

CONSTITUTIONAL STRUCTURE AND RIGHTS
PSCI 223
Mr. Jackson
Fall 2020

COURSE SYLLABUS

The assigned readings listed below have 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 invariably is 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.

This Course Syllabus is an accompaniment to “Assigned Reading, Lecture, and Q & A Class Schedule,” that sets out each week’s assigned reading, as well as class lectures and “question and answer” sessions.

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

Allocation of Powers: Legislative, Executive, & Judicial

The Foundations of Judicial Review

Marbury v. Madison

Sections 13 & 14 of the Judiciary Act of 1789

“Horizontal” Structure: Judicial Review and its Limits

Lujan v. Defenders of Wildlife

Note on *Massachusetts v. EPA*

Note on Taxpayer Standing

Trump v. Sierra Club

Note on Legislative Standing: *Arizona State Legislature v. Arizona State Redistricting Comm.*

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 *Gundy v. United States* and the “Nondelegation Doctrine”

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

NLRB v. Noel Canning

Seila Law LLC v. Consumer Financial Protection Bureau

United States v. Nixon

Note on Presidential Immunity from Civil Actions

Trump v. Vance

Trump v. Mazars USA

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

“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
Note on *Franchise Tax Bd. of Cal. v. Hyatt*

“Vertical” Structure: Constitutional Grants (and 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

Murphy v. NCAA

Roberts, pp. 45 (from “IV”) – 58 (to “****”)

Ginsburg, pp. 38 – 61

Scalia, pp. 28 (from “IV”) - 49

Mid-Term

Orin Kerr on How to Answer an Exam

“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*

An Introduction to Government Regulation of Individuals

Individual Rights and the “Original” Constitution: 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*

Note on *Al-Alwi v. Trump*

Johnson v. Eisentrager

Boumediene v. Bush

Note on *Al-Maqaleh v. Gates*

Individual Rights After the 14th Amendment: Privileges or Immunities & Due Process

14th Amendment Privileges or Immunities

Barron v. Mayor and City Council of Baltimore

Note on the 14th Amendment’s “Privileges or Immunities” Clause

Note on 20th Century Efforts to Revisit the 14th Amendment’s Privileges or Immunities Clause

14th Amendment: Due Process & “Incorporation”

Note on “Incorporation” of the Bill of Rights to Apply to States via the 14th Amendment’s Due Process Clause

14th 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*

Sveen v. Melin

The 14th 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

Note on *Pavan v. Smith*

Individual Rights: Equal Protection

The 14th Amendment: Equal Protection and Race

Brown v. Board of Education

Note on *Bolling v. Sharpe*

Loving v. Virginia

Washington v. Davis

The 14th 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 14th Amendment and Redistricting

Rucho v. Common Cause

Arizona State Legislature v. Arizona Indep. Redistricting Comm.

Bethune-Hill v. Virginia State Bd. of Elections

The 14th Amendment: Equal Protection and Other Classifications

Craig v. Boren

United States v. Virginia

Note on Sex-Based Legislation and the Equal Protection Clause

Note on *Bostock v. Clayton County*

Cleburne v. Cleburne Living Center, Inc.

Note on Alienage as a Suspect Class

Romer v. Evans

Constitutional Rights in the Context of Immigration

Note on *Trump v. Hawaii*

Course Wrap-Up

Other course information:

In addition to the assigned readings, posted lectures, and class “question and answer” sessions, there will be a mid-term and a final examination, both take-home, but timed and with restrictions on access to outside material (i.e. material not connected with the course), that will comprise the bulk of your grade in this course.

Academic honesty: All assignments and activities associated with this course must be performed in accordance with the University of Rochester's Academic Honesty Policy. More information is available at:
www.rochester.edu/college/honesty

The University of Rochester respects and welcomes students of all backgrounds and abilities. In the event you encounter any barrier(s) to full participation in this course due to the impact of disability, please contact the Office of Disability Resources. The access coordinators in the Office of Disability Resources can meet with you to discuss the barriers you are experiencing and explain the eligibility process for establishing academic accommodations. You can reach the Office of Disability Resources at:
http://disability@rochester.edu; (585) 276-5075; Taylor Hall.