

**CONSTITUTIONAL LAW I:  
CONSTITUTIONAL STRUCTURES OF GOVERNMENT  
(Law A507)**

Autumn 2018 Syllabus

(Updated: 2018.09.20)

TTh 5:30 p.m. - 7:00 p.m., W.H. Gates Hall, Room 127

Instructor: Dean Falvy ([dfalvy@uw.edu](mailto:dfalvy@uw.edu))

*We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

- Constitution of the United States (Preamble)

**1. Course Description and Objectives**

The Constitution of the United States is a remarkable document. A product of Enlightenment philosophy and hard political bargaining, it has provided an enduring and influential blueprint for self-government for over 230 years. Over time, veneration of the Constitution has become a kind of civic religion, shared by Americans across the political spectrum, even if they often disagree about its meaning. It is easy to forget that the Constitution was only ratified by a thin margin, against fierce opposition, and that its compromises nearly unraveled in the sectional conflict over slavery. The debates over the Constitution are hardly settled – they continue to the present day.

The task of settling these arguments has fallen to (or, some might say, has been seized by) the U.S. Supreme Court. Often hailed, but just as often criticized, the Court has reached a position of exceptional power in American life. Every year, this unelected group of nine men and women issues decisions that profoundly affect the functioning of democratic government in the United States and even the daily lives of its inhabitants. Has the Court achieved this role by deducing a neutral science of constitutional interpretation? Alternatively, has it won its glory by bravely defending (and sometimes discovering) the rights of the people? Or is the Court just a continuation of politics by another means, a sort of super-legislature, but without democratic accountability? As we study its decisions, we will remember that the role of the Court itself is a significant part of the ongoing debate.

We will examine the successes and failures of the U.S. Constitution as governing document, right up to the challenges of the present day. Does the Constitution provide a sufficient framework for effective national governance, while preserving state, local, and individual liberty? Does it successfully balance the legislative, executive, and judicial branches of government, or just provide a recipe for paralyzed gridlock? And how is the Constitution coping with increasingly bitter partisanship, and the election of a thoroughly unconventional chief executive?

This course is intended for law students educated outside the United States. Our objective is to gain an understanding of the history and theories behind the Constitution; including the source of the federal government's power, the division of power between the federal and state governments, and the distribution of federal power among the legislative, executive, and judicial branches of government (Constitutional Law II will examine the relationship between the federal and state governments and individual rights and liberties.)

The study of U.S. Constitutional Law is not really about absorbing a list of settled doctrines and cases. Whether we view it as law, or politics, or a little of both, it is clearly an ongoing argument, in which the losers of one debate may re-emerge a generation later as the winners of the next. Accordingly, we will learn how to make arguments on either side of any constitutional question. To achieve this, your active participation in classroom discussions is essential. You will be encouraged to voice an opinion.

Although this is not a course in comparative law, we will take advantage of the diversity of cultural backgrounds, personal values, and the legal and constitutional experiences that will be represented in the class, in order to place U.S. Constitutional Law in a global context. At the same time, we will seek to understand why the United States has often followed its own path in government and law.

## 2. **Required Text**

As our primary text, we will use Gregory E. Maggs & Peter J. Smith, *Constitutional Law: A Contemporary Approach* (West Academic Publishing, 4<sup>th</sup> edition, 2018). This physical textbook also includes a digital access code that allows you to read the material on a computer or tablet.

**FREQUENTLY ASKED QUESTION:** The 4<sup>th</sup> edition of the casebook is new this year and less-expensive used copies are not available. Can I use the 3<sup>rd</sup> edition instead?

**ANSWER:** *Yes, but... I do recommend using the latest edition of the casebook. If you have an earlier edition, it may be missing a few recent cases and some explanatory material. However, all cases in the textbook can also be found online (although usually in longer versions). If you do use an earlier edition, it is your responsibility to find the analogous page numbers from the syllabus and locate any materials you do not have in your edition.*

We will also use a short PDF update to the Maggs & Smith text with a few cases from the Supreme Court's most recent term. This will be distributed on the CANVAS site (look under the "Files" tab).

In addition, for a few classes we will use supplemental readings which will also be posted on CANVAS under the "Files" tab.

### **3. Optional Texts**

U.S. constitutional law is deeply interwoven with American political and social history. Because many students enrolled in this course will have had limited prior exposure to these subjects, we will spend a significant amount of class time putting the Constitution in historical context. Although the Maggs & Smith textbook includes some helpful background, it still presumes that most U.S. law students will have a college-level understanding of U.S. history. For those lacking such a background, you may wish to read a basic introduction to U.S. history, such as James West Davidson's *A Little History of the United States* (Yale University Press, 2015), Robert Remini's *A Short History of the United States* (Harper Collins, 2008), or David Reynolds' *America, Empire of Liberty: A New History of the United States* (Basic Books, 2009), or Jill Lepore's *These Truths: A History of the United States* (W.W. Norton, 2018). (I have listed these books in order of length, from shortest to longest, so you can choose among them based on your appetite for detail). Background reading of this type is completely optional.

Also, if you would like to use a secondary source to better understand the legal material discussed in the casebook, one recommended treatise is Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Wolters Kluwer, 5th ed. 2015). Again, this is not required.

### **4. Schedule**

The class will normally meet on Tuesdays and Thursdays from 5:30 to 7:00 p.m. in W.H. Gates Hall, Room 127.

Note that there will be no class on Thursday, November 22 (due to the Thanksgiving holiday).

Also, please note that I have an active law practice that may require me to cancel or postpone a class. I will do my best to avoid this. If I cannot avoid it, I will do my best to notify you about a change or cancellation as early as possible.

### **5. Office Hours**

I will generally hold office hours from 4:30 p.m. to 5:15 p.m. on Thursdays in W.H. Gates Hall Room 446. You do not need an appointment, but please make one if you want to be sure that I will be there.

### **6. Grading**

**Mid-term quiz: 15%.** We will have one multiple-choice midterm quiz that will last about 30-45 minutes.

**Final Exam: 70%.** The final exam will consist of 4-5 essay problems and will last about 3 hours. You will receive practice exam questions to assist you in preparing for the exam, which we will discuss in our review session at the end of the course.

**Class Participation: 15%.** This grade will be based on attendance, preparation, and participation in class discussions. The participation grade will be based less on giving the “right” answers in class, and more on a willingness to engage with the material and express an opinion.

**In addition to general participation, you will be asked serve as an in-class “expert” two times during the quarter.** This requires you to be prepared to lead class discussion and to answer detailed questions relating to the assigned reading. In contrast to relying solely on “volunteers”, this system is designed to ensure that everyone gets a chance to participate in class discussions. Of course, participation is not limited to the “experts” – students are encouraged to join in any and all class discussions.

Sign-ups for the expert sessions will be offered through [signupgenius.com](http://signupgenius.com). You can use this [link](#) to access the sign-up page:

<https://www.signupgenius.com/go/10c0b4ba8ac2aa4fb6-conlaw1>.

Regardless of whether or not you are designated as an “expert” for a given day, it is your responsibility to be prepared to analyze and discuss the assigned reading.

In addition to the class participation score above, the instructor also reserves the right to adjust a student’s grade upward or downward on the basis of participation in and attendance in class. The law school’s grading policy is available at <http://www.law.washington.edu/students/academics/Grading.aspx>.

**Materials:** When taking the mid-term quiz or the final exam, you may use your textbook, any other assigned readings, legal or non-legal dictionaries, including translation dictionaries, and your own notes and outlines. You may download and refer to the slide decks and any other handouts used in class. You may NOT bring commercially-prepared outlines or materials. You may not consult the Internet or paste previously prepared materials into your answers. Please contact me if you have any questions regarding permitted materials.

## 7. **Attendance Policy**

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor’s so indicating to the Academic Services Office.

In addition, low attendance rates may be reflected in a student’s class participation grade. Students do not need to notify the instructor regarding each absence, but please inform the instructor regarding prolonged absences due to illness, family emergency, etc.

## **8. Access and Accommodation**

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

## **9. Language Accommodation**

If you are a non-native speaker of English, you may qualify for additional time on your final exam. A request for language accommodation can be made to Academic Services using this [form](#). Requests must be made by the reschedule deadline for the quarter. Academic Services will notify students by email regarding approval of the request and of the specific arrangements for this accommodation.

## **10. Course Evaluation**

Course evaluations are open online during the last week of classes. Class time will be made available on Dec. 5 for filling out your evaluation. Please bring a laptop or mobile device to class on this date to participate in the evaluation. Of course, you may also complete the evaluation outside of class on your own time.

## **11. Assignments**

The reading assignments below are mostly from the Maggs & Smith casebook (“M&S”). Additional materials may be assigned from time to time and posted on the CANVAS website for the course. CANVAS materials are marked with an asterisk (\*) below.

### **Class 1 (September 25)**

#### **Origins of the U.S. Constitution**

- M&S pp. 1-14
- [Declaration of Independence \(see CANVAS website\)](#)
- [Text of Articles of Confederation \(see CANVAS website\)](#)

## **Class 2 (September 27)**

### **Reading the U.S. Constitution – Part 1**

- Text of U.S. Constitution (Articles I-VII)

M&S 1471-1481

## **Class 3 (October 2)**

### **Amending the Constitution**

- Bill of Rights (Amendments 1-10)
- Amendments 11-28

M&S pp. 1481-1489

### **Approaches to Interpretation**

- *District of Columbia v. Heller* (2008)
- [\*Roper v. Simmons\* \(2005\) \(see CANVAS\)](#)

M&S pp. 13-44

## **Class 4 (October 4)**

### **Judicial Power and Judicial Review**

- *Marbury v. Madison* (1803)
- *Martin v. Hunter's Lessee* (1816)
- *Cooper v. Aaron* (1958)

M&S pp. 45-70

## **Class 5 (October 9)**

### **Justiciability**

- *Baker v. Carr* (1962)
- *Nixon v. U.S.* (1993)
- *Muskrat v. U.S.* (1911)
- *Allen v. Wright* (1984)

- *Lujan v. Defenders of Wildlife* (1992)
- *Ex parte McCardle* (1869)

M&S pp. 71-111

### **Class 6 (October 11)**

#### **Federalism and the Legislative Power**

- *McCullough v. Maryland* (1819)

M&S pp. 113-127

#### **The Commerce Power (Part 1)**

- *Gibbons v. Ogden* (1824)
- *U.S. v. E.C. Knight* (1895)
- *Shreveport Rate Case* (1914)
- *Champion v. Ames* (1903)
- *Hammer v. Dagenhart* (1918)

M&S pp. 134-152

### **Class 7 (October 16)**

#### **The Commerce Power (Part 2)**

- *Carter v. Carter Coal Co.* (1936)
- *NLRB v. Jones & Laughlin Steel Corp.* (1937)
- *U.S. v. Darby* (1941)
- *Wickard v. Fillburn* (1942)
- *Heart of Atlanta Motel v. U.S.* (1964)
- *Katzenbach v. McClung* (1964)

M&S pp. 152-170

## **Class 8 (October 18)**

### **The Commerce Power (Part 3)**

- *U.S. v. Lopez* (1995)
- *U.S. v. Morrison* (2000)
- *Gonzales v. Raich* (2005)
- *Nat'l Fed. of Ind. Business v. Sebelius* (2012) (part 1)

M&S pp. 171-207

## **Class 9 (October 23)**

### **The Taxation Power**

- *Child Labor Tax Case* (1922)
- *U.S. v. Kahriger* (1953)
- *Nat'l Fed. of Ind. Business v. Sebelius* (2012) (part 2)

### **The Spending Power**

- *U.S. v. Butler* (1936)
- *South Dakota v. Dole* (1987)
- *Nat'l Fed. of Ind. Business v. Sebelius* (2012) (part 3)

M&S pp. 207-240

## **Class 10 (October 25)**

### **Congressional War and Treaty Powers**

- *Woods v. Cloyd W. Miller Co.* (1948)
- *Missouri v. Holland* (1920)

M&S pp. 241-246

### **Tribal Sovereignty Under the Constitution**

- [\*Worcester v. Georgia\* \(1832\)\\* \(CANVAS\)](#)
- [\*Tribal Nations: The Story of U.S. Indian Law\*](#) (Video documentary) (2006)

<https://www.youtube.com/watch?v=fhRGnWISuo>

### **Class 11 (October 30)**

**\*\*MIDTERM EXAM AND REVIEW\*\*\***

### **Class 12 (November 1)**

#### **State Immunity from Federal Regulation**

- *National League of Cities v. Usery* (1976)
- *Garcia v. San Antonio Metropolitan Transit Authority* (1985)
- *New York v. U.S.* (1992)
- *Printz v. U.S.* (1997)
- *Alden v. Maine* (1999)

M&S pp. 246-284

### **Class 13 (November 6)**

#### **Limitations on State Power – Preemption & Dormant Commerce Clause (Part 1)**

- *Silkwood v. Kerr-McGee Corp.* (1984)
- *Gibbons v. Ogden* (1824) (part 2)
- *Cooley v. Board of Wardens* (1851)
- *Wabash, St. L. & P. Ry. Co. v. Illinois* (1886)
- *Dean Milk Co. v. City of Madison* (1951)
- *Hughes v. Oklahoma* (1979)
- *South Carolina Hwy Dept. v. Barnwell Bros.* (1938)
- *Southern Pacific Co. v. Arizona* (1945)
- *Kassel v. Consolidated Freightways Corp. of Delaware* (1981)

M&S pp. 286-327

### **Class 14 (November 8)**

#### **Dormant Commerce Clause (Part 2)**

- *City of Philadelphia v. New Jersey* (1978)
- *Camps Newfound/Owatonna v. Town of Harrison* (1997)

- *South-Central Timber Dev., Inc. v. Wunnicke* (1984)
- *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Management Auth.* (2007)
- *Prudential Ins. Co. v. Benjamin* (1946)
- *Metropolitan Life Ins. Co. v. Ward* (1985)
- [\*South Dakota v. Wayfair\* \(2018\) \(see M&S 2018 Supplement on CANVAS\)](#)

### **Privileges and Immunities Clause**

- *Baldwin v. Fish and Game Commission of Montana* (1978)
- *Supreme Court of New Hampshire v. Piper* (1985)

M&S pp. 327-361

### **Class 15 (November 13)**

#### **State Power to Regulate House and Senate**

- *U.S. Term Limits, Inc. v. Thornton* (1995)

M&S pp. 362-373

#### **Separation of Legislative & Executive Powers (1)**

- *Whitman v. American Trucking Associations* (2001)
- *I.N.S. v. Chadha* (1983)
- *Clinton v. New York* (1998)
- *Myers v. United States* (1926)
- *Humphrey’s Executor v. U.S.* (1935)

M&S pp. 458-494

### **Class 16 (November 15)**

#### **Separation of Legislative & Executive Powers (2)**

- *Bowsher v. Synar* (1986)
- *Morrison v. Olson* (1988)
- *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010)
- *National Labor Relations Board v. Noel Canning* (2014)
- [\*Lucia v. Securities and Exchange Commission\* \(2018\) \(see M&S 2018 Supplement on CANVAS\)](#)
- *Nixon v. Administrator of General Services* (1977) M&S pp. 494-533

## **Class 17 (November 20)**

### **Executive Power – Foreign Policy**

- *United States v. Curtiss-Wright Export Corporation* (1936)
- *Youngstown Sheet & Tube Co. v. Sawyer* (1952)
- *Goldwater v. Carter* (1979)
- *Dames & Moore v. Regan* (1981)
- *Zivotofsky v. Kerry* (2015)

M&S pp. 375-415

## **November 22\*\*\*NO CLASS – HAPPY THANKSGIVING \*\*\***

## **Class 18 (November 27)**

### **Presidential War Powers**

- Abraham Lincoln, *First Inaugural Address*\*
- Bruce Ragsdale, “*Ex parte Merryman* and Debates on Civil Liberties During the Civil War” (pp. 1-9, 33-34, 43-44)\*
- Abraham Lincoln, *Emancipation Proclamation*\*
- *Ex parte Quirin* (1942)\*
- *Korematsu v. U.S.* (1944)
- War Powers Resolution (1973)\*
- Nixon Veto Message (1973)\*
- *Hamdi v. Rumsfeld* (2004)
- *Boumedienne v. Bush* (2008)\*

\*See CANVAS website; M&S pp. 415-431; 453-456; 767-773

## **Class 19 (November 29)**

### **Executive Privilege & Immunity**

- *U.S. v. Nixon* (1974)
- *Nixon v. Fitzgerald* (1982)
- *Clinton v. Jones* (1997)

M&S 431-453

## **Removal of the President**

- [Charles L. Black, Jr., “The Impeachable Offense” \(1974\)\\*](#)
- [Dean G. Falvy, “Four Ways the Trump Presidency Might Not Last Four Years” \(2017\)\\*](#)

\*See CANVAS website

## **Class 20 - Review Session (December 4)**

**\*\*\*PRACTICE EXAM DISCUSSION AND REVIEW\*\*\***

## **FINAL EXAM (December 13, 8:30 am.)**