Constitutional Law  
Spring 2017  
Professor Michael Klarman

SYLLABUS

The casebook for the course is Stone, Seidman, Sunstein, Tushnet & Karlan, Constitutional Law (Little, Brown & Co. 7th ed. 2013), together with the 2016 Supplement thereto [hereinafter designated “Supp”]. There is also a short supplement of photocopied materials that will be posted on the course website and can be picked up in hard copy from the law school copy center sometime after the first week of the semester [hereinafter designated “Supp II”].

The numbers along the left-hand side of the syllabus represent assignments (of which there are 30), rather than class sessions (of which there are 36); some of the reading assignments will occupy us for longer than a single class. I will tell you each day in class how far you need to read for the following class.

My office is Areeda 332. My email is mklarman@law.harvard.edu. My office hours this semester are Wednesdays and Fridays from 3:30 to 5:30. I would prefer that people make appointments in advance, as it enables me to better distribute the traffic. Please make appointments directly with me, not with my assistant. I will start off the semester allocating a half hour to each appointment, but if the traffic gets heavy, we may need to reduce that a bit. Most days, I’m also happy to stick around after class to answer questions.

Class is cancelled for Friday, Apr. 7. Our makeup class will be Friday, Mar. 24 at 3:00 PM in the regular classroom.

I. Structure

A. The Role of the Supreme Court

(1) Judicial Review: Marbury ................................................................. pp. 25–38
(2) Introduction ................................................................................................................. 1–25
(3) McCulloch v. Maryland; Natural Law .................................................................53–69

B. Congressional Powers and Federalism

(4) Theory of Enumerated Powers and the New Deal Crisis .........................159–165; 172 (starting with the Note)–179; 185 (“Note: The New Deal Crisis”)–196
(5) Post-New Deal Approach to Commerce Power ..................... 171–172 (Wickard); 196–218
(6) NFIB v. Sebelius ......................................................................................................218–240
(7) Taxing and Spending ..............................................................................................294–322
(8) Section 5 of the 14th Amendment .........................................................................325–336
C. Separation of Powers

(9) Introduction and Youngstown Steel ................................................................. 367–380
(10) Foreign Affairs .................................................................................................. 382–406; Supp. 47–50
(11) Domestic Affairs ............................................................................................... 411–448

II. Individual Rights

A. Equal Protection

1. Minimum Rationality

(12) Rational Basis Review ....................................................................................... 497–520

2. Race

(13) Race Discrimination History .......................................................................... 453–472
(14) Brown I ............................................................................................................ 472–482; Supp. II, 1–29
(15) Brown II and Subsequent Desegregation Developments ......................... 482–497; Supp. II, 30–62
(16) Race-Specific Classifications ........................................................................ 520–540
(17) Discriminatory Purpose or Effect? ................................................................. 540–561; Supp. P.59-60
(18) Affirmative Action I ......................................................................................... 562–591
(19) Affirmative Action II ...................................................................................... 591–598; Supp. 61-77; Casebook, 608–629

3. Sex

(20) Stereotypes ....................................................................................................... 629–646
(21) “Natural Differences” and Affirmative Action ............................................. 646–673

4. Sexual Orientation

(22) Bowers, Romer, and Lawrence ................................................................. 921 (Bowers); 673–693 (through note 5); 922–933 (just through note 1)
(I’m asking you to jump around some in this assignment, but I think the cases make the most sense when read in this order.)
(23) Same-Sex Marriage and Obergefell ......................................................... 693 (note 5)–696; 934–937; Supp. pp. 131–53 (We are skipping Windsor)

B. Fundamental Rights

1. Early Applications

(24) Implied Rights, Slaughter-House, Incorporation, and McDonald .................. 721–750
(25) Substantive Due Process: The Rise and Fall of *Lochner* ........................................ 750–776

2. Fundamental Rights Equal Protection

(26) Procreation and Access to the Judicial Process .......... 776–780; 807–813 (to end of page)
(27) Voting .................................................................................................................................. 780-84; 788 (starting with b. “Dilution...”)–795, 138–141, 800 (note 3)–803

3. Modern Substantive Due Process

(28) Privacy: *Griswold* and Abortion I (*Roe*) ................................................................. 841–866
(29) Abortion II: Funding, Restrictions, and *Casey* .............................................................. 866–893
(Time permitting)
(30) Abortion III; *Whole Women’s Health* and Right to Die ...................................................... Supp. 107-18; Casebook, 937–951 (including “Note: Assisted Suicide”)