CONSTITUTIONAL LAW I
SYLLABUS

Professor David E. Bernstein
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COURSE SCHEDULE/MEETING TIMES/TYPE: This is scheduled to be online course that meets via Zoom on Tuesday and Thursday evenings from 6:05-8:05. If this course gets moved to in-person, policies will change accordingly.

Please sign up for this class’s TWEN page.

The casebook for this class is Barnett & Blackmun, Constitutional Law: Cases in Context (3d ed.). You do not need to buy the supplement/update.

Below is the tentative syllabus. Please see important additional information after the syllabus.

1 INTRODUCTION TO CLASS AND FOUNDING DOCUMENTS
   Assignment: Preface of Casebook, xxv-xxvii; Casebook, pages 3-31 (pay special attention to the Declaration of Independence, pages 4-7)

2 FOUNDING DOCUMENTS, ORIGINAL SIN?

3 SCOPE OF FEDERAL LEGISLATIVE POWER
   Assignment: Casebook 66-95

4 JUDICIAL REVIEW, SCOPE OF FEDERAL LEGISLATIVE POWER, NATIONAL BANK CONTROVERSY
   Assignment: Casebook 98-130, 135-38

5 THE BILL OF RIGHTS
   Assignment: Casebook 50-66, 154-57, 1680-1703

6 SCOPE OF FEDERAL LEGISLATIVE POWER: COMMERCE AND SLAVERY
   Assignment: Casebook 138-52, 162-80

7 FEDERAL POWER OVER SLAVERY, CONT.
   Assignment: Casebook 773-807
8  **ENUMERATED POWERS: LEGISLATIVE POWER**  
*Assignment:* Casebook 198-229

9  **ENUMERATED POWER: LEGISLATIVE POWER**  
*Assignment:* casebook 229-67

10  **ENUMERATED POWER: LEGISLATIVE POWER**  
*Assignment:* casebook 267-304

11  **STATE POWER AND THE FEDERAL CONSTITUTION-CONTRACTS CLAUSE**  
*Assignment:* Contract Clause readings on TWEN, Supplemental Readings Folder

12  **PRIVILEGES OR IMMUNITIES CLAUSE**  
*Assignment:* Casebook 816-41

13  **ENUMERATED POWER: LEGISLATIVE POWER**  
*Assignment:* Casebook 304-339

14  **ENUMERATED POWER: LEGISLATIVE POWER**  
*Assignment:* Casebook 339-346  
**TENTH AMENDMENT AS A LIMIT ON FEDERAL POWER**  
*Assignment:* Casebook 347-368

15  **TENTH AMENDMENT AS A LIMIT ON FEDERAL POWER**  
*Assignment:* Casebook 369-384  
**ELEVENTH AMENDMENT**  
*Assignment:* Casebook 384-400

16  **ELEVENTH AMENDMENT**  
*Assignment:* Casebook 400-415  
**CONGRESS’S SECTION 5 POWER**  
*Assignment:* casebook 415-432

17  **CONGRESS’S SECTION 5 POWER**  
*Assignment:* casebook 432-440  
**DORMANT COMMERCE CLAUSE**  
*Assignment:* casebook 440-462

18  **DORMANT COMMERCE CLAUSE**  
*Assignment:* casebook 462-85  
**PRIVILEGES AND IMMUNITIES**  
*Assignment:* casebook 485-491

19  **LIMITS ON STATE POWER TO REGULATE ELECTIONS**  
*Assignment:*
Reynolds v. Sims,
http://law2.umkc.edu/faculty/projects/ftrials/conlaw/ReynoldsvSims.html
Casebook 492-512
Chiafalo v. Washington (faithless electors) Reading TBA

20  EXECUTIVE POWER
    Assignment: Casebook, 515-44

21  EXECUTIVE POWER
    Assignment: Casebook 544-72

22  EXECUTIVE POWER--WARTIME DISCRIMINATION AND TREATMENT OF SPIES
    Assignment Casebook 572-605

23  EXECUTIVE POWER
    Assignment: Casebook 605-25; Trump v. Hawaii (available on TWEN)

24  SEPARATION OF POWERS
    Assignment: Casebook 627-50, 673-82

25  SEPARATION OF POWERS
    Assignment: Casebook 682-704, Vance and Mazars (TBD) Gundy (available on TWEN)

26  TBA

Course Overview
The purpose of this class is to cover the constitutional status of federalism, the separation of
powers, and other issues, mostly via reading and discussing relevant Supreme Court cases.

Learning outcomes
Students who complete this course should be conversant in the following topics:

Judicial review – the scope and limits of the judicial power to resolve constitutional issues, and
the question of whether judicial interpretation of the Constitution is “supreme”;

Separation of powers – the relationship among branches within the federal government,
including questions of the scope of Congress’ legislative power, the president’s executive power,
and the relationship between them;

Federalism – the relationship between the federal government and state governments, including
the powers of the federal government to regulate commerce and to enforce constitutional rights;

Constitutional interpretation – available methods of constitutional argument, interpretation,
analysis, and/or decision, including originalism and living constitutionalism;
Political and Historical context – understanding how all of the above unfolding in the context of the relevant historical and political context, including the history of slavery and the civil rights movement.

Students are expected to be prepared for class. Relevant policies will be announced by the first day of class, once it’s clear whether class will be online or in person, or both.

**Office hours**
I am happy to meet with you via Zoom at any mutually convenient time. Please email me for an appointment.

**Basis of Evaluation & Assessments**
Students’ grade will be based on a final exam, exact format TBA. There are no pluses or minuses for class participation on this class.

**Instructor Expectations**
This class deals with many controversial and sometimes sensitive issues. Students are expected to participate and listen respectfully, and express disagreement in a civil manner. Students (and even the professor) sometimes express their views awkwardly, which can happen when one is speaking extemporaneously rather than from a script. We should all be generous in assuming that other participants in the class are well-meaning and do not intend to express animus toward any individual or group.

**Course rules**
Students are expected to participate in class. Students who don’t regularly participate will be called on.
Students should have their cameras on. Their mics should be on mute unless they are speaking to the class.
Students should ask to participate by raising their hand. Students may also post questions for the professor or their classmates in chat, but the question may not be answered right away.
Professor Bernstein was on research leave last semester, so this is his first time teaching a remote class. Policies therefore may evolve as the semester progresses.
If you need to momentarily step away from the class, please turn your camera off, and then put it back on when you return.
Please dress and act appropriately during the class session. Just because we will all be remote does not mean that no one can see you. Last semester, a Harvard student stirred controversy by cleaning his gun during class. Please refrain from similarly distracting activities.

**Email Communication**
Students must use their MasonLive email account to receive important University information, including communications related to this class.

**Attendance**
Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should
circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.

**Class Recordings Prohibited**

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. My current plan is to record class sessions and make them available to students only upon express direction from Assistant Dean, Student Academic Affairs as an accommodation for illness or other exigency.

**Covid Instructional Contingency Plan**

In the event I am unable to teach due to illness, Professor Kontorovich has agreed to step in.

**Covid Health & Safety Requirements**

To the extent this class meets in person, or I meet with individual students in person, student must follow all university policies. Please refer to the most up-to-date University policies [here](#).

**Exam Conflicts**

In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

**Academic Integrity**

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: [https://sls.gmu.edu/honor/](https://sls.gmu.edu/honor/).

**Classroom Accommodations:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit [ds.gmu.edu](http://ds.gmu.edu/) for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

**University Life**

University Life provides student support resources such as Counseling and Psychological Services ([https://caps.gmu.edu/](https://caps.gmu.edu/)), Student Health Services ([https://shs.gmu.edu/](https://shs.gmu.edu/)), and the Student Support and Advocacy Center ([https://ssac.gmu.edu/](https://ssac.gmu.edu/)). For more information about University Life on the Arlington Campus, please visit: [https://ularlington.gmu.edu/](https://ularlington.gmu.edu/)