

CONSTITUTIONAL LAW R. Miller Fall 2004

CONSTITUTIONAL INTERPRETATION

The art of constitutional interpretation
Limits on the federal judicial power
Interpretive limits
How should the constitution be interpreted?: the second amendment as an example
United States v. Emerson
United States v. Emerson, amicus brief
Massey on constitutional interpretation [handout]

FEDERALISM & COMMUNITY

Federalism introduced
What role should concern over protecting states have in defining Congress's powers?
Rubin & Feeley's *Federalism: Some Notes on a National Neurosis*
The sociology of federalism
Putnam's *Bowling Alone* [handout]
Lyon's *The Community in Urban Society* [handout]
Mike Stern's guest lecture

THE JUDICIARY

REVIEW AUTHORITY

Judicial review
The authority for judicial review
Marbury v. Madison
Simon's *Mr. Marbury's Missing Commission* [handout]
Authority for judicial review of state judgments
Martin v. Hunter's Lessee
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LIMITS ON AUTHORITY

CONGRESSIONAL

Limits on the federal judicial power
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Foreign policy
Goldwater v. Carter
Impeachment and removal
Nixon v. United States

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Federalism and community at the founding
Federalist papers nos. 42, 44, 45, and 46
de Tocqueville's *Democracy in America*

THE LEGISLATURE

Federal legislative power
Scope of congressional authority
Congress and the states
McCulloch v. Maryland
What role should concern over protecting states have in defining Congress's powers?

COMMERCE POWER

Commercial power

Initial era

Gibbons v. Ogden

Limited era: 1890s–1937

What is "commerce"?

United States v. E.C. Knight Co.

Carter v. Carter Coal Co.

What does "among the states" mean?

Houston, East & West Texas Railway Co. v. United States

A.L.A. Schechter Poultry Corporation v. United States

United States

LIMITED ERA

Expansive era: 1937–1990s

Dorothea Lange photos and Studs Terkel interviews [handout]

Key decisions

N.L.R.B. v. Jones & Laughlin Steel Corp.

United States v. Darby

Wickard v. Filburn

The meaning of "commerce among the states"

Heart of Atlanta, Inc. v. United States

Katzenbach v. McClung Sr. and McClung Jr.

Perez v. United States

EXPANSIVE ERA

Tönnies's *Gemeinschaft und Gesellschaft*

Limited era?: 1990s–???

What is Congress's authority to regulate "commerce among the states"?

United States v. Lopez

United States v. Morrison

LIMITED ERA

10TH AMENDMENT

Does the Tenth Amendment limit congressional powers?

Limited era: 1890s–1937

Hammer v. Dagenhart

Champion v. Ames

Expansive era: 1937–1990s

National League of Cities v. Usery

Garcia v. San Antonio Metropolitan Transit Authority

Limited era?: 1990s–???

New York v. United States

Printz v. United States; Reno v. Condon

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Federalism and community today?

Riesman's *The Lonely Crowd* [handout]

Nisbet's *The Quest for Community* [handout]

Viteritti & Russello's *Community and American Federalism* [handout]

THE LEGISLATURE

Federal legislative power

TAXING & SPENDING

Taxing and spending

For what purposes may congress tax and spend?

United States v. Butler

Chas. C. Steward Mach. Co. v. Davis

Conditions on grants to state governments

South Dakota v. Dole

Sabri v. United States

SUITS AGAINST STATE GOVERNMENTS

Congress's power to authorize suits against state governments

Background on the Eleventh Amendment and state sovereign immunity

Lapides v. Board of Regents of the University System of Georgia

Congress's power to authorize suits against state governments

Fitzpatrick v. Bitzer

Seminole Tribe of Florida v. Florida

Board of Trustees, University of Alabama v. Garrett

Nevada Dep't of Human Resources v. Hibbs

Tennessee v. Lane

THE EXECUTIVE

Federal executive power

Inherent presidential power

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Youngstown Sheet & Tube Co. v. Sawyer

The scope of inherent power: the issue of executive privilege

United States v. Nixon

Cheney v. U.S. District Court for the District of Columbia

The authority of congress to increase executive power

Clinton v. City of New York

THE ADMINISTRATIVE STATE

The constitutional problems of the administrative state

The non-delegation doctrine and its demise

A.L.A. Schechter Poultry Corporation v. United States

Panama Refining Co. v. Ryan

Mistretta v. United States

Whitman v. American Trucking Association, Inc.

The legislative veto and its demise

INS v. Chadha

Checking administrative power

The appointment power

Morrison v. Olson

The removal power

The impeachment of Andrew Johnson

(EXECUTIVE)

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Myers v. United States
Humphrey's Executor v. United States
Wiener v. United States
Bowsher v. Synar
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FOREIGN AFFAIRS

Separation of powers and foreign policy
Are foreign policy and domestic affairs different?
United States v. Curtiss-Wright Export Corp.
Treaties and executive agreements
Dames & Moore v. Regan
War powers
War Powers Resolution (50 U.S.C. § 1541 *et seq.*)
Are military tribunals constitutional?
Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terrorism (66 Fed. Reg. 57,833).
Ex parte Quirin
Hamdi v. Rumsfeld

Checks on the president
Suing and prosecuting the president
Nixon v. Fitzgerald
Clinton v. Jones
Impeachment

THE STATES

PREEMPTION

Limits on state regulatory and taxing power

Preemption of state and local laws
Express preemption
Cipollone v. Liggett Group, Inc.
Lorillard Tobacco Co. v. Reilly
Implied preemption
Conflicts preemption
Florida Lime & Avocado Growers, Inc. v. Paul
Preemption because state law impedes the achievement of a federal objective
PG&E Co. v. State Energy Resources Conservation & Development Comm'n
Preemption because federal law occupies the field
Hines v. Davidowitz

DORMANT COMMERCE CLAUSE

The dormant commerce clause
Why a dormant commerce clause?
H.P. Hood & Sons, Inc. v. du Mond
The dormant commerce clause before 1938
Cooley v. The Board of Wardens of the Port of Philadelphia
The contemporary test for the dormant commerce clause
The shift to a balancing approach
South Carolina State Highway Dep't v. Barnwell Bros., Inc.
Southern Pacific Co. v. Arizona ex rel. Sullivan

(STATES)

(DORMANT COMMERCE CLAUSE)

Determining if a law is discriminatory

Facially discriminatory laws

City of Philadelphia v. New Jersey

C&A Carbone, Inc. v. Town of

Clarkston, New York

Hughes v. Oklahoma

Facially neutral laws

Hunt v. Washington State Apple

Advertising Comm'n

Exxon Corporation v. Governor of
Maryland

West Lynn Creamery, Inc. v. Healy

State of Minnesota v. Clover Leaf
Creamery Co.

Analysis if a law is deemed discriminatory

Dean Milk Co. v. City of Madison, Wisconsin

Maine v. Taylor and United States

Analysis if a law is deemed non-discriminatory

Pike v. Bruce Church, Inc.

Bibb v. Navajo Freight Lines, Inc.

Kassel v. Consolidated Freightways
Corporation

CTS Corp. v. Dynamics Corp. of America

Exceptions to the dormant commerce clause

Congressional approval

Western & Southern Life Ins. Co. v.

State Bd. of Equalization of California

The market participant exception

Reeves, Inc. v. Stake

South-Central Timber Development,
Inc. v. Wunnicke

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Federalism and community: final thoughts

Kymlicka's *Community* [handout]

Powell's *The other Double Standard: Communitarianism,*
Federalism, and American Constitutional Law [handout]

Kemmis's *Community and Politics of Place* [handout]

Current's *Tarhalls and Badgers* [handout]