

CONSTITUTIONAL LAW I:
CONSTITUTIONAL STRUCTURES OF GOVERNMENT

COURSE OVERVIEW AND SYLLABUS

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Office Location: Gates Hall 314
Office Hours: Mondays from 3:30 to 4:20 and by appointment.

COURSE OVERVIEW

1. Course Description

This course is an examination of the structures of government that derive 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. Required Texts

The casebook required for this course is Charles Shanor's *American Constitutional Law: Structure and Reconstruction* (5th ed. 2013). Be sure to obtain the Fifth Edition.

We will be supplementing the casebook with various readings that will be made available through Westlaw, Lexis, the Internet, or Canvas. Occasionally I will email you; please make sure that you check your UW email regularly during the quarter. There is no need to obtain the casebook supplement.

3. 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* (4th ed. 2011).

4. 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 an associate at a large Seattle law firm, as a clerk at both the appellate and Supreme Court level, and as an intern in various capacities (including at a federal prosecutor's office, a public-interest legal organization, 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 3:30 to 4:20) for drop-in meetings.

5. Disability-Related Needs

To request academic accommodations due to a disability, contact Disability Resources for Students (DRS), 448 Schmitz, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please present the letter to me so we can discuss the accommodations you might need in this class.

6. 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 audio (not video) of 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. Notwithstanding this authorization, you should not rely on these recordings or assume they always will be made available. Technical errors frequently interfere with the recording process, and, more importantly, 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.

7. 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. You may not bring commercial outlines, treatises, or other commercial resources into the exam. You may bring with you only the following: the required casebook, copies of the required reading, your class notes, any material posted to Canvas, and any outlines or notes you personally have prepared or have worked with a group to prepare. If you use a computer for the exam, you must use Extegrity's Exam4 software. Those using the Exam4 software may use the setting that permits access to electronic documents stored on a hard drive.

8. Reading Assignments

Below 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. Introduction

Assignment 1: Introduction to the Constitutional Structures of Government;
Judicial Review

II. Judicial Power To Enforce the Constitution

Assignment 2: Sources, Methods, and Mechanics of Judicial Decisions

Assignments 3-4: Limits on the Judicial Power

III. The Distribution of National Powers

Assignment 5: Executive Powers

Assignment 6: Legislative Powers

IV. Congress's Article I Powers and Their Limits

Assignments 7-11: Article I Powers, Including the Commerce Clause Power

Assignment 12: Federalism as a Limit: The Tenth Amendment

Assignment 13: Federalism as a Limit: The Eleventh Amendment

V. Federalism as a Limit on State Power

Assignment 14: Federal Preemption of State Law

Assignment 15: Reflection and Review

Assignments 16-17: The Dormant Commerce Clause; State Privileges and Immunities

VI. Introduction to the Reconstruction Amendments

Assignments 18-19: Overview; State-Actor Doctrine; Federal Privileges and Immunities

VII. Due Process

Assignment 20: Overview of Due Process

VIII. 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

Assignment 24: Reflection and Review

IX. Enforcement of the Reconstruction Amendments

Assignment 25: Framework

Assignment 26: Applications

X. Reflection and Review

Assignment 27: Reflection and Review

READING ASSIGNMENTS

(subject to modification)

“CB” refers to the required casebook.

INTRODUCTION

Assignment 1

Introduction to the Constitutional Structures of Government; Judicial Review

- The U.S. Constitution and Amendments (CB pp. xxv-xli)
- A Brief Outline of the Constitution’s Text (CB 1-3)
- A Brief History of the Constitution and Its Interpretation (CB 4-9)
- Overview of the Casebook (CB 16)
- Introduction (CB 17)
- Invalidation of Federal Laws; *Marbury* (CB 17-31)
- The two editorials concerning Newt Gingrich’s “Attack on the Courts” (available on Canvas)
- Adam Liptak, *‘We the People’ Loses Appeal With People Around the World*, N.Y. TIMES (Feb. 6, 2012) (available on Canvas)

JUDICIAL POWER TO ENFORCE THE CONSTITUTION

Assignment 2

Sources, Methods, and Mechanics of Judicial Decisions

- Introduction to Interpretative Issues; *Casey*; *Roper* (CB 39-50)
- Excerpts from THE SUPREME COURT SOURCEBOOK (available on Canvas)
- **Skim** Linda Greenhouse, *Bush Prevails; By Single Vote, Justices End Recount, Blocking Gore After 5-Week Struggle*, N.Y. TIMES (Dec. 13, 2000) (available on Canvas)
- Linda Greenhouse, *Another Kind of Bitter Split*, N.Y. TIMES (Dec. 14, 2000) (available on Canvas)

Assignment 3

Limits on the Judicial Power: Standing and Mootness

- Introduction to Limits on the Judicial Power (CB 64-65)
- Congressional Limits (CB 65-69)
- The “Case or Controversy” Limit (CB 85-86)
- Standing and Mootness; *Laidlaw* (CB 86-98)

Assignment 4

Limits on the Judicial Power: Political Questions

- Political Questions; *Baker* and *Vieth* (CB 102-113)
- Listen to oral argument from the *Vieth* case, available at <http://tinyurl.com/7kvf2hm>

THE DISTRIBUTION OF NATIONAL POWERS

Assignment 5

Introduction to Distribution of National Powers; Executive Powers

- Introduction to the Distribution of National Powers (CB 114-117)
- The Framework; *Youngstown* (CB 117-126)
- Introduction to Executive Powers (CB 126)
- Domestic Affairs; *Clinton v. City of New York* (CB 126-135)
- Foreign Affairs; *Curtiss-Wright* (CB 135-137)

Assignment 6

Legislative Powers

- Introduction to Legislative Authority (CB 160-161)
- *Chadha* (CB 161-169)
- *Morrison v. Olson* (CB 177-188)

CONGRESS'S ARTICLE I POWERS AND THEIR LIMITS

Assignment 7

Article I Powers, Including the Commerce Clause Power

The Necessary and Proper Clause; the Classical View of the Commerce Power

- Introduction to Congress's Article I Powers (CB 207)
- Basic Framework; *McCulloch* (CB 207-220)
- Introduction to the Commerce Clause Power (CB 224)
- Classical View; *Gibbons* (CB 225-233)

Assignment 8

Article I Powers, Including the Commerce Clause Power

The Commerce Clause During and After the New Deal

- *Wickard* (CB 233-237)
- *Heart of Atlanta Motel* (CB 238-242)

Assignment 9

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

- *Lopez* (CB 243-251)
- *United States v. Morrison* (CB 251-256)

Assignment 10

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

- *Raich* (CB 256-261)
- *NFIB* (CB 261-268)

Assignment 11

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

- The Taxing Power (CB 269)
- *NFIB* (CB 269-275)
- The Spending Powers; *Dole* (CB 276-281)
- *NFIB* (CB 281-287)
- The Treaty and War Powers (CB 288-289)

Assignment 12

Federalism as a Limit: The Tenth Amendment

- Introduction to Federalism Limits on Article I Powers (CB 289)
- The Tenth Amendment; *Garcia* (CB 289-296)
- *New York v. United States* (CB 296-304)
- *Printz* (CB 304-311)

Assignment 13

Federalism as a Limit: The Eleventh Amendment

- 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 14

Federal Preemption

- Introduction to Federalism's Limits on the States (CB 330)
- Introduction to Federal Preemption of State Law (CB 351-352)
- *Geier* (CB 352-356)
- *Garamendi* (CB 356-363)
- "Preemption Handout" (available on Canvas)

Assignment 15

Reflection and Review

- Assignment to be announced.

Assignment 16

The Dormant Commerce Clause

- Introduction to Judicial Protection of Interstate Commerce (CB 364-365)
- Introduction to Origins of the Dormant Commerce Clause; *Willson* (CB 365-367)
- Discrimination and Burdens on Commerce; *Philadelphia v. New Jersey* (CB 367-373)
- *Kassel* (CB 377-386)

Assignment 17

The Dormant Commerce Clause, con't; State Privileges and Immunities

- The Market Participant Exception; *South-Central Timber* (CB 386-392)
- *United Haulers* (CB 392-399)
- Introduction to State Privileges and Immunities (CB 399)
- *Camden* (CB 400-406)

INTRODUCTION TO THE RECONSTRUCTION AMENDMENTS

Assignments 18-19

Introduction to the Reconstruction Amendments; the State-Actor Doctrine;
Federal Privileges and Immunities

- Introduction to Reconstruction of Federal-State Relations (CB 407-408)
- Introduction to Origins of the Reconstruction Amendments (CB 408)
- “Overview of *Dred Scott*” (available on Canvas)
- State Action; *The Civil Rights Cases* (CB 418-426)
- *Shelley* (CB 426-430)
- *Leesville Concrete* (CB 430-438)
- *DeShaney* (CB 439-445)
- Federal Privileges and Immunities; *Slaughter-House Cases* (CB 445-453)

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DUE PROCESS

Assignment 20

Overview of Due Process

- “Overview of Due Process” (available on Canvas)
- Excerpt from Erwin Chemerinsky, CONSTITUTIONAL LAW (available on Canvas)

EQUAL PROTECTION

Assignment 21

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

- Introduction to Equal Protection (CB 593-595)
- Introduction to Traditional Rational Basis Review (CB 595)
- *Railway Express* (CB 595-600)
- *Armour* (CB 600-603)
- *Beazer* (CB 603-607)
- Introduction to Race and the Equal Protection Clause (CB 607)
- *Plessy* (CB 607-612)
- *Brown* (CB 612-617)

Assignment 22
Strict Scrutiny

- Introduction to Invidious Race Discrimination (CB 617)
- *Strauder* (CB 617-619)
- *Yick Wo* (CB 619-620)
- *Korematsu* (CB 621-627)
- *Loving* (CB 627-630)
- *Johnson* (CB 630-632)
- *Washington* (CB 632-637)

Assignment 23

Intermediate Scrutiny; Fundamental Interests; Non-Traditional Rational-Basis Review

- Introduction to Gender and Equal Protection (CB 678-679)
- *Craig* (CB 679-685)
- *Virginia* (CB 685-693)
- Introduction to Fundamental Interests and the Equal Protection Clause (CB 703)
- *Zablocki* (CB 709-713)
- Introduction to Rational Basis and Hybrid Review (CB 743)
- *Cleburne* (CB 743-750)

Assignment 24

Reflection and Review

- Assignment to be announced.

ENFORCEMENT OF THE RECONSTRUCTION AMENDMENTS

Assignment 25

Framework for Enforcing the Reconstruction Amendments

- Introduction to the Power To Enforce the Reconstruction Amendments (CB 779-780)
- Introduction to Framework; *Katzenbach* (CB 780-786)
- *City of Boerne* (CB 786-793)
- *Shelby County* (available on Canvas)
- Heather Gerken, *Goodbye to the Crown Jewel of the Civil Rights Movement*, published on Slate, available at <http://tinyurl.com/ne2s48h>

Assignment 26

Applications of Congress's Section 5 Power

- *Garrett* (CB 794-801)
- *Hibbs* (CB 801-806)
- *Coleman* (CB 806-810)
- 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.