

CONSTITUTIONAL LAW I SYLLABUS

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COURSE SCHEDULE/MEETING TIMES/TYPE: This is scheduled to be an in-person course that meets on Tuesdays and Thursdays from 9:50 to 11:50 a.m.

Please sign up for this class's TWEN page before the semester starts.

The casebook for this class is Barnett & Blackmun, *Constitutional Law: Cases in Context* (4th ed.). You do not need to buy the supplement/update. You can save some money by buying the book on Amazon, new or used.

Barnett & Blackman have videos that summarize many of the cases we will be reading. You are not required to watch these videos, but you may find them helpful. The code to access all videos is included with new copies of the casebook. If you buy a used copy of the casebook, you can get an access code for to the videos by buying a new copy of Barnett & Blackman, *An Introduction to Constitutional Law: 100 Supreme Court Cases Everyone Should Know* (which you might also find helpful, but is not a required text). Or you can buy access to the videos only at <https://aspublishing.com/products/barnettblackman-conlaw-100cases-videos-1>.

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 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 and do not intend to offend.

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.

8/22 INTRODUCTION TO CLASS AND FOUNDING DOCUMENTS

Assignment: Preface of Casebook; Casebook, pages 3-31 (pay special attention to the Declaration of Independence, pages 4-7)

8/27 FOUNDING DOCUMENTS, ORIGINAL SIN?

Assignment: Articles of Confederation, Casebook li-lvii; U.S. Constitution, Casebook: xxii-end, casebook 31-50 Thurgood Marshall bicentennial speech,

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2686&context=vlr>;
ClarenceThomas article (available on TWEN)

- 8/29** SCOPE OF FEDERAL LEGISLATIVE POWER
Assignment: Casebook 61-88
- 9/3** JUDICIAL REVIEW, SCOPE OF FEDERAL LEGISLATIVE POWER, NATIONAL BANK CONTROVERSY
Assignment: Casebook 88-118, 124-28
- 9/5** THE BILL OF RIGHTS
Assignment: Casebook 50-66, 154-57, 1680-1703
- 9/10** SCOPE OF FEDERAL LEGISLATIVE POWER: COMMERCE AND SLAVERY
Assignment: CASEBOOK 128-37, 152-80
- 9/12** FEDERAL POWER OVER SLAVERY, CONT.
Assignment: Casebook 677-713
- 9/17** ENUMERATED POWERS: LEGISLATIVE POWER
Assignment: Casebook 203-235
- 9/19** ENUMERATED POWER: LEGISLATIVE POWER
Assignment: casebook 235-70
- 9/24** ENUMERATED POWER: LEGISLATIVE POWER
Assignment: casebook 270-303
- 9/26** ENUMERATED POWER: LEGISLATIVE POWER
Assignment: Casebook 303-339
- 10/1** ENUMERATED POWER: LEGISLATIVE POWER
Assignment: Casebook 339-344
TENTH AMENDMENT AS A LIMIT ON FEDERAL POWER
Assignment: Casebook 344-373
- 10/3** [Rosh Hashanah, class will be rescheduled]
ELEVENTH AMENDMENT
Assignment: Casebook 374-385, 394-98
CONGRESS'S SECTION 5 POWER
Assignment: Casebook 386-394
- 10/8** DORMANT COMMERCE CLAUSE
Assignment: casebook 399-421, National Pork Producers (TWEN)
- 10/10** LIMITS ON STATE POWER TO REGULATE FEDERAL ELECTIONS
Assignment:

Reynolds v. Sims,
<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/ReynoldsvSims.html>
US Terms Limits v. Thornton,
<http://law2.umkc.edu/faculty/projects/FTrials/conlaw/ustermlimits.html>
Bush v. Gore, <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/bushvgorell.html>
Trump v. Anderson, TWEN

- 10/15 EXECUTIVE POWER**
Assignment: Casebook, 429-75
- 10/17 EXECUTIVE POWER: WARTIME DISCRIMINATION AND TREATMENT OF SPIES**
Assignment Casebook 482-508
- 10/22 EXECUTIVE POWER: US CITIZEN ENEMY COMBATANTS**
Readings TBA
- 10/24 EXECUTIVE POWER: THE APPOINTMENT AND REMOVAL POWER**
Humphrey's Executor (TWEN); Casebook 509-30; Reading on “the unitary executive”
TBA
- 10/29 EXECUTIVE POWER: THE APPOINTMENT AND REMOVAL POWER**
Casebook 531-75
- 10/31 EXECUTIVE POWER: EXECUTIVE PRIVILEGE AND IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY**
Assignment: Casebook 575-88, *Trump v. United States* (TWEN)
- 11/5 ELECTION DAY, NO CLASS**
- 11/7 SEPARATION OF POWERS: ADVISORY OPINIONS AND THE POLITICAL QUESTION DOCTRINE**
Casebook 611-642
- 11/12 THE JUDICIAL POWER: STANDING, RIPENESS, MOOTNESS**
Casebook 643-74
- 11/14 DOES SUPREME COURT PRECEDENT BIND NON-PARTIES? SHOULD IT? DOES THE SUPREME COURT OWE ANY DEFERENCE TO THE OTHER BRANCHES?**
Lincoln, first inaugural address, <https://perma.cc/D3B3-L66P>; Southern Manifesto, <https://perma.cc/UZ5L-98FS>; Cooper v. Aaron, Casebook 949-55; Revisit *City of Boerne v. Flores*
- 11/20** This class is reserved for catching up if we fall behind in the syllabus. Otherwise, reading and topic TBA
- 11/21 NO CLASS OBSERVE MONDAY SCHEDULE**

11/22 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/>