

Summary of Session 1
October 24, 2018: Introductions
An Introduction to U.S. Constitutional Law & Jurisprudence

Who are “We” the People?



Summary of Administrative Matters:

- The class meets for 90 minutes, from 12:15, without break (based on a class vote)
- All course materials and lessons are available on the course website:
 - <https://constitutionallawlibrary.wordpress.com/syllabus/>
- Details on the grading scheme are available online at the following link:
 - <https://constitutionallawlibrary.wordpress.com/exam-guidelines/>
- All non-law students MUST take the final exam.

Summary of Introduction to the subject-matter:

Big-Picture Take Away:

The term “people” in the U.S. Constitution is a legal term of art and the interpretation of this term (and the political and social struggles around its interpretation) form a good starting point for understanding the American approach to law.

Important Points of Legal History/Philosophy:

- While American law invokes terms sourced in the European legal tradition, particularly in the Common Law system of England, American Law, itself, was created in deliberate and continuous revolt against many European ideas about power, social status, and the Rule of Law.
 - In particular, American Law was created in revolt against monarchy and religious intolerance.
- American Jurisprudence was most significantly and consistently influenced by African-American and Native American approaches to ideas of freedom, equality, and justice.
 - American law was formed, and continues to be formed through the fierce

- confrontation between these and other differing ideas about the Rule of Law.
- Formal writing on the jurisprudence of African-American and Native American traditions are not easily available or accessible to lay audiences.
 - For this reason, the class will access these ideas through literary sources, the study of social movements, and political speeches.
 - NOTE: During our first class, for this reason, we listened to Martin Luther King's famous "I have a Dream" speech.

Nature and Authority of the U.S. Constitution:

- The U.S. Constitution was ratified on June 21, 1788 and became effective on this day.
- The American Constitution is the "Supreme Law of the Land."
 - The authority for this statement can be found in Article VI, Clause 2 of the U.S. Constitution.
 - This Clause is referred to as the "Supremacy Clause"
 - The Supremacy Clause means that, as far as the United States is concerned, the U.S. Constitution has supreme authority over all other sources of norms and laws—including religious texts.
 - It can be amended (and we will discuss amendment procedures later in the class)
 - Despite the document's endurance for more than two centuries, it has only twenty-seven amendments.

- The Basics of U.S. Federalism:

- The United States, much like the European Union, was created as a federation that united independent states.
- There was and continues to be great debate about the nature of the power relationship between states and the federal government
- We will address these issues later on in the class, in sections focused on U.S. federalism.
 - For now it is important to understand that the state system and the federal system exist largely as two separate systems.
 - The relationship between these systems remains fiercely debated to this day.
 - Like the U.S. government, every state government has a constitution.
 - A state's constitution is the supreme form of state law.
 - There are two views on whether state constitutions should conform to the U.S. Constitution:

- Majority View:

- Some believe that all states laws must conform to two constitutions, the U.S. Constitution and the state constitution.
- According to this view: "The federal constitution sets the

floor for individual rights; state constitutions establish the ceiling.” (LeCroy v. Hanlon. 713 S.W.2d at 338. 815 S.W.2d at 690.)

- NOTE: This case will not be tested on the final exam, it is cited for your reference only. The general concept of a constitutional floor may be tested.

- **Minority View:**

- A few believe that state constitutions are the final authority on state laws.
- On this view, what how do we interpret the Supremacy Clause?
 - Persons will always be able to avail themselves of the greater right—whether it is state or federal.
 - It does not mean that a court, faithfully interpreting state laws, can only find in them protections that equal or exceed federal laws.

- ***The Separation of Powers Doctrine:***

- This is a political doctrine of constitutional law that divides the function of government into three broad categories that are kept separate to prevent abuse and concentration of power.
- The system includes a series of “checks and balances” that prescribe opportunities for each branches to “check” or “balance” the power of one or both of the remaining branches.
- On the basis of this Doctrine, the Constitution creates three co-equal branches of government:
 - The Legislative Branch creates laws.
 - The Executive Branch enforces laws.
 - The Judicial Branch interprets laws.

- ***Reading American Caselaw (Part I)***

- In American judgements, judges express personal views and embrace a more narrative-based style of writing
- We will discuss the reasons for this in greater detail.
- For now:
 - As you read cases, try and identify the difference between:
 - **Holding:** The narrow law generated in response to the central question of the case, as determined by a majority (or at the least a plurality of the judges)
 - **Orbiter Dictum:** Remarks or observations made by a judge in her written opinion that do not form a necessary part of the court's decision but may be used to interpret, understand, and apply the holding in the

case.

- Understand that:
 - A majority opinion is ascribed to by the majority judges deciding a case
 - A plurality opinion is an opinion that is subscribed to by the greatest number of judges. This means there is no view that has the support of a majority and therefore the holding in the case is traced by identifying the positions with with the most votes
 - A minority opinion, obviously, is a view that does not have the support of a majority or plurality
 - A concurrence is an opinion that expresses agreement with the holding of the majority opinion but expresses, either something in addition or an alternative legal basis for the holding. These additional or alternative views in a concurrence are not part of the courts holding for that case.
 - A dissent is a basis, set in a judicial opinion, for opposition to views expressed by other opinions on the case.
 - Some of the most impactful opinions have been dissents.
 - It is hard to predict the life of a dissent. Over time, many powerful dissents or concurrences have been known to have a significant impact on shaping the evolution of the law.

CASE STUDIED: Dred Scott v. Sandford, 60 U.S. 393 (1857)

- *Key takeaways from Dred Scott v. Sanford.*
 - **Question:** Was Dred Scott free or slave?
 - **Verdict:** “The majority held that “a negro, whose ancestors were imported into [the U.S.], and sold as slaves,” whether enslaved or free, could not be an American citizen and therefore did not have standing to sue in federal court.”
 - **Legal Basis for the decision:** Jurisdiction, standing, citizenship
- See the following page for a summary of Dred Scott v. Sandford, 60 U.S. 393 (1857)
 - <https://constitutionallawlibrary.wordpress.com/scott-v-sandford/>
- **Highly Recommended Next Steps:**
 - Skim (at the very least) the Dred Scott Opinion available here:
 - It is not for the faint of heart, but it is by far one of the most honest descriptions of the big contests that still plague the American Legal System.
 - It provides, with extraordinary detail, a variety of views on the issue of
 - Race
 - The original meaning of U.S. Constitutional terms-of-art such as “people” and “equality.”