

Constitutional Law I – Spring 2018
Professor Fenton -- Syllabus

Background (before start of course):

Compare and contrast:

Iroquois Constitution (circa 1450-1500 AD) **(handout)**

The Constitution of the United States (1787) **(handout)**
p. xli-lvi.¹

Week of: Jan. 16 (Tues.)

Introduction to Judicial Decision-making

Minersville School District v. Gobitis (1940) **(handout)**; West Va. Bd. Ed. v. Barnette (1943) **(handout)**; Henderson, Gobitis and Barnette **(handout)**.

Week of: Jan. 22

Judicial Review

p. 37-38 (Federalist No. 78 (Hamilton, 1787))

Bickel, The Least Dangerous Branch, Ch 1 **(handout)**

p. 25-38 (*Marbury v. Madison* (1803))

Missouri Compromise (1850) **(handout)**

Dred Scot v. Sanford (1857) p. 459-468

Fourteenth Amendment, p. 1i-1ii];

Frank J. Williams, Lincoln's Attorney General, 17 Pub. Law. 8 (2009) **(handout)**

Declaration of Independence (July 4, 1776) **(handout)**

Frederick Douglass, speech (July 4, 1852) **(handout)**

p. 721-738, 629-630 (*Slaughterhouse cases* (1873) (*Bradwell v. Illinois* (1873)) [federalism preview]

Week of: Jan. 29

p.1556-1562 (*The Civil Rights cases* (1883))[state action doctrine]

Marshall B. Woodworth, *Who Are Citizens of The United States?*, 32 Am. L. Rev. 554 (1898) **(handout)**

Federalism p.53-69 (*McCulloch v. Md* (1819))

Ex parte Merryman (1861) **(handout)**.

Separation of Powers Federalist No. 48 (Madison) p. 368-370; 70-82 (*ExParte McCordle* (1869))

¹ Unless indicated otherwise, page references are to Stone, Seidman, Sunstein, Tushnet, and Karlan, Constitutional Law (7th ed. 2013).

Week of: Feb. 5

Judicial Decision-Making p. 468-497 (*Plessy (1896)*, *Brown (1954)*, *Bolling (1954)*, *Cooper v. Aaron (1958)*).

Constitutional Crises. . . [Marbury,][Dred Scot][Cooper v Aaron][Ex parte Merryman]; *Cherokee Nation v. Georgia (1831)* (**handout**); *Worcester v. Georgia (1832)* (**handout**); Excerpts from Getches et al. (**handout**)

Week of: Feb. 12

Standing p. 82-121 (*Allen v. Wright (1984)*; *Lujan v. Defenders of Wildlife (1992)* *Mass v. EPA (2007)* *Elk Grove v Newdow (2004)*; *City of Los Angeles v. Lyons (1983)* (**handout**)

Ripeness and Mootness p. 153-155; *U.S. Parole Commn. v. Geraghty (1980)* (**handout**)

Political Questions Doctrine p. 121-153 (*Baker v. Carr (1962)*, *Veith v Jubelier (2004)*, *Bush v. Gore (2000)*)

Week of: Feb. 19

Enumerated Powers & Federalism

p. 165-169 (*Gibbons v. Ogden (1824)*)

Substantive Due Process & Means/Ends Rationality

DP: “Progressivism” p. 750-766 (*Lochner v. New York (1905)*)

Commerce Clause “Capsule” p. 159-165;

CC: “Progressivism” p. 179-186, 169-170 (*E.C. Knight (1895)*, *The Shreveport Rate Case (1914)*, *Champion v. Ames(1903)*, *Hammer v. Dagenhart (1918)*)

Week of: Feb. 26

DP: “The New Deal” p. 766-770 (*Nebbia v New York (1934)*, *West Coast Hotel v. Parrish (1937)*)

CC: “The New Deal” p. 186-196 (*Schechter Poultry (1935)*, *Carter Coal (1936)*, *NLRB v. Jones & Laughlin (1937)*)

DP: “Postwar” p. 770-776 (*U.S. v. Carolene Products (1938)*, *Williams v Lee Optical (1955)*, *Ferguson v. Skrupa (1963)*)

CC: “Postwar” p. 171-179; 196-198 (*Wickard v. Filburn (1942)*; *U.S. v. Darby (1941)*)

Week of: Mar. 5

Rational Basis Review of Social and Economic Matters

Tussman and tenBroek, Equal Protection (**handout**); p. 498-504; 513-517 ((*NYC Transit Auth. v. Baezer*; *Railway Express Agency v. NY (1949)*)

Rational Basis Review – “with bite”

“Civil Rights” p. 505-508 (*City of Cleburne v. Cleburne Living Center* (1985); *Romer v. Evans* (1996))

March 12-16 -- Spring Break

Week of: Mar. 19

Enforcement Power: p. 325-346 (*Katzenbach v Morgan* (1966), *City of Boerne v. Flores* (2000), *Board of Trustees v. Garrett* (2001))

CC: p.199-202 (*Heart of Atlanta Motel v. US* (1964), *Katzenbach v. McClung*(1964))

Week of: Mar. 26

“Retrenchment” p. 202-218 (*United States v. Lopez* (1995), *United States v. Morrison* (2000))
Wickard Revisited... *Gonzalez v. Raich* (2005) (**handout**)

Substantive Due Process Redux: p. 776-780 (*Skinner v. Oklahoma*); p. 842-853 (*Griswold v. Connecticut*)

p. 218-240 (*Nat’l Federation v. Sebelius* (2012))

Week of: Apr. 2

Preemption: p. 283-292

Dormant Commerce Clause p.165-169 (*Gibbons v. Ogden*, (1824)),

p. 247-280 (*City of Philadelphia v. New Jersey* (1978), *C&A Carbone v. Clarkstown* (1994), *West Lynn Creamery v. Healy* (1994), *Hunt v. Washington State Apple* (1977), *Exxon v Maryland* (1978), *Kassel v. Consolidated Freightways* (1981))

Week of: Apr. 9

Commandeering p.354-365 (*New York v. United States* (1992), *Printz v. United States*(1997))

Separation of Powers: Presidential Imperialism p. 367-390 (Federalist Nos. 47, 48 (Madison), *Youngstown Sheet & Tube v. Sawyer* (1952), *US v. Curtis-Wright* (1936); *Dames & Moore v. Regan* (1981))

Week of: Apr. 16

Legislative Overreach p. 424-451 (*INS v Chadha* (1983); *Clinton v. City of New York* (1998); *Bowsher v Synar* (1986); *Morrison v Olson* (1988))

Mon., Apr. 23 tbd

Tues., Apr. 24 last class -- Review