CONSTITUTIONAL LAW
Fall 2022
Instructor: Haley N. Proctor

GOALS AND EXPECTATIONS

This course is about our fundamental law: the United States Constitution. During the first half of the course, we will examine how power is allocated among the legislative, executive, and judicial branches of the federal government, and between the federal government and the state governments. During the second half of the course, we will focus on the rights and related rules that protect individuals from certain types of state action.

There is far more constitutional law than we could cover in a single course, and even if we could cover everything, your knowledge would quickly become out of date. Doctrine changes over time. In studying the topics we do cover, therefore, we will pay special attention to constitutional tradition, interpretation, argumentation, and theory. The skills you learn will enable you to approach and master many other areas of constitutional law that we will not have time to cover.

Class Meetings

Our class meets in Room 7, on Mondays, Wednesdays, and Fridays, from 11:30 am to 12:40 pm. During the first week of class, I will pass around a seating chart. Your seat on that day will be your seat for the rest of the semester.

American Bar Association Accreditation Standard 311(f) requires your regular class attendance. If you are not feeling well or have any symptoms of illness, please do not come to class. Alternative modes of attendance and participation are described below. If I need to cancel a class for any reason, we will schedule a make-up as soon as possible.

Constitutional law is a difficult subject, in part because so much remains unsettled, in part because the ideas are often complex, and in part because the issues at stake matter deeply to each of us. For each of these reasons, we will all benefit from a free and open discussion of the material. This, in turn, requires a willingness to be wrong and to let your classmates be wrong, to persuade and to be persuaded. Please contribute freely, give my questions your best shot, be patient with classmates who are working to understand the material, keep your mind open to opinions that differ from your own, and treat everyone with respect and charity.
Preparing for Class

There will be assigned reading for every class. The reading assignments that I intend to cover are listed below. At the end of each week, I will identify the reading assignments we will cover during the following week. This list is subject to revision over the course of the semester.

You should read the assigned materials for each class and be prepared to talk about them in class. I will call on students without advance warning during class, and class participation will factor into your final grade.

I understand that there may be times when you cannot prepare for class. At such times, you should email me no later than 10:00 AM on the day of class. If you do so, I will not call on you that day. You may “opt out” of participation three times without explanation. Any further requests to be exempted from participation will require good cause. If I find that you are unprepared for class and have not informed me in advance, then your participation grade will suffer.

I encourage you to begin outlining the material for the exam early in the semester. You will find that this will assist you in making connections and understanding new material as the class progresses. You should also consider drafting a short case-brief for each of the major opinions assigned (i.e., those listed on the syllabus). These short summaries distill a large and complicated case into its core facts and holding(s). I am happy to discuss outlining strategies during office hours and can provide a sample case brief upon request.

Technology

Every class will be broadcast live on Zoom. The link will be provided on Canvas. If you cannot join us in the classroom for any reason, the best alternative is to participate in the Zoom meeting in real time. If you are participating in the Zoom meeting, then 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, but keep yourself on mute unless you are speaking. (It will be a pleasant surprise if pets, children, or other guests make an appearance.)

Each class will also be recorded. If you can neither attend class nor participate via Zoom, then you should watch the recording before the next session of class. The recordings may also prove useful for purposes of review.

Please speak with me before recording any class or sharing any recording of a class with anyone outside of the class. It is a violation of University of Missouri policy to distribute such recordings without my authorization and the permission of others who are recorded.

I strongly encourage you to take notes by hand during class. If you use a laptop or tablet, confine your use to note-taking and accessing course materials. I
reserve the right to prohibit the use of laptops and tablets should they become a distraction. Telephones should remain silent and out of sight while class is in session.

**Accommodations**

If you anticipate barriers related to the format or requirements of this course, or if you need to make arrangements in case the building must be evacuated, please talk with Associate Dean Trachtenberg or Denise Boessen as soon as possible. If disability-related accommodations are necessary (for example, a note-taker, extended time on exams, captioning), please also register with the Office of Disability Services [http://disabilityservices.missouri.edu](http://disabilityservices.missouri.edu), S5 Memorial Union, 573-882-4696. For other MU resources for students with disabilities, click on “Disability Resources” on the MU homepage. Please do not hesitate to come to me if you would like assistance on any of these matters.

**Office Hours**

I will hold office hours this semester from 2:30 to 5:30 on Wednesday afternoons. I will have a sign-up sheet on the door of my office (Room 314), on which you can sign up for a meeting time, but one hour of that time and any time that is not booked in advance will remain open for walk-ins. I encourage you to attend office hours.

If you need to contact me for any reason, my email is hproctor@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.

Alternatively, you may post your questions—or observations—on Canvas, where I will offer my answer, and other students should feel free to respond, as well. As in class, everyone must act with decorum and respect in these discussions.

**Honor Code**

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a violation may include academic sanctions such as failing the course, and disciplinary sanctions ranging from probation to expulsion. Please consult with me when in doubt.
ASSSESSMENT

Your grade will be determined based on class participation and a final exam.

Your class participation will account for ten percent of your final grade. In order to ensure a good participation mark, read the assigned material and come prepared to discuss it.

The final exam will be comprehensive and will comprise the remaining ninety percent of your unadjusted grade. You may use any resources you wish during the exam, subject to the restriction that you may not discuss the exam with any other person after you receive it and before you have handed it in. Failure to abide by this restriction may result in a lower grade or automatic failure.

COURSE MATERIALS

The casebook (“CB”) for this course is GREGORY E. MAGGS & PETER J. SMITH, CONSTITUTIONAL LAW: A CONTEMPORARY APPROACH (5th ed. 2021). The authors have recently released a supplement (“CB Supp.”), from which we will draw some readings. It is available on Canvas.

Other readings will be posted on Canvas or are otherwise readily accessible online.

I also encourage you to bring a copy of the Constitution to class to review and annotate. One appears in the back of your casebook, but you may find a pocket Constitution more manageable.
ASSIGNMENTS

Structure

I. The Constitution

a. Introduction

The United States Constitution
The Declaration of Independence
The Gettysburg Address
CB 1-13

b. Interpreting the Constitution: How?

CB 13-22, 41-43
CB Supp. 3-19 (*New York State Rifle & Pistol Association v. Bruen*)

c. Interpreting the Constitution: Who?

CB 47–57 (*Marbury v. Madison*)
CB 74–79 (*Nixon v. United States*)
Excerpts of Statements of the Executive Branch (on Canvas)
Excerpts of the Virginia and Kentucky Resolutions (on Canvas)

II. Legislative Power

a. The Necessary and Proper Clause

CB 113–132 (*McCulloch v. Maryland, United States v. Comstock*)

b. The Commerce Clause

i. The Early Years

CB 132–137 (*Gibbons v. Ogden*)

ii. The Middle Years


iii. The New Deal Era


iv. The Civil Rights Era
CB 162–168 (*Heart of Atlanta Motel v. United States, Katzenbach v. McClung*)

v. The Rehnquist Court

CB 168–178 (*United States v. Lopez*)
CB 184–191 (*Gonzales v. Raich*)

c. The Tax and Spend Powers

CB 204–210 (*Child Labor Tax Case, United States v. Kahriger*)
Excerpts of Framer’s Positions on General Welfare (on Canvas)

d. Tying It All Together

CB 277–279

III. Executive Power

a. Domestic and Foreign Affairs

CB 363–375 (*Youngstown Sheet & Tube Co. v. Sawyer*)
CB 375–388 (*Dames & Moore v. Regan, United States v. Curtiss-Wright Export Corporation*)

b. War Powers

CB 393–410 (War Powers Resolution, *Hamdi v. Rumsfeld*)
CB 455–457

c. Characteristics of the Executive

Excerpts of The Federalist Nos. 64 and 70 (on Canvas)

i. Secrecy

CB 410–416 (*United States v. Nixon*)
Excerpts of *United States v. Zubaydah* (on Canvas)

ii. Control

CB 485–486

CB 494–502 (*Myers v. United States, Humphrey’s Executor v. United States*)
CB 530–543 (*Seila Law LLC v. CFPB*)
IV. **Judicial Power**

a. Introduction

CB 45–46

b. Case or Controversy Requirement

CB 70–74 (*Baker v. Carr*)
CB 80–85 (*Muskrat v. United States*)
CB 85–100 (*Allen v. Wright, Lujan v. Defenders of Wildlife*)

Excerpts of the Correspondence of the Justices (on Canvas)

CB 85–100 (*Muskrat v. United States*)

CB 109–110

c. Judicial Review

CB 58–69 (*Martin v. Hunter's Lessee, Cooper v. Aaron*)

CB 109–110

d. Limits on Jurisdiction

CB 101–105 (*Ex Parte McCardle*)
CB 264–274 (*Alden v. Maine*)
CB Supp. 27

V. **Interbranch Issues**

a. Delegation

CB 459–462

Excerpts of *Gundy v. United States* (on Canvas)

CB 487–493 (*Lucia v. SEC*)
CB 502–512 (*Bowers v. Synar*)

b. Legislative Process

CB 467–485 (*INS v. Chadha, Clinton v. New York*)

VI. **Federalism**

a. Enumeration and Preemption


b. Structural Principles

CB 242–250 (*National League of Cities v. Usery, Garcia v. San Antonio Metropolitan Transit Authority*)
CB 250–264 (New York v. United States, Printz v. United States)
Excerpts of Murphy v. NCAA (on Canvas)
CB 349–358 (U.S. Term Limits, Inc. v. Thornton)

**Rights**

**VII. Individual Rights**

a. Sources of Rights

CB 553–558
CB 569–573
CB 592–594
CB 595–598
CB 729–731

b. Chronology of Rights

CB 558–561 (Barron v. Baltimore)
CB 768–770 (Dred Scott v. Sandford)
CB 561–569 (The Slaughter-House Cases)
CB 613–620 (Pierce v. Society of the Sisters, Skinner v. Oklahoma)
CB 573–580 (Adamson v. California)
CB 620–636 (Griswold v. Connecticut, Roe v. Wade)
CB 720–725 (Washington v. Glucksberg)
CB 580–591 (McDonald v. City of Chicago)
CB Supp. 35–54 (Dobbs v. Jackson Women’s Health Organization)

c. Due Process

CB 733–743 (Cleveland Board of Education v. Loudermill)
Excerpts of In Re Winship (on Canvas)
Excerpts of Reno v. Flores (on Canvas)

**VIII. Equal Protection**

a. Introduction and Framework

CB 745–765 (Bolling v. Sharpe, Railway Express Agency v. People of State of New York, New York City Transit Authority v. Beazer)

b. Race

 i. Facial Discrimination

CB 771–775 (Strauder v. West Virginia)
ii. Discriminatory Purpose and Effect

CB 783–793 (Yick Wo v. Hopkins, Washington v. Davis)

iii. Race-Specific but Facial Symmetrical Laws


iv. Affirmative Action


c. Sex

CB 850–875 (Craig v. Boren, United States v. Virginia, Orr v. Orr, Michael M. v. Superior Court of Sonoma County, Personnel Administrator of Massachusetts v. Feeney)

d. Other Classifications

CB 875–900 (Graham v. Richardson, Clark v. Jeter, Massachusetts Bd. of Retirement v. Murgia, Cleburne v. Cleburne Living Center, Romer v. Evans)

IX. Individual Rights and Equality Meet

a. Overlap

CB 916–934 (Reynolds v. Sims, Rucho v. Common Cause)
CB 691–706 (Obergefell v. Hodges)

b. Congressional Enforcement

CB 953–957 (Jones v. Alfred H. Mayer Co.)
CB 982–991 (City of Boerne v. Flores, United States v. Morrison)

c. The State Action Doctrine

CB 1461–1470 (Civil Rights Cases)
CB 1478–1483 (Shelley v. Kraemer)

X. Case Study: Property Rights
a. Contracts Clause

CB 1425–1433 (Home Building & Loan Ass’n v. Blaisdell, Allied Structural Steel Co. v. Spannaus)

b. Takings Clause