United States Constitutional Law: Theory, Practice, and Interpretation

Class 10: The Constitution in Action—Hypothetical Anti-Dog Ordinance

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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
Hypothetical Anti-Dog Ordinance
Hypothetical New Orleans Anti-Dog Ordinance

No dogs allowed within city limits due to “public health” concerns.
Canine Public Health Concerns

• In 2015, U.S. Center for Disease Control estimated that dogs bit approximately 4.5 million people each year in the U.S.
• In 2000s, dogs killed an average of 26 people each year
History of Man-Dog Relationship

The earliest dogs arose 27,000-40,000 YBP during the time of *homo sapiens* hunter-gatherers and long before the Agricultural Revolution.
Discuss Constitutionality of Anti-Dog Ordinance

• What do you personally think about dog ownership as a matter of social policy?
• What does the Constitution say about a fundamental right to dog ownership?
  • Is there an individual right to dog ownership in the Constitution, including the 14th Amendment?
  • To which governmental institution did the Constitution delegate the power to regulate dog ownership?
    • To the States, the Federal government or both?
    • If to the Federal government, to the Judiciary?
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.
Remainder of United States Constitution?
Tenth Amendment on Nondelegated Powers

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
Ninth Amendment on Unenumerated Rights

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
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• Compare how a Living Constitutionalist and an Originalist might approach these questions.
Principal Dichotomy in Interpretation

**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 democracy, the rule of law, federalism, and the separation of powers?
- Is this constitutional amendment under the guise of constitutional interpretation?
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• Compare how a Living Constitutionalist and an Originalist might approach these questions
• As a practical matter, how to challenge ordinance?