

Constitutional Law I: Structure of Government – LAW 121
Syllabus
Fall 2021

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**This course will meet from 9:50-11:50 a.m. on Mondays and Wednesdays.*

Course Objectives: By the end of this course, students should have a basic understanding of the structure of the federal government with its separation into three branches exercising three distinct categories of power. Students also should understand the general role and scope of authority of the federal government in relation to state governments. Students will gain familiarity with the Constitution through a rigorous study of its original text as well as broad-brush instruction on the Reconstruction Amendments and their impact on the relationship between the federal and state governments. Students will acquire familiarity with methods of constitutional interpretation and will learn how to study and analyze case law interpreting and applying constitutional provisions. Students will gain awareness of how to reconcile case law interpreting the Constitution with the text of the document itself to understand the body of contemporary constitutional doctrine governing the U.S. legal system. The course begins with examination of the core powers of the three federal branches and then turns to discussion of individual rights and state-federal relations. But this course in no way exhaustively covers the Reconstruction Amendments or individual rights, the study of which is the focus of Constitutional Law II and other more specialized courses on specific constitutional protections such as the religious freedoms.

Office Hours: I will hold office hours on Mondays from 12:00–2:00 p.m. In addition, I encourage students to contact me by email or telephone. Students also may post questions to our course TWEN site. I reserve the right to post to TWEN any substantive student questions emailed to me (with the student’s name redacted) that I feel would benefit the entire class. I am most likely to post to TWEN student questions that arise close to final exam time, to ensure that all students have access to the same substantive answers regarding content that might be covered on the exam.

Class Schedule:

Mondays & Wednesdays, 9:50-11:50 a.m.

Required Materials:

Maggs & Smith, *Constitutional Law: A Contemporary Approach* (5th ed. 2021) (West Academic Publishing).

Examination/Grades:

Grades will be based primarily on the final examination, which is scheduled for Thursday, December 2, at noon. The exam will consist primarily of essay questions and will be “open book.”

Course Participation/Grades:

Although grades will be based primarily on the final examination, class participation can also impact a student’s final grade. Based on the quality of class participation, I reserve the right to adjust a student’s final grade up or down by one step (e.g., from “B” to “B+” or “A” to “A-”). All students should be prepared for each class and are expected to provide high-quality participation in accordance with an “on-deck” system that I will implement upon the end of the add/drop period based on the class seating chart. Until that time, all students will be on deck. In accordance with mandatory law school policy, class attendance also is required. As required by the law school, students missing more than 20 percent of class sessions, for any reason, will not receive credit for the course. Students missing more than 25 percent of any particular class session are counted as absent on that date. You do not need to provide me with notice of when you will miss class unless you are “on deck” to participate during that session.

Reading Assignments:

Following are the reading assignments for class organized by topic and date. Following the end of the first week of class, I will post on TWEN the “on deck” participation assignments for the semester.

The reading assignment for the first class is the Constitution (including all amendments) and pp. 1-22 in the casebook. Our discussion of this material might continue into the second class.

I. History and Overview

- A. Text of the Constitution (including all amendments)
- B. Historical Context, pp. 1-10
- C. Organization & Interpretive Methods, pp. 10-22
- D. Application, pp. 23-39

II. Judicial Power

- A. Judicial Review, pp. 45-66
- B. Obstacles to Judicial Review
 - 1. Political Question Doctrine, pp. 69-79
 - 2. “Case” or “Controversy,” pp. 80-85

3. Standing, pp. 85-100 (through discussion point (b))
4. Congressional Authority over Federal Jurisdiction, pp. 101-05

III. Federalism

- A. Governmental Powers Under the Constitution—A Foundation (Express v. Implied), pp. 111-26
- B. Limits on State Power
 1. Preemption, pp. 281-89
 2. “Dormant”/ “Negative Commerce Clause” Jurisprudence
 - a. Standards, pp. 290-316
 - b. Criticism, pp. 325-30
 - c. Consent of Congress, pp. 336-40
- C. Privileges & Immunities Clause, pp. 340-48

IV. Selected Congressional Powers, Their Scope, & Constraints

- A. Commerce Clause, pp. 132-203
- B. Taxing, pp. 204-18
- C. Spending, pp. 219-36
- D. Congressional Regulation Related to War & Treaty Powers, pp. 236-42
- E. State Immunity from Federal Regulation, pp. 242-64
- F. State Sovereign Immunity as a Limit on Federal Power, pp. 264-74
- G. Implied or Derivative Oversight/Investigation Authority v. Exec Privilege, pp. 410-21, 441-52

V. Presidential Authority

- A. Intro & Limits of Domestic Authority, pp. 363-75

B. Foreign Affairs & National Security, pp. 375-410

VI. Separation of Powers

A. Character of Legislative Power, pp. 467-85

B. Character of Executive Authority, pp. 495-523

C. State Efforts to Regulate the House & Senate, pp. 349-58

VII. Legislative Power Versus Selected Individual Rights

A. Bills of Attainder, pp. 544-49

B. State-Law Impairment of Contracts, pp. 1425-33

C. Takings of Private Property, pp. 1434-59

VIII. State Action Doctrine

A. General Requirement, pp. 1463-70

B. Public Function Exception, pp. 1470-78

C. Judicial Enforcement Exception, pp. 1478-83

D. Joint Participation Exception, pp. 1483-96

IX. Reconstruction Amendments

A. Privileges or Immunities, pp. 553-71

B. Incorporation, pp. 571-91

C. Equal Protection, pp. 750-54, 767-72, 793-807

D. Enforcement, pp. 953, 957, 978-91

X. Substantive Due Process, pp. 597-612, 613-16, 620-30, 659-81, 725-27