

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

COURSE OVERVIEW AND SYLLABUS

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Office Location: Gates Hall 319

Group Office Hours (Held in Law School Café or Terrace): *Mondays from 12:30 p.m. to 1:20 p.m.; Fridays 12:30-1:30 P.M.*; Individual office hours (in office): *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

The casebook required for this course is Charles Shanor's *American Constitutional Law: Structure and Reconstruction* (6th ed. 2017). Casebooks are inexcusably expensive. Please note, therefore, that most of the cases that are assigned in the 6th edition are also printed in the 5th edition, and, when available, this edition will be cheaper. If you have access to that 5th edition and you are willing to do the (not particularly onerous) conversion of assigned pages from the 6th edition to the corresponding pages in the 5th, then, by all means, please feel free to use the 5th edition.

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

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 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 at least one writing exercise during the quarter. This exercise is mandatory but otherwise ungraded. Failing to complete this 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. With the exception of one make-up class scheduled outside of regular class hours, classes will not be recorded. You are not allowed to make your own video or audio recordings of class sessions.

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 *SoftTest* software. In *SoftTest*, 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

M 4/01: Assignment 1: The Constitution's Framing: Its Purposes and Structure
W 4/03: Assignment 2: The Legislative/Exec Branch
Fr 4/05: Assignment 3: Jud Branch

II Judicial Power To Enforce the Constitution

M 4/08: Assignment 4: Standing/Mootness;
W 4/10 (Morning make-up): Assgn. 5 Pol. Question Doctrine

III. The Executive's Powers and Their Limits

W 4/10: Assignment 6: Scope of a President's Powers
Fr 4/12: Assignment 7: Exec. Privileges & Immunities/Impeachment
M 4/15: **Writing Exercise**
W 4/17 : Assignment 8: (Class Cancelled (reflecting earlier makeup))

IV. Congress's Article I Powers and Their Limits

F 4/19: Assignment 9: Article I Powers, Incl. The Commerce Clause Power
M 4/22: Assignment 10: “ ”
W 4/24: Assignment 11: “ ”
F 4/26: Assignment 12: Article I Powers: Beyond the Commerce Clause

M 4/29: Assignment 13: Federalism as a Limit: The Tenth Amendment
W 5/01: Assignment 14: Federalism as a Limit: The Eleventh Amendment

V. Federalism as a Limit on State Power

F 5/03: Assignment 15: Federal Preemption of State Law (Taught by Prof Watts)
M 5/06: CLASS CANCELLED
Tuesday 5/07 Meetings to discuss the writing exercise.
W 5/08: Assignment 16: Dormant Commerce Clause;
F 5/10: Assignment 17: **Forman Lecture** & State Privileges & Immunities

VI. Introduction to the Reconstruction Amendments

M 5/13: Assignment 18: Overview; State-Actor Doctrine;
W 5/15: Assignment 19: Federal Privileges & Immunities . Overview of Procedural and Substantive Due Process
F 5/17: Assignment 20: Due Process `ctd and Intro to Free Exercise.

Fri 5/17 REL. FREEDOM CONFERENCE!

VII. Equal Protection

M 5/20: Assignment 21: Overview; Traditional Rational-Basis Review; “Separate But Equal”
W 5/22: Assignment 22: Strict Scrutiny
F 5/24: Assignment 23: Intermediate Scrutiny; Fundamental Interests; Non-Traditional Rational-Basis Review

M 5/27: MEMORIAL DAY

VIII. Enforcement of the Reconstruction Amendments

W 5/29 – F 5/31 Assignment 24-25: Congress’s Section 14.5 Power

VIII. Reflection and Review

M 6/03 Assignment 26: Reflection and Review
W 6/05 Assignment 27: Review for final exam

READING ASSIGNMENTS

(subject to modification)

“CB” refers to the required casebook.

PRE-READING:

- In the week before class, please read the Constitution and *The Limits of Presidential Power*, chapters, 1-6

OVERVIEW OF THE UNITED STATES GOVERNMENT

Assignment 1

The Constitution and Its Interpretation

- Read Russell Baker, “On Conversation”, *N.Y. Rev. of Books*, 5/11/2006 (available on Canvas)
- Read Steve Israel, “Atticus Finch : Flip Flopper,” *Politico.com* (Feb 23, 2015) (Available on Canvas).
- Read the Articles of Confederation (CB pp.770-774).
- Read “A Brief Outline of the Constitution’s Text” and “A Brief History of the Constitution and Its Interpretation” (CB 1-9)
- Read the Constitution (CB xxv-xli)

Assignment 2

The Legislative and Executive Branches

- Reread U.S. CONST., Articles I and II and
- Re-read the Introduction and Chapters 1-5 of *The Limits of Presidential Power*. Read “Legislative Branch Packet” (available on Canvas) Please note that there is a case embedded within this reading packet: *U.S. v. McIntosh* from the Ninth Circuit..
- Read *I.N.S. v. Chadha*, (CB 152-59)
- Read CB pp. 101-112 (on the distribution of national powers) and (*Youngstown*).

Assignment 3

The Judicial Branch and Modalities of Constitutional Interpretation

- Reread U.S. CONST., Art. III
- Read “Judicial Branch Packet” (available on Canvas)
 - Please note that within this packet, there are several embedded materials on hyperlinks, and also references to the following additional materials that are in the CB or available on CANVAS: *Ex Parte McCardle* 60-6; an excerpt on *Marbury v.*

Madison from Nowak's constitutional law treatise, etc. and finally, an article by Phillip Bobbit describing different approaches to constitutional interpretation. To make your reading more manageable, please do NOT read, the excerpt from Steven Gardbaum's article on the traditional British distrust of judicial review;

- Re-read Chapter 6 of *The Limits of Presidential Power*.

JUDICIAL POWER TO ENFORCE THE CONSTITUTION

Assignment 4

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 77-86)
- State standing; *Massachusetts v. EPA* (CB 86-89)
- Re-read Chapters 7 and 9 of *The Limits of Presidential Power*.

Assignment 5

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

THE EXECUTIVE'S POWERS AND THEIR LIMITS

Assignment 6

The Scope of the President's Powers

- Reread U.S. CONST. Art. II
- Re-read *Youngstown* quickly
- Domestic Affairs; *Clinton v. City of New York* (CB 112-120)
- Foreign Affairs; *Curtiss-Wright & Dames and Moore*(CB 120-127)
- Read the following opinion piece on President Trump's emergency declaration to increase funding for a border wall: <https://thehill.com/opinion/judiciary/433923-national-emergency-funding-of-border-wall-is-unconstitutional>. After you have read the piece, spend a few minutes thinking about whether you agree with the authors of this piece that the President's emergency declaration runs afoul of *Clinton*.

Assignment 7
Executive Privileges and Immunities

- Reread U.S. CONST. Art. II. Does this Article anywhere mention executive privileges or immunities?
- *United States v. Nixon* (CB 138-144)
- *Clinton v. Jones* (CB 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 221-224)
- *Heart of Atlanta Motel* (CB 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 229-236)
- *United States v. Morrison* (CB 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 241-245)
- *National Federation* (CB 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 251-52)
- *National Federation* (CB 252-257)
- The Spending Powers; *Dole* (CB 257-262)
- *National Federation* (CB 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 274-75)
- The Tenth Amendment; *Garcia* (CB 275-280)
- Excerpt from *New York v. United States* (available on Canvas)
- *Printz* (CB 288-294).
- Read Slip opinion of *Murphy v. NCAA* pp.1-21 (available via Canvas).

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 294-295)
- *Seminole Tribe* (CB 295-300)
- *Alden* (CB 300-305)

FEDERALISM AS A LIMIT ON STATE POWER

Assignment 15

Federal Preemption of State Law [Subject to Revision]

- Reread U.S. CONST. Art. VI.
- Introduction to Federalism's Limits on the States (CB 309) [5th ed. pp. 330].
- Introduction to Federal Preemption of State Law (CB 326-327) [5th ed. pp. 351-352].
- "Preemption Handout" (available on Canvas).
- Read the edited version of *Geier* (available on Canvas).
- Read *Garamendi* (CB 331-336) [5th ed. pp. 356-363].
- Read pages 1-4 & 14-17 of *Zervos v. Trump* (available [here](#)). For context, recall our Assignment 8 readings and discussion. The remainder of the *Zervos v. Trump* majority decision, as well as the dissent (beginning on page 34) is interesting, but optional.
- Strongly Recommended: Read Slip opinion of *Murphy v. NCAA* pp.21 – 28 (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)

Assignment 17

State Privileges and Immunities

- Reread U.S. CONST. Art. IV, § 2, cl. 1
- Introduction to State Privileges and Immunities (CB 399-400)
Camden (CB 400-406)

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 391-99)
- State Action: *Shelley v. Kramer* (CB 399-403)
- *Edmonson v. Leesville Concrete* (CB 403-409)
- *DeShaney* (CB 411-417)
- Reading TBD on Federal Privileges and Immunities

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)
- Introduction to Rational Basis and Hybrid Review (CB 743)
- *Cleburne* (CB 743-750)

ENFORCEMENT OF THE RECONSTRUCTION AMENDMENTS

Assignment 24 - 25
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 26

Reflection and Review [Subject to Revision]

- 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

Review for Final Exam