

Syllabus
“Constitutional Law II: 14th Amendment”
Law 158 (3 credits)
Professor Robert Luther III
Spring 2025
Tuesdays/Thursdays @ 6:05-7:30 pm

Course Description and Learning Outcomes: By the end of the semester, students should be well versed in the principal features of the 14th Amendment of the U.S. Constitution; possess solid knowledge of the doctrines underlying the Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause; and effectively engage with Supreme Court opinions that decide issues of Constitutional Law so that they may deploy operational legal analysis grounded in a practical knowledge of history and contemporary judicial decision-making.

Casebook: *Constitutional Rights: Cases in Context* (4th ed.) by Randy E. Barnett and Josh Blackman (Barnett). You will need a hard copy of the casebook (which is essentially the second half of the larger Barnett/Blackman *Constitutional Law* hardcover casebook, so you are welcome to use that book, though you will need to figure out the pagination). I will provide PDFs of supplemental cases/materials marked with a “ * ” as they are not in the casebook.

Grading: This course will be letter graded (i.e., on an A+* to F scale). The Exam (May 1, 2025 @ 6 pm) will be a typed, blind-graded, in-class essay Exam. Public speaking is important to your development as a lawyer, so I treat class participation as an integral part of this course. Students who demonstrate exceptional class participation may have their Exam grade increased by 1/3 of a letter grade. Attendance rules are governed by Academic Regulation 4.

Reflection Essays: Oliver Wendell Holmes quipped that “[t]he life of the law has not been logic—it has been experience” and experience has taught me that writing about the law shortly after studying it yields long-term benefits. At the end of each week of two class sessions you are invited to write a reflection essay on the material not to exceed one side of a regular sheet of paper. Any reflection essays you deliver to me prior to the beginning of our next week of class will be returned to you at the beginning of the Exam and—along with a copy of the U.S. Constitution—will be the only outside materials you may use to assist you during the Exam. Type your name and date of the classes/subjects at the top of each essay in bold. The goal here is to incentivize you to synthesize the material throughout the semester so that you retain the information for the long run.

Contact Info/Office Hours: If I am in my office without a pressing emergency, you are always welcome to visit to discuss classwork, career goals, or the legal profession. Formal office hours are Tuesday and Thursday from 4:30 pm–6:00 pm and by appointment in person or on Zoom. My email is rluther@gmu.edu and my office is Hazel Hall #423.

Disclaimer: A course like this one (involving U.S. Supreme Court decisions interpreting provisions of a written Constitution enacted into law by political actors) is likely to result in strong and divergent opinions. I will not make any great effort either to reveal or to conceal my personal views about the cases we’re going to study because I will play the Devil’s advocate. I will, however, insist that you offer reasoned arguments for whatever opinions you express.

Class Session – Date	Agenda
1 – 1/16	<p>Background:</p> <ul style="list-style-type: none"> • Barnett, 3-12; 46-51; 82-87 <ul style="list-style-type: none"> ○ <i>Barron v. Baltimore</i> • The 13th, 14th, and 15th Amdts. (available at Barnett pp. xliii-xliv) <p>I will begin the course with introductory remarks.</p> <p>What phrases stand out to you in the Declaration of Independence?</p> <p>Be prepared to argue the case both for and against the adoption of a Bill of Rights.</p>
2 – 1/21	<p>Slavery and the Due Process of Law:</p> <ul style="list-style-type: none"> • Barnett, 121-127 • Barnett, 154-157 <p>The Reconstruction Amendments:</p> <ul style="list-style-type: none"> • Barnett, 159-169 <p>Privileges or Immunities Clause:</p> <ul style="list-style-type: none"> • Barnett, 170-195 <ul style="list-style-type: none"> ○ <i>Slaughterhouse Cases</i> ○ <i>Bradwell v. Illinois</i> <p>What are the best and worst legal arguments made in each of the four <i>Slaughterhouse Cases</i> opinions excerpted?</p>
3 – 1/23	<p>Privileges or Immunities Clause (cont.):</p> <ul style="list-style-type: none"> • Barnett, 196-202 <ul style="list-style-type: none"> ○ <i>U.S. v. Cruikshank</i> <p>Enforcement Powers:</p> <ul style="list-style-type: none"> ○ Barnett, 219-247 <ul style="list-style-type: none"> ○ <i>Strauder v. West Virginia</i> ○ <i>The Civil Rights Cases</i> <p>Consider the arguments for and against the Court’s interpretation of the Privileges or Immunities Clause.</p>
4 – 1/28	<p>Defining the Due Process and Equal Protection Clauses:</p> <ul style="list-style-type: none"> • Barnett, 254-274 <ul style="list-style-type: none"> ○ <i>Yick Wo v. Hopkins</i> ○ <i>Plessy v. Ferguson</i> <p>Due Process in the Progressive Era:</p> <ul style="list-style-type: none"> • Barnett, 275-282 <ul style="list-style-type: none"> ○ <i>Chicago, Burlington & Quincy RR v. Chicago</i>

5 – 1/30	<p>Due Process in the Progressive Era:</p> <ul style="list-style-type: none"> • Barnett, 282-296 <ul style="list-style-type: none"> ○ <i>Lochner v. NY</i> • Barnett, 296-299 <ul style="list-style-type: none"> ○ <i>Muller v. Oregon</i> <p>Consider how the three different <i>Lochner</i> opinions determine whether the law is constitutional.</p>
6– 2/4 and 7 – 2/6	<p>Due Process in the Progressive Era (cont.):</p> <ul style="list-style-type: none"> • Barnett, 300-326 <ul style="list-style-type: none"> ○ <i>Buchanan v. Warley</i> ○ <i>Adkins v. Children’s Hospital</i> ○ <i>Meyer v. Nebraska</i> ○ <i>Pierce v. Society of Sisters</i> ○ <i>Buck v. Bell</i> ○ <i>Bartels v. Iowa</i> <p>Due Process & the Presumption of Constitutionality:</p> <ul style="list-style-type: none"> • Barnett, 326-330 <ul style="list-style-type: none"> ○ <i>O’Gorman & Young</i>
8 – 2/11	No Class – I will be in Chicago attending a Memorial Service for Judge Daniel A. Manion, formerly of the U.S. Court of Appeals for the Seventh Circuit
9 – 2/13	No Class – We are Hosting the Seventh Annual Scalia Forum at Scalia Law
10 – 2/18	<p>Due Process & the Presumption of Constitutionality:</p> <ul style="list-style-type: none"> • Barnett, 331-355 <ul style="list-style-type: none"> ○ <i>Nebbia v. New York</i> ○ <i>West Coast Hotel v. Parrish</i> ○ <i>U.S. v. Carolene Products</i> <ul style="list-style-type: none"> ▪ Pay particular attention to footnote 4
11 – 2/20	<p>Presumption of Constitutionality (cont.):</p> <ul style="list-style-type: none"> • Barnett, 356-369 <ul style="list-style-type: none"> ○ <i>Lee Optical v. Williams</i> ○ <i>Williams v. Lee Optical</i> ○ <i>Milnot v. Richardson</i>
12 – 2/25	<p>Equal Protection – Race:</p> <ul style="list-style-type: none"> • Barnett, 377-413 <ul style="list-style-type: none"> ○ <i>Brown I</i> ○ <i>Bolling v. Sharpe</i> ○ <i>Brown II</i> ○ <i>Cooper v. Aaron</i>

13 – 2/27	Equal Protection – Race (cont.): <ul style="list-style-type: none"> • <i>Reynolds v. Sims</i>, 377 U.S. 533 (1964)* • Barnett, 413-422 <ul style="list-style-type: none"> ○ <i>Loving v. Virginia</i> ○ <i>Washington v. Davis</i>
14 – 3/4 and 15 – 3/6	Equal Protection – Race (cont.) <ul style="list-style-type: none"> • Barnett, 422-455 <ul style="list-style-type: none"> ○ <i>Bakke</i> ○ <i>Grutter</i> ○ <i>Gratz</i> ○ <i>Students for Fair Admissions v. Harvard</i>* <p>Guest Speaker: Josh Thompson, Pacific Legal Foundation</p>
3/10 – 3/16	No Classes – Spring Recess
16 – 3/18	Equal Protection – Race (cont.): <ul style="list-style-type: none"> • <i>City of Richmond v. Croson</i>, 488 U.S. 469 (1989)* • Barnett, 464-473 <ul style="list-style-type: none"> ○ <i>Adarand Constructors v. Pena</i> • <i>Parents Involved v. Seattle School District No. 1</i>, 551 U.S. 701 (2007), Read the first two paragraphs of the Syllabus (p. 701), Part III of Roberts opinion (pp. 720-735), and Part III of Breyer’s dissent (pp. 838-852)*
17 – 3/20	Equal Protection – Race & Other: <ul style="list-style-type: none"> • <i>San Antonio v. Rodriguez</i>, 411 U.S. 1 (1973)* • <i>Village of Arlington Heights v. Metropolitan Housing Development Corporation</i>, 429 U.S. 252 (1977)* • <i>Plyler v. Doe</i>, 457 U.S. 202 (1982)*
18 – 3/25 and 19 – 3/27	Equal Protection – Other (cont.): <ul style="list-style-type: none"> • Barnett, 475, 500-517 <ul style="list-style-type: none"> ○ <i>Cleburne v. Cleburne Living Center</i> ○ <i>Romer v. Evans</i> <p>Equal Protection – Sex:</p> <ul style="list-style-type: none"> • <i>Goeseart v. Cleary</i>, 335 U.S. 464 (1948)* • <i>Reed v. Reed</i>, 404 U.S. 71 (1971)* • Barnett, 476-499 <ul style="list-style-type: none"> ○ <i>Frontiero v. Richardson</i> ○ <i>Craig v. Boren</i> ○ <i>United States v. Virginia</i> • <i>United States v. Skrmetti</i> (pending at S.Ct.)*

20 – 4/1	Substantive Due Process – Privacy → Liberty + Dignity <ul style="list-style-type: none"> • Barnett, 521-51, 566-584 <ul style="list-style-type: none"> ○ <i>Griswold v. Connecticut</i> (skip Justices White’s and Stewart’s opinions) ○ <i>Roe v. Wade</i> ○ <i>Planned Parenthood v. Casey</i> (skip Blackmun’s and Rehnquist’s opinions)
21 - 4/3	Substantive Due Process – Fundamental Rights <ul style="list-style-type: none"> • Barnett, 551-566 <ul style="list-style-type: none"> ○ <i>Bowers v. Hardwick</i> (skip Justices Burger’s and Powell’s opinions) ○ <i>Washington v. Glucksberg</i> ○ <i>Troxel v. Granville</i>
22 – 4/8	Substantive Due Process – Liberty + Dignity <ul style="list-style-type: none"> • Barnett, reread bottom of 566, 599-616 <ul style="list-style-type: none"> ○ <i>Lawrence v. Texas</i> • Barnett, 619-641 <ul style="list-style-type: none"> ○ <i>Obergefell v. Hodges</i>: (Kennedy’s, Roberts’s, and Scalia’s opinions only)
23 – 4/10	Substantive Due Process – Recent Developments <ul style="list-style-type: none"> • <i>Dobbs v. Jackson Women’s Health</i>, 597 U.S. _ (2022)*
24 – 4/15	The Ninth Amendment: <ul style="list-style-type: none"> • Barnett, 60-64; 369-373 <ul style="list-style-type: none"> ○ <i>United Public Workers v. Mitchell</i> • <i>The Ninth Amendment: It Means What it Says</i>, 85 Tex. L. Rev. 1 (2006): Section IV* Right to Travel: <ul style="list-style-type: none"> • <i>Saenz v. Roe</i>, 526 U.S. 489 (1999)*
25 – 4/17	Revisiting the P/I Clause <ul style="list-style-type: none"> • Barnett, 203-219 <ul style="list-style-type: none"> ○ <i>McDonald v. City of Chicago</i> • <i>Timbs v. Indiana</i>, 139 S.Ct. 682 (2019)* • <i>Ramos v. Louisiana</i>, 140 S.Ct. 1390 (2020)* (note: you will read part of each of Justice Gorsuch’s and Thomas’ opinions only)
26 – 4/22	Exam Review
5/1 @ 6:00 pm	Final Exam