absolute sovereignty of the majority; for there is nothing in democratic States which is capable of resisting it (*DIA*, p. 258)." Later in the same chapter, de Tocqueville spoke of the ephemeral nature of state constitutions in America, arguing that they did little to contain the power of the electorate and were mere expressions of voter preferences (*DIA*, p. 261).

Perhaps the quintessential example of an inflamed majority undoing constitutional limitations on its power comes from antebellum Kentucky. During the 1820s, the Kentucky Supreme Court struck down a popular law that established a moratorium on farm foreclosures. Creditors sued, claiming that the law violated provisions in the state and federal constitutions prohibiting governments from altering the terms of contracts *ex post*. When the creditors won, Kentucky farmers were irate and demanded that their legislators change the constitution and the court to prevent future judges from thwarting the will of the majority. The legislature responded by disbanding the state supreme court, and creating a new, elected court in which the judges served only a short period of time and were therefore acutely aware of electoral pressures and punishments. Although the Kentucky legislature eventually disbanded the new elected court and restored the previous court, the import of this experience could not have eluded the re-impaneled justices: ignore the will of the electorate at your peril.

This discussion does not imply that constitutions are irrelevant. It only says that the ruling majority must be willing to defer to the constitutional rules promulgated by the courts, otherwise the majority would change the rules, or at the very least, the individuals who interpret the rules. Why, then, do majorities defer to constitutional rules? Why do they consent to binding limits on their power? Part of the answer involves nothing more than a change of nomenclature—think not of a single majority at a single point in time but of multiples majorities at multiple points in time. Other parts are more involved and call for a more extensive treatment. Accordingly, we will spend much time discussing the origins of a robust and independent judiciary, and why judges might hold preferences that diverge from the executive and legislative branches. There are well-developed literatures in economics, history, law, and political science that provide insight into these questions.

Prerequisites

Prior course work in economics is highly recommended, but not essential.

Writing and Other Course Requirements

This is a writing course. As such, it is as much about writing as it is about economics. You will, therefore, do a lot of writing and a lot of talking and thinking about writing. This will be accomplished through weekly writing assignments, and a 10-20 page paper that serves as the capstone for the course. Every week we will go over court cases. You will need to write a

two to three page paper summarizing and analyzing one of the cases. Two or three times during the semester you will need to meet with me outside of class to discuss your capstone paper. These meetings should not last more than thirty minutes.

For the capstone paper, you will choose a court case that revolves around some economically-relevant constitutional question. I will also consider proposals to analyze specific papers in *The Federalist*, particularly papers 10,11, 23-25, 30, 42-44, 48-52, and 78-82. Whatever option you pursue, the paper should not develop themes wholly independent of the topics and analyses presented during class lectures and in the associated readings. On the contrary, you will be graded, in part, on your ability to apply, and expand on, what you have learned in class. In this way, your class notes should serve as a source of both information and creative inspiration. Use them liberally in formulating, organizing, and supporting your argument.

When completed, the capstone paper should contain six parts: (i) an introduction that specifies the larger questions the paper address, reviews the associated literature, and lays out your argument with clarity and precision; (ii) a well-developed description of the case and the broader historical context from which it emerged; (iii) an economic model that analyzes the likely impact of the court case; (iv) a review of the evidence for and against the model; (v) a summary of the paper and its main conclusions; and (vi) a list of references cited in the paper. Each part of the paper will be built on a series of logically connected paragraphs, which are themselves the products of a topic sentence and a series of supporting sentences.

The final product should be an argument-driven essay devoid of hyperbole, unnecessary verbiage, awkward sentences, inaccurate historical and legal claims, and faulty economic reasoning. Put another way, an A paper would have the following characteristics: clear, uncluttered prose; a matter-of-fact statement of the argument and its significance; reliable and well-documented statements of history and law; and a coherent model of the relevant economic issues.

In addition to the weekly papers and the capstone paper, there will also be an in-class midterm and final. Both tests are closed-note, and consist of short answer and essay questions. I will draw test questions from both the lectures and the readings.

Textbooks

A copy of the U.S. Constitution is required and available at my website on economics department faculty page. All other required readings are available through online sources, such as JSTOR, Hein Online, and Academic (Lexis-Nexis), which you can access through the Pitt library webpage. Although you can use Student Express to access the articles from home, I recommend going to the library and trying the system out. That way, if you have any questions or problems, a librarian will be in close reach. Other books are available through Google Books (books.google.com). You might consider downloading a copy of the *The Federalist* from Google books and print out papers 10,11, 23-25, 30, 42-44, 48-52, and 78-82. A copy is also available at the course website. If you prefer, you can purchase a new copy at almost any bookstore.

The only other text you might consider purchasing is Strunk and White's, *The Elements of Style*. This small volume is available through a variety of online and chain booksellers. Whether you acquire an older used edition or the newest edition does not matter. It is the single best book I know of to improve your writing. While it is not required—I won't assign any chapters or passages—it is recommended for anyone who wants to improve their writing.

Grading, Course Rules, and Schedule of Tests and Deadlines

The grading scale works as follows:

A	90 and above	C	70-75
A-	88-89	C-	68-69
B+	86-87	D+	66-67
B	80-85	D	60-65
B-	78-79	D-	58-59
C+	76-77	F	57 and below

The following weights will be used in determining final grades:

Weekly papers	25%
Final paper	25%
Class participation	10%
Midterm	20%
Final exam	20%

Late papers are penalized. The magnitude of the penalty varies positively with time and frequency of infraction. The later the paper, the heavier the penalty; and the more often you are late, the heavier the penalty. Put another way, the first late paper does not incur a large penalty; the third and fourth do. The same holds true for the due dates on your capstone paper. If you are late getting me your case choice, outline, rough draft, and/or final draft you will incur a penalty and that penalty will vary with time and frequency of infraction.

Webster's defines plagiarism as the act of "taking ideas, writings, etc. from another and passing them off as one's own." This means that you should not paraphrase or copy someone else's words. If you like the way somebody else say's something, quote and cite them properly (with original author, date, and page number in parentheses). Depending on the severity of the infraction, plagiarism will be punished severely up to and including receiving an F for the entire course. In addition, cases of plagiarism will also be forwarded to the university's academic integrity committee, which depending upon the severity of the infraction, can result in suspension from Pitt. To judge a paper as plagiarized, I need only observe **one** of the following: a paper that contains passages very similar to those found in un-attributed online or written sources; a paper that exhibits writing or knowledge that is grossly inconsistent with the

student's prior work; or any other evidence indicative of plagiarism.

Test dates and deadlines for the paper are as follows:

Test/paper assignment	Due date
Choose your court case	Mon., Sept. 19
Meet with instructor to discuss case choice and writing	Week of Sept. 26
Outline of paper	Mon., Oct. 10
Midterm	Mon., Oct. 24
Rough draft due (first grading opportunity)	Mon., Nov. 14
Meet with instructor to discuss paper (bring all materials)	Week of Nov. 28
Final draft due (final grading opportunity)	Mon., Dec. 5
Final exam	Mon., Dec. 12, 12:00-1:50

List of Lectures and Associated Readings

Lecture 1. Toward a Theory of the State and the Constitution

Alexander Hamilton, John Jay, and James Madison. *The Federalist*, no's 10, 11, 23-25, 30, 42-44, 48-52, and 78-82.

The U.S. Constitution

Part I. The Contract Clause

Lecture 2. The Contract Clause and the Social Compact

Fletcher v. Peck, 6 Cranch (U.S.) 87 (1810)

Dartmouth v. Woodward, 17 U.S. 518 (1819)

Gordon v. Tax Appeal Court, 44 U.S. 133 (1845)

Mills et al. v. The County of St. Clair, 49 U.S. 569 (1850)

Lecture 3. The Contract Clause, Police Powers, and Early Economic Regulation

Cedar Rapids Gas Light Company v. City of Cedar Rapids, 223 U.S. 655 (1912)

Fertilizing Company v. Hyde Park, 97 U.S. 659 (1878)

Vicksburg v. Vicksburg Waterworks Company, 202 U.S. 453 (1906)

The People ex rel. Francis B. Peabody v. The Chicago Gas Trust Company, 130 Ill. 268 (1889)

Lecture 4. The Contract Clause and the Credit Market

Blair v. Williams, 14 Ky. 34 (1823)

Sturges v. Crowninshield, 17 U.S. 122 (1819)

The Planters' Bank of Mississippi v. Thomas L. Sharp, 47 U.S. 301 (1848)

Lecture 5. The Contract Clause in Twentieth-Century Jurisprudence

RUI Corporation v. City of Berkeley, 371 F.3d 1137 (2004)

Chemical Bank v. Washington Public Power Supply System, 99 Wn.2d 772 (1983)

Home Building & Loan Association v. Blaisdell et al., 290 U.S. 398 (1934)

Part II. The Commerce Clause

Lecture 6: On the Ever Expanding Definition of Commerce

Randy E. Barnett, "The Original Meaning of the Commerce Clause," *University of Chicago Law Review*, Vol. 68, No. 1 (Winter, 2001), pp. 101-47.

United States v. E.C. Knight Co., 156 U.S. 1 (1896)

Swift & Co. v. United States, 196 U.S. 375 (1905)

NLRB v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937)

Lecture 7. The Economic Logic of the Dormant Commerce Clause

Brown v. State of Maryland, 25 U.S. 419 (1827)
Ficklen v. Shelby County Taxing District, 145 U.S. 1 (1892)
Reymann Brewing Company v. Brister, 179 U.S. 445 (1900)
Hammond Packing Company v. State of Arkansas, 212 U.S. 322 (1909)
Western Union Telegraph Company v. State of Kansas, 216 U.S. 1 (1909)

Lecture 8. The Commerce Clause, the Common Law, and Environmental Regulation

Missouri v. Illinois and the Sanitary District of Chicago, 200 U.S. 496 (1906)
Sanitary District of Chicago v. United States, 266 U.S. 405 (1925)
South Dakota Farm Bureau v. Hazeltine, 340 F.3d 583 (2003)
International Paper Co. v. Ouellette, 479 U.S. 481 (1987)

Part III. The Rise and Fall of Substantive Due Process

Lecture 9. Substantive Due Process and Rate Regulation

Munn v. Illinois, 94 U.S. 127 (1877)
Smyth v. Ames, 169 U.S. 466 (1898)
Nebbia v. New York, 291 U.S. 553 (1934)
Driscoll v. Edison Light & Power, 307 U.S. 104 (1939)

Lecture 10. *Lochner*

Cass R. Sunstein, "Lochner's Legacy," *Columbia Law Review*, Vol. 87, No. 5 (Jun., 1987), pp. 873-919.
Matthew S. Bewig, "*Lochner v. The Journeymen Bakers of New York*: The Journeymen Bakers, Their Hours of Labor, and The Constitution: A Case Study in the Social History of Legal Thought," *American Journal of Legal History*, Vol. 38, No. 4 (Oct., 1994), pp. 413-451.
Lochner v. New York, 198 U.S. 45 (1905)
Buck v. Bell, 274 U.S. 200 (1927)

Lecture 11. Antitrust and Equal Protection

Henry Demarest Lloyd, *Wealth Against Commonwealth*
Connolly v. Union Sewer Pipe Co., 184 U.S. 540 (1902)
Tigner v. Texas, 310 U.S. 141 (1940)

Lecture 12. Race and Fourteenth Amendment Protections in the Pre-Civil-Rights Era

Plessy v. Ferguson, 163 U.S. 537 (1896)
Buchanan v. Warley, 245 U.S. 60 (1917); see also *Gandolfo v. Hartman et al.*, 49 F. 181 (1892)
Anderson H. Brown et al. v. The Board of Education of Charleston, 106 W. Va. 476 (1928)
Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Lecture 13. Substantive Due Process and the Provision of Public Health

State v. Chicago, Milwaukee & St. Paul Railway Company, 114 Minn. 122 (1911)
Rhea v. Board of Education, 41 N.D. 449 (1919)
Village of Euclid et al. v. Ambler Realty Company, 272 U.S. 365 (1926)
Slaughterhouse Cases, 16 Wall. (U.S.) 36 (1873)
City of Newnan et al. v. Atlanta Laundries Inc. et al., 174 Ga. 99 (1932) [for purposes of juxtaposition with the Slaughterhouse cases.]

Part IV. Miscellaneous Topics

Lecture 14. Slavery and the Law

Joseph Wallingsford v. Sarah Ann Allen, 35 U.S. 583 (1836)
Dred Scott v. Sandford, 19 How. (U.S.) 393 (1857)
Elodie Lambert v. M. King, 12 La. Ann. 662 (1856) [very short]
Harris v. Maury, 30 Ala. 679 (1857) [very short]

Lecture 15. Richard Epstein, *Takings: Private Property and the Power of Eminent Domain*

Richard A. Epstein, "Takings: Descent and Resurrection," *The Supreme Court Review*, 1987, pp. 1-45.
Robert Brauneis, "The Foundation of Our Regulatory Takings' Jurisprudence: The Myth and Meaning of Justice Holmes's Opinion in Pennsylvania Coal Co. v. Mahon," *Yale Law Journal*, Vol. 106, No. 3 (Dec., 1996), pp. 613-702.
John F. Hart, "Colonial Land Use Law and Its Significance for Modern Takings Doctrine,"*Harvard Law Review*, Vol. 109, No. 6 (Apr., 1996), pp. 1252-1300.
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)
Keystone Bituminous Coal Assn. et al. v. DeBenedictis, 480 U.S. 470 (1987)

Lecture 16. Progressive Taxation and the Constitution

Bruce Ackerman, "Taxation and the Constitution," *Columbia Law Review*, Vol. 99, No. 1 (Jan. 1999), pp. 1-58.
A. P. Winston, "The Tariff and the Constitution," *Journal of Political Economy*, Vol. 5, No. 1 (Dec., 1896), pp. 40-70.
Knowlton v. Moore, 178 U.S. 41 (1900)
Pollock v. Farmers' Loan and Trust Company, 157 U.S. 429 (1895)

Lecture 17. Monetary Policy and the Constitution

McCulloch v. Maryland, 17 U.S. 316 (1819)
Legal Tender Case; Juilliard v. Greenman, 110 U.S. 421 (1884)
Trebilcock v. Wilson et ux., 79 U.S. 687 (1872)
Briscoe v. Kentucky, 36 U.S. 257 (1837)