

**CONSTITUTIONAL LAW I:
JUDICIAL REVIEW AND CONSTITUTIONAL INTERPRETATION
POLITICAL SCIENCE 307
SPRING 2024
MICRO-ESSAY #4**

Write a 750 word essay on the following topic. Your essay is due in the google doc folder by 4 PM on FRIDAY March 29. Please supply a descriptive title, and include at least one claim-objection-rejoinder sequence.

Which approach to constitutional interpretation in *Missouri v. Holland* (1920) is most responsible for the holding in the case?

Many argue that it is the structural argument distinguishing enumerated and expressly delegated powers; others emphasize the prudential argument weighing against the states' because of their mishandling of their police power and property rights over the birds, e.g., that practically there "soon might be no birds for any powers to deal with" (179).

Bobbitt argues the key modality is Holmes' doctrinal focus—the need to develop a general and neutral rule for limiting the treaty power (56).

Compton would likely emphasize Holmes' rejection of a rigid and "inviolable zone of state sovereignty" (136). Here the focus is on the "living constitution" idea that relations between state and federal sovereignty evolve under the Constitution. One consequence of this idea is that, as Holmes wrote in his famous *Lochner* dissent, "general propositions do not decide particular cases" (136). This leads to the conclusion that one fixed, determinate "principle" like vested rights or divided sovereignty cannot hold for all time—or decide all cases without some judicial discretion—under any theory of constitutional interpretation.

For all the arguments, growth and change in "the authority of the United States" (Article VI) plays a key—albeit in each case different—role.

Whichever approach you decide on, be sure to consider the merits of at least one other approach and argument in the case. Thus in this paper, the "debate" will be tailor made by you, but in each case it is still a contested (i.e., arguable) question.

I will appreciate any essay that can make sense of the prudential argument(s) in the case without recourse to a simplistic "living constitution" position, e.g., that under this view the US Constitution is (and should be) whatever the justices say it is.