

Constitutional Law I, Spring 2022
Monday and Wednesday 9:10-10:40

Prof. Robin Maril

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Office Hours: Monday and Wednesday 3:30 - 4:30 (drop in), other days by appointment

Substantive Course Overview:

- I. Introduction
- II. Federal Judiciary and the Constitution
 - A. Early development and approaches to the Judiciary
 - B. Authority of Review
 - C. Limits to Federal Judicial Power
 - 1. Interpretative
 - 2. Congressional Limits
 - 3. Justiciability Limits
- III. Federalism and Congressional Power
 - A. Congress and the States
 - B. The Necessary and Proper Clause
 - C. Regulation of Interstate Commerce
 - D. Taxing and Spending Power
 - E. Limits on Congressional Power
 - F. Enforcement of the 13th, 14th, and 15th Amendments
- IV. Federal Executive Power
 - A. Overview
 - B. Congressional Power over the President
 - C. Foreign Affairs
 - 1. Treaties
 - 2. War Powers
- V. The Constitution and Civil Rights
 - A. State Action
 - B. Due Process
 - 1. Economic
 - 2. Non-economic

Texts: Required materials: Chemerinsky, Constitutional Law 6th Edition, Aspen Casebook Series (referenced as Casebook and/or CB within)

Preparation & Participation: Each class I will assign certain students ahead of time to be “experts” on the day’s cases. In addition to these “experts,” I will cold call throughout the discussion. You are expected to read and think critically about the assigned material before each class. If you are unable to prepare for class, please email me 30 minutes prior to the start of class to avoid being called on. I understand that life happens. You may request 3 “passes” throughout the semester. In order to receive credit for this course, the ABA expects that you will be conducting at least 2 hours of out-of-class work for every hour of class time.

Learning Objectives: Students will learn the doctrinal rules applicable for each area of constitutional law; be able to apply those rules to novel or unanticipated factual scenarios; and be able to critically assess the normative validity of those rules, including by articulating and defending alternative interpretations of the relevant constitutional text.

Attendance: All students are expected to comply with the law school’s attendance policy. Students are also expected to be on time for class; students who are regularly late to class (or regularly leave class early) may be reported to the Associate Dean for Student Affairs for appropriate action. Students should leave cameras on for all classes conducted over zoom. Please contact me directly if this is a concern.

Willamette Nondiscrimination Policy: Willamette University is a diverse community that provides equal opportunity in employment, activities, and its academic programs. The university shall not discriminate on the basis of race, color, religion, sex, national origin, marital status, veteran status, actual or perceived sexual orientation, gender identity, gender expression, or status with regard to pregnancy, disability or age. Willamette is firmly committed to adhere to the letter and spirit of all federal and state equal opportunity and civil rights laws.

Information for Students with Disabilities: Willamette Law is committed to making sure that everyone is able to participate fully in our courses. If you have particular needs in order to access to this course, please contact Dean Mac Alpine or Sue Minder, Director of Accessible Education Services, at sminder@willamette.edu or 503-370-6737.

Final Exam: The final exam will consist of four to five essay questions. In addition, students who volunteer and participate in the classroom discussion on a regular and helpful basis may receive a grade enhancement of one-third a grade at the discretion of the instructor.

1/10 Week 1

Class 1) Course Themes and Introduction to Constitutional Judicial Powers

Reading: *The Functions of a Constitution: Constraining Today's Majority* available for download on WISE; *Marbury v. Madison* CB Pages 2-8.

Class 2) Judicial Power and the Constitution: Authority Continued, Introduction to Limitations

Reading: *Martin v. Hunter's Lessee* CB Page 10, *Modes of Constitutional Interpretation* Available on WISE, *Ex Parte McCordle* and end note CB 34-36.

1/17 Week 2

Class 3) Limits to Judicial Constitutional Power Continued, Introduction to Justiciability

Reading: *U.S. v. Klein* Page 35-38, *Allen v. Wright* CB 45-52, *Mass v. EPA* CB 52-58.

1/24 Week 3

Class 4) Justiciability Continued

Reading: *City of Los Angeles v. Lyons* CB 58-60, *Lujan v. Defenders of Wildlife* CB 60-63, CB 64-66, *Singleton v. Wulff* CB 67-69, *U.S. v. Richardson* CB 71-73, Mootness note CB 85-87, *Baker v. Carr* CB 92-94, *Abbott Laboratories v. Gardner* CB 82-83.

Class 5) Introduction to Federalism and the Scope of Congressional Power

Reading: CB 121-130 *McCulloch v. Maryland*, *The Story of McCulloch* available on WISE 705-714 **only**.

1/31 Week 4

Class 6) Congressional Power to Regulate Interstate Commerce

Reading: Note on commerce CB 155-156, *Gibbons v. Ogden* 156-159, Note: A Limited Federal Commerce Power 1890-1937 CB 159-167.

Class 7) Key Decisions Changing Interstate Commerce

Reading: *NLRB v. Laughlin Steel* CB 167-170, *U.S. v. Darby* CB 170-172, *Wickard v. Filburn* CB 173-174, *Heart of Atlanta Motel* CB 175-178, *Katzenbach v. McClung* CB 178-179, please check WISE for additional contextual materials.

2/7 Week 5

Class 8) Key Decisions Narrowing the Commerce Clause

Reading: *U.S. v. Lopez* CB 188-199, *U.S. v. Morrison* CB 199-204, *NFIB v. Sebelius* CB 133-138 and 145-147 only, *Gonzales v. Raiche* CB 207-216.

Class 9) Introduction to Taxing and Spending

Reading: *NFIB v. Sebelius* (Spending: 140-143; 148-149; 152-154 Taxing 150-152) CB *U.S. v. Butler* CB 241-242, *Sabri v. United States* CB 243-245, *South Dakota v. Dole* CB 245-247, *The Federal Government's Authority to Impose Conditions on Grant Funds*, Congressional Research Service-- available on WISE.

2/14 Week 6

Class 10) Congressional Power Under the Civil War Amendments

Readings: *U.S. v. Morrison* CB 251-253, *Katzenbach v. Morgan & Morgan* CB 254-257, *City of Boerne v. Flores* CB 258-263, *Shelby County v. Holder* CB 263-274.

Class 11) Necessary and Proper Clause and limitation of the 10th Amendment

Reading: *United States v. Comstock: Legislative Authority Under the Necessary and Proper Clause* Congressional Research Service -- available on WISE, *NY v. U.S.* CB 216-226, *Printz v. U.S.* CB 226-234, *Reno v. Condon* CB 234-236, *Murphy v. National Collegiate Athletic Association* CB 236-240.

2/21 Week 7

Class 12) Preemption and Privileges and Immunities

Reading: *Florida Lime and Avocado Growers v. Paul* CB 429-430, *Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission* CB 430-434, *Arizona v. United States* CB 435-444 *Toomer v. Witsell* CB 493-494, *Lester Baldwin v. Fish and Game* CB 496-497 *Supreme Court of New Hampshire v. Kathryn Piper* CB 497-501.

Class 13) Introduction to the Dormant Commerce Clause

Reading: *Tennessee Wine and Spirits v. Thomas* CB 446-452, *Cooley v. Board of Wardens of Philadelphia* CB 455-457, *City of Philadelphia v. New Jersey* CB 458-461, *Skim Exxon Corp. v. Governor of Maryland* CB 464-467, *West Lynn Creamery, Inc. v. Healy* CB 468-469, Read notes and cases CB 471-481.

2/28 Week 8

Class 14) Introduction to Federal Executive Power

Readings: Contested Ground, *Introduction*, Available on WISE, *Youngstown Sheet and Tube v. Sawyer* CB 276-284, *U.S. v. Nixon* CB 286-289, *United States v. Curtiss-Wright Export Corp.* CB 340-341, *Zivotofsky v. Kerry* CB 343-351.

Class 15) Executive Power Continued, Executive Power and War

Readings: *Dames and Moore v. Regan* CB 352-354, War Power Resolution CB 355-358, *Hamdi v. Rumsfeld* CB 359-370.

3/7 Week 9

Class 16) Executive War Power, Checks on Executive Power

Readings: *Boumediene v. Bush* CB 370-387, Note on Military Tribunals and Ex Parte Quirin CB 387-395, *Nixon v. Fitzgerald* CB 406-410, *Clinton v. Jones* CB 410-413, Impeachment video on WISE.

Class 17) The Constitution and the Administrative State.

Readings: *A.L.A. Schechter Poultry Corp v. United States* CB 293-294, *Panama Refining Co. v. Ryan* CB 294-295 *Gundy v. United States* CB 296-304, Optional Listen: [Deep Dive Episode 61, Gundy v. United States: Revisiting the Nondelegation Doctrine, or Not?](#)

3/14 Week 10

Class 18) The Constitution and Civil Rights

Reading: *False Start* note CB 506-507, *Due Process* Note CB 516, *Slaughter House Cases* CB 507-513, *Saenz v. Roe* CB 514-516, Last note on incorporation bottom of CB 521, Current Law of Incorporation CB 522-523, Case Preview Video (9 minutes) [C-SPAN Landmark Cases | Civil Rights Cases \(cspan.org\)](#).

Class 19) Pre-Spring Break Review

3/28 Week 11

Class 20) Civil Rights Cases Concluded, Introduction to State Action

Reading: *U.S. v. Stanley* CB 533-535, *Marsh v. Alabama* CB 538-540, *Jackson v. Metropolitan Edison Co* CB 540-543, *Terry v. Adams* CB 543-544, *Evans v. Newton* CB 544-546, Entanglement Exception Note CB 553, *Shelley v. Kraemer* CB 553-556.

Class 21) Economic Substantive Due Process

Readings: *Lochner v. New York* CB 586-592, *Muller v. Oregon* CB 593-595, *Adkins v. Children's Hospital* CB 595-597, *Weaver v. Palmer Bros.* CB 597-599, CB Section 4 Notes and Cases 599-606.

4/4 Week 12

Class 22) Economic Substantive Due Process Continued Introduction to Fundamental Rights and Due Process

Readings: *BMW of North America v. Gore* CB 606-611, *State Farm v. Campbell* CB 611-617 and CB Note 618, CB Note 909-915.

Class 23) Economic Substantive Due Process Continued, Fundamental Rights and Due Process

Readings: *Griswold v. Connecticut* CB 953-959, *Eisenstadt v. Baird* CB 959-960, *Lawrence v. Texas* CB 1031-1042.

4/11 Week 13

Class 24) Due Process and Fundamental Rights Continued

Readings: *Obergefell v. Hodges* CB 915-929, Penumbra and Privacy Article, available on WISE.

Class 24) Conclusion of Fundamental Rights/Guest Lecture

4/18 Week 14

Class 25) Review Session