Con Law I

March 23, 2009

Class Notes and Discussion Questions

1. What does it mean to say that the Reconstruction Amendments are self-executing?

2. What is “state action” after The Civil Rights Cases?

3. What power does Section 2 of the 13th Amendment grant to Congress?

4. What power does Section 5 of the 14th Amendment grant to Congress?

5. In your mind, what is the most obvious Constitutional provision that would authorize Congress to enact the statute at issue in Jones? What Constitutional authority does the Court find to be most relevant?

6. Ask the same questions in relation to Morrison.

7. Compare McCulloch’s ends-means test to Boerne’s congruence and proportionality test. How are they different?

8. The Rehnquist Court’s “federalism revolution” (including cases like Lopez, Morrison, Boerne, and Seminole Tribe) includes a powerful strain of what critics refer to as “judicial supremacy.” What do you think this means? Can you see any examples of arguments made by the Court? Review Boerne, especially, for an example.

9. What role does state sovereign immunity play in regard to statutes Congress enacts in accordance with its Reconstruction amendments-related powers.