

## Constitutional Law

---

---

---

---

---

---

---

## Federalism

- Form of Government where Power divided Between National Government and States
- Privileges and Immunities Clause (Article IV)
  - state must show substantial reason substantially related
- Full Faith and Credit Clause (Article IV)

---

---

---

---

---

---

---

## Checks and Balances

- Tri-Partite Government
  - Legislative
  - Executive
  - Judicial

---

---

---

---

---

---

---

## Commerce Clause

- Article I, Section 8 to Regulate Commerce with Foreign Nations between States and Indian Tribes
- Interstate and Intrastate Commerce
  - As long as interstate commerce substantially affects interstate commerce

---

---

---

---

---

---

---

## Regulatory Powers of State

- Police Power
- Balancing Commerce Clause with States' Police Power
  - State law presumed valid notwithstanding effect on interstate commerce
    - but if interferes substantially will be struck down

---

---

---

---

---

---

---

## Supremacy Clause and Preemption

- Federal Constitution, Statutory Law, and Treaties Supersede State Counterparts (Article IV, Section 2)
- Preemption
  - Federal Law Preempts a Conflicting State or Local Law, Regulation, or Ordinance if
    - Federal Law is Pervasive, comprehensive or detailed and leaves state no room
    - Federal Law Creates Regulatory Agency

---

---

---

---

---

---

---

## Taxing and Spending Powers

- Taxing Power (Article I, Section 8)
  - Congress to Lay and Collect taxes
    - must bear reasonable relationship to revenue production
    - Uniformity of Taxes
- Spending Power
- Power of the Purse Strings

---

---

---

---

---

---

---

## Bill of Rights: General

- First Ten Amendments
- Protections for Individuals against Federal Government
  - Legal persons, such as corporations and proprietorships as well as natural persons
- Supreme Court Incorporated it into Fourteenth Amendment and applied to States
  - No state shall abridge privileges and immunities, deny life, liberty, or property without due process of law, or deny to any person equal protection

---

---

---

---

---

---

---

## Bill of Rights

- Freedom of Religion, Speech, and the Press, as well as Right to Assemble and to Petition the Government (Amend 1)
- Right to Keep and Bear Arms (Amend 2)
- Prohibition of Unreasonable Searches and Seizures (Amend 5)

---

---

---

---

---

---

---

## Bill of Rights (2)

- Right to Due Process of Law (Fundamental Fairness)
  - including Indictment by Grand Jury (Amend 5)
- Right to Speedy and Public (Criminal) Trial
  - with Assistance of Counsel
  - and right to Cross-Examine and to Solicit favorable Testimony

---

---

---

---

---

---

---

## Bill of Rights (3)

- Right to Trial by Jury
  - Both Criminal (Amend 6) and Civil Cases involving More than \$20 (Amend 7)
- Prohibits Excessive Bails and Fines as well as Cruel and Unusual Punishment (Amend 8)

---

---

---

---

---

---

---

## Freedom of Speech

- First Amendment Safeguards Freedom of Speech Including Corporate Political Speech and Symbolic Speech
- Commercial Speech
  - May be restricted
    - as long as restriction promotes substantial government interest, directly advances said interest, and is no more restrictive than necessary

---

---

---

---

---

---

---

## Freedom of Speech (2)

- Unprotected Speech
  - Slander and Libel that Defames or Harms Good Reputation of another Individual
  - Threatening or fighting words
  - Obscene or Pornographic speech

---

---

---

---

---

---

---

## Cyberspeech

- Attempts to regulate Hampered by Fact that Internet is Seamless Global Web and Many Users are Not Subject to US Law
- One Approach is Filtering

---

---

---

---

---

---

---

## Freedom of Religion

- First Amendment
- Prohibits Congress from
  - Making Law Respecting Establishment of Religion
  - Prohibiting the Free Exercise of Religion
- Focus on the Primary Effect, not Secondary Effect
  - As Long as Law or Regulation Doesn't Put a Significant Burden on Religion, it will not be deemed Unconstitutional because it has some impact

---

---

---

---

---

---

---

## Searches and Seizures

- Fourth Amendment
- Protects Right of People to be Secure in Homes
  - Officers must obtain warrants, unless exigent circumstances
    - evidence being destroyed or relocated
  - Person Includes a Corporation, Partnership, and other Legal Entities
    - although standard for probable cause is lower than required to search a natural person

---

---

---

---

---

---

---

## Self-Incrimination

- Fifth Amendment
- No Person Shall Be Compelled to Testify Against Himself
  - Unlike Fourth Amendment, does not extend to corporations or partnerships, but does protect sole partnerships and sole practitioners to the same extent as natural persons

---

---

---

---

---

---

---

## Due Process of Law

- Procedural Due Process
  - Fundamental Fairness in Procedure, such as Prior Notice, Opportunity to Be Heard
- Substantive Due Process
  - Requires that the Interest of State Be Weighted against Right of Individual(s) against Whom Law Directed
  - Fundamental right protected unless compelling state interest (public safety, speed limits)
  - As long as rationally related to legitimate government interest, law will not violate legitimate governmental purpose (such as insurance regulation, etc.)

---

---

---

---

---

---

---

## Equal Protection

- Fourteenth and Fifth Amendments
- Prohibit State and Federal Government from Denying Any Person in Jurisdiction Equal Protection of the Laws
- Like Substantive Due Process, Equal Protection Requires that the Substantive effect of the Law be Weighted Against Right of Individual

---

---

---

---

---

---

---

## Equal Protection (2)

- If Law inhibits Fundamental Right or Classification based on Suspect Trait (e.g., Race, National Origin)
  - it is subject to Strict Scrutiny
  - it will stand only if serves compelling State Interest
- If Law embodies a Classification based on Gender or Legitimacy
  - it is Subject to Intermediate Scrutiny
  - it will be upheld only if Substantially Related to Important Government Interest

---

---

---

---

---

---

---

## Equal Protection (3)

- If the Law or Action inhibits only Rights Related to Economic or Social Welfare
  - it will be upheld if there is any Rational Basis on which the Classification might relate to a Legitimate Government Interest

---

---

---

---

---

---

---

## Privacy Rights

- Courts have inferred Fundamental Right to Personal Privacy
- from First, Third, Fourth, Fifth, and Ninth Amendment
  - Freedom of Information Act
  - Family and Educational Rights and Privacy Act
  - Right to Financial Privacy
  - Electronic Communications Privacy Act

---

---

---

---

---

---

---