United States Constitutional Law: Theory, Practice, and Interpretation

Class 1: Introduction to Course and Constitutional Law

*Monday, October 7, 2019*

Dane S. Ciolino
A.R. Christovich Professor of Law
Loyola University New Orleans
An Introduction to the Course and the United States Constitution
United States Constitution (Ratified 1788)
United States Supreme Court
United States Constitutional Law: Theory, Practice, and Interpretation

• Introduction
• Governmental structure
• Individual rights
• Enforcing the Constitution
• Interpreting the Constitution
• The Constitution in action
Introduction

• The instructor
• The course
• Constitutionalism
• A brief history of the United States Constitution
  • The Declaration of Independence and the American Revolution
  • The Articles of Confederation
  • The Constitutional Convention
  • The Federalist Papers
  • Ratification of the Constitution
  • The Bill of Rights
Governmental Structure

- Popular sovereignty, democratic republic, and limited government
- Federalism and the states
  - Supremacy and preemption
  - States’ rights
- The federal government
  - Branches and separation of powers
  - Checks and balances
Individual Rights

• The history and theory of individual rights
• The United States Constitution’s Bill of Rights
  • The First Amendment and freedom of speech
  • The Second Amendment and the right to bear arms
  • The Fifth Amendment and the right to just compensation
• Constitutional criminal procedure
  • The Fourth Amendment and searches and seizures
  • The Fifth Amendment and the right to remain silent, the right to grand jury indictment, the prohibition against double jeopardy, and the right to due process
  • The Sixth Amendment and the right to confront adverse witnesses and to trial by jury
  • The Eight Amendment and the prohibition against cruel and unusual punishment
  • The Ninth and Tenth Amendments
Enforcing the Constitution

- Introduction
- Judicial review
- Motions to suppress and the exclusionary rule
- Civil-rights litigation
Constitutional Interpretation

- Introduction and the problem of interpretation
- “The Living Constitution”
- Textualism and originalism
- Other approaches to interpretation
The United States Constitution in Action

• Introduction
• Racial discrimination
• Abortion
• Same-sex marriage
• The right to keep and bear arms
• A hypothetical municipal ordinance
Constitutionalism
Constitutionalism: Basic Principles

- Authority and legitimacy of government depends on a writing that defines and limits three basic forms of governmental power: legislative power; executive power; and judicial power.
- Contrast with a state ruled by an absolute sovereign, “Rex”
- Limitations on government power
  - Scope of authority (federalism and separation of powers)
  - Mechanisms used to exercise power (procedural requirements)
  - Civil rights
- Entrenchment of limitations
- Writtenness
- Associated with John Locke and the Framers of the United States Constitution
A Brief History of the United States Constitution
The Declaration of Independence (1776)
Declaration of Independence

- Written by Thomas Jefferson
- Adopted, or accepted by vote, on **July 4, 1776** in Philadelphia, PA during 2nd Continental Congress
- It has four main sections which discuss all the issues between the 13 Colonies and Great Britain.
The Declaration of Independence (1776)

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
The Declaration of Independence (1776)

We hold these truths to be self-evident, that all men are created equal,

That they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

That whenever any Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.
Articles of Confederation (March 1, 1781)
# Weaknesses of the Articles of Confederation

<table>
<thead>
<tr>
<th>Weakness</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ No power to tax</td>
<td>No money</td>
</tr>
<tr>
<td>✓ No national executive</td>
<td>No enforcement of laws</td>
</tr>
<tr>
<td>✓ Unicameral legislature</td>
<td>One vote / state unequal representation</td>
</tr>
<tr>
<td>✓ No judicial/national court</td>
<td>Problems with interstate relations</td>
</tr>
</tbody>
</table>

*No checks & balances!*
# Weaknesses of the Articles of Confederation

<table>
<thead>
<tr>
<th>Weaknesses</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ No regulation of commerce</td>
<td>Economic quarrels</td>
</tr>
<tr>
<td></td>
<td>No foreign trade</td>
</tr>
<tr>
<td>✓ No power to maintain army</td>
<td>No defense</td>
</tr>
<tr>
<td>✓ Government dominated by states</td>
<td>No unity</td>
</tr>
<tr>
<td>✓ Need 9/13 to pass a law &amp; unanimous consent to amend</td>
<td>Impossible to accomplish</td>
</tr>
</tbody>
</table>
Shays’ Rebellion (Massachusetts 1786)

4,000 armed rebels marched on a federal armory in Massachusetts in an attempt to seize its guns and overthrow the government.

The young federal government was unable to finance troops to put down the rebellion, and the Massachusetts state militia had to do it.
Shays’ Rebellion (Massachusetts 1786)

The Rebellion was a catalyst for convening a new Constitutional Convention to construct a new, stronger federal government.

The shock of the rebellion also drew retired General George Washington back into public life. He chaired the Convention.
Constitutional Convention (1787)

- May-September 1787 in Philadelphia, Pennsylvania
- James Madison was the “Father of the Constitution”
- 55 delegates from 12 states
- All “White Males of privilege”
- Statesmen, lawyers, planters, bankers, businessmen
- Most under age 50
Framers Were Firmly Rooted in the Eighteenth Century

• Perpetuated injustices with compromises permitting slavery and the slave trade
• Not everybody included in its references to “men”
• States given power to set qualifications for voting; women, nonwhites, and poor people denied right to vote
• For example, in the first presidential election in 1789, only white men who owned property voted.
Famous Delegates

• *Alexander Hamilton*: Proponent of strong government
• *George Washington*: President of the convention
• *James Madison*: “Father of the Constitution”
• *Benjamin Franklin*: Oldest member at 81
Federalists v. Anti-Federalists

**Federalists**
- Supported the Constitution and a strong central government
  - Alexander Hamilton, James Madison, John Jay
- *Federalist Papers*: Series of articles written in defense of the Constitution

**Anti-Federalists**
- Supported a weaker central government; supported state power
- Opposed the Constitution
- Wanted a Bill of Rights included
- Samuel Adams, Patrick Henry
Ratification

• Constitution officially adopted in 1788 after ratified by New Hampshire.
• Once the new government convened, Congress added a Bill of Rights to the Constitution.

### Ratification of the Constitution

<table>
<thead>
<tr>
<th>State</th>
<th>Date</th>
<th>For</th>
<th>Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>December 1787</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>December 1787</td>
<td>46</td>
<td>23</td>
</tr>
<tr>
<td>New Jersey</td>
<td>December 1787</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>Georgia</td>
<td>January 1788</td>
<td>26</td>
<td>0</td>
</tr>
<tr>
<td>Connecticut</td>
<td>January 1788</td>
<td>128</td>
<td>40</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>February 1788</td>
<td>187</td>
<td>168</td>
</tr>
<tr>
<td>Maryland</td>
<td>April 1788</td>
<td>63</td>
<td>11</td>
</tr>
<tr>
<td>South Carolina</td>
<td>May 1788</td>
<td>149</td>
<td>73</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>June 1788</td>
<td>57</td>
<td>47</td>
</tr>
<tr>
<td>Virginia</td>
<td>June 1788</td>
<td>89</td>
<td>79</td>
</tr>
<tr>
<td>New York</td>
<td>July 1788</td>
<td>30</td>
<td>27</td>
</tr>
<tr>
<td>North Carolina</td>
<td>November 1789</td>
<td>194</td>
<td>77</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>May 1790</td>
<td>34</td>
<td>32</td>
</tr>
</tbody>
</table>