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17.245 The Supreme Court, Civil Liberties, and Civil Rights
Fall 2006

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17.245 Midterm Exam – Fall 2006

General instructions: remember to save enough time for the essay questions; please write clearly; and please be as specific as possible – avoid unsubstantiated generalizations!

Part One – Identifications (twenty points)

Please identify and give the significance of FOUR of the following SIX items. Each ID is worth five points.

- a. The Ninth Amendment
- b. The three-fifths clause
- c. Haitian Centers Council v. McNary
- d. “It is emphatically the province and duty of the judicial department to say what the law is.”
- e. “[The best test of truth is the power of the thought to get itself accepted in the competition of the market.”
- f. “A prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded.”

Part Two – Essays (forty points each)

Please answer BOTH of the following essay questions.

- a. Richard Posner, a judge on the United States Court of Appeals for the Seventh Circuit in Chicago, has recently argued as follows:

The proper way to think about constitutional rights in a time like this is in terms of the metaphor of a balance . . . with the balance needing and receiving readjustment from time to time as the weights of the respective interests change. The safer we feel, the more weight we place on the interest in personal liberty; the more endangered we feel, the more weight we place on the interest in safety. . . But these are details. The essential point is that, one way or another, law must adjust to necessity born of emergency.

Please discuss this argument in light of your reading of the wartime constitutional cases that we have studied this semester. Is Judge Posner correct? Why or why not?

- b. In his dissenting opinion in Adarand Constructors v. Peña (1995) – a case involving affirmative action in government contracting -- Justice John Paul Stevens observed that “[t]here is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination.” Please consider this statement in light of the cases involving racial discrimination and equal protection that we have studied thus far. Does the Constitution embody a principle of “neutral” decision-making where race is concerned? Should it? In responding to this question, please give at least some consideration to the following: the text of the Constitution; Plessy v. Ferguson, Brown v. Board of Education, Gratz v. Bollinger, and Grutter v. Bollinger.

END OF EXAM