

Interpreting the U.S. Constitution



David A. Hughes, Ph.D.

Associate Professor
University of Louisiana at Lafayette
Department of Political Science

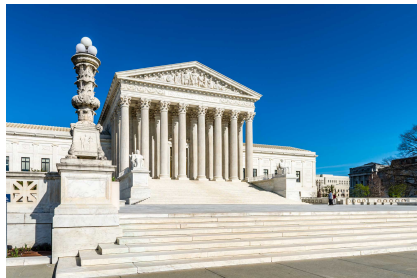
Introduction

- A constitution is the highest law of the land.
- It creates the entity and specifies its offices/officers, along with their powers.
- The U.S. Constitution of 1789 creates a system characterized by separated powers, checks and balances, federalism, and limited government.



Why interpret constitutions?

- Clarify broad and ambiguous language
- Resolve internal conflict
- Adjudicate omissions
- Address unforeseen developments



Who interprets the constitution?

- Theoretically, everyone who swears an oath to the Constitution interprets it.
- But the norm of judicial supremacy holds that the judiciary gets the last word (see *Marbury v. Madison* [1803])
- This creates a clear counter-majoritarian difficulty



Judicial philosophy and ideology

- Judicial philosophy is how a judge approaches their job.
- This could include a more active or restrained approach.
- The judiciary's approach to substantive due process is illustrative in this regard.



William O. Douglas (1898-1980)

Constitutional interpretation/construction

- Originalism
- Non-originalism
- Pragmatism



Sandra Day O'Connor (1930-2023)

Constitutional law

- The Constitution, its amendments, and the voluminous case-law interpreting them are collectively referred to as constitutional law
- Most academic programs break constitutional law up into a course on “powers” and a course on “civil rights and liberties”



Conclusion

- As we saw with statutory interpretation, constitutional interpretation in a common law system like ours is necessary, largely due to vagueness.
- Because of the norm of judicial supremacy, how judges exercise judicial review has important payoffs for democratic ideals.
- And how judges approach their task is, perhaps unsatisfyingly, largely a matter of personal taste.