

CONSTITUTIONAL STRUCTURE AND RIGHTS
PSC 223
Mr. Jackson
Fall 2008

COURSE SYLLABUS

Required text: KATHLEEN M. SULLIVAN & GERALD GUNTHER, *CONSTITUTIONAL LAW* (Foundation Press 16th edition 2007), together with its 2008 Supplement.

In addition to the Sullivan & Gunther book, there are several additional or replacement readings that are posted on Blackboard as .pdf files.

This course concerns how the Constitution of the United States sets up the structure of government in three distinct ways: “Horizontal” (among the three branches of the federal government); “Vertical” (allocation of power between the federal government and state governments); and “Individual” (rights of individuals vis-à-vis the government). The principal vehicle for our examination will be more than 200 years of Supreme Court opinions, spanning from *Marbury v. Madison* in 1803 to *Boumediene v. Bush* in 2008. As a result, for most of the course, the issue is less an underlying normative one of whether the Constitution has set up the “right” structure, but, rather, the positive one of filling out the implications of the structure that the Constitution has, indeed, set up. But in that examination, it is essential to develop a sense of how well the Supreme Court is doing in explaining its outcomes in terms of the Constitution.

In the cases we will read, the Court is invariably construing the Constitution of the United States, either specific provisions or authority and limitations arising out of what the Court perceives to be the underlying structure embodied in the Constitution. In *every* case, you should make the effort to determine which provision is (or provisions are) involved and read the provision(s) carefully for yourself—the syllabus that follows does not “assign” specific provisions of the Constitution, but it is the foundation of everything we will do in the course. The Constitution is reprinted in Sullivan & Gunther following p. 1370. I am also posting a .pdf file containing the Constitution, as I find it useful to have it open alongside any particular opinion, without needing to flip back and forth in the Sullivan & Gunther book.

Weeks 1 - 5 (September 2, 9, 16, 23 & 30): Legislative, Executive & Judicial

Orin Kerr, “How to Read a Legal Opinion” (.pdf file)

The Foundation, Nature, and Limits of Judicial Review

pp. 1 - 15 (to Section 2) [in lieu of Sullivan & Gunther's edited version of *Marbury v. Madison* (pp. 2 - 9), please read the unedited version (.pdf file)]

Section 13 of the Judiciary Act of 1789 (.pdf file)

Hayburn's Case (.pdf file) [read in light of *Marbury v. Madison*]

Stuart v. Laird (.pdf file) [read in light of *Marbury v. Madison*]

pp. 19 (starting with Section 3) - 59 [in conjunction with "6. Generalized Grievances" on p. 44, please read "Note on Taxpayer Standing" (.pdf file)]

"Horizontal" Structure: Separation of Powers

pp. 244 – 260 (to Section 2) [in lieu of Sullivan & Gunther's edited version of *Youngstown Sheet & Tube Co. v. Sawyer* (pp. 245 - 252), please read the version I edited (.pdf file)]

Goldwater v. Carter (.pdf file)

pp. 260 (starting with Section 2) - 265

pp. 291 (starting with Section 3) - 320 (to Section 4)

pp. 324 (starting with "3" at bottom) - 338

pp. 320 (starting with Section 4) - 324 (to "3" at bottom)

Recap & Current Application: Justiciability and Separation of Powers

Committee on the Judiciary v. Miers (.pdf file)

Issues Involving "Horizontal" Structure That Also Implicate Individual Rights: Enemy Combatants, Executive Detention, and Habeas Corpus

Ex Parte Milligan (.pdf file)

pp. 268 (starting with the first full paragraph) - 291 (to Section 3) [(where Sullivan & Gunther (p. 271) briefly discuss *Johnson v. Eisentrager*, please read the version I edited (.pdf file)]

Boumediene v. Bush (.pdf file) [in lieu of the 2008 supplement's edited version]

Weeks 6 - 7 (October 7 & 14): Federal & State

"Vertical" Structure: Judicial Review

pp. 15 (starting with Section 2) - 19 (to Section 3)

“Vertical” Structure: The Nature of the Relationship of the States to the Nation

pp. 60 - 81

“Vertical” Structure: Federal Authority (Active and “Dormant”) Over Interstate Commerce

pp. 102 (starting with *Wickard v. Filburn*) - 113 (to “Commerce Clause Review After Lopez”)

pp. 119 (starting with “The Limits of Lopez and Morrison”) - 126 (to Section 5)

pp. 174 - 240 (to Section 4)

pp. 126 (starting with Section 5) - 143 (to “State Sovereign Immunity and the Eleventh Amendment”)

Week 8 (October 21)

Mid-Term

Weeks 9 - 15 (October 28, November 4, 11, 18 & 25, December 2 & 9):
Government & Individual

Individual Rights: Due Process

pp. 339 - 480 (to Section 4) [In conjunction with p. 378, please read *United States v. Carolene Products Co.* (.pdf file)]

Individual Rights: Equal Protection

pp. 486 - 561 (to “Race Preferences in Electoral Districting”)

pp. 643 (starting with “Vote ‘Dilution’: Reapportionment and Gerrymandering”) - 651

pp. 561 (starting with “Race Preferences in Electoral Districting”) - 638 (to Section 4)

Individual Rights: Freedom of Speech

pp. 741 - 903 (to Section 6)

Course Wrap-Up