Greetings, and welcome back. I look forward to our shared study of U.S. constitutional law this semester.

I. GOALS AND EXPECTATIONS

A. What You Will Learn

Constitutional law is a vast subject. Unlike the subjects you have studied so far in law school, this course is not defined by its subject matter. Instead, constitutional law is identified by its source: the United States Constitution, including its amendments.

Even though the text of the constitution is not very long, there is far too much constitutional law to cover in one four-credit introductory course. Entire areas of constitutional law must therefore be left for other courses. The First Amendment is covered in (among other places) Freedom of Speech and Association; the Second Amendment is treated primarily in Firearms Law; the Fourth, Fifth, and Sixth Amendments are covered in Criminal Procedure; the Eighth Amendment is covered (among other places) in Death Penalty Law. Important questions about the constitutional separation of powers and due process are covered in Administrative Law. Detailed examination of constitutional bases of federal court jurisdiction and judicial federalism is left for the course in Federal Courts. Other constitutional issues form important parts of courses in Evidence, Election Law, Family Law, Immigration Law, and Wrongful Convictions. Indeed, nearly every course in the law school’s course catalog involves questions of constitutional law, including such unlikely suspects as Bankruptcy, Patents, Copyrights, Property, and Income Taxation.

This course is therefore selective. Its focus is on the constitutional structure of U.S. government and certain individual rights secured by the Fifth and Fourteenth Amendments. However, in studying these topics, we will pay special attention to constitutional history, interpretation, argumentation, politics, and theory. These skills ought to give you the tools you need to approach and master many other areas of constitutional law that we will not have time to cover.

B. Preparing for Class

There will be assigned reading for every class. You should do the reading and be prepared to talk about it in class. Sometimes, when the material is dense or difficult, you will have to read it more than once. Thorough preparation for every class is essential to learning this material. For that reason, class participation may factor into your final grade.

I will call on students without advance warning during class. I understand that there may be times when you will not be able to prepare for class. In those cases, you should email me no later than noon on the day of class. If you do so, I will not call on you that day. If you are unprepared for class and have not emailed me in advance, I will be cross. There
will be a designated block of time at the end of each class session for questions. Outside of that window, I will not take questions or comments from students who are not on call.

II. COURSE MATERIALS

Most of the readings for the course will be taken from a forthcoming casebook in Constitutional Law edited by Richard D. Friedman and Julian Davis Mortenson. It is available through the bookstore as a course packet in two volumes by permission of the editors. Unless otherwise noted, the assigned readings can be found in either volume 1 (“CBV1”) or 2 (“CBV2”) of that packet. Other readings will be posted to the course Canvas page.

III. COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN

A. Class Meetings

Our class meets Mondays, Wednesdays, and Fridays in Room 6 from 3:00pm to 4:10pm. Please be on time. If you need to enter or leave the room while class is in session, please do so as quietly and unobtrusively as possible. The seating chart is available on Canvas. Please sit in your assigned seat.

If I need to cancel a class session for any reason, we will schedule a make-up session as soon as possible.

B. Illness, Face Coverings & Social Distancing

I cannot stress this enough: if you are not feeling well or have any symptoms of illness, do not come to class. Alternative modes of attendance and participation are described below.

You must wear a face covering while in class. I will also be wearing a face covering. Failure to wear a face covering may result in disciplinary action. Please sit at your assigned seat and maintain a safe distance of at least six feet from your classmates.

Please be considerate of those around you and comply with all local and University regulations regarding public health.

C. Technology

1. Class recordings

Every class will be broadcast live on Zoom. The link will be provided on Canvas. If you cannot be present in the classroom for any reason, the best alternative is to participate in the Zoom meeting for class in real time. If you are participating in the Zoom meeting, you should be prepared to be called on just as you would be if you were in the classroom. Please make your best effort to turn on your video. (It will be a pleasant surprise if pets, children, or other guests make an appearance.)

Each class will also be recorded. If you cannot attend class or participate via Zoom, you should watch the recording as soon as possible, and certainly before the next
class session. Watching the recorded class is an imperfect substitute for real-time participation. Nevertheless, the recorded classes may be useful for purposes of review.

2. Electronic devices

Laptops will not be allowed in the classroom absent special permission. You should take notes by hand. Please do not use your phone or other electronic devices during class. If you are participating via Zoom, I encourage you to take notes by hand just as you would in the classroom, leaving your computer or other device to act solely as a Zoom terminal.

D. Office Hours

I will be holding office hours virtually this semester. On Tuesdays from 1-2pm and Thursdays from 11am-noon, I will be available at the following Zoom link: https://umsystem.zoom.us/my/tommybennett. The password is “MIZ.” I encourage you to attend office hours.

If you need to contact me for any reason, feel free to email me at thomas.bennett@missouri.edu. If you email me a question, I may share your question and my answer with the entire class. If you would not like me to share your question, or you would like your identity to remain anonymous, please indicate as much in your email to me.

E. Pivot Plan

Circumstances outside my control may force this course to pivot to a fully online format during the course of the semester. I have planned for this contingency. If we go fully online, we will meet at our regular time via Zoom, and I will supplement our online meetings with short videos, which I will post to Canvas, that you can view at your leisure.

IV. ASSESSMENT

Your grade will be determined primarily based on a mid-term and a final exam.

A. Midterm

The midterm will be given at the end of our unit on executive power and will cover all the material on the syllabus to that point. It will be a take-home issue spotting exam and will comprise 25% of your grade before adjustment for class participation. You may use any materials you like to prepare your answer except that you may not discuss it with anyone else, whether or not they are in the class.

B. Final Exam

The final exam will be comprehensive and will comprise the remaining 75% of your unadjusted grade. Unless we pivot to an online format, the exam will be administered in person. It will be open note but closed laptop, meaning that you can use printed materials but not the internet or materials from your hard drive. If, on the other hand, we pivot to a
fully online format, the exam will be open laptop, meaning you can access materials on your hard drive but not the internet.

In all events, you should not discuss your exam with anyone else before you have handed it in. Failure to abide by this rule may result in a lower grade or automatic failure.

V. READING ASSIGNMENTS

A. Why & How To Do Constitutional Law

1. How: Methodology
   CBV1, pp. 1–24 (District of Columbia v. Heller) (also on Canvas)

2. Why: The Countermajoritarian Difficulty
   CBV1, pp. 25–37 (also on Canvas)

3. Limits: State Action
   CBV1, pp. 38–53 (Marsh v. Alabama; Georgia v. McCollum) (also on Canvas)

B. Judicial Power

1. Judicial Review
   CBV1, pp. 54–70 (Marbury v. Madison) (also on Canvas)

2. Constitutional Limits: Political Questions
   CBV1, pp. 71–85 (Zivotofsky v. Clinton) (also on Canvas)

3. Constitutional Limits: Standing, Mootness, & Ripeness
   CBV1, pp. 86–100 (Lujan v. Defenders of Wildlife; Los Angeles v. Lyons) (also on Canvas)
   Havens Realty Corp. v. Coleman (on Canvas); Spokeo v. Robins (on Canvas)
   CBV1, pp. 101–02 (also on Canvas)

C. Legislative Power(s)

1. Enumerated Powers & The Necessary and Proper Clause
   CBV1, pp. 104–22 (McCulloch; Chae Chan Ping; Fong Yue Ting) (also on Canvas)
2. Interstate Commerce

CBV1, pp. 123–59 (Gibbons; E.C. Knight; Shreveport Rate Cases; Stafford; Champion v. Ames; Hammer v. Dagenhart)

CBV1, pp. 159–72 – The Four Horsemen (Schechter Poultry; Carter Coal)

CBV1, pp. 172–87 – The Switch in Time (Jones & Laughlin Steel; Darby; Wickard v. Filburn)

CBV1, pp. 188–97 – The New Deal Consensus (Heart of Atlanta Motel; Katzenbach v. McClung)

CBV1, pp. 198–219 – The Rehnquist Revolution (United States v. Lopez; Dorsey; Raich)

3. Taxing

CBV1, pp. 220–31 (Doremus; Child Labor Tax Case; Kahriger)

4. Spending

CBV1, pp. 232–42 (Butler; Steward Mach.; Helvering v. Davis; South Dakota v. Dole)

5. A Unified Field Theory?

CBV1, pp. 243–308 (NFIB v. Sebelius, served three ways)

D. Executive Power

1. Relation to Other Branches

CBV1, pp. 309–44 (In re Neagle; Youngstown Sheet & Tube Co. v. Sawyer)

2. Duty To Take Care

CBV1, pp. 345–64

3. Foreign Affairs

CBV1, pp. 365–385 (Curtiss-Wright; Dames & Moore v. Regan)

CBV1, pp. 386–405 (Medellin; Zivotofsky v. Kerry)

4. War Powers

CBV1, pp. 406–24 (Korematsu; The Prize Cases)

CBV1, pp. 424–49 (Hamdi v. Rumsfeld)
E. State Power

1. The “Dormant” Commerce Clause
   CBV1, pp. 450–64 (*Philadelphia v. N.J.; Maine v. Taylor*)

2. Commandeering
   CBV1, pp. 465–78 (*New York; Printz*)

F. Equal Protection

1. Prelude
   CBV2, pp. 1–18 (*Scott v. Sandford*)

2. Economic
   CBV2, pp. 19–27
   (*Carolene Products; Railway Express; Williamson v. Lee Optical*)

3. Race
   CBV2, pp. 28–45
   (*Strauder; Plessy; McCabe*)
   CBV2, pp. 45–61
   (*Brown v. Board of Education; Loving v. Virginia; Palmer v. Thompson*)
   CBV2, pp. 61–79 (*Wash. v. Davis; Hunter v. Underwood; Trump v. Hi.*)
   CBV2, pp. 79–99 (*Twick Wo; Gomillion; Arlington Heights; McCrory*)
   CBV2, pp. 100–50 (*Croson; Adarand; Grutter*)
   CBV2, pp. 151–80
   (*Gratz; Parents Involved; Fisher*)

4. Gender
   CBV2, pp. 181–213 (*Craig v. Boren; U.S. v. Virginia*)
   CBV2, pp. 213–25 (*Geduldig; Feeney*)

5. Animus & Other Classes
   CBV2, pp. 227–47
   (*Moreno; Palmore; Cleburne; Graham v. Richardson*)

6. Enforcing Reconstruction Amendments
   CBV2, pp. 248–72
   (*Civil Rights Cases; Heart of Atlanta Motel redux; Katzenbach v. Morgan; City of Boerne v. Flores; and United States v. Morrison*)
7. Coda: Abrogating State Sovereign Immunity

CBV2, pp. 273
Seminole Tribe (on Canvas)
CBV2, pp. 273–83 (Kimel v. Fla. Bd. of Regents; Hibbs)

G. Due Process

1. Procedural Due Process & Incorporation

CBV2, pp. 284–97 (Mathews; Hamdi redux)
CBV2, pp. 298–324 (McDonald)

2. Economic Liberty

CBV2, pp. 325–49 (Lochner; Muller; W. Coast Hotel; Skrupa)

3. Intimate Privacy

CBV2, pp. 350–75
(Meyer; Pierce; Griswold; Loving redux; Moore)
CBV2, pp. 376–94 (Washington v. Glucksberg)
CBV2, pp. 394–451 (Roe; Casey)
Whole Women’s Health (on Canvas); June Medical Services (on Canvas)

H. Dignity and The Legal Double Helix

1. Sexual Identity

CBV2, pp. 452–92 (Lawrence; Obergfell; Evancho)

VI. COVID-19

Please note: the following statement was written by University administration and is required to be included in this syllabus. Please comply with all University rules and regulations.

A. Decreasing the Risk of COVID-19 in Classrooms and Labs

MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. This statement will be updated as information changes.

If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or
body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.

We will all wear face coverings while in the classroom, unless you have a documented exemption due to a disability or medical condition.

We will maintain a 6-foot distance from each other at all times (except in specific lab/studio courses with other specific guidelines for social distancing).

We will enter the classroom and fill the room starting at the front, filing all the way across a row. When class ends, we will exit the row nearest to the door first; the instructor or TA will give the signal for the next row to exit, in the same manner.

In any small section or lab class that requires them, additional measures will be listed in the syllabus and be mandatory for class participation.

Online office hours will be available for all students.

This course may be recorded for the sole purpose of sharing the recording with students who can’t attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University’s Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

If an instructor has concerns about how a student is following COVID-19 policies and protocols, please report those concerns to the Office of the Dean of Students. You can fill out a COVID Safety Measures Reporting Form here: https://cm.maxient.com/reportingform.php?UnivMissouriSystem&layout_id=38

By taking the above measures, we are supporting your health and that of the whole Mizzou community. Thank you in advance for joining me and your peers in adhering to these safety measures.