**CONSTITUTIONAL LAW**

**Law 5501-15901**

Section 2
Spring 2020

University of Florida Levin College of Law
Professor Merritt McAlister

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**Syllabus**

**1. Overview.** This course examines core concepts in constitutional law. We will focus our attention on three areas: separation of powers, federalism, and individual rights. “Separation of powers” refers to our system of divided federal government and the corresponding checks and balances among the three branches of government (executive, legislative, and judicial). “Federalism” refers to the balance of power between state and federal governments. “Individual rights” refers to the individual liberties the constitution protects against state or federal governmental interference or intrusion.

This is a foundational course. There’s much more to constitutional law than we will be able to cover this semester, but this course will provide you with a foundation for further study as your law school career progresses. For example, we will not explore the First Amendment or constitutional criminal procedure provisions. Those are the subject of other, more specialized course.

Our course will also ground you in the process of common-law judicial decisionmaking, as we explore how doctrine evolves and changes over time. We will consider different interpretive choices by different jurist—principally, “originalism” and living or common-law constitutionalism—and how those frameworks apply in context. We will consider, also, and more provocatively, whether judicial review on constitutional questions involves neutral or objective decisionmaking by jurists or whether jurists’ personal policy preference more often drive judicial decisions.

**2. Required and Optional Materials.** Our casebook is Gregory Maggs & Peter Smith, Constitutional Law: A Contemporary Approach (4th ed. 2018). You may purchase an earlier edition for cost reasons, but I will assign reading from the Fourth Edition and you are solely responsible for ensuring that you have covered the assigned material.

Our casebook offers significant online supplemental material, including an online interactive version of the casebook and quiz questions covering the material. I encourage you to make use of these resources.

Although it is not required, you may find Professor Erwin Chemerinsky’s treatise, Constitutional Law: Principles and Policies (6th ed.), a useful resource for this course.

**3. Class Meetings.** Our class will meet on Mondays, Tuesdays, and Wednesdays from 10:45 am to 12:00 pm in HH 270.

**4. Office Hours.** My office hours are 1:00 pm to 2:30 pm on Mondays and 12:00 pm to 1:00 pm on Wednesdays. If I need to reschedule my office hours for any reason, I will make an announcement in class and/or leave a note on my door. Outside of office hours, I am happy to meet by appointment at other times; please e-mail me to arrange. I also maintain an open-door drop-in policy: if my door is open, I am available. I encourage you to talk with me about anything class- or law-school related. I also know a thing or two about clerkships, law-firm jobs, cooking, wine, and chocolate Labs.

**5. Contact Information.** My office is in Room 343 in Holland Hall, and my office telephone number is 352.273.0981. My e-mail address is mcalister@law.ufl.edu. E-mail is usually the best way to reach me, and please do not hesitate to contact me regularly throughout the semester.

**6. Canvas.** I will use Canvas to distribute any assigned material that is not in our casebook and make available any material I distribute in class, including PowerPoint presentations.

**7. Course Objectives and Student Learning Outcomes.** By the end of this course, you should be able to: (1) describe the core constitutional concepts of separation of powers and federalism; (2) explain the framework for substantive due process and equal protection; (3) articulate the basic limits on and extent of judicial review; (4) explain differing views of judicial decisionmaking and constitutional interpretive methodologies; and (5) describe core congressional and executive powers and the limits thereon.

**8. Class Assignments.** At the end of this syllabus, you will find a Course Reading Map, which is a list of assignments by subject matter. The Reading Map itself may provide you with a useful organizational tool. I have noted in brackets the material of most importance in each assignment; these will be our points of focus in class, but you are responsible for all of the reading.

Each assignment corresponds roughly to one class period. We may discuss one assignment over two days (note there are 37 assignments and 39 class periods). I will confirm the next assignment at the end of class, but if you miss class, or I do not announce the assignment for any reason, you should prepare the next class assignment. I reserve the right to remove assignments from our planned reading map depending on how quickly we move through the material.

**9. Class Preparation, Participation, and Experience.** Consistent with the American Bar Association Standard 310, you should expect to spend at least **eight hours** per week preparing for this three-hour course.

I have high expectations for the learning environment we create together. I use a “lectussion” teaching style, which means that I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I will supplement our discussion with a short introductory lecture each class to recap the major take-away points from the previous class and launch that day’s discussion.

I expect each of you to attend class prepared. Preparation includes completing the assigned reading, reviewing notes and/or reading material from the prior class, and thinking through assigned problems. In completing the assigned reading, please focus your attention on the main cases and the hypothetical problems; you may skim the notes. **I expect you to come to class prepared to discuss how you might answer the discussion problems in the assigned reading.**

To ensure meaningful participation from all class members and to help you build lawyering skills, I will cold-call students using a modified Socratic method. I use an on-line list randomizer to generate the cold-call list for each week’s class. Although you may be called on in consecutive weeks, I will not call on a student who has not indicated that she is prepared (*see* Section 10). I may call on one student to dialogue with me on one case or I may jump around from student to student. I will often take volunteers, especially as our discussion opens up to consider the implications of doctrine. Sometimes you will work together in groups to brainstorm responses to the problems included in our casebook or that I pose in class.

Meaningful and thorough class preparation is essential to success in this course. Our material will be difficult yet deeply rewarding; my classroom expectations will ensure that we will work well together to absorb these materials and keep our focus on some of the most important and challenging questions in our constitutional system.

**10. Class Attendance.** I record both class attendance and preparation solely by the sign-in sheet. **By signing in,** **you confirm that you are prepared for class in accordance with section 9.** It is your responsibility to sign-in and/or initial the sheet before class begins. **You may not sign the attendance sheet if you arrive to class after I have begun teaching.** Be aware that it is a serious violation of the Academic Honesty policy to sign in for another person or to have others sign you in. I will make the sign-in sheet available at least 5 minutes before class is scheduled to begin.

**If you fail to sign the sign-in sheet more than ten times during the semester, I will lower your final grade by at least one-third of a point (e.g., from a B to a B-).** That means that, collectively, you may not (1) be late; (2) exercise a pass/be unprepared; or (3) be absent more than ten times in total this semester; if you are, it will affect your grade in this course. In my experience, students with the best attendance/students who use the fewest passes generally perform better on my final exams. So, although I have a generous pass policy, I encourage you to be prepared for class as often as possible.

I will cross-reference the attendance sheet with my cold-call list each class, but if for some reason I nevertheless call on you and you have not marked yourself as present and prepared, please let me know. No harm, no foul—and that will be my mistake. **If, however, I call on you and you are not prepared but you have otherwise signed in/marked yourself as present and prepared, I reserve the right to reduce your grade by one-third of a point (e.g., from a B to a B-). Don’t tempt fate.**

You do not need to tell me why you are absent or unprepared. If, however, you expect to be absent from class more than seven times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. Accordingly, please notify me of such absences in advance.

**11. Electronic Devices.** I use interactive electronic polling to increase engagement and receive student feedback: <http://mmcalister.participoll.com>. You may use either a cellphone or a computer to participate in polling. You may not use your cellphone for any other purpose in this class. You may use a computer or tablet in class for classroom purposes if you wish, though studies suggest that students learn better through taking handwritten notes.

I expect you to be professional and respectful of the classroom environment and not use electronic devices for any other purpose. I reserve the right to reconsider my electronic device policy to preserve the classroom environment.

**12. Evaluation.** Your final grade in this course is based on a closed-book midterm (20%) and a closed-book final (80%). Both exams will be in-class exams. The mid-term exam will be in class on Tuesday, February 18; our final exam will be held on Friday, May 1.

I will also take exceptional participation into account in setting the curve, and I reserve the right to increase grades by 1/3 of a point (e.g., from a B to a B+) if I conclude that a student’s examination performance does not reflect that student’s contributions to our learning environment. Grade adjustments are the exception, not the norm.

**13. Grading**. Your grade in this class will be based on the midterm, the final exam, and participation, as described in Sections 9, 10, and 12, above. The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

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| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B (Average) | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0  |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**14. Accommodations**. Students requesting accommodation for disabilities must first register with the Disability Resource Center (http://www.dso.ufl.edu/drc/). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**15. Student Course Evaluations.** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**16. Academic honesty.** Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School’s application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

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**Introduction**

1. The Constitution & its Interpretation: pp. 1471–1488 (The Constitution) & 23–43 (*District of Columbia v. Heller*)
2. Hot Topic: Impeachment, pp. 75–80 & 431–437 (*Nixon v. United States* & *United States v. Nixon*)
3. **Article III & Judicial Power**
4. **Judicial Review**
5. The Power of Judicial Review, pp. 47–57 (*Marbury v. Madison*)
6. Federal Judicial Supremacy, pp. 48–69 (*Martin v. Hunter’s Lessee* & *Cooper v. Allen*)
7. **Limits on Judicial Power**
8. Obstacles to Judicial Review: Standing, pp. 81–101 (*Muskrat*, *Allen v. Wright* & *Lujan*)
9. **Federalism and Legislative Powers**
10. **Express and Implied Powers Legislative Powers**
11. The “Necessary and Proper” Clause, pp. 111–133 (*McCulloch v. Maryland* & *Comstock*)
12. The Commerce Clause: The New Deal Era, pp. 151–169 (*Carter*, *Jones & Laughlin Steel*, *Darby*, *Wickard*)
13. The Commerce Clause: The Modern View, pp. 169–179 (*Lopez*)
14. The Commerce Clause: The Modern View, continued, pp. 179–206 (*Morrison*, *Raich*, & *NFIB*)
15. The Taxing & Spending Power, pp. 212–221 & 230–39 (*NFIB*)
16. **Limitations on Power**
17. State Immunity from Legislation, pp. 252–67 (*New York* & *Printz*)
18. Limitations on State Power: The Dormant Commerce Clause, pp. 306–313 & 329–34 (*Dean Milk*, *Hughes*, & *Camps Newfound*/*Owatonna*)
19. Limitations on State Power: The Dormant Commerce Clause, continued, pp. 313–26 (*Barnwell Bros.*, *So. Pacific*, & *Kassel*)
20. Privileges & Immunities Clause, pp. 351–60 (*Baldwin* & *Piper*)
21. **Separation of Powers: Federal Executive Power & The Legislative Process**
22. **Federal Executive Power**
23. Domestic Affairs & Foreign Affairs, pp. 373–393 (*Youngstown Steel* & *Dames & Moore v. Regan*)
24. Foreign Affairs, continued, pp. 394–414 (*Curtiss-Wright* & *Zivotofsky*)
25. Executive Immunity, pp. 437–450 (*Fitzgerald* & *Clinton v. Jones*)
26. **Legislative Process**
27. Delegation, Excluding the President, & the Line-Item Veto, pp. 457–84 (*Whitman v. American Trucking Associations*, *Chadha*, & *Clinton v. New York*)
28. Appointment Powers, pp. 493–515 (*Bowsher* & *Morrison*)
29. **Individual Rights**
30. **Introduction to Individual Rights**
31. Early History of Individual Rights, pp. 535–553 (*Barron* & *Slaughter-House Cases*)
32. Incorporation Doctrine, pp. 553–74 (*Adamson* & *McDonald*)
33. **Substantive Due Process**
34. Economic Liberty, pp. 583–591, 594–600 (*Lochner*, *West Coast Hotel*, & *Williamson*)
35. Origins of Modern Substantive Due Process, Privacy, & Contraceptives, pp. 601–17 (*Pierce*, *Skinner*, & *Griswold*)
36. Abortion, pp. 617–639 (*Roe* & *Casey*)
37. Abortion Cases in the Roberts Court, pp. 640–654 (*Gonzales v. Carhart* & *Whole Women’s Health*)
38. (Heterosexual) Marriage & Family, pp.654–668 (*Loving* & *Michael H.*)
39. Sexuality & Same-Sex Marriage, pp. 669–95 (*Lawrence* & *Obergefell*)
40. Life & Death, pp. 695–702 & 710–715 (*DeShaney* & *Glucksberg*)
41. **Procedural Due Process**
42. Procedural Due Process, pp. 723–733 (*Loudermill*)

1. **Equal Protection**
2. Distinctions, Classifications, and Basic Application, pp. 737–751 (*Bolling*, *Railway Express*, & *Beazer*)
3. Facially-Discriminatory Laws, pp. 757–772 (*Dred Scott*, *Strauder*, *Korematsu*)
4. Laws that Discriminate in Purpose and Effect, pp. 773–783 (*Vick Woo* & *Davis*)
5. Laws That Are Race-Specific But Facially Symmetrical (“Separate But Equal”), pp. 783–98 (*Plessy*, *Brown*, & *Loving*)
6. Affirmative Action, pp. 798–800, 806–835 (*Grutter*, *Gratz*, *Fisher*, & *Parents Involved*)
7. Gender Classifications, pp. 841–66 (*Craig*, *VMI* Case, *Michael M.* & *Fenney*)
8. Alienage, Age, Disability, pp. 867–883 (*Graham*, *Clark*, *Murgia*, *Cleburne*)
9. Sexuality, pp.883–93 (*Romer* & *Windsor*)