United States Constitutional Law: Theory, Practice, and Interpretation

- Introduction
- Governmental structure
- Individual rights
- Enforcing the Constitution
- Interpreting the Constitution
- The Constitution in action
The United States Constitution in Action

- Introduction
- Racial discrimination
- The right to keep and bear arms
- Abortion
- Same-sex marriage
- A hypothetical municipal ordinance prohibiting dog ownership
Supreme Court Case Presentations

• Background
  - Who were the parties?
  - What happened (what were the facts of underlying the dispute)?
  - How did the case get to the Court (what was the procedural history)?

• Court’s ruling, justices’ votes, and final disposition
  - Who won (which party prevailed) and what did the Court do (affirm or reverse the last lower court)?
  - How did each justice vote (to affirm or to reverse)?
  - What happens next (did the Court remand and, if so, to where and for what)?

• Rationale and reasoning of each opinion (majority, concurrences, dissents)
  - What approach to constitutional interpretation did each opinion take?
  - What role did precedent and *stare decisis* play in each opinion?
Honesty in Constitutional Interpretation

• Ask first: “What do I personally think about this issue as a matter of social policy?”
• Then ask: “What does the Constitution say about the issue?”
  • Is there an individual right regarding that issue in the Constitution?
  • To which governmental institution did the Constitution delegate the power to regulate as to the issue?
    • To the States, the Federal government or both?
    • If to the federal government, to Congress, the President, or the Judiciary?
Principal Dichotomy

**Originalists**
- Constitution establishes a fixed governmental framework
- Consider intention of framers or original public understanding
- Questions about moral and political soundness of policy are historical
- Is this overly conservative and tied to the “dead hand of the past”?
- Is this approach incapable of rational and responsible change?

**Living Constitutionalists**
- Constitution is evolving in response to changing circumstances and improved moral and political beliefs
- Reasoning resembles development of common law
- Is this threatening to the rule of law and the separation of powers?
- Is this constitutional amendment under the guise of interpretation?
Racial Discrimination
Thirteenth Amendment (1865)

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.
Fourteenth Amendment § 1 (1868)

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Plessy v. Ferguson (1896)

- Plessy, 1/8 black, refused to sit in “colored” railcar in violation of Louisiana Separate Car Act
- Convicted in Orleans Parish Criminal Court
- Conviction affirmed by SCOTUS
- Segregation did not violate 13th Amendment because enough equality to abolish slavery
- Did not violate Equal Protection Clause because segregation was reasonable and did not brand blacks with “badge of inferiority”
- *Harlan Dissent:* The Constitution is “color-blind, and neither knows nor tolerates classes.”

Homer Plessy
Brown v. Board of Education of Topeka, Kansas (1954)
Brown v. Board: Key Players

Thurgood Marshall

Linda Brown
Brown v. Board

- Thirteen black parents sponsored by NAACP sued the school board in U.S. District Court to invalidate 1879 Kansas law permitting separate elementary schools
- Lost in district court because under Plessy, the facility and education, although separate, were comparable
- SCOTUS held that racial segregation in public schools violated the EP Clause of the 14th Amendment
- The Court reasoned that segregation deprived children of equal educational opportunities and had a detrimental psychological effect on black children
- “Separate educational facilities are inherently unequal.”
The Right to Keep and Bear Arms
Second Amendment

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

- D.C. banned handguns and required rifles and shotguns to be locked or inoperable. D.C. denied Heller a handgun permit.
- Plaintiffs sued in U.S. District Court under section 1983 seeking injunctive relief
- Lost in district court; prevailed in D.C. Circuit.
- SCOTUS held that Second Amendment protects and individual right to bear arms
- Prefatory clause announces purpose but does not limit or expand the operative clause. “Militia” was the body of men capable of military service.
- Right existed prior to Constitution in state constitutions. Drafting history included proposals that unequivocally referred to an individual right to bear arms.