

CONSTITUTIONAL LAW I SYLLABUS

Professor David E. Bernstein
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COURSE SCHEDULE/MEETING TIMES/TYPE: This is scheduled to be an in-person course that meets on Tuesday and Thursday evenings from 6:05-8:05.

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. You can save some money by buying the book on Amazon, new or used.

This class deals with many controversial and sometimes sensitive issues. Legal and, to the extent relevant, political views of all stripes are welcome in this class (including those that the professor strongly disagrees with—indeed, those are especially encouraged) so long as they are expressed in a civil manner. 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.

Please also note the the law school faculty's statement on Commitment to Open Dialogue and Debate, with which I whole heartedly agree. You can find it at:
https://www.law.gmu.edu/about/commitment_to_open_dialogue

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

- 8/24** 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)
- 8/26** FOUNDING DOCUMENTS, ORIGINAL SIN?
Assignment: Articles of Confederation, Casebook li-lvi; U.S. Constitution, Casebook: xxxi-xxlvii, casebook 31-50 Thurgood Marshall bicentennial speech, <http://thurgoodmarshall.com/the-bicentennial-speech/> Thomas article (available on TWEN)
- 8/31** SCOPE OF FEDERAL LEGISLATIVE POWER
Assignment: Casebook 66-95
- 9/2** JUDICIAL REVIEW, SCOPE OF FEDERAL LEGISLATIVE POWER, NATIONAL BANK

CONTROVERSY

Assignment: Casebook 98-130, 135-38

9/7 THE BILL OF RIGHTS

Assignment: Casebook 50-66, 154-57, 1680-1703

NOTE: *This class will be held online via Zoom.*

9/9 SCOPE OF FEDERAL LEGISLATIVE POWER: COMMERCE AND SLAVERY

Assignment: CASEBOOK 138-52, 162-80

9/14 FEDERAL POWER OVER SLAVERY, CONT.

Assignment: Casebook 773-807

9/16 Guest lecture, Prof. Eric Claeys Readings TBA

9/21 ENUMERATED POWERS: LEGISLATIVE POWER

Assignment: Casebook 198-229

9/23 ENUMERATED POWER: LEGISLATIVE POWER

Assignment: casebook 229-67

9/28 ENUMERATED POWER: LEGISLATIVE POWER

Assignment: casebook 267-304

9/30 ENUMERATED POWER: LEGISLATIVE POWER

Assignment: Casebook 304-339

10/5 ENUMERATED POWER: LEGISLATIVE POWER

Assignment: Casebook 339-346

TENTH AMENDMENT AS A LIMIT ON FEDERAL POWER

Assignment: Casebook 347-368

10/7 TENTH AMENDMENT AS A LIMIT ON FEDERAL POWER

Assignment: Casebook 369-384

ELEVENTH AMENDMENT

Assignment: Casebook 384-400

10/12 NO CLASS (Observe Monday Schedule)

10/14 ELEVENTH AMENDMENT

Assignment: Casebook 400-415

CONGRESS'S SECTION 5 POWER

Assignment: casebook 415-432

10/19 CONGRESS'S SECTION 5 POWER

Assignment: casebook 432-440

DORMANT COMMERCE CLAUSE

Assignment: casebook 440-462

10/21 DORMANT COMMERCE CLAUSE

Assignment: casebook 462-85

PRIVILEGES AND IMMUNITIES

Assignment: casebook 485-491

10/26 LIMITS ON STATE POWER TO REGULATE ELECTIONS

Assignment:

Reynolds v. Sims,

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/ReynoldsvSims.html>

Casebook 492-512

Bush v. Gore, <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/bushvgorell.html>

Chiafalo v. Washington (faithless electors) Reading TBA

10/28 EXECUTIVE POWER

Assignment: Casebook, 515-44

11/2 EXECUTIVE POWER

Assignment: Casebook 544-72

11/4 EXECUTIVE POWER--WARTIME DISCRIMINATION AND TREATMENT OF SPIES

Assignment Casebook 572-605

11/9 EXECUTIVE POWER

Assignment: Casebook 605-25; *Trump v. Hawaii* (TBD)

11/11 SEPARATION OF POWERS

Assignment: Casebook 627-50, 673-82

11/16 SEPARATION OF POWERS

Assignment: Casebook 682-704, *Vance* and *Mazars* (TBD) *Gundy* (TBD)

11/18 TBA

11/23 STATE POWER AND THE FEDERAL CONSTITUTION-CONTRACTS CLAUSE

Assignment: Contract Clause readings on TWEN, Supplemental Readings Folder

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.

Office hours

I am happy to meet with you via Zoom or in person 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.

Course rules

Students are expected to participate in class. Students who don’t regularly participate will be called on.

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 Health & Safety Requirements

To the extent 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/>.

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 <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 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/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>