



MASARYKOVA UNIVERZITA

# Constitutionalism

## American Constitutionalism

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# American Constitutionalism

- History
- Constitutional Interpretation

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- History
- Constitutional Interpretation

# History

- Origins
- Development

# History

- **Origins**
- **Development**



# Origins

- Federalist 78
- Marbury v. Madison



# Federalist 78

- The Constitution and Ordinary Law
- Will of the People v. Constitutionally Delegated Authority
- Where to Place Final Authority to Interpret the Constitution (President? Parliament? Court?)

# Federalist 78

- The Least Dangerous Branch („Lacking Both Purse and Sword“)
- Against Majority, and Public Opinion
- What If The Court Abuses Power?



# Marbury v. Madison

- Republicans v. Federalists
- Adams signed Marbury's commission, but it was not delivered. Jefferson refused to deliver it.
- Marbury asked the Supreme Court to issue a writ of mandamus.

# Marbury v. Madison

- Marbury had a legal right to the commission...
- Marbury had a legal remedy to it...
- The power to issue the writ of mandamus:  
statute and Constitution

# Marbury v. Madison

- „in all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction.“
- The Statute Was Unconstitutional...

# History

- Origins
- Development

# Development

## Dred Scott v. Sandford:

- Two Lawsuits (1846, 1853)
- Taney: „*Any person descended from Africans, whether slave or free, is not a citizen of the United States.*“
- Missouri compromise (“*Once free, always free.*”) voided.

# Development

## Lochner Era:

- using its interpretation of substantive due process to strike down laws held to be infringing on economic liberty or private contract rights.
- legislative proposal to enlarge the Court (Roosevelt)

# Development

- **Warren court:** banned the segregation of public schools, expanded civil rights, judicial power, and the federal power
- **Burger court:** continued the liberal legacy

# Development

- **Rehnquist Court:** more conservative (swing vote: Sandra O'Connor)
- **Roberts court:** still more conservative (swing vote Anthony Kennedy), but *Obergefell v. Hodge* (a right of same-sex couples to marry)



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# Constitutional Interpretation

- Dworkin v. Rehnquist
- Approaches

# Constitutional Interpretation

- *Dworkin v. Rehnquist*
- Approaches

# Dworkin v. Rehnquist

- Rehnquist
- Dworkin

# Dworkin v. Rehnquist

- Rehnquist
- Dworkin

# Rehnquist

- Should the Constitution Be Responsive to Changing Social Conditions?
- Its Application Should be Coextensive with the Language
- Intention of the Constitution's Framers
- Constitution Becomes Increasingly Irrelevant

# Dworkin v. Rehnquist

- Rehnquist
- Dworkin

# Dworkin

- changes of interpretation of Constitution's text
- distinction between concept and conceptions
- fusion of constitutional law and philosophy
- the possibility of moral truth



# Constitutional Interpretation

- Dworkin v. Rehnquist
- **Approaches**

# Approaches

- Textualism – Consensualism
- Abstract Originalism (Philosophical Approach) – Intentionalism and Originalism
- Structuralism – Doctrinalism – Pragmatism

# Sources

- Ackerman, B., *We the People*
- Barber, S., Fleming, J., *Constitutional Interpretation*
- Bickel, A., *The Least Dangerous Branch*
- Breyer, S., *Making Our Democracy Work*
- Chemerinsky, E., *Constitutional Law*
- Dworkin, R., *Taking Rights Seriously*
- Scalia, A., *A Matter of Interpretation*