

**CONSTITUTIONAL LAW I:  
JUDICIAL REVIEW AND CONSTITUTIONAL INTERPRETATION  
POLITICAL SCIENCE 307  
SPRING 2024  
MICRO-ESSAY #2**

Write a 750-900 word essay on the following topic. Your essay is due in the Google folder by 4 PM on FRIDAY February 23. Be sure to use direct quotations from *Calder v. Bull* to bolster your claims, to cite course pack page numbers in parentheses after the quotation, and to add a title that captures your argument. Finally, be sure to include at least one claim-objection-rejoinder sequence.

Justices Chase and Iredell, the key opinion writers in *Calder v. Bull*, agree that the Connecticut legislature's act of 1795, which "set aside" (153) a probate court ruling and ordered a rehearing, did not violate the "ex post facto" clause in Article I Section 10 of the US Constitution.

They both agree that the phrase "ex post facto" only applies to retrospective criminal laws. They agree, then, on the key legal holding in the case. But they disagree on the nature of the power of interpretation that undergirds the holding. Their disagreement goes to the deep issue of what justices should be doing when they engage in judicial review to enforce the constitution.

**Write an essay that assesses the two positions on the constitution. Who has the better view, Chase or Iredell? Be sure to articulate specific reasons why you believe one view or the other is better.**

Chase would have judges enforce limits based broadly on "principles ... of free republican governments," (154) whether they are "express or implied" (157). But he also notes that he would limit the "exercise ... [of deciding any law] to be void" to "very clear" cases (157).

Iredell would similarly limit judicial review to "clear and urgent" cases, though he describes it as a "delicate and awful" power (158), and, importantly, he limits it narrowly to cases where the legislature has violated "marked and settled boundaries" (158).

Thus they disagree over how judicial review should work, and this disagreement exposes a more fundamental disagreement over the proper understanding of what a republican constitution is. Both agree it is a kind of social contract, but Iredell sees the contract as a positivist would—the "constitutional provisions" (158) are the command of the sovereign people. For him this means that the commands written down are crucial. Chase also sees the constitution as "an express compact" (154), i.e., a written constitution. But, by contrast to Iredell, he thinks the larger "purposes for which men enter into society" (154) as well as the document's text should be used to interpret the contract, e.g., to grasp fully the constitution's meaning.