

# Law 101

## Constitutional Law

- Constitution created in 1787
- 7 articles, 27 amendments
- Defines structure & function of gov't & rel. powers between nat'l & state gov't
- The Constitution supersedes all state & federal law
- All constitutional law decisions are based solely on the Constitution
  - Constitution is not that specific in most situations
  - Such situations require extensive interpretation
- Central issues center around authority of the judges to make rulings & theories of interpretation
- SCOTUS has final authority on constitutional interpretations via cases
- SCOTUS members appointed, not elected, unlike other branches
- Each state also has its own constitution too
  - Have same function as the national one
  - But, since states have general authority to govern states limit rather than grant power
  - Amendments are easier to add to them & provisions on it can be more specific & less about rights & gov't organization
  - Often replaced altogether
  - The bill of rights in state constitutions contain more detailed protections & express rights not in the constitution
  - often, SCOTUS decides something & state SCs will decide the opposite based on the state constitution (California v. Greenwood) & (State vs. Hemphill)

## Why do we need Constitutional Law?

- Gov't does a lot of things, so it should be strong
- Therefore it needs rules & structure
- Constitutional law & debate traditionally happens in courts
- Intended to protect the integrity of a democracy

= Court is not upolitical, but does serve at a distance from politics

- Play a significant role in settling controversies (Scott v. Sandford)
  - Lincoln and Ponglars fought over Scott
  - The political reaction to Dred Scott caused the Civil War
- Race, in general, has been fought over in SCOTUS
  - Plessy v. Ferguson
  - Brown v. Board of Ed.
  - 14th amendment raises a lot of questions on what equal protections means

- Constitution Law provides a vocabulary & process for dealing w/ important issues

How does SCOTUS Decide What Constitution Means?

- SCOTUS Constrained by political realities
  - If court oversteps, there will be uproar
  - "The Constitution directs their decision"
- But again, Constitution is short & vague
  - How does it apply to Obamacare?
  - Roe v. Wade?
  - Brown v. Board?
  - Both decided based on 14th, but are different issues in practice

- Two major theories on how to interpret the Constitution
  - Originalism: Constitution is changeless & has some meaning
    - Framers of Constitution acted on behalf of the people & delegated power accordingly
    - No one, not even SCOTUS, can diverge from their intent
  - Couple issues w/ this
    - Original Constitution drafted by delegates from diff states
    - Bill of Rights came from 1st Congress
    - Other Amendments came from different Congresses
    - So, who do we decide to follow?



\* How do we decide a "universal opinion" from people from different times, which in themselves had people w/ drastically different viewpoints?

- Shift from frames to general understanding of amendment when drafted

- Hard to dig up truths about the past

- Vastly changed circumstances, hard to translate to present

- Constrain to principles that arise from text?

- Simultaneously asking framers "what did you mean" & "what broader implications does this have"

- See other issues w/ that

- Can state said principles at different levels of generality

- Court is informed by text, personal opinion & political realities

- Non-originalism: Not !!

- Some people argue Framers were non-originalists

- There are constraints on decision-making, but there is no objective way to come to a decision.

- Dred Scott would be decided differently today

Where does SCOTUS get Authority to Interpret?

- Judicial Review does not come from Constitution

- Article III just says SCOTUS is the highest court

- Established via Marbury v. Madison

- The court also asserts its power over state law

- Fletcher v. Peck

- Martin v. Hunter's Lessee

- Cohens v. Virginia asserted final say on criminal proceedings

- When political branches conflict on interpretation, court wins

- United States v. Nixon.

- Supposed to refrain from deciding political questions

- Vietnam War litigation

What Powers does Const. Law give to the rest of the Federal Government?

- The point of the Constitution is to give Fed govt more power, after the Articles failed
- Fed Govt started out pretty small, grew in power over time
  - Sanctioned by interpretations from Const.
- These powers come from article I section 8
- Congress has used the commerce clause to extend federal regulatory power. But the Court has occasionally limited it
  - Gibbons v. Ogden (1824)
  - Partially overturned in U.S. v. E.C. Knight (1895)
  - Schechter Poultry Corp v. United States reinforced this
  - Wickard v. Filburn (1942) flipped back to Ogden
- In general, the commerce clause has been used to enact a new federalism
  - U.S. v. Lopez

What Powers Do the States Have Under Const Law

- Const says little on states' authority
- Fed govt supposed to follow Const. States have all other powers (Dual Sov.)
- States maintain general police power
- Post Civil War to New Deal, Courts ruled in favor of states over the Fed.
  - Hammer v. Dagenhart (1918)
  - Keller v. United States (1909)