

Law: 121 - 002
Professor Sally Katzen-Dyk

Room 120
Tues. & Thurs.
10:00 - 11:50 a.m.

Constitutional Law

Fall 2007 Syllabus

This is the basic course in Constitutional Law. We will study the structure of our government, a structure defined by the Constitution, by Supreme Court precedents interpreting that document, and by the traditional practice of the elected branches. The basic question we will explore is: "How is power divided among the various organs of American government and why?" We will begin with the horizontal division of power among the three branches of the federal government, and then turn to the vertical distribution of power between the federal and state governments. The course also includes an introduction to, and exploration of, selected aspects of the 14th Amendment, as well as the Contracts and Takings clauses.

The case book for this class is "Constitutional Law," by Stone, Seidman, Sunstein, Tushnet and Karlan, 5th edition, Aspen Publishers. References to the casebook appear as "pp. ___:" references to the Supplement are in italics. We will cover approximately 25-30 pages per 2-hour session, but some days we will have more, others less, material to cover. Although I will try to stick to the schedule, we may occasionally fall behind, in which case we will begin the next class where we left off and try to get back on schedule.

Class participation is an important component of this course and both positive (quality as well as quantity) and negative (unexcused absence, being unprepared, failure to participate, etc.) contributions will affect your grade.

My office is in room 305, and I will have office hours on Tuesday afternoon from 2 until 4, but will also be available virtually any time Monday through Thursday by prior appointment. My email is skatzend@gmu.edu and my telephone number at the Law School is: 703-993-8966.

Aug. 23 - **Introduction**

Constitution of the United States, pp. xliii-lix
Declaration of Independence (copied materials) *
Articles of Confederation (copied material) *
History and Theory, pp. 8-18, 21-24

Aug. 28 - **I. Horizontal Division of Power**

A. The Judicial Power

1. Judicial Review (Marbury v Madison, Cooper v Aaron), pp. 29-42, 57-58

Aug. 30	<ul style="list-style-type: none"> 2. Interpretive Sources (<u>McCulloch v Maryland</u>, <u>Calder v Bull</u>), pp. 61-75 3. Political Control (<u>Ex Parte McCardle</u>), pp. 77-82
Sept. 4	<ul style="list-style-type: none"> 4. "Case or Controversy" Requirements <ul style="list-style-type: none"> a. Advisory Opinions, pp. 89-92 b. Standing (<u>Allen v Wright</u>, <u>Lujan v Defenders of Wildlife</u>, <u>Elk Grove v Newdow</u>), pp. 92-119
Sept. 6	<ul style="list-style-type: none"> c. Political Question (<u>Baker v Carr</u>, <u>Vieth v Jubelirer</u>, <u>Bush v Gore</u>), pp. 119-27, 137-44, <i>Supp.</i>, p. 4, pp. 144-58 <hr/>
Sept. 11	<ul style="list-style-type: none"> continue w/ Political Question d. Ripeness and Mootness, pp. 158-59 <p>B. The Executive Power</p> <ul style="list-style-type: none"> 1. Executive-Legislative Conflicts, pp. 357-59 (through note 2) <ul style="list-style-type: none"> a. Domestic Affairs (<u>Youngstown Sheet & Tube Co. v Sawyer</u>, <u>Dames & Moore v Regan</u>), pp. 361-75
Sept. 13	<ul style="list-style-type: none"> continue w/ Domestic Affairs b. Foreign Affairs (<u>U.S. v Curtiss-Wright Corp.</u>), pp. 375-83
Sept. 18	<ul style="list-style-type: none"> continue w/ Foreign Affairs (<u>Hamdi v Rumsfeld</u>, <u>Hamdan v Rumsfeld</u>), pp. 383-95, <i>Supp.</i>, pp. 24-31, 39-41, 42-43, 48-49, 50 <hr/>
Sept. 20	<ul style="list-style-type: none"> continue w/ Foreign Affairs, pp. 396-97 note 4, pp. 399-402 2. Executive-Judicial Conflicts (<u>U.S. v Nixon</u>), pp. 405-13
Sept. 25	<p>C. The Legislative Power</p> <ul style="list-style-type: none"> 1. Legislative-Executive Conflicts <ul style="list-style-type: none"> a. Bicameralism and Presentment (<u>INS v Chada</u>), pp. 418-20, 423-29

b. Creation and Control of Executive Functions (Myers v U.S., Humphrey's Executor v U.S., Bowsher v Synar), pp. 430-32, 433-35

Sept. 27 continue w/ Creation and Control of Exec. Functions (Morrison v Olson), pp. 435-42

2. Legislative-Judicial Conflicts (review Ex Parte McCordle, U.S. v Klein, pp. 85-88

II. Vertical Division of Power

pp. 163-66 (middle), 167 (note 3)–69

Oct. 2 A. Federal Power: Judicial (Martin v Hunter's Lessee), pp. 51-57, review McCulloch v Maryland, pp. 68-70

B. Federal Power: Legislative

1. Power to Regulate Commerce

a. Doctrinal Fundamentals (Gibbons v Ogden, Child Labor Case, Wickard v Filburn), pp.170-79 (through note 1)

Oct. 4 b. Evolution of Commerce Clause Doctrine (U.S. v E.C. Knight Co, Shreveport Rate Cases, Champion v Ames, Schechter Poultry Corp. v U.S., Carter v Carter Coal Co.), pp. 185-200

Oct. 9 ** no class

Oct. 11 continue w/ Evolution of Commerce Clause Doctrine (NLRB v J&L Steel Corp., U.S. v Darby, Heart of Atlanta Motel v U.S., Katzenbach v McClung), pp. 200-10

c. New Federalism (U.S. v Lopez, U.S. v Morrison, Gonzales v Raich), pp. 211-24, copied materials

Oct. 16 continue New Federalism

2. Power to Tax and Spend (U.S. v Butler,

Steward Machine v Davis), pp. 280-96.

- Oct.18 3. War Power, pp. 296-99
4. Power to Enforce Reconstruction Amendments and Intro to 11th Amendment (Katzenbach v Morgan, City of Boerne v Flores), pp. 299-310
- Oct. 23 continue with Reconstruction Amendments and 11th Amend (Board of Trustees v Garrett, Nevada v Hibbs), pp. 310-30, copied materials
- C. Supremacy Over Conflicting State Laws
1. Dormant Commerce Clause (City of Philadelphia v New Jersey), pp. 229-40
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- Oct. 25 continue with Dormant Commerce Clause (C&A Carbone, Inc. v Clarkstown, West Lynn Creamery, Inc. v Healy), pp. 240-54, copied materials
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2. Foreign Policy – Crosby v National Foreign Trade Council, 530 U.S. 363 (2000)(majority opinion only)

- Oct 30 D. The 10th Amendment as a Federalism-Based Limitation on Legislative Power (Missouri v Holland, Garcia v San Antonio Metro Transit Authority, New York v U.S., Printz v U.S.), pp. 330-56, copied materials
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- Nov. 2 continue w/ 10th Amendment

III. Selected Aspects of the 14th Amendment

- A. History, pp. 447-48(end of page), (Dred Scott v Sandford) 453-56 (middle), 457-59 (bottom), 460 (middle)-63 (middle)
- B. Case Study of Desegregation (Plessy v Ferguson, Brown v Board of Education I and II), 464-67, 471 (note 1), 472 (note 3)-75, 481-82
- Nov 6 C. Theories of Constitutional Interpretation - “Originalism” and Its Critics, pp. 717-24
- D. Privileges and Immunities Clause (The Slaughter-House Cases), pp. 724-730

E. The Incorporation Controversy (Adamson v California, Duncan v Louisiana, pp. 734-41

Nov. 8 F. Substantive Due Process: The Protection of Economic Interests and the Question of Redistribution (Lochner v New York, Nebia v New York, West Coast Hotel Co. v Parrish, U.S. v Carolene Products, Williamson v Lee Optical, Ferguson v Skrupa), pp. 741-50, 755-65

Nov. 13 continue w/ Substantive Due Process

G. The Contracts Clause (Home Building & Loan Ass'n v Blaisdell, U.S. Trust Co. v New Jersey, Allied Structural Steel v Spannaus), pp. 988-1004

Nov. 15 H. The Takings Clause (Hawaii Housing Authority v Midkiff, Kelo v City of New London, Pennsylvania Coal Co v Mahon, Miller v Schoene, Penn Central v New York City, Keystone Bituminous Coal Ass'n v Debenedicts), pp. 1004-06, copied materials 1007-24 (thru f)

Nov 20 no class

Nov. 22 no class

Nov. 27 continue with Takings (Lucas v South Carolina Coastal Council, Palazzolov v Rhode Island), pp., 1031-38 (bottom), 1039-47

Dec. 4 Catch up/review

Dec. 12
Noon

Final Exam

