

University of Montana
Department of Political Science

Dr. Grey
PSCI 354
Tues/Thurs 12:30-1:50

Email: ramona.grey@umontana.edu

Fall 2020
Office Hours: via Zoom, email for
appt.
LA 353

**Contemporary Political Theory & Constitutional Law:
What is freedom?**

*"The word **freedom** is incompletely descriptive. To understand what freedom means, we must know what it is —freedom **from** or freedom **for**."*— Maurice Cranston

*"Do you see these stones in this bare, scorching desert? Turn them into bread and mankind will run after you like sheep, grateful and obedient. . .But you did not want to deprive man of freedom and rejected the offer, for what sort of **freedom** is it, you reasoned, if obedience is bought with loaves of bread?"*— Dostoevsky, *The Brothers Karamazov*

"What is the value of any political freedom, but as a means to moral freedom?"—Henry David Thoreau, *Walden and Other Writings*

God a'mighty, if I was alone I could live so easy. I could go get a job an' work, an' no trouble. No mess at all, and when the end of the month come I could take my fifty bucks and go into town and get whatever I want. —John Steinbeck, *Of Mice and Men*

Course Description:

Political philosophers, writers, legal scholars, politicians, and citizens often speak of *freedom*, (some even make a distinction between liberty and freedom.) But what exactly does freedom mean? There is considerable debate among political thinkers, generally speaking, and especially among the writers and legal scholars we will examine this semester over whether freedom or "liberty" should be treated as an *end* (good for its own sake) or a *means* (to other human ends or values.) This seminar we will examine both forms of freedom, considering how the embrace of negative or positive freedom influences our notions—not to mention legal interpretations of the U.S. Constitution—of what properly belongs to the public versus the private sphere, the relationship between society's good and the individual's interest, as well as what he/she believes are the sources of oppression and its remedy. As we will discover, even the opinions of Supreme Court justices have tended to show a preference for one form of freedom over another. By examining the works of major contemporary theorists and Supreme Court cases, we will consider the analytical, empirical and normative value of making a distinction between negative and positive freedom.

Course Objectives:

After successfully completing the course work, the student should be able to:

1. Distinguish between negative and positive freedom, and recognize how this analytical framework influences contemporary political theory, interpretations of major civil rights cases and legal debate.
2. Identify and assess the various tests or criteria (such as relevance, significance, or ethical standards) that can be used to establish the value of one theoretical position or legal argument over another.
3. Present and orally defend a series of analytical essays which examine a thinker's ideas about freedom, human nature, justice, social obligation, and political legitimacy. The purpose of these essays will be to provide focus to readings and discussions.
4. Orally critique an essay in terms of its analytical clarity, accuracy in its interpretation of the readings, logic and ethical soundness of its conclusion(s).
5. Write and orally present a case brief, summarizing and analyzing the arguments of justices on the Supreme Court.

Course Grading:

PS 354 will be taught as a seminar **remotely via synchronous Zoom**. This means that, as John Dewey observes, the teacher "steers the boat, but the energy that propels it must come from those who are learning." Each student, therefore, will present & defend in class **2 analytical essays** (30% of course grade or **15 pts** per essay.) The essays (see note for those taking course with PSC 400) must not exceed *4 double-spaced, typed pages*. **Please number essay paragraphs for reference in class discussions**. In addition, students will write **1 case brief** (15 pts or 15% of course grade.) The briefs must not exceed *3 double-spaced, typed pages* (see sign-up and instructions below.) Each essay and brief will be due no later than the class period *before* you are scheduled to orally present it. On this *due date*, please email your essay to Prof. Grey. Your briefs will be emailed to Prof. Grey after class. If you are absent the day we are scheduled to discuss your essay or case brief, you will not get credit for it. **Sign-up sheets for essays & briefs posted on Moodle; please email to Prof. Grey which essay prompts & cases you wish to address.**

Class participation and attendance:

Each student will be graded on class **participation** and attendance (**10%** of course grade.) *** Students who attend class, but seldom raise questions or participate in discussion usually receive between 5pts out of 10. See note below regarding COVID-19.)

Finally, since it does not honor a writer to read him/her without seeking to challenge him/her, students will be required to submit **two written questions for the essays discussed (10%** of course grade.) They should plan on writing questions for all essays distributed in class, and expect to turn in their questions (via Moodle) on time for credit.

Exams:

Each student will complete on time **a comprehensive final**, worth 35pts (or **35%** of course grade). The final will be take-home, 12-15 pages and must be typed, double-spaced. {There will be no midterm.} Late final papers will be deducted a letter grade for every business day it's late.

COVID-19 note: Wearing a mask in class is mandatory. **All students with cough/flu-like symptoms should NOT attempt to come to ANY in-person class.** Although you may still feel able to attend the in-person class, by doing so you put **others around you at risk**. As healthy undergraduates, you are not the most "at sector of our population, but it is your responsibility to do your part to make sure that you do not transmit the virus to others who might be at risk (including student peers and many faculty and staff who are older and at much greater risk.) If you are sick or displaying symptoms, please contact the Curry Health Center at (406) 243-4330, please let me know if you are sick. Up-to-Date COVID-19 Information from University of Montana Coronavirus Website: <https://www.umt.edu/coronavirus>UM COVID-19 Fall 2020 website: <https://www.umt.edu/coronavirus/fall2020.php> We strongly encourage you to remain vigilant outside the classroom in mitigating the spread of COVID-19

Students taking this course to **fulfill writing the 400 requirements** will be required to revise and *expand one of their essays into 10-12 pages*. Substantive and grammatical revisions will be expected. The writing grade will be based upon the following writing guidelines and expectations:

- The critical, interpretive essay must provide a **clear thesis** (preferably at the end of the introductory paragraph), indicating the author's main points with regard to the essay question.
- The essay must support the thesis statement with **specific references** to the primary texts, **providing footnotes** for all quoted material and a **bibliography** at the end. Please use Chicago style.
- Students should pay close attention to their **choice of words** in summarizing and clarifying the substance of a political theory (i.e. *the* good state and *a* good state are *not* the same). They must demonstrate awareness of how words can clarify and/or obscure a theorist's principles, illustrations, and, in general, the nature of their political inquiry.
- The first essay draft will be returned with editorial comments. Students are encouraged to talk with me about their essays before revising them.
- Student must include **original essay draft with revised, extended draft**.
- Only **one revision** is allowed. Please proof read the final drafts for any grammatical, spelling, or typos before turning it in.
- Revised essay will be **graded based upon:** grammar, spelling, appropriate choice of words, transitions between paragraphs, use of quoted material to support their interpretation, accuracy in paraphrasing, logical organization of ideas and points, and clarity.

Please note:

- Plus/Minus Grades will be used based on the following: 100-93 = A; 92-90 = A-; 89-87 = B+; 86-83 = B; 82-80 = B-; 79-77 = C+; 76-73 = C; 72-70 = C-; 69-67 = D+; 66-63 = D; 62-60 = D-; 59 < = F

- If student elects to take course as a Pass or No Pass, they should be aware that a total of 69 pts. or lower will be a NP.
- Please see me and UM catalog for criteria on Incomplete Grades.
- *All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code. The Code is available for review online at <http://www.umt.edu/SA/VPSA/index.cfm/page/1321>.*
- *Students with disabilities may request reasonable modifications by contacting me. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students (DSS). "Reasonable" means the University permits no fundamental alterations of academic standards or retroactive modifications. For more information, please consult <http://www.umt.edu/disability>.*

Required Texts:

Berlin, "Two Concepts of Liberty," see link below; "Introduction" to *Liberty* (on Moodle)
Hayek, *Road to Serfdom*

Hayek, selections from *The Constitution of Liberty* (on Moodle)

T.H. Green, "Liberal Legislation & Freedom of Contract" (on Moodle)

Wendell Berry, *Sex, Economy, Freedom & Community*

B.F. Skinner, *Beyond Freedom and Dignity*

Erich Fromm, *Escape From Freedom*

Steinbeck, *Of Mice & Men*

****Select Supreme Court Cases** (on Moodle)

Tentative Schedule:

8/20 ***Introduction to the Course: Negative v. Positive Freedom (Synchronous Zoom)***

Read: Berlin, *Liberty*, "Two Concepts of Liberty:"

https://cactus.dixie.edu/green/B_Readings/I_Berlin%20Two%20Concepts%20of%20Liberty.pdf; Hayek, *The Road to Serfdom*

Recommend: Grey, *Political Theory & The Human Predicament: An Introduction to Major Political Thinkers*

8/25 ***Two Concepts of Freedom in Political Theory***

Read: Hayek, *The Road to Serfdom*;

8/27 ***Two Concepts of Freedom in Political Theory***

Essays: (*due **8/27: please post on Moodle by 2pm**): What form of liberty, positive or negative, would a conservative, like Burke, embrace and why?

Recommended Readings on Hayek:

Sunstein, "The Road to Serfdom," *The New Republic*, 20 October 1997

Gray, J. "The Road From Serfdom," *National Review*, 27 April 1992

Hazlett, T. "The Road From Serfdom: An Interview with F.A.

Hayek, *Reason*, July 1992

Kumar, A. "F.A. Hayek: Economics and Politics," *Indian Journal of Political Science*, Jan. 1992

Lundstrom, M. "Is Anti-Rationalism Rational? The Case of F.A.

Hayek," *Scandinavian Political Studies*, 1992

Miller, D. "F.A. Hayek: Dogmatic Skeptic," *Dissent*,
Summer 1994

9/1

***** No Class Meeting *****

Read: Hayek, *The Constitution of Liberty* excerpts (on Moodle); Prepare
Case Briefs & Draft Essays

9/3-
9/8

Liberalism & The Two Concepts of Liberty

Essays: (*due **8/27: please post on Moodle by 2pm**) What form of
liberty, positive or negative, would John Locke embrace and why?

Essays: (due **8/27: please post on Moodle by 2pm**) What form of
liberty, positive or negative, would J.S. Mill embrace and why?

Essays (due 9/3): What form of liberty, positive or negative, does Hayek
embrace and why?

Essays (due 9/3): What role(s) for the state would Hayek's theory of
freedom support? Why?

9/10

Economic Freedom & Property Rights: Lochner Era

Read: *Lochner v. New York* (1905); *Adkins v. Children's Hospital* (1923);
West Coast Hotel Co. v. Parrish (1937), (on Moodle); T.H. Green, "Liberal
Legislation & Freedom of Contract," (on Moodle);

Case Briefs (due 9/10): *Lochner v. New York* (1906); *Adkins v. Children's
Hospital* (1923); *West Coast Hotel Co. v. Parrish* (1937)

Recommended Readings on T.H. Green:

Anderson, O, "The Feminism of T.H. Green...," *History of
Political Thought*, Winter 1991

Bevir, M. "Welfarism, Socialism, and Religion...,"
The Review of Politics, Fall 1993

Etzioni, A. *Rights & the Common Good*

Harris, P., "Moral Progress & Politics: The Theory of T.H.
Green," *Polity*, Spring 1989

Nichols, D. "Positive Liberty: 1880-1890," *Amer. Pol. Sci.
Rev.*, March 1962

Simhony, A. "Was T.H. Green a Utilitarian?," *Utilitas*, May
1995

"T.H. Green: The Common Good Society,"

History of Political Thought, Summer 1993

9/15-
9/17

Economic Freedom & Property Rights cont.

Read: Wendell Barry, *Sex Economy, Freedom & Community*; Cases:
McNeal v. Culver (1961); *Gideon v. Wainwright* (1963); *Miranda v. Arizona*
(1966); *Colorado v. Connelly* (1986); see below also *Erich Fromm, Escape
From Freedom*;

Essays (due 9/10): Is private property truly "private"? If so, why? If not,
why not? Discuss with reference to above cases & opinions.

Essays (due 9/10): What are the strengths, if any, do you find in **Hayek's** conception of liberty? What are the weaknesses, if any, do you find in Hayek's conception of liberty? In addition to drawing upon Hayek's writing, you may also reference the majority and/or dissenting Supreme Court opinions in the assigned cases.

Essays (due 9/15): Is there such a thing as a "just price" or a "fair wage?" Would you join Fromm in establishing a rational economic system? (p. 272 hardback ed.; p. 299 paperback ed. of *Escape From Freedom*)

Essays (due 9/15): What does **T.H. Green** mean by liberty, and does his conception of liberty make him more or less a 'liberal' thinker?

9/22

Liberty & Due Process of Law: 5th & 6th Amendment Rights

Read: Wendell Barry, *Sex Economy, Freedom & Community*

Case Briefs (due 9/22): *McNeal v. Culver* (1961); *Gideon v. Wainwright* (1963); *Miranda v. Arizona* (1966); *Colorado v. Connelly* (1986)

9/24

Liberty & Due Process of Law: 5th & 6th Amendment Rights cont.

Read: Wendell Barry, *Sex Economy, Freedom & Community; California v. Byers* (1971)

Essays (due 9/22): How do the opinions in *Miranda v. Arizona* (1966) and *Colorado v. Connelly* (1986) illustrate the tensions between negative and positive freedom? How would you have ruled in either case, and why?

9/29

Due Process of Law: Balancing Individual Liberty & the Public Interest

Read: B. F. Skinner, *Beyond Freedom & Dignity*

Case Briefs (due 9/29): *California v Byers* (1971)

Essays (due 9/24): "Freedom requires order." Discuss with reference to the Supreme Court opinions (majority and dissenting) in the *Byers* case above. How would you have ruled in the case, and why?

Essays (due 9/24): "There are two kinds of freedom: the freedom of the community and the freedom of the individual. The freedom of the community is the more fundamental and the more complex." What does **Barry** mean by this? Also discuss with reference to the assigned cases above.

10/1-

Communitarians, Conservatives (Radical?) & Liberty

10/6

Read: B. F. Skinner, *Beyond Freedom & Dignity*; Cases: *Mapp v. Ohio* (1961); *Hudson v. Michigan* (2006);

Essays (due 9/29): Is Wendell Barry embracing a positive or negative notion of freedom? Please explain.

Essays (due 9/29): While **Barry** is critical of the libertarian view, what makes his conception of freedom conservative? (Note quote from

Barry below.) Is his particular conservative philosophy a relic of the past, or can it still be found in American political discourse today? Discuss

Essay (due 10/1): “The danger of the ideal of competition is that it neither proposes nor implies any limits. It proposes simply to lower costs at any cost, and to raise profits at any cost. It does not hesitate at the destruction of the life of a family or the life of a community. It pits neighbor against neighbor as readily as it pits buyer against seller. Every transaction is *meant* to involve a winner and a loser. And for this reason the human community is pitted without limit against nature. For in the unlimited competition of neighbor and neighbor, buyer and seller, all available means must be used; none may be spared.” – **Berry** Discuss

10/8 ***Due Process of Law, Searches: Balancing Individual Liberty & the Public Interest cont.***

Read: Skinner, *Beyond Freedom & Dignity*;

Briefs Due 10/8: *Mapp v. Ohio* (1961); *Hudson v. Michigan* (2006);

10/13 ***Due Process of Law, Searches: Balancing Individual Liberty & the Public Interest cont.***

Read: Steinbeck, *Of Mice and Men*;

Essays (due 10/8): Berlin wishes to define ‘negative liberty’ as that “area” within a person should be left alone to do whatever he or she wishes, without interference by others. What difficulties—especially with regard the above cases involving search and seizure, and privacy rights—does the Supreme Court appear to encounter in identifying these “areas” of absolute non-interference with a person’s life?

10/15 ***Freedom, Dignity, Democracy v. Behavioral Science?***

Read: Fromm, *Escape From Freedom*; Cases; Furman v. Georgia (1972); *Penry v. Lynaugh* (1989); *Atkins v. Virginia* (2002)

Essays (due 10/13): Can science be either anti-social or asocial? How does Skinner answer? Do you see problems with his answer?

Essays (due 10/13): If Skinner had his way, we would have no alternative but to choose between science and democracy. Is this a valid choice? Why, why not?

10/20- ***Science, Freedom, Accountability, & Death Penalty Sentencing***

10/22 Read: Fromm, *Escape From Freedom*

Case Briefs (due 10/20): *Furman v. Georgia* (1972); *Penry v. Lynaugh* (1989); *Atkins v. Virginia* (2002);

Essay (due 10/20): If one were to apply Skinner's views on freedom and dignity (as judgment) to *Furman v. Georgia* (1972); *Stanford v. Kentucky* (1989), OR *Atkins v. Virginia* (2002)—would this have altered the majority's opinion in these cases? If Skinner were writing a majority opinion or dissenting opinion in any one of these cases, what would it be?

10/27

Of Mice & Men: an anatomy of agency & a double homicide

Read: Fromm, *Escape From Freedom*

Recommend Reference: List of U.S. Supreme Court decisions on capital punishment:

https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_decisions_on_capital_punishment

Essays (due 10/22): The defendant, Mr. Lenny (from *Of Mice & Men*) has appealed his sentenced of death for the murder of a young woman, claiming diminished mental capacity. Drawing upon the death penalty case precedent (majority and/or minority opinions), please write the majority opinion of the Supreme Court.

10/29

Of Mice & Men: an anatomy of agency & a double homicide

Essays (due 10/27): The defendant, Mr. George (from *Of Mice & Men*) has appealed his sentenced of death for the murder of Mr. Lenny, claiming he was motivated to spare his friend emotional trauma of an unusual & cruel death penalty. Drawing upon the death penalty case precedent (majority and/or minority opinions), please write the majority opinion of the Supreme Court.

******* Tuesday, November 3rd Election Day: No Class *******

11/5-
11/17

Fromm's Humanist Vision of Freedom & Critical Theory

Essays (due 10/29): What does Fromm find wrong with a negative conception of freedom? Is there any aspect of negative freedom that he finds commendable?

Essays (due 11/5): If one were to apply Fromm's view of freedom to— *Furman v. Georgia* (1972), *Stanford v. Kentucky* (1989) or *Atkins v. Virginia* (2002)—would this have altered the majority's opinion in these cases? If not, why not? If Fromm were writing a majority opinion or dissenting opinion in any one of these cases, what would it be?

Essays (due 11/10): Man is rational, says Fromm, not because he always thinks or acts rationally but because he has this need to rationalize whatever he does. What does Fromm mean? What does it mean (to you) to say that people behave or fail to behave in a rational way?

Essays (due 11/10) "What is good or bad for man is not a metaphysical question, but an empirical one that can be answered on the basis of an analysis of man's nature and the effect which certain conditions have on him." (266 -Escape From Freedom) What difficulties are involved in making an "empirical" view of human nature the basis of a political theory?

Essays (due 11/12) Fromm, in common with other writers on the left (and who embrace a positive notion of freedom), has a concept of alienation. What is it? Is there any comparable concept in liberal (i.e. Hayek's) thought? Has the concept of alienation become outdated, too blunt for an analytical tool?

Recommended Readings on Fromm:

Bartlett & Schodall, "Fromm, Marx, and the Concept of Alienation, *Science and Society*, Summer 1963

Fromm, *Man For Himself*

Kariel, "The Normative Pattern of Erich Fromm's Escape From Freedom," *Journal of Politics*, vol. 19, 1957

Marcuse, *One Dimensional Man*

Schaar, *Escape From Authority: The Perspectives of Erich Fromm*, 1961

Briggs, "From Slaves to Robots," *New Statesman and Nation*, 23 June 1956

Burston, *The Legacy of Erich Fromm*, 1991

H.P. "The Insane Society," *Dissent*, vol. 3, Winter 1956

Spitz, "The Appeal to the Right Man," in *Democracy and the Challenge of Power*, 1958

11/17

Conclusions

Final: Definitions of freedom, Erich Fromm's and Isaiah Berlin's to take two examples, are not without political and legal consequences. Discuss their respective positions on freedom, drawing on any three (3 only) Supreme Court cases we have discussed this semester.

Final Paper Due –November 23rd by 12pm.

Essay Writing & Grading Guidelines:

1st: Please: put the [essay question/statement](#) on the top of your paper. . .

Thesis & Transitions – 20%

- Clear, thoughtful, and coherent thesis statement that addresses essay question/statement
- Thesis placed at end of 1st paragraph
- Stays focused on essay topic

Analysis – 65%

- Strong supporting evidence, drawn from reading material for the **thesis**

- Provides relevant information, clearly presented
- Fully developed, *interesting* arguments and points
- Analysis and conclusions are logical and precise
- Shows that the writer understands the author's argument, logic, and moral reasoning before critiquing or defending his/her argument
- Credit is given to outside sources, where appropriate, and properly cited in footnotes

Format, Word Choice, Mechanics & Quotations 15%

- Format: 3 typed, double-spaced pages, 10-12 point font
- Grammar: Neatness, spelling, grammar, punctuation, good transition sentences between paragraphs and tight topic organization
- Quotations: Inserted in body with page number, relevant to point, not taken out of context, best summary of thinker's view, and properly cited in footnotes.

Don't editorialize! Give us nothing but your opinion w/no reference to our reading.

Don't give us a book review! No rehashing of lecture notes or quote for the sake of quoting. # (Too much narration/description.)

Don't quote Wikipedia or Dictionary for definitions! Instead provide your own ideas and criteria for the meaning of key political terms.

Some General tips for Good Writing:

1. Good writing stems from good thinking. Clarify your intent & major ideas before you start. Don't expect that your design will materialize during writing. A good outline can help organize your ideas. Sketch out your major points and their logical relationship.
2. Be a master builder. Your building blocks are sentences and paragraphs. Each essay should have a specific theme; each paragraph should have a specific purpose regarding that theme; and each sentence should have a specific purpose in its paragraph.
3. Good writing results from revision. First drafts are almost always lousy writing. Samuel Johnson said, "What is written in haste is read without pleasure." Please note!
4. Become your own best editor. If you are committed to your ideas, you will be willing to revise and revise until they are expressed clearly.
5. "Simplicity, simplicity, simplicity," Henry David Thoreau admonished. His advice applies to composition as well as to life. Use clear-cut syntax and active voice (passive voice tends to distract & obscure.) Avoid unnecessary verbiage, such as "first and foremost" instead of "first." A good writer, said Thomas Jefferson, can use one word instead of three.
6. Be precise in your diction. Avoid a \$100 word when a \$5 word will do. "Never," said George Orwell, "use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent."
7. And "if it is possible to cut a word out," Orwell added, "cut it out." Carefully selected nouns and verbs rarely require adjectives and adverbs.
8. Don't be a hedger. If you believe in your purpose and conclusions, be positive and bold. Tentativeness undercuts your credibility. Avoid, for example, "it seems," "perhaps," "somewhat," "it appears," etc. I call these 'chicken words.'
9. Keep your reader in mind. Guide the reader through your train of thought. Keep the reader awake by varying the length and beginning of sentences. Keep the reader involved by providing interesting examples, transitions, and conclusions. Use short and apt quotations and paraphrase the rest.

10. Be technically correct. Grammar and spelling errors tell the reader that you are careless. Read your writing aloud to catch your mistakes.

Briefing a Case

Thoughtful and precise notes will enable you to master not only the study of Constitutional Law, but also help you take good notes for other class reading assignments. Case briefs are the basis of participation in class discussion and useful for retrieving information when writing essays and the final exam. When carefully composed, they bear witness to the thought given to the material we are investigating.

In order to compile a useful set of notes, you will have to analyze the reading material and the arguments of the justices. In addition, you will have to synthesize the results of cases in order to derive some general understanding from them. To guide your attempts, I have prepared the following description & grading rubric for 'briefing' a case; that is, composing a "written summary or abstract in your *own* words."

Generally, students compose this summary after reading the case completely at least once without taking notes. The initial reading is not, however, passive, because one must read the case with certain questions in mind in order to analyze it on the second reading. Making time for two readings and having the patience to do them will, in the end, help you to avoid taking detailed notes on parts of the opinion which later prove beside the point or redundant.

As you gain experience preparing notes, you will develop a number of questions to ask when reading. Reading in terms of specific questions give a purpose to the work beyond completing the task someone else assigned.

The case brief is usually 2-3 pages maximum with the following format & citation:

Case Name
{**Underlined or Italicize**}
U.S.

A. Facts (1 pts):

What are the facts of the case? Usually one answers this question by describing the parties and events which led them to seek relief from the courts. Specifically, on notes:

- (1) Who did what to whom, how and under what circumstances;
- (2) What remedy did the complaining party in the trial court seek;
- (3) What action did the lower court take;
- (4) *What reasons did the complaining party (appellants) give to justify the Supreme Court taking its side in the matter;
- (5) *What reasons did the defending party (respondents) offer to justify the Supreme Court taking its side in the matter?

*Be prepared to orally state.

B. What is the Constitutional question(s) decided in the opinion and answers? (1 pts):

What are the legal issues? One usually answers this question by stating specifically the constitutional or statutory question(s) the Court answered in order to decide the case. You should endeavor to state the question(s) so that one may answer them with either a "yes" or "no" response when recording the Court's decision.

For example: one might state the legal question in *Hammer v. Dagenhart* 247 US 251 (1918), as follows: May Congress exclude the products of child labor from interstate commerce in order to end the practice of employing children to manufacture products for sale in other states?

In other words, the question (or questions) would be phrased to enable the reader to understand it and to distinguish this case from others studied. Simply to present the question, “Is the law Constitutional?” is not sufficient to enable one either to understand the issue or to distinguish it from other cases.

C. Majority Opinion: What is the opinion of the Court and who wrote it?

After recording the answers which the majority or plurality gave to the question(s), carefully summarize in your own words the Court’s reasons for its decision. Reading the material entirely before beginning to brief will enable you to accomplish this section with precision. Asking yourself the following questions should also help with this major part of your brief:

- (1) What are the major propositions which the author of the opinion developed to justify the ruling?
- (2) Does the proposition (or reason) stand independently of others offered by the author; or, to state it differently, is the proposition, if stated alone, sufficient to justify the decision?
- (3) What are the author’s main points in defense of the proposition?
- (4) What are the underlying problems/ideas/concepts with which the judicial opinion addresses?
- (5) What is the outcome of the decision?: Reversed, Dismissed, Affirmed, Remanded?

D. Concurring and/or Dissenting Opinions?

You should read and brief concurring and dissenting opinions with the care given the majority opinion. Again, brief each opinion by stating the legal issue, if concurring justice(s) or dissenting justice(s) perceive them as different than what the majority does, and the reasons the author has regarded as essential to the decision. A concurring opinion is written when a member of the Court has voted with the majority but wishes to support the decision with reasons different from theirs. Consider:

- (1) What is the basis of the disagreement between its author and others on the court?
- (2) What parts does the concurrent opinion agree with the majority, and what parts does the author disagree, or think should be noted?
- (3) What parts (if any) does the dissenting opinion agree with the majority, and what parts does the authority disagree?

(Sections C & D = 8 pts)

E. Significance of the Case: What is remarkable or noteworthy about this ruling? (5 pts)

Consider: What is the long-term significance of the Court’s ruling? What *tests or standards* are useful in evaluating or settling the political, legal, ethical issues raised by the Supreme Court’s decision(s)?