

CONSTITUTIONAL LAW OVERVIEW

by Professor Robert Pushaw

I. OVERVIEW OF CONSTITUTIONAL LAW I—GOVERNMENT STRUCTURE

A. ROLE OF FEDERAL COURTS IN INTERPRETING CONSTITUTION

Theme: Founders expected constitutional interpretation to be shared by all three branches. Over past 50 years, however, **Supreme Court has asserted it's the ultimate arbiter of the Constitution**, and that everyone (not merely the parties to a particular case) must follow its interpretation unless Court changes its mind (*Cooper*).

1. Ongoing Controversy

(A) Judicial Activism or Independence of the Judiciary?

Article III makes judges **independent**, especially so they can enforce **Constitution**, even when it's politically unpopular (e.g., allowing offensive free speech, like flag burning). But Framers intended federal courts to invalidate laws only when they "**clearly**" violated Constitution, like suspending habeas corpus when there's no emergency. Gradually, however, Court began to strike down laws that did **NOT** clearly contradict any constitutional provision, but rather with **Court's view** of the best interpretation of that provision. And because Court is independent of political process, and enjoys such prestige, it can create **new constitutional rights under the guise of interpretation**. Such activism can reflect either liberal or conservative ideology. So independence is a two-edged sword.

(B) States' Rights vs. National Uniformity

Supremacy Clause makes plain that **FEDERAL** law trumps **STATE** law when they conflict. Court is final word on federal constitutional law, which must be (1) **superior** to all other law, and (2) **uniform**, so that your rights don't vary depending on what state you're in.

Nonetheless, there's been a persistent notion of "**states' rights**"—states can act on own independent interpretation of Constitution. That's how Southern States justified **secession**, and you would think that this idea would have died after the Civil War. But it didn't (e.g., Southern States' resistance to desegregation). Even today, a **majority** of the Court assert that **federal law** (including the Constitution) generally should be construed **narrowly** to preserve state power—*Lopez* and *Morrison* are examples.

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all the trappings of success from a Wall Street career Jake is a man tormented by the irrational guilt he carries from his past
relationship with Jessica Jessica is unmarried and childless with a biological clock that has all but stopped ticking and Jake is
her back up plan Her ultimate goal is to fix Jakes life by blackmailing him in an effort to force him into a horrible relationship
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