

**CONSTITUTIONAL STRUCTURE AND RIGHTS**  
**PSC 223**  
Mr. Jackson  
Fall 2016

## **COURSE SYLLABUS**

Assigned reading has been posted on Blackboard as .pdf files under “Course Materials.” There is no assigned textbook.

This course concerns how the Constitution of the United States sets up the structure of government in three distinct ways: “Horizontal” (among the three branches of the federal government); “Vertical” (allocation of power between the federal government and states); and “Individual” (rights of individuals vis-à-vis the federal and state governments). In addition to the Constitution itself, the principal vehicle for our examination will be more than 200 years of Supreme Court opinions, starting with *Marbury v. Madison* in 1803. As a result, for most of the course, the issue is less an underlying normative one of whether the Constitution has set up the “right” structure, but, rather, the positive one of filling out the implications of the structure that the Constitution has, indeed, set up. But in that examination, it is essential to develop a sense of how well the Supreme Court is doing in explaining its outcomes in terms of the Constitution.

In the cases we will read, the Court is invariably construing the Constitution of the United States, either specific provisions or authority and limitations arising out of what the Court perceives to be the underlying structure embodied in the Constitution. In *every* case, you should make the effort to determine which constitutional provision is (or provisions are) involved and read the provision(s) carefully for yourself—the syllabus that follows does not “assign” specific provisions of the Constitution, but those provisions are the foundation of everything we will do in the course.

**Week 1** (August 31): Course Introduction & The Nature of Judicial Review

### Introduction

Orin Kerr, “How to Read a Legal Opinion”  
LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* (3d ed. 2000) pp. 18 –  
29 & 302 – 311

David Law, *A Theory of Judicial Power and Judicial Review*,  
<http://ssrn.com=1112613> (2008), pp. 3 – 13 & 76 – 85

**Weeks 2 - 6** (September 7, 12, 14, 19, 21, 26 & 28; October 3, 5, 10 & 12):  
Legislative, Executive, & Judicial

The Foundations of Judicial Review

*Marbury v. Madison*

Sections 13 & 14 of the Judiciary Act of 1789

*Hayburn's Case* [read in light of *Marbury v. Madison*]

*Stuart v. Laird* [read in light of *Marbury v. Madison*]

“Horizontal” Structure: Judicial Review and its Limits

*Lujan v. Defenders of Wildlife*

Note on *Massachusetts v. EPA*

Note on Taxpayer Standing

Note on *Clapper v. Amnesty Int'l USA*

*United States v. Windsor*

*Hollingsworth v. Perry*

*Powell v. McCormack*

Note on *Walter Nixon v. United States*

“Horizontal” Structure: Separation of Powers

*Youngstown Sheet & Tube Co. v. Sawyer*

*Zivotofsky v. Kerry*

*Goldwater v. Carter*

Note on *INS v. Chadha* and *Clinton v. City of New York*

*NLRB v. Noel Canning*

Note on Congressional “Control” Over the Removal of “Officers”

*United States v. Nixon*

Note on Presidential Immunity from Civil Actions

Impeachment: (Read Art. I, §2, cl. 5 and § 3, cl.6 & 7; Art. II, § 4)

Issues Involving “Horizontal” Structure That Also Implicate Individual Rights:  
Enemy Combatants, Executive Detention, and Habeas Corpus

*Ex Parte Milligan*

Applicable Provisions as an Aid from *Quirin* to *Boumediene*

*Ex Parte Quirin*

*Hamdi v. Rumsfeld*

Note on *Hamdan v. Rumsfeld*

*Johnson v. Eisentrager*

*Boumediene v. Bush*  
Note on *Al-Maqaleh v. Gates*

**Week 7** (October 19)

Mid-Term

Orin Kerr on How to Answer an Exam

**Weeks 8 - 9** (October 24, 26 & 31; November 2): Federal & State

“Vertical” Structure: Judicial Review

*Martin v. Hunter’s Lessee*

“Vertical” Structure: The Nature of the Relationship of the States to the Nation

*McCulloch v. Maryland*  
*U.S. Term Limits, Inc. v. Thornton*

“Vertical” Structure: Constitutional Limits on the Reach of the Federal Government: Enumerated Powers

*National Federation of Independent Business v. Sebelius*  
[Note “break-out” readings in the areas that follow]

Background

Roberts, pp. 1 – 15 (to “III”); 58 (from “\*\*\*\*”) – 59  
Scalia, pp. 1-4 (to “I”); 64 (from “\*\*\*\*”) – 65

Taxing Power

*United States v. Butler*  
*Bailey v. Drexel Furniture Co.*  
Note on *Helvering v. Davis*  
Roberts, pp. 31 – 45 (to “IV”)  
Scalia, pp. 16 (from “II”) – 28 (to “IV”)

Commerce Clause

*Wickard v. Filburn*  
*United States v. Lopez*  
Note on *United States v. Morrison* and *Gonzales v. Raich*

Roberts, pp. 15 (from “III”) – 27 (to “2”)  
Ginsburg, pp. 1 – 31 (to “III”)  
Scalia, pp. 4 (from “I”) – 16 (to “II”)  
Thomas, pp. 1 - 2

Necessary and Proper Clause

*United States v. Comstock*  
Roberts, pp. 27 (from “2”) – 30  
Ginsburg, pp. 31 (from “III”) – 37  
Scalia pp. 5 (“A”) – 10 (“B”) [again]  
Spending Power & State Autonomy as a Limit on Federal Powers  
*South Dakota v. Dole*  
*New York v. United States*  
Roberts, pp. 45 (from “IV”) – 58 (to “\*\*\*\*”)  
Ginsburg, pp. 38 – 61  
Scalia, pp. 28 (from “IV”) - 49

“Vertical” Structure: Original Constitutional Limits on State Regulation

*Philadelphia v. New Jersey*  
Note on *C & A Carbone, Inc. v. Clarkstown and United Haulers Ass’n v. Oneida-Herkimer Solid Waste Management Authority*  
*Corfield v. Coryell*  
Note on *United Building & Construction Trades Council v. Mayor and Council of Camden*  
Note on *McBurney v. Young*

**Weeks 10 - 14** (November 7, 9, 14, 16, 21, 28 & 30; December 5, 7 & 12):  
Government & Individual

Individual Rights: Privileges or Immunities & Due Process

14<sup>th</sup> Amendment Privileges or Immunities  
*Barron v. Mayor and City Council of Baltimore*  
Note on the 14<sup>th</sup> Amendment’s “Privileges or Immunities” Clause  
Note on 20<sup>th</sup> Century Efforts to Revisit the 14<sup>th</sup> Amendment’s  
Privileges or Immunities Clause  
14<sup>th</sup> Amendment: Due Process & “Incorporation”  
Note on “Incorporation” of the Bill of Rights to Apply to States via the 14<sup>th</sup>  
Amendment’s Due Process Clause  
14<sup>th</sup> Amendment: Due Process and Economic Protection  
*Lochner v. New York*  
*United States v. Carolene Products Co.*  
*Williamson v. Lee Optical of Oklahoma*  
The “Takings” Clause and Economic Protection  
*Kelo v. City of New London*  
*Nollan v. California Coastal Comm’n*  
Note on *Arkansas Game & Fish Comm. v. US* and *Koontz v. St. Johns River Water*

The “Contracts Clause” and Economic Protection

Note on the “Contracts Clause” of Article I, Section 10

*Home Building & Loan Ass’n v. Blaisdell*

Note on *Allied Structural Steel Co. v. Spannaus*

The 14<sup>th</sup> Amendment: Due Process and the Protection of Fundamental Rights

*Griswold v. Connecticut*

*Roe v. Wade*

Note on the Aftermath of *Roe v. Wade*

*Washington v. Glucksberg*

*Obergefell v. Hodges*

Individual Rights: Equal Protection

The 14<sup>th</sup> Amendment: Equal Protection and Race

*Brown v. Board of Education*

Note on *Bolling v. Sharpe*

*Loving v. Virginia*

*Washington v. Davis*

The 14<sup>th</sup> Amendment: Equal Protection and Race-Based Affirmative Action

*Regents of University of California v. Bakke*

Note on *Grutter v. Bollinger* and *Gratz v. Bollinger*

Note on *Fisher v. University of Texas (I & II)*

*Schuette v. Coalition to Defend Affirmative Action*

*Parents Involved in Community Schools v. Seattle School District No. 1*

Note on Minority “Set-Aside” Programs

The 14<sup>th</sup> Amendment and Redistricting

Note on Political Redistricting and Equal Protection

*Shaw v. Reno*

The 14<sup>th</sup> Amendment: Equal Protection and Other Classifications

*Craig v. Boren*

*United States v. Virginia*

Note on Sex-Based Legislation and the Equal Protection Clause

*Cleburne v. Cleburne Living Center, Inc.*

Note on Alienage as a Suspect Class

*Romer v. Evans*

Course Wrap-Up