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State and Federal Government I Lecture Outline

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STATE AND FEDERAL GOVERNMENT 1

I. A PREFACE TO AMERICAN POLITICS
- A. SEEING THROUGH A GLASS, DARKLY
  - 1. We Are Like Fish **in** Water
    - a. Our Circumstances
  - 2. What Is Politics?
    - a. Power
    - b. Context: "I am I and My Circumstances" (Ortega y Gasset)
- B. CITIZENS AND HOUSEHOLD STEWARDS
  - 1. Public and Private Distinction
    - a. Limited Liability Corporation
      - 1) Liability
      - 2) Who Should Pay?
  - 2. Politics and Economics
    - a. Classical Tradition
      - 1) City (**Polis**); **Aristotle**
      - 2) Household (**Oikos**)
      - 3) Virtue vs. Corruption
    - b. Biblical/Western Tradition
      - 1) Trustee or Steward
      - 2) Community and Individuality (Proudhon vs. Tocqueville)
      - 3) Unity vs. Diversity
      - 4) Internal Self-Government -> External Liberty
- C. MORALITY AND LIBERTY
  - 1. "**Who Gets What, When, How?**" (Lasswell)
    - a. Private Benefit
    - b. Public Treasury
    - c. Albert Jay Nock on Modern Politics
  - 2. Political Economy
    - a. Ethical Issues
- D. THE ONE AND THE MANY
  - 1. Who Benefits?
  - 2. Conflict vs. Harmony of Interests
  - 3. Hamarchy (Lieber)

II. AMERICAN POLITICAL CULTURE
- A. THE AMERICAN CHARACTER
  - 1. Individualism
    - a. Contrast with Selfishness
    - b. Effects
    - c. Loss of Community

2. Character Types
    a. Tradition-Directed
    b. Inner-Directed
    c. Other-Directed
3. Absence of a Feudal Tradition
    a. Pilgrims and Puritans
    b. Frontier Society
    c. Social Contract Theory
4. Status vs. Contract
    a. Meritocracy
    b. Privileges and Entitlements

B. SETTLEMENT PATTERNS
1. Political Culture
2. A Nation of Immigrants
3. Reasons for Coming

C. RELIGIOUS PATTERNS
1. Separatists
    a. Pilgrims
    b. Mayflower Compact
2. Nonconformists
    a. Puritans
    b. Fundamental Orders of Connecticut
3. Dissenters
4. Catholics
5. Quakers
6. Pietists
7. Presbyterians
8. Episcopalians
9. Baptists and Methodists
10. Eastern Orthodox
11. Jews
12. Others

D. GEOGRAPHICAL SETTING
1. Physiognomy
2. Geopolitics and History
3. Four British Folkways
4. Population
5. Decentralization
6. Capitals
7. Stability

E. ETHNIC PATTERNS
1. English
2. Scots and Scotch-Irish
3. Dutch (Netherlanders)
4. Scandinavians

5. French
6. Hispanics
7. African-Americans
8. Irish
9. Germans
10. Southern and Eastern Europeans
11. Middle East and North Africa
12. South and East Asians
13. Ethnic Conflict

F. POLITICAL PATTERNS
1. Townships
2. School Systems
3. Legal Traditions
   a. Common Law
   b. Civil Law

G. STATES AS CULTURAL ENTITIES
1. Nation-State System
2. State Traditions
3. New England
   a. Massachusetts
   b. Vermont, New Hampshire, and Maine
   c. Rhode Island and Connecticut
4. Middle Atlantic
   a. Maryland
   b. Delaware
   c. Pennsylvania
   d. New Jersey
   e. New York
5. South
   a. Virginia and West Virginia
   b. Kentucky and Tennessee
   c. North and South Carolina
   d. Georgia
   e. Florida
   f. Mississippi and Alabama
   g. Louisiana
   h. Missouri and Arkansas
6. Midwest
   a. Indiana and Ohio
   b. Illinois
   c. Michigan
   d. Wisconsin
   e. North Dakota and Minnesota
   f. Iowa
   g. Kansas and Nebraska

7. Mountain West
    a. Colorado
    b. Wyoming and Montana
    c. Utah and Idaho
    d. Nevada
8. Pacific Northwest
    a. Oregon and Washington
    b. Alaska
9. California
10. Hawaii
11. Southwest
    a. Arizona
    b. New Mexico
    c. Oklahoma

III. THE POLITICAL CULTURE OF TEXAS

A. GEOGRAPHIC CHARACTERISTICS
1. Size
2. Population
3. Economic Regions
    a. East Texas
    b. Metroplex
    c. Plains
    d. Border
    e. Central Corridor
    f. Gulf Coast

B. SETTLEMENT PATTERNS
1. Prehistoric
2. Anglo-American Colonists
3. Lone Star Republic
4. Lower South and Upper South
5. African Americans
6. Mexicans
7. Germans

C. POLITICAL PATTERNS
1. Political Subcultures
    a. Moralistic
    b. Individualistic
    c. Traditionalistic
2. Individualistic Conservatism

IV. THE CONSTITUTIONAL SYSTEM

A. CONSTITUTIONALISM
1. Purpose
2. Consent of the Governed

a. Covenant
b. Unalienable Rights

3. Origins of Constitutionalism
-- Pilgrim Code of Law (1636)
-- **Fundamental Orders of Connecticut** (1638)
a. Church **Covenants**
b. Colonial **Charters**

4. Declaration of Independence
5. Constitution of 1787
6. **Articles of Confederation** (1781)
7. Subsequent Development
a. New Goals
b. Egalitarian and Individualistic Outlooks

B. THE FIRST CONSTITUTIONAL SYSTEM

1. Richard Henry Lee
a. Basic Draft
2. Debate Over Independence
3. Declaration of Independence
a. Slave Trade
b. John Witherspoon
c. Plea at Law Against the King
4. Unanimous Declaration
5. Articles of Confederation
a. Unicameral Congress
b. Limitations

C. THE PHILADELPHIA CONVENTION

1. Leadership
a. Floor Debates: **James Madison**, George Mason, **Gouverneur Morris**, James Wilson, Roger Sherman, Elbridge Gerry
b. Absentees: John Adams, Thomas Jefferson, and Patrick Henry
c. The Delegates
d. **Robert Yates** and John Lansing
2. Virginia Plan: **Edmund Randolph**
a. Provisions
3. Proposed Amendments
a. Popular Elections Issue: George Mason
b. Single Executive: James Wilson
c. Upper House: Mason and Gerry
4. New Jersey Plan: **William Paterson**
a. Provisions
5. Committee of the Whole
a. Proportional vs. Equal Representation
b. Franklin's Proposal

6. Compromises
    a. Connecticut Compromise: **Roger Sherman**
    b. Three-Fifths Compromise
    c. Commerce Compromise
    d. Electoral College
7. Fundamental Resolutions
8. The Great Debate
    a. Slavery
    b. Property Qualifications Rejected
    c. Immigration
    d. Army
    e. National Debt
    f. Export Taxes Outlawed
9. Committee on Style and Arrangement
10. Final Approval
11. Analysis

D. CONSTITUTIONAL COMPONENTS
1. Guiding Principles
2. **Preamble**
    a. Invocation
        1) **Mayflower Compact** (1620)
3. Bill of Rights
    a. Massachusetts **Body of Liberties** (1641)
4. Separation of Powers and Checks and Balances
    a. Restraint on Power
        1) William Blackstone
    b. System of Overlapping Powers
5. Amendment
    a. Constitutional Provision
        1) Constitutional Convention
        2) Individual Proposal
        3) Ratification
    b. Interpretation
    c. Treaties
    d. Popular Initiative (states)
    e. Popular Referendum (states)
6. Extraconstitutional Measures
    a. Interposition
    b. Nullification
    c. Secession
    d. Martial Law

E. ORGANIZING PRINCIPLES (DIVISIONS OF POWERS)
1. **Federalism**
    a. Two Main Levels
        1) Divided Political Sovereignty

b. "Supreme Law of the Land"
   1) **Magna Carta**
   2) Sanctioning Land
   3) Common Law and Due Process
   4) Super-Legislation
c. Alternatives
   1) Monarchy
   2) Feudalism; Confederation or League

2. **Bicameralism**
   a. Two Chambers
      1) Unicameral Legislature (Nebraska)
   b. **Senate**
      1) Designed to Represent the States
      2) Two Senators
      3) Restraint on Presidency and Judiciary
   c. **House of Representatives**
      1) Designed to Represent the People
      2) Population
      3) Money Bills
3. **Separation of Powers**
   a. Branches
      1) Legislative
      2) Executive
      3) Judicial
   b. Constituencies
   c. Modes of Selection and Terms of Office
      1) Representatives
      2) Senators
      3) Presidents (**Electoral College**)
      4) Justices
4. **Republican Principle**
   a. Enhances Stability
   b. Wise and Capable Leaders
5. Characteristics of a Desirable Constitution
   a. Stability and Continuity
   b. Division of Powers
   c. Representativeness
   d. Accountability

F. FEDERALIST, NO. 10
1. <u>Federalist Papers</u>
2. Purpose: Break and Control Violence of Faction
3. Two Methods
   a. **Remove the Causes**
      1) Abolishing Liberty
      2) Creating Uniformity

b. **Control the Effects**
1) Republican Principle
4. Tyranny of the Majority
5. Large Republic
a. Built-in Diversity of Interests
6. Auxiliary Precautions (Checks and Balances)
7. Evaluation
a. Deliberation
b. Consensus or Unity

V. CONSTITUTIONAL POWERS AND CUSTOMS
A. LAWS (Art. I, sec. 1)
1. Bills (Art. 1, sec. 7)
2. Executive Orders
3. Administrative Law
4. **Executive Privilege**
B. AMENDMENTS (Art. V)
1. Validity or Legitimacy
2. Treaties
3. Custom and Interpretation
C. TREATIES (Art. II, sec. 2)
1. **Executive Agreements**
2. Compacts (Art. I, sec. 10)
D. STATES
1. **Reserved Powers** (Tenth Amendment)
2. **Denied Powers** (Art. I, sec. 10)
c. Electoral College (Art. II, sec. 1)
d. Guaranty Clause (Art. IV, sec. 4)
e. Territorial Integrity (Art. IV, sec. 3; Art. V)
f. Enclaves (Art. I, sec. 8; Art. IV, sec. 3)
g. Immunity (Art. II, sec. 2; Eleventh Amend.)
h. Extradition (Art. IV, sec. 2)
i. Election of Senators (Seventeenth Amendment)
E. THE PEOPLE
1. Elections (Art. I, sec. 2)
2. Juries
F. CIVIL LIBERTIES
1. Security from Discrimination
a. Bills of Attainder, Ex Post Facto Laws (Art. I, secs. 9, 10; Art. III, sec. 3)
2. Privileges and Immunities (Art. IV, sec. 2; Fourteenth Amendment)
3. Liberty of Conscience and Expression
a. Religion, Speech, and Press

- b. Peaceable Assembly (First Amendment)
- 4. Security in Person and Estate
  - a. Keep and Bear Arms (Second Amendment)
  - b. Quartering of Soldiers (Third Amendment)
  - c. Searches and Seizures (Fourth Amendment)
  - d. Takings Clause (Fifth Amendment)
  - e. Procedural Rights (Fifth - Eighth Amendments)
  - f. Penal Limitations (Eighth Amendment)
- 5. Sanctity of Property
- 6. Martial Law

G. THE JUDICIARY (Art. I, sec. 8; Art. III)
- 1. Original Jurisdiction (Art. III, sec. 2)
- 2. Restricted Appellate Jurisdiction (same)
- 3. Judicial Review
- 4. Judicial Legislation
- 5. Reversals (Art. V)
- 6. Shared Power of Interpretation

H. APPOINTMENTS (Art. II, sec. 2)
- 1. Patronage and Partisanship
- 2. Senatorial Courtesy
- 3. Civil Service
- 4. Independent Counsel

I. BUREAUCRACY (Art. I, sec. 8; Art. II, sec. 2; Art. III, sec. 1)
- 1. Congressional Oversight
- 2. Quasi-Legislative and -Judicial Powers

J. COMMERCE
- 1. Regulation (Art. I, sec. 8)
- 2. Subsidies and Privileges

K. FISCAL AND MONETARY POLICIES (Art. I, secs. 7, 8)
- 1. Limits (Art. I, sec. 9)
- 2. Income Taxation (Sixteenth Amendment)
- 3. Money (Art. I, sec. 8, 10)
- 4. Salaries (Art. I, sec. 6)
- 5. Impoundment

L. CONGRESS AND THE PRESIDENT
- 1. Legislative Powers of the President
- 2. Special Sessions (Art. II, sec. 3)
- 3. Tie-Breaking (Art. I, sec. 3)
- 4. Veto (Art. I, sec. 7)
- 5. Override
- 6. Pocket Veto (Art. I, sec. 7)
- 7. Setting the Agenda
- 8. Elections
  - a. President
  - b. Vice President

M. AFFAIRS OF STATE
1. Impeachment (Art. I, sec. 2)
2. Trial (Art. I, sec. 3)
3. Presiding Officer (Art. I, sec. 3; Art. II, sec. 4)
4. Qualifications; Punishments (Art. I, sec. 5)
5. Treason (Art. III, sec. 3)
6. Pardons and Reprieves (Art. II, sec. 2)
7. Amnesty
8. Contempt of Congress

N. WAR POWERS (Art. II, sec. 2)
1. Conscription (Art. I, sec. 8)
2. Declaration of War (same)
3. Police Actions
4. Emergency Powers and Martial Law

VI. THE FEDERAL SYSTEM

A. THE POLITICS OF CONSTITUTION WRITING
1. Special Interests
2. Length and Complexity
3. Amendments
4. Constitutional Conventions
a. Frontier Individualism
b. Period of Reform
c. Reapportionment
d. One Man, One Vote

5. Texas Constitution of 1876

B. FEDERALISM AND INTERGOVERNMENTAL RELATIONS
1. Federalism
a. Purpose
2. Classification of Powers
a. Enumerated and Implied
b. Exclusive, Concurrent, and Reserved
c. Inherent and Resulting
d. Elastic Clause (Art. I, sec. 8)
e. *McCulloch* v. *Maryland* (1819)
3. Dual Federalism
4. Cooperative Federalism
5. Regulatory Federalism
6. Interdependence
7. Lower Levels of Government
8. Federal Balance of Power
9. Grants-in-Aid
a. Agriculture
b. Housing, Highways, Education, Public Welfare
10. Establishing National Standards
11. Information and Technical Advice
12. Red Tape

C. INTERSTATE RELATIONS
1. Privileges and Immunities
a. Limitations
2. Full Faith and Credit
3. Extradition
a. *Puerto Rico* v. *Branstadt* (1987)
4. Guaranty Clause
5. interstate Competition
6. Interstate Cooperation
a. Crime Compact of 1934
b. National Conference of Commissioners on Uniform State Laws
c. Council of State Governments

VII. LOCAL GOVERNMENTS

A. POWERS OF CITY GOVERNMENT
1. Municipal Corporations
2. Dillon's Rule
3. Home Rule
a. Constitutional Home Rule
b. Statutory Home Rule
4. Annexation
5. Consolidation

B. CITY CHARTERS
   1. Special Act
   2. General Act
      a. Texas
   3. Classified System
      a. Indiana
      b. Texas
   4. Optional System
   5. Home Rule
C. FORMS OF CITY GOVERNMENT
   1. Mayor-Council Plan
      a. Strong Mayor-Council
      b. Weak Mayor-Council
   2. Commission Plan
   3. Council-Manager Plan
   4. Town Meeting
D. POLITICAL STYLES
   1. Elections
      a. Nonpartisan
      b. Single-Member Districts
      c. At-Large System
      d. Hare System
   2. Styles
      a. Anglo-Saxon or Middle-Class Ethos
      b. Immigrant Ethos
   3. Images of the City
      a. Traditional Anti-City Bias
      b. Boosterism
      c. Provider of Life's Amenities
      d. Caretaker
      e. Umpire
E. COUNTIES AND SPECIAL DISTRICTS
   1. Origins

      a. Count
      b. Sheriff
      c. Posse Comitatis
   2. Settlement Patterns
      a. Settlement Patterns
      b. Courthouse Gang
      c. Texas
   3. Forms of County Government
      a. Board of County Supervisors
      b. Board of County Commissioners
      c. Commissioners Court

4. Limited Powers
5. Elected Officers
    a. Sheriff
    b. Attorney
    c. Clerk
    d. Tax Assessor
    e. Treasurer
6. Appointed Officilas
7. Taxes
8. Spending Patterns
9. Special Districts
    a. Independent Public Schools
    b. Junior or Community College Districts
    c. Nonschool Districts
    d. Municipal Utility Districts (MUDs)

VIII. METROPOLITAN GOVERNMENT

A. DEMOGRAPHY
1. Population Shift
2. Standard Metropolitan Area

B. SOCIOECONOMIC TRENDS
1. Central Cities
2. Suburbs
3. Changing Lifestyles
4. Rise of the Sunbelt Cities
    a. Central Air-Conditioning
    b. Growing Retirement Population
    c. Mass access to Cheaper Transportation
    d. Increasing Cosmopolitanism
    e. Changing Racial Attitudes
    f. Relatively Lower Cost of Living
5. Population Shift

C. CITIES AND SUBURBS
1. Residential Suburbs
    a. Balkanization of Services
2. Intergovernmental Cooperation
3. Politics of Accommodation
4. Nonpartisanship
5. Family-Related Issues
    a. Public Schools
    b. Housing
    c. Land Use
    d. Environmental Quality

6. Metropolitan Government
    a. Councils of Government
    b. Annexation
    a. Councils of Government

IX. INTEREST GROUP POLITICS
A. PUBLIC OPINION
1. Public Opinion
2. Political Socialization
    a. Family, School, Media
    b. Socioeconomic Status (SES)
    c. Religion, Gender, Ethnicity
    d. Geography
3. Party Identification
4. Qualities of Public Opinion
    a. Direction, Intensity, Stability
5. Political Polls
    a. Population or Universe
    b. Probability
6. Beliefs
    a. Tocqueville: Individualism vs. Equality
    b. Pragmatism
7. Political Participation
8. Lack of Knowledge
9. Violence in America
10. Mass Opinion
B. PUBLIC OPINION POLLING
1. Purpose
    a. Discovery
    b. Manipulation: Edward Bernays
2. Origins
    a. Sources
    b. Plebiscite: Comitia Tributa
3. Straw Votes
    a. Two Forms
    b. Sample Bias
4. Market Research
    a. Business Bourse
    b. Public Relations
        1) Ivy Lee
    c. Census of Distribution
5. Social Survey
    a. Censuses
    b. Elmo Roper and George Gallup
C. THE FORMATION OF PUBLIC OPINION

1. Ethnic or Religious Homogeneity
2. Diversity
    a. Federalist, no. 10
    b. Alexis de Tocqueville
3. Consensus
4. Three Methods
    a. Patronage and Pork
    b. Terror and Obedience
    c. Voluntary System
5. Manipulating Public Opinion
    a. George Creel
    b. Edward Bernays
    c. Woodrow Wilson
    d. Poll-Taking
6. Conclusion

D. MASS MEDIA AND PUBLIC OPINION
1. Mass Media
    a. News Leaks, Backgrounders
    b, Fairmness Doctrine
2. Television
3. Decline of Newspaper Competition

E. INTEREST GROUPS
1. Two Views of Power in America
    a. Elitism: C. Wright Mills
    b. Pluralism: Robert A. Dahl
2. Interest Groups
3. Who Belongs?
4. Leadership
5. Modus Operandi
    a. Lobbying
    b. Money
    c. Mass Propaganda
    d. Grassroots Pressure
6. "Single-Issue" Interest Groups
7. Rise of PACs
    a. *Buckley* v. *Valeo* (1976)
8. Functions of Interest Groups

F. INTEREST GROUPS IN TEXAS
1. *NAACP* v. *Alabama* (1958)
2. Classification
3. Political Power
    a. Texas Research League
4. Activities and Techniques
5. Interest Group Power and Publiuc Policy
    a. Free Enterprise and Self-Reliance

6. Hazardous Waste Disposal Policies

X. POLITICAL PARTIES
- A. WHAT IS A POLITICAL PARTY?
  - 1. Election of Bill Clinton
  - 2. Elements of a Major Party
  - 3. Functions of Political Parties
- B. PARTY ORGANIZATION
  - 1. Purpose
  - 2. The American Pattern
    - a. Politics of Consensus
  - 3. Political Machines
  - 4. Party Discipline
    - a. Issues
  - 5. Electoral Appeal
  - 6. The Weber Model
  - 7. Electoral Representation
- C. PATTERNS OF PARTISAN POLITICS
  - 1. Origins of Two-Party Competition
  - 2. Twelfth Amendment
  - 3. Federalists and (Democratic-)Republicans
  - 4. Periods of Party Dominance and Realignments
  - 5. The First Party System: Jefferson Republicans
    - a. First National Coalition
    - b. Federalist Opposition
    - c. Era of Good Feelings
  - 6. The Second Party System: Jackson Democrats
    - a. Expanding Popular Suffrage
    - b. Tammany Hall, the Albany Regency, Loco-Focos, Barnburners
    - c. Whig Party
    - d. Third Parties: Anti-Masons, Know-Nothings
    - e. Democratic Split
  - 5. Third Party System: Lincoln Republicans
    - a. Civil War
    - b. Reconstruction
    - c. Political Machines
  - 6. McKinley Republicans
    - a. Populists and Progressives
    - b. First World War
  - 7. Roosevelt Democrats
    - a. Mass Media
    - b. Great Society
  - 8. Current Pattern
- D. ATTRIBUTES OF THE SYSTEM

1. Resiliency
2. Two-Party System
3. Typical Democrats and Republicans
4. Franklin Roosevelt and the Democratic Party
5. Republicans and Big Business
6. Minor Parties and Independent Candidates

E. PARTY STRUCTURE AND ACTIVITIES
1. Party Structure
2. State and Local Parties
3. National Convention
4. Delegates
   a. Presidential Primaries
5. Diminishing Role of the Convention
6. Party Responsibility

F. CAMPAIGNS AND CANDIDATES
1. Television and Political Campaigns
2. Campaign Organizations
3. Undecided Voters
4. The Primary Route
5. The President as Candidate
6. The Two Parties: Issues and Images
7. The Seamier Side
8. Television Debates
9. Media Costs
10. Image
11. Professional Campaign Managers
12. Newspaper Endorsements
13. Campaign Spending
14. New Laws on Campaign Finance
15. Costs of a Presidential Campaign

XI. PARTIES AND ELECTIONS IN TEXAS

A. THE POLITICS OF ELECTIONS
1. Changing Times
2. Extension of Suffrage
3. Voter Registration Law
4. Voter Turnout
   a. Level of Education
5. Direct Primaries
6. Expenses
7. Nominating Petition
8. General Elections
9. Special Elections
   a. Run-Off Elections
10. Miscellaneous

B. PARTY STRUCTURE
   1. Similarities
   2. Presidential Primaries: Super Tuesday
   3. Permanent Organizational Structure
   4. PARTY OFFICIALS
C. POLITICAL DEMOCRACY
   1. Liberals vs. Conservatives
   2. Republicans
   3. Recent Governors
   4. Presidential Campaign of 1992
   5. 1993 Senate Race
   6. 1994 Gubernatorial Race
   7. Continued Democratic Dominance
   8. Women
   9. Minorities
D. CAMPAIGNS AND MONEY
   1. Campaign Costs
      a. PACs
      b. Post-Election Contributions
   2. Campaign Treasurer
   3. Financial Reports
   4. Public Financing

XII. LAW AND LIBERTY
A. CIVIL LIBERTY AND SELF-GOVERNMENT
   1. Man's Twofold Character:
      Individual and Social Being
   2. Self-Determination
   3. Historical Conceptions
      a. Ancient Subordination of Individual
   4. Medieval Liberty as a Privilege
   5. Modern Liberty
      a. Rise of the Nation-State
      b. Christian Integrity and Responsibility
      c. The State Under Law
   6. Sources of Law and Liberty
B. BIBLICAL LAW
   1. Personal and Societal Righteousness
   2. Divine Revelation
   3. St. Patrick and Alfred the Great
   4. The Bible
      a. Restricted Access
      b. Translation and Publication:
         John Wycliffe, Johan Gutenberg
      c. Reformation: Martin Luther, John Calvin

C. ROMAN LAW
  1. Twelve Tables
  2. Code of Justinian
  3. Canon Law
D. FOLKLAW
  1. Peace-Keeping and Peace-Officers
  2. Proprietary Courts
    a. Precarium
    b. Proprietary Courts
  3. The King's Peace
  4. Divine Right
E. COMMON LAW AND EQUITY
  1. Stare Decisis
  2. *Jus Commune* of Canon Law
  3. Discovery
  4. Political Crises
  5. Struggles for Control
    a. Norman Kings vs. Subjects
    b. Crown vs. Feudal Barons
    c. Crown vs. Church
    d. Crown vs. Parliament
  6. Rule of Law
  7. Common Law Judges
    a. Political and Social Liberty
  8. Francis Lieber: Anglican Liberty
    a. National Sovereignty
    b. Personal Liberty
  9. Administrative Law

XIII. CIVIL LIBERTIES IN AMERICA
A. CONSTITUTIONAL FOUNDATIONS
  1. Bill of Rights
  2. Incorporation Theory
B. INDIVIDUAL FREEDOM AND SOCIETY
  1. Balancing Competing Principles
  2. Liberty and Order
    a. John Stuart Mill
    b. The One and the Many
  3. Supreme Court
C. FREEDOM OF SPEECH
  1. Benjamin Cardozo: Matrix
  2. Sedition Act of 1798
  3. Limits on Speech
    a. Schenck v. United States:

Clear and Present Danger Test
b. Gitlow v. New York:
Bad Tendency Test
4. Dennis v. United States
5. Threatening Speech
6. Expression vs. Action
a. United States v. O'Brien:
Symbolic Speech
b. Bethel School District v. Fraser
c. School Censorship
d. Simon and Schuster v. New York
Crime Victims Board
7. Preferred Freedoms and the Balancing Test

D. FREEDOM OF THE PRESS
1. Peter Zenger Case, 1735
2. New York Times v. Sullivan, 1964
3. Prior Restraint: Near v. Minnesota, 1931;
New York Times v. United States, 1971
4. The Progressive and the H-Bomb
5. Limitations
6. Free Press and Fair Trial
7. Shielding Reporters and Their Sources
a. Confidentiality
b. Privilege
c. Shield Laws
8. Television and Radio
a. Regulation
b. Last Protected
c. Equal Time

E. FREEDOM OF INFORMATION
1. Freedom of Information Act, 1966
2. Privacy Act of 1974

F. OBSCENITY
1. Obscenity
2. Roth v. United States, 1957
3. Miller v. California, 1973
a. Local Community Standards
4. Pope v. Illinois, 1987
5. Child Pornography

G. LIBEL
1. Libel
2. New York Times v. Sullivan

H. PRIVACY
1. Ninth Amendment
2. Griswold v. Connecticut, 1965

- a. Resulting Powers: Penumbras and Emanations
- 3. Roe v. Wade, 1973
- 4. Privacy Laws
  - a. Privacy Act of 1974
  - b. Fair Credit Reporting Act, 1970
  - c. Family Rights and Privacy Act, 1974

I. FREEDOM OF ASSEMBLY
- 1. Nazis in Skokie

J. FREEDOM OF RELIGION
- 1. First Amendment
- 2. Establishment Clause
  - a. Everson v. Board of Education, 1947
- 3. Prayers and Devotional Bible Reading
- 4. Sunday Closing Laws
- 5. Lemon v. Kurtzman, 1971
- 6. Free Exercise Clause
- 7. Mormon Polygamy
  - a. Mexican Cession of 1848
  - b. Reynolds v. United States, 1878
- 8. Cantwell v. Connecticut, 1940
- 9. West Virginia State Board of Education v. Barnette, 1943
- 10. Regulation of Religious Practice

K. LOYALTY AND SECURITY
- 1. Joseph McCarthy
- 2. Alien and Sedition Acts of 1798
- 3. Smith Act
- 4. McCarran Act

L. DUE PROCESS
- 1. Due Process of Law
  - a. Substantive vs. Procedural Due Process
- 2. Fundametal Freedoms
  - a. Palko v. Connecticut, 1937
- 3. Searches and Seizures
  - a. Fourth Amendment
  - b. Exclusionary Rule
  - c. Mapp v. Ohio, 1961
  - c. Good Faith Exception: United States v. Leon, 1984
- 4. Right to a Jury Trial
  - a. Duncan v. Louisiana, 1968
- 5. Rights of the Accused
- 6. Escobedo v. Illinois, 1964
- 7. Gideon v. Wainwright, 1963

8. Miranda v. Arizona, 1966
9. Nw York v. Quarles, 1984
10. Surveillance
    a. Uninvited Ear
    b. Omnibus Crime Control Act of 1968

M. CITIZENSHIP
1. Who Is a Citizen?
    a. Fourteenth Amendment
    b. *Jus Soli*
    c. *Jus Sanguinis*
2. Naturalization
3. Loss of Citizenship
4. A Nation of Immigrants
    a. MacCarran-Walter Act
    b. Immigration Act of 1965
    c. Undocumented Aliens
    d. Revision

N. SUMMARY
1. Bill of Rights
2. States
    a. Gitlow v. New York
    b. Everson v. Board of Education
    c. Mapp v. Ohio
    d. Selective Incorporation
3. Balancing Liberty and Order
    a. Buffer
4. Change, Citizen Action, and Dissent

XIV. THE STRUGGLE FOR EQUAL RIGHTS

A. THE FEDERAL SYSTEM
1. Multicultural Society
2. Distinct Groups
3. Racial Polarization
    a. Clash of Civilizations
4. Multiculturalism
    a. Fragmentation
    b. Assimilation
    c. Diversity Myth

B. AN AMERICAN DILEMMA: HISTORICAL BACKGROUND
1. Slavery
2. African-American Heritage
3. Scott v. Sandford, 1857
    a. Divided Political Establishment
    b. Political Context
    c. Background of the Case

- d. Missouri Compromise
- e. Black Citizenship
- f. Consequences
- g. Aftermath

4. Civil War
5. Reconstruction Amendments
   - a. Thirteenth
   - b. Fourteenth
   - c. Fifteenth
6. Civil Rights Act of 1875
   - a. Civil Rights Cases of 1883
   - b. Jim Crow Laws
7. Plessy v. Ferguson, 1896
   - a. Racial Segregation
   - b. John Marshall Harlan
   - c. Separate but Equal Doctrine
8. Case of Linda Carol Brown
   - a. School Segregation in Topeka
   - b. NAACP
9. Brown v. Board of Education, 1954
   - a. Brown II (1955)
10. Confrontations
11. Aftermath
12. Busing
    - a. De Jure vs. De Facto Segregation

C. THE CIVIL RIGHTS MOVEMENT

1. Montgomery School Boycott
   - a. Rosa Parks
   - b. Martin Luther King, Jr.
   - c. Southern Christian Leadership Conference
2. Sit-Ins and Freedom Rides
3. Birmingham
4. March on Washington

D. LEGISLATIVE BREAKTHROUGH