

**CONSTITUTIONAL LAW I:**  
**CONSTITUTIONAL STRUCTURES OF GOVERNMENT**

COURSE OVERVIEW AND SYLLABUS

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Office Location: Gates Hall 314  
Office Hours: Mondays from 12:30 to 1:20 and by appointment.

**COURSE OVERVIEW**

**1. Course Description**

This course is an examination of the structures of government that emerge from the United States Constitution. Major themes of the course include federalism, separation of powers, the role of the courts, and Reconstruction. Topics of particular focus include judicial review, the executive and legislative powers, interstate commerce, state sovereign immunity, federal preemption, and the Fourteenth Amendment. We also will address certain individual constitutional rights.

This course is an important but nevertheless introductory part of the larger project of exploring and understanding the United States Constitution. Of necessity, we will address only in passing certain subjects, such as procedural due process, that tend to be covered more thoroughly in semester-based Constitutional Law courses. I strongly encourage students to take upper-level classes that more fully explore these subjects and to consider enrolling in other advanced courses in constitutional law.

**2. Learning Objectives and Outcomes**

This course aims to ensure that you:

- (a) Deepen your understanding of American structures of government and how the United States Constitution divides governmental power;
- (b) Develop an understanding of key constitutional law concepts that speak to the structures of American government, including federalism, separation of powers, the role of the courts, and the Fourteenth Amendment;
- (c) Engage in legal analysis and reasoning needed for problem solving in the constitutional law arena; and
- (d) Communicate effectively in writing and orally on constitutional law matters.

### **3. Required Texts**

There are two books required for this course. The first is Charles Shanor's *American Constitutional Law: Structure and Reconstruction* (5th ed. 2013). Note that this is not the most recent edition. I have assigned this older edition because it tends to be less expensive, and I will supplement it as necessary with more recent materials. Please do be sure to obtain the Fifth Edition. There is no need to obtain the casebook supplement.

The second required book for this course is *The Limits of Presidential Power: A Citizen's Guide to the Law* (2018), written by me and Professor Kathryn Watts. This book is available on [Amazon](#). Five copies of this book will be on hold at the library for those wishing not to purchase a copy. Please note that, per UW policy, I am not allowed to retain any profits from texts assigned to my own students.

I will be supplementing the casebook with various readings that will be made available through Westlaw, Lexis, Canvas or links to various websites. Pulling up reading assignments online using web links can be more cumbersome than reading out of a printed course pack. However, this will save you money, and the online links will facilitate the incorporation of current, developing news into the class. Occasionally I will email you; please make sure that you check your UW email regularly during the quarter.

### **4. Additional Resources**

Constitutional law is difficult to summarize and simplify, and coverage of cases and other materials tends to vary significantly from class to class. As such, I would advise caution with respect to commercial outlines. For those wishing to consult a supplementary source, I recommend Erwin Chemerinsky's *Constitutional Law: Principles and Policies* (5th ed. 2015). A copy should be available in the library.

### **5. Office Hours**

I encourage you to talk with me outside of class if you have questions or comments or otherwise wish to meet. I am always happy to discuss the course and its materials. In addition, I have worked as a clerk at both the appellate and Supreme Court level, as an associate at a large Seattle law firm, and as an intern in various capacities (including at a public-interest legal organization, a federal prosecutor's office, and a large New York law firm). I am happy to discuss any of these experiences with you or more generally to discuss the legal profession.

To set up an appointment, please contact me by email, and we can determine a mutually available time. I am happy to talk with you either in person or over the phone. In addition to office hours by appointment, I also have set aside scheduled office hours (Mondays from 12:30 to 1:20) for drop-in meetings.

## 6. Disability-Related Needs

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](mailto:uwdrs@uw.edu) or [disability.uw.edu](http://disability.uw.edu). DRS offers resources and coordinates reasonable accommodations for students with disabilities or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructors, 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.

## 7. Classroom Policies

**Preparation.** It is critical that you come to class prepared. At a minimum, this requires that you have completed the reading, that you have thought about the implicated issues, and that you arrive to each class ready to discuss the materials on a substantive level.

**Class Participation.** I will call on people randomly and without prior notice, and I encourage students to participate voluntarily. Please note that the purpose of the former policy is not to intimidate or otherwise impose on students; to the contrary, it is a means of ensuring that everyone is included in the discussion and therefore can benefit both from the insights of his or her peers and from actively engaging with the material. Class participation may affect your final grade, as discussed below.

**Writing Exercises.** I will assign at least two writing exercises during the quarter. These exercises are mandatory but otherwise ungraded. Failing to complete these writing exercises may affect your final grade, as discussed below.

**Attendance.** Attendance is important, and it is required. If you need to miss a class, please let me know by email. An excessive number of missed classes will result in automatic expulsion from the course. As the School of Law's attendance policy reads, "[a]t any time after the fifth week of a 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."

**Recordings.** You are not allowed to make your own video or audio recordings of class sessions. I will authorize Law Media to record the class subject to the following conditions: (1) students who access the recordings agree to use the recordings only for their studies in this class; and (2) students who access the recordings agree not to distribute the recordings to anyone else. Note that you should not rely on these recordings or assume they always will be made available. Technical errors can interfere with the recording process, and listening to the audio is not a substitute for class attendance. If at any point during the quarter I feel that class participation or attendance has been low, I may withdraw my recording authorization for future classes.

## **8. Grades**

Your grade for the course will be determined primarily by your score on an exam, which is discussed below. Class participation and completion of the writing assignments may affect your grade in one of two circumstances. First, if your grade is on or near the cutoff between two grades, then I may bump your grade up if (1) you have turned in all the assigned writing exercises and (2) your classroom participation has been exceptionally valuable and thoughtful (where quality, not quantity, of participation is the relevant criterion). Conversely, if your grade is on or near the cutoff between two grades, then I may bump your grade down if (1) you have failed to turn in one or more of the assigned writing exercises or (2) you have failed to participate meaningfully in class discussion.

The exam will be open book and four hours long. If you use a computer for the exam, you must use the ExamSoft software. In ExamSoft, the exam will be administered in the “Non-Secure with Blocked Internet” setting, which means that you will be able to access files on your computer but that your network access will be blocked. Among other things, you will not be allowed to do computerized research (e.g., Lexis or Westlaw research) or to access the Internet while taking the exam. You may use the control-F function for purposes of the exam, but you may not use the cut-and-paste function.

## **9. Reading Assignments**

Below please find the syllabus and reading assignments for the course. We will tackle an average of approximately one assignment per class period.

If necessary, I will circulate a revised version of the Course Overview and Syllabus. Each version of the Course Overview and Syllabus is marked as such at the bottom of the page.

# **SYLLABUS**

(subject to modification)

## **I. Overview of the United States Government**

Assignment 1: The Constitution and Its Interpretation  
Assignment 2: The Legislative Branch  
Assignment 3: The Executive Branch  
Assignment 4: The Judicial Branch

## **II. Judicial Power To Enforce the Constitution**

Assignment 5: Standing and Mootness  
Assignment 6: Political Question Doctrine

## **III. The Executive's Powers and Their Limits**

Assignment 7: The Scope of the President's Powers  
Assignment 8: Executive Privileges and Immunities / Impeachment

## **IV. Congress's Article I Powers and Their Limits**

Assignments 9-12: Article I Powers, Including the Commerce Clause Power  
Assignment 13: Federalism as a Limit: The Tenth Amendment  
Assignment 14: Federalism as a Limit: The Eleventh Amendment

## **V. Federalism as a Limit on State Power**

Assignment 15: Federal Preemption of State Law  
Assignment 16: The Dormant Commerce Clause; State Privileges and Immunities  
Assignment 17: Reflection and Review

## **VI. Introduction to the Reconstruction Amendments**

Assignments 18-19: Overview; State-Actor Doctrine; Federal Privileges and Immunities  
Assignment 20: Overview of Procedural Due Process and Substantive Due Process

## **VII. Equal Protection**

Assignment 21: Overview; Traditional Rational-Basis Review; "Separate But Equal"  
Assignment 22: Strict Scrutiny  
Assignment 23: Intermediate Scrutiny; Fundamental Interests; Non-Traditional Rational-Basis Review

## **VIII. Enforcement of the Reconstruction Amendments**

Assignment 24: Congress's Section 14.5 Power  
Assignment 25: Reflection and Review

## **VIII. Reflection and Review**

Assignment 26: Reflection and Review  
Assignment 27: Reflection and Review

# **READING ASSIGNMENTS**

(subject to modification)

“CB” refers to the required casebook.

## **OVERVIEW OF THE UNITED STATES GOVERNMENT**

### **Assignment 1**

#### **The Constitution and Its Interpretation**

- Read “A Brief History of the Constitution and Its Interpretation” (CB 4-9). Though reading the Articles of Confederation is a worthwhile exercise, it is not required.
- Read “A Brief Outline of the Constitution’s Text” (CB 1-3).
- Read the Constitution (CB xxv-xli). Note that the meaning of much of its text will not be clear to you. That is to be expected and should not deter you from reading it in full.
- Read the Introduction, as well as Chapter 1, of *The Limits of Presidential Power*.
- Read “Travel Ban” packet (available on Canvas).

### **Assignment 2**

#### **The Legislative Branch**

- Reread U.S. CONST., Art. I.
- Read Chapter 4 of *The Limits of Presidential Power*.
- Read “Legislative Branch Packet” (available on Canvas). If you dislike (or can’t load) the five-minute video, feel free to read the transcript instead.

### **Assignment 3**

#### **The Executive Branch**

- Reread U.S. CONST., Art. II.
- Read Chapters 2-3 and 5 of *The Limits of Presidential Power*.
- Read “Executive Branch Packet” (available on Canvas).

## **Assignment 4**

### The Judicial Branch

- Reread U.S. CONST., Art. III.
- Read Chapter 6 of *The Limits of Presidential Power*.
- Read “Judicial Branch Packet” (available on Canvas).

### **JUDICIAL POWER TO ENFORCE THE CONSTITUTION**

#### **Assignment 5**

#### Limits on the Judicial Power: Standing and Mootness

- Reread U.S. CONST. Art. III, taking particular note of § 2, cl. 1.
- The “Case or Controversy” Limit (CB 85-86). [6th edition pp. 76-77]
- Standing and Mootness; *Laidlaw* (CB 86-98). [6th edition pp. 77-86]
- Read Chapters 7 and 9 of *The Limits of Presidential Power*.
- State standing: *Massachusetts v. EPA* (CB 98-102). [6th edition pp. 86-89]
- Think back to the Travel Ban materials from day one. Why did Washington State have standing to bring suit?

#### **Assignment 6**

#### Limits on the Judicial Power: Political Question Doctrine

- Reread U.S. CONST. Art. III.
- Political Questions; *Baker* and *Vieth* (CB 102-113). [6th edition pp. 89-100]
- Reread U.S. CONST. Art. I, § 9, cl. 8.
- Read the Complaint filed in *Citizens for Responsibility and Ethics in Washington (CREW) v. Trump* (available on Canvas). Feel free to skim, rather than closely read, Section IV.A (“Defendants’ Foreign Emoluments Clause Violations”).
- OPTIONAL: Read Chapters 8 and 10 of *The Limits of Presidential Power*. Please note that we will not be covering this material in class.

### **THE EXECUTIVE’S POWERS AND THEIR LIMITS**

#### **Assignment 7**

#### The Scope of the President’s Powers

- Reread U.S. CONST. Art. II.
- Domestic Affairs; *Clinton v. City of New York* (CB 126-134). [6th edition pp. 112-120]
- Foreign Affairs; *Curtiss-Wright* (CB 135-137). [6th edition pp. 120-123]
- *Dames & Moore* (CB 146-150). [6th edition pp. 123-127]
- Read the “Monuments litigation” packet (available on Canvas).

**Assignment 8**  
Executive Privileges and Immunities

- Reread U.S. CONST. Art. II. Does this Article anywhere mention executive privileges or immunities?
- *United States v. Nixon* (CB 147-153). [6th edition pp. 138-144]
- *Clinton v. Jones* (CB 153-160). [6th edition pp. 144-150]
- Read the “Impeachment” packet (available on Canvas).

**CONGRESS’S ARTICLE I POWERS AND THEIR LIMITS**

**Assignment 9**  
Article I Powers, Including the Commerce Clause Power  
*The Commerce Clause During and After the New Deal*

- Reread U.S. CONST. Art. I; take particular note of Art. I, § 8.
- Read “Introduction to Congress’s Powers” (available on Canvas).
- *Wickard* (CB 233-237). [6th edition pp. 221-224]
- *Heart of Atlanta Motel* (CB 238-242). [6th edition pp. 225-229]

**Assignment 10**  
Article I Powers, Including the Commerce Clause Power  
*Modern Scope of the Commerce Clause*

- Reread U.S. CONST. Art. I, § 8, cl. 3 & 18.
- *Lopez* (CB 243-251). [6th edition pp. 229-236]
- *United States v. Morrison* (CB 251-256). [6th edition pp. 236-241]

### **Assignment 11**

#### Article I Powers, Including the Commerce Clause Power *Modern Scope of the Commerce Clause, con't*

- Reread U.S. CONST. Art. I, § 8, cl. 3 & 18.
- *Raich* (CB 256-261). [6th edition pp. 241-245]
- *National Federation* (CB 261-268). [6th edition pp. 245-251]
- Spend at least 10 minutes looking (online) through the full *National Federation* opinion, available at <http://goo.gl/S9JxCp>. Note that the first six pages constitute the “Syllabus,” a quasi-official summary described at the very top of the first page. The actual opinion starts on page 7 of the PDF and continues through page 193. If you look to the top of each opinion page, it will indicate whether at least five justices joined that portion of the opinion (in which case it will read “Opinion of the Court,” *see, e.g.*, page 13 of the PDF) or if fewer than five justices joined (in which case it will read “Opinion of [the relevant justices], *see, e.g.*, page 21 of the PDF; *compare id. with, e.g.*, page 130 of the PDF). Spend these 10 minutes not focused on the text of the opinion, but instead familiarizing yourself with how such an opinion looks and generally is organized.

### **Assignment 12**

#### Article I Powers, Including the Commerce Clause Power *Other Article I Powers*

- Reread U.S. CONST. Art. I, § 8.
- The Taxing Power (CB 269). [6th edition pp. 251-252]
- *National Federation* (CB 269-275). [6th edition pp. 252-257]
- The Spending Powers; *Dole* (CB 276-281). [6th edition pp. 257-262]
- *National Federation* (CB 281-287). [6th edition pp. 262-268]

### **Assignment 13**

#### Federalism as a Limit: The Tenth Amendment *Commandeering*

- Reread U.S. CONST. amend. 10.
- Introduction to Federalism Limits on Article I Powers (CB 289). [6th edition pp. 274-275]
- The Tenth Amendment; *Garcia* (CB 289-296). [6th edition pp. 275-280]
- Excerpt from *New York v. United States* (available on Canvas).
- *Printz* (CB 304-311). [6th edition pp. 288-294]

### **Assignment 14**

#### Federalism as a Limit: The Eleventh Amendment

- Reread U.S. CONST. amend. 11.
- Introduction to the Eleventh Amendment and State Sovereign Immunity (CB 311-312). [6th edition pp. 294-295]
- *Seminole Tribe* (CB 312-319). [6th edition pp. 295-300]
- *Alden* (CB 319-325). [6th edition pp. 300-305]

### **FEDERALISM AS A LIMIT ON STATE POWER**

### **Assignment 15**

#### Federal Preemption of State Law

- Reread U.S. CONST. Art. VI.
- Introduction to Federalism's Limits on the States (CB 330). [6th edition pp. 309]
- Introduction to Federal Preemption of State Law (CB 351-352). [6th edition pp. 326-327]
- Excerpt from *Geier v. American Honda Motor Company*, 529 U.S. 861 (2000) (available on Canvas).
- "Preemption Handout" (available on Canvas).

### **Assignment 16**

#### The Dormant Commerce Clause; State Privileges and Immunities

- Reread U.S. CONST. Art. I, § 8, cl. 3.
- Introduction to Judicial Protection of Interstate Commerce (CB 364-365). [6th edition pp. 337-338]
- Discrimination and Burdens on Commerce; *Philadelphia v. New Jersey* (CB 367-373). [6th edition pp. 340-346]
- Excerpt from *White v. Massachusetts Council of Const. Employers, Inc.*, 460 U.S. 204 (1983) (available on Canvas).
- Reread U.S. CONST. Art. IV, § 2, cl. 1.
- Introduction to State Privileges and Immunities (CB 399-400). [6th edition pp. 372]
- *Camden* (CB 400-406). [6th edition pp. 372-378]

### **Assignment 17**

#### Reflection and Review

- Assignment to be announced.

## INTRODUCTION TO THE RECONSTRUCTION AMENDMENTS

### Assignments 18-19

Overview of the Reconstruction Amendments; the State-Actor Doctrine;  
Federal Privileges and Immunities

- Reread U.S. CONST. amend. 14.
- “Overview of *Dred Scott*” (available on Canvas).
- Introduction to Reconstruction of Federal-State Relations (CB 407). [6th edition pp. 382]
- Introduction to Origins of the Reconstruction Amendments (CB 408). [6th edition pp. 383]
- State Action; *The Civil Rights Cases* (CB 418-426). [6th edition pp. 391-399]
- *Leesville Concrete* (CB 430-438). [6th edition pp. 403-411]
- *DeShaney* (CB 439-445). [6th edition pp. 411-417]
- Read “Overview of Federal Privileges and Immunities” (available on Canvas).

### Assignment 20

Overview of Procedural Due Process and Substantive Due Process

- Reread U.S. CONST. amend. 14, § 1.
- Read “Due Process Packet” (available on Canvas).

## EQUAL PROTECTION

### Assignment 21

Overview; Traditional Rational-Basis Review; “Separate But Equal”

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Equal Protection (CB 593-595). [6th edition pp. 567-569]
- Introduction to Traditional Rational Basis Review (CB 595). [6th edition pp. 569]
- *Railway Express* (CB 595-600). [6th edition pp. 569-574]
- *Armour* (CB 600-603). [6th edition pp. 574-577]
- Introduction to Race and the Equal Protection Clause (CB 607). [6th edition pp. 581]
- *Plessy* (CB 607-612). [6th edition pp. 581-586]
- Full, unedited opinion in *Brown v. Board of Education* (available on Canvas).
- Notes on *Brown* (CB 615-617). [6th edition pp. 589-591]

**Assignment 22**  
Strict Scrutiny

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Invidious Race Discrimination (CB 617). [6th edition pp. 591]
- *Yick Wo, Korematsu, Loving, Johnson, and Washington* (CB 619-637). [6th edition pp. 593-611]
- Reread *Yick Wo* (CB 619-620). [6th edition pp. 593-594]

**Assignment 23**  
Intermediate Scrutiny; Non-Traditional Rational-Basis Review

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Gender and Equal Protection (CB 678-679). [6th edition pp. 651-652]
- *Craig* (CB 679-685). [6th edition pp. 652-658]
- *Virginia* (CB 685-693). [6th edition pp. 658-666]
- Read the “Transgender Troops” packet (available on Canvas).
- Introduction to Rational Basis and Hybrid Review (CB 743). [6th edition pp. 711]
- *Cleburne* (CB 743-750). [6th edition pp. 711-718]

**ENFORCEMENT OF THE RECONSTRUCTION AMENDMENTS**

**Assignment 24**  
Congress’s Section 14.5 Power

- Reread U.S. CONST. amend. 14, taking particular note of § 5.
- Introduction to the Power To Enforce the Reconstruction Amendments (CB 779-780). [6th edition pp. 737-738]
- *City of Boerne* (CB 786-793). [6th edition pp. 743-750]
- *Garrett* (CB 794-801). [6th edition pp. 755-761]
- *Hibbs* (CB 801-806). [6th edition pp. 761-765]
- *Coleman* (CB 806-810). [6th edition pp. 765-769]

**Assignment 25**  
Reflection and Review

- Complete the “Review Problem” writing exercise.

**Assignment 26**  
Reflection and Review

- Reread U.S. CONST. amend. 14, taking particular note of § 5.
- Full, unedited version of *Heart of Atlanta Motel*, 379 U.S. 241 (1964) (available on Lexis or Westlaw).
- Full, unedited version of *United States v. Morrison*, 529 U.S. 598 (2000) (available on Lexis or Westlaw).

**Assignment 27**  
Reflection and Review

- Assignment to be announced.