

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

COURSE OVERVIEW AND SYLLABUS

Professor Kathryn A. Watts
Office Phone: (206) 543-6299
Email: kawatts@uw.edu
Spring 2018

Version 3 (3/23/2018)

Office Location: Gates Hall 313
Office Hours: Mondays & Wednesdays from 3:30 p.m. to 4:30 p.m. 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 required texts for this class. The first required book for this course 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 Lisa Manheim. This book is available on [Amazon](#) in either a paperback or an e-book format. Five copies of this book will be on hold at the library for those who do not wish to purchase a copy. Please note that, per UW policy, I will not retain any profits from texts assigned to my students.

I will be supplementing these two required texts 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 with important details or additional readings; 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. However, for those wishing to consult a supplementary source, I recommend Erwin Chemerinsky's *Constitutional Law: Principles and Policies* (5th ed. 2015).

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 levels, as an associate at a large Chicago law firm, and as an intern or summer associate in various capacities (including at a law firm in Portland, Oregon). 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. In addition to office hours by appointment, I also have set aside scheduled, drop-in office hours Mondays & Wednesdays from 3:30 p.m. to 4:30 p.m. No appointment is necessary for my scheduled drop-in office hours; however, should you wish to meet with me outside of these pre-scheduled hours, please email me to set up an appointment.

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 or 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 two writing exercises during the quarter. These exercises are mandatory and must be completed by the assigned due dates. Failing to complete and submit these writing exercises in a timely manner will negatively affect your final grade, as discussed below. But otherwise they are ungraded.

Attendance. Attendance is important, and it is required. If you need to miss a class, send me an email to let me know about your absence. An excessive number of missed classes will result in automatic expulsion from the course. The School of Law's attendance policy reads: "At 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 by your score on an exam, which is discussed below. However, class participation and completion of the writing assignments may affect your grade as follows:

- a. **Class Participation:** If your final grade on the exam is on or near the cutoff between two grades, then I may bump your grade up if 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 you have failed to participate meaningfully in class discussion.
- b. **Failure to timely submit the required writing assignments:** In addition, failure to timely submit either of the two required writing assignments will result in an automatic bump down of your final grade for the course (e.g., if you earn an A on the exam but you fail to turn in one of the two writing assignments on time, then your final grade will be bumped down from an A to an A-). Failure to timely submit both of the two required assignments will result in two grade bumps down (e.g., from an A to a B+). Should a serious illness, unavoidable scheduling conflict, or emergency arise that will make it difficult for you to complete either of the two assignments on time, then you should reach out to me via email in advance of the original due date to request an extension. I will grant extensions where the circumstances warrant doing so (e.g., in cases of illness, family emergencies, unavoidable scheduling conflicts, etc.) If I grant you an extension and you meet your new deadline, then your assignment will be considered timely, and your grade will not be negatively impacted. As a result, it is in your best interest to reach out to me in advance to request a due date extension should one become necessary. Please note that I am much less likely to grant you an extension if you request an extension at the last minute based on foreseeable or avoidable circumstances.

9. The exam

The exam will be open book and four hours long. If you use a computer for the exam, you must use the software required by Academic Services. 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.

10. Class schedule changes

On Wednesday, March 28, we will meet in Room 138 rather than in our usual classroom. I will teach the class as usual but we will be joined by Professor Manheim's students.

Also, on Friday, April 6, you will attend class with Professor Manheim's students in Room 133 rather than in our usual room. Professor Manheim will teach class that day as I will be presenting a paper in Washington, D.C.

11. 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 adjustments to this reading list become 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 (Writing Assignment #1)

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 (Writing Assignment #2)

VIII. Reflection and Review

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

READING ASSIGNMENTS

(subject to modification)

“CB” refers to the required Shanor 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).
- 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).
- Print and complete “Student Info Sheet” (posted to Canvas) and bring to class to submit to me.

Assignment 2

The Legislative Branch

- Note that class today (Wednesday, March 28) will meet in **Room 138**.
- Reread U.S. CONST., Art. I.
- 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.
- Read Chapter 4 of *The Limits of Presidential Power*.
- Read and compare the following two commentaries, which address the Constitution as a whole:
 - David Keene, *Preserving the ‘genius’ of the Constitution*, THE WASHINGTON TIMES (Sept. 12, 2016) (available here: <https://tinyurl.com/zytpnfx>)
 - Read Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1 (1987) (available on Westlaw, Lexis, or [HeinOnline](#))

Assignment 3

The Executive Branch

- Reread U.S. CONST., Art. II.
- Read Chapters 2-3 and 5 of *The Limits of Presidential Power*.
- Read CB pp. 114-116 (on the distribution of national powers) and CB pp. 117-125 (*Youngstown*).

Assignment 4
The Judicial Branch

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

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).
- Standing and Mootness; *Laidlaw* (CB 86-98).
- Read Chapter 9 of *The Limits of Presidential Power*.
- State standing: *Massachusetts v. EPA* (CB 98-102).
- 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).
- Reread U.S. CONST. Art. I, § 9, cl. 8.
- Read the “*Citizens for Responsibility and Ethics in Washington (CREW) v. Trump Complaint*” (available on Canvas).

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).
- Foreign Affairs; *Curtiss-Wright* (CB 135-137); *Dames & Moore* (CB 137-141).
- 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).
- *Clinton v. Jones* (CB 153-160).
- 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).
- *Heart of Atlanta Motel* (CB 238-242).

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).
- *United States v. Morrison* (CB 251-256).

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).
- *National Federation* (CB 261-268).
- 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).
- *National Federation* (CB 269-275).
- The Spending Powers; *Dole* (CB 276-281).
- *National Federation* (CB 281-287).

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).
- The Tenth Amendment; *Garcia* (CB 289-296).
- Excerpt from *New York v. United States* (available on Canvas).
- *Printz* (CB 304-311).
- Read Chapter 7 of *The Limits of Presidential Power*.

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).
- *Seminole Tribe* (CB 312-319).
- *Alden* (CB 319-325).

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).
- Introduction to Federal Preemption of State Law (CB 351-352).
- Read the edited version of "*Geier*" (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).
- Discrimination and Burdens on Commerce; *Philadelphia v. New Jersey* (CB 367-373).
- 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).
- *Camden* (CB 400-406).

Assignment 17

Reflection and Review

- Complete the "Review Problem" writing exercise.

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).
- Introduction to Origins of the Reconstruction Amendments (CB 408).
- State Action; *The Civil Rights Cases* (CB 418-426).
- *Leesville Concrete* (CB 430-438).
- *DeShaney* (CB 439-445).
- 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).
- Introduction to Traditional Rational Basis Review (CB 595).
- *Railway Express* (CB 595-600).
- *Armour* (CB 600-603).
- Introduction to Race and the Equal Protection Clause (CB 607).
- *Plessy* (CB 607-612).
- Full, unedited opinion in *Brown v. Board of Education* (available on Canvas).
- Notes on *Brown* (CB 615-617).

Assignment 22
Strict Scrutiny

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Invidious Race Discrimination (CB 617).
- *Yick Wo* (CB 619-620).
- *Korematsu* (CB 621-627).
- *Loving* (CB 628-630).
- *Johnson* (CB 630-632).
- *Washington* (CB 632-637).
- Reread *Yick Wo* (CB 619-620)

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).
- *Craig* (CB 679-685).
- *Virginia* (CB 685-693).
- Read the “Transgender Troops” packet (available on Canvas).
- Introduction to Rational Basis and Hybrid Review (CB 743).
- *Cleburne* (CB 743-750).

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).
- *City of Boerne* (CB 786-793).
- *Garrett* (CB 794-801).
- *Hibbs* (CB 801-806).
- *Coleman* (CB 806-810).

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.