CONSTITUTIONAL STRUCTURE AND RIGHTS
PSC 223
Mr. Jackson
Fall 2013

COURSE SYLLABUS

Assigned reading has been posted on Blackboard as .pdf files under "Course Materials."

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 authorities 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 provision is (or provisions are) involved and read the provision(s) carefully for yourself; the skills that follow are "reading" specific provisions of the Constitution, but these provisions are the foundation of everything we will do in the course.

Week 1 (September 3): 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
Hayburn's Case [read in light of *Marbury v. Madison*]
Stuart v. Laird [read in light of *Marbury v. Madison*]

Weeks 2 - 6 (September 10, 17 & 24; October 1 & 15): Legislative, Executive, & Judicial

"Horizontal" Structure: Judicial Review and Its Limits

Lujan v. Defenders of Wildlife
Massachusetts v. EPA
United States v. Windsor [I]
Hollingsworth v. Perry
Note on Taxpayer Standing
Powell v. McCormack
Note on *Walter Nixon v. United States*

"Horizontal" Structure: Separation of Powers

Youngstown Sheet & Tube Co. v. Sawyer
Dames & Moore v. Regan
Note on *United States v. Belmont*
Goldwater v. Carter
Note on *INS v. Chadha* and *Clinton v. City of New York*
Morrison v. Olson
Note on *Bowsher v. Sinar*
Note on *Free Enterprise Fund v. PCAOB*
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
Johnson v. Eisentrager
Hamdi v. Rumsfeld
Note on *Hamdan v. Rumsfeld*

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

Weeks 7 - 8 (October 22 & 29): 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
[illegible]
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
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*

Week 9 (November 5)

Mid-Term
Orin Kerr on How to Answer an Exam

Weeks 10 - 15 (November 12, 19 & 26; December 3 & 10): 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 "Privileges or Immunities" Clause
Slaughter-House Cases
U.S. v. Cruikshank
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
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 14th Amendment: Due Process and the Protection of Fundamental Rights

Griswold v. Connecticut

Lawrence v. Texas

Roe v. Wade

Note on the Aftermath of *Roe v. Wade*

Washington v. Glucksberg

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-Conscious Affirmative Action

Regents of University of California v. Bakke

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

Fisher v. University of Texas

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

Note on Minority "Set-Aside" Programs

The 14th Amendment and Redistricting

Note on Political Redistricting and Equal Protection

Shaw v. Reno

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

Cleburne v. Cleburne Living Center, Inc.

Note on Alienage as a Suspect Class

Romer v. Evans

United States v. Windsor [II]

Course Wrap-Up