

CONSTITUTIONAL STRUCTURE AND RIGHTS
PSC 223
Mr. Jackson
Fall 2014

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 (September 2): 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

The Foundations of Judicial Review

Marbury v. Madison

Sections 13 & 14 of the Judiciary Act of 1789

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

Week 7 (October 21)

Mid-Term

Necessary and Proper Clause

United States v. Comstock
Roberts, pp. 27 (from "2") - 30
Ginsburg, pp. 31 (from "III") - 37

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*
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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 11, 18 & 25; December 2 & 9): Government & Individual

Individual Rights: 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 & ' , Q F R U S R U D W L R Q μ
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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
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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

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

The 14th Amendment: Due Process and the Protection of Fundamental

Rights

Griswold v. Connecticut

Lawrence v. Texas

Roe v. Wade