

Antonin Scalia Law School at George Mason University

CONSTITUTIONAL LAW II
Spring 2022 Course Syllabus (12.27.21)
3 credits

Professor: JoAnn Koob; jkoob@gmu.edu
Office Hours: Tuesdays 4:30-5:30 p.m., Room 433K, and by appointment; Zoom appointments available

Casebook and Readings: Our primary class material will be *Constitutional Rights: Cases in Context* (2nd ed.) by Randy E. Barnett and Josh Blackman (Barnett). You do not need to purchase the supplement, as I will provide links or copies of any supplement materials. Note that substantively, the casebook is essentially the second half of the larger Barnett/Blackman Constitutional Law hardcover casebook, so you are able to use that book. There will be videos assigned, which are available on Casebook Connect (included with purchase of book (new)).

Readings not found in the Casebook will be provided on TWEN* via link or file, and/or distributed in class.

*i.e., you will need to use TWEN, so please sign up if you have not already done so.

Attendance: The course follows the Law School's attendance policy. If a student is absent for any reason more than 20% of the course, then the student is not eligible for credit. A student who misses more than 25% of a class session will be counted as absent from that class session.

Classroom Policies: We'll go over virtual classroom policies on the first day of class.

Assessment and Grades:

- **Final Exam:** The final exam will comprise 90% of your final grade.
- **Class Participation:** Class participation will comprise 10% of your grade. This class will involve quite a bit of discussion (e.g., small group breakout discussions, class 'debates' of court decisions, etc.). In addition, there will be cold-calling during class. You have two "passes" you may use during the semester, which can be used by emailing me at least 4 hours before class starts. Other than your two approved passes, failure to be prepared may affect your grade.

Learning Outcomes: By the end of the semester, students should:

- Be well versed in the principal features of the 14th Amendment;
- Have solid knowledge of the doctrines underlying the Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause;
- Be skilled at reading and analyzing Supreme Court constitutional opinions; and
- Be able to debate the legal rationale for Supreme Court constitutional opinions.

Assigned Readings: The Assigned Readings may be updated during the semester. When updated, I will send an email and update the syllabus on TWEN. Occasionally the Assigned Readings including specific items to consider or be prepared to discuss; this does not imply you do not otherwise need to be prepared to discuss everything covered in the assignments, but rather, is to give you notice to plan for a

robust discussion on those issues noted. The page numbers indicated below are the assigned reading (i.e., the cases are listed solely for reference purposes).

Class Session – Date	Readings	Notes, Information, and Other Assignments
1 – 1/19	Background: <ul style="list-style-type: none"> • Barnett, 3-12; 19-24; 32-33 (section 5); 39-43 <ul style="list-style-type: none"> ○ <i>Barron v. Baltimore</i> • The 13th, 14th, and 15th Amdts. (available at Barnett pp. xxxix-xl) 	Notes: Be prepared to argue the case both for and against the adoption of a Bill of Rights.
2 - 1/24	Adoption of the 13th, 14th, and 15th Amendments: <ul style="list-style-type: none"> • Casebook Connect Chpt. 10: “Dred Scott v. Sanford” • Barnett, 77-86 Contracting the Privileges/Immunities Clause: <ul style="list-style-type: none"> • Barnett, 86-108 <ul style="list-style-type: none"> ○ <i>Slaughterhouse Cases</i> ○ <i>Bradwell v. Illinois</i> 	What are the best and worst legal arguments made in each of the four Slaughter-House Cases opinions excerpted?
3 – 1/26	Contracting the P/I Clause (cont.): <ul style="list-style-type: none"> • Barnett, 109-112; 127-132 <ul style="list-style-type: none"> ○ <i>U.S. v. Cruikshank</i> State Action Limitation: <ul style="list-style-type: none"> ○ Barnett, 132-150 <ul style="list-style-type: none"> ○ <i>The Civil Rights Cases</i> 	Consider the arguments for and against the Court’s interpretation of the Privileges or Immunities Clause
1/31: NO CLASS ON MONDAY, JANUARY 31st		
4 – 2/2	The Early Equal Protection Clause: <ul style="list-style-type: none"> • <u>Strauder v. West Virginia</u>, 100 U.S. 303 (1880)* • Barnett, 150-165 <ul style="list-style-type: none"> ○ <i>Yick Wo v. Hopkins</i> ○ <i>Plessy v. Ferguson</i> • <i>Berea College v. Kentucky</i>, 211 U.S. 45 (1908)** 	Note: Be prepared to continue our discussion of <i>The Civil Rights Cases</i> during the first part of class. *Available on TWEN **Edited version available on TWEN
5 – 2/7	Due Process and the Regulatory State: <ul style="list-style-type: none"> • Barnett, 167-188 <ul style="list-style-type: none"> ○ <i>Chicago, Burlington & Quincy RR v. Chicago</i> ○ <i>Lochner v. NY</i> 	Optional Reading: <i>Lochner v. NY: A Centennial Retrospective</i> , pp. 1505-14, by D.

		Bernstein (available on TWEN).
6 – 2/9	Due Process and the Regulatory State (cont.): <ul style="list-style-type: none"> • Barnett, 188-193 <ul style="list-style-type: none"> ○ <i>Bailey v. Alabama</i> • Barnett, 194-203 <ul style="list-style-type: none"> ○ <i>Buchanan v. Warley</i> ○ <i>Muller v. Oregon</i> 	*Available on TWEN
7 – 2/14	Due Process and the Regulatory State (cont.): <ul style="list-style-type: none"> • Barnett, 204-225; <ul style="list-style-type: none"> ○ <i>Adkins v. Children’s Hospital</i> ○ <i>Meyer v. Nebraska</i> ○ <i>Pierce v. Society of Sisters</i> ○ <i>Buck v. Bell</i> 	*Available on TWEN Note Holmes’ opinion in <i>Bartels v. Iowa</i> on the bottom of p. 215
8 – 2/16	Due Process and the Regulatory State (cont.): <ul style="list-style-type: none"> • <i>Gitlow v. New York</i>, 268 U.S. 652 (1925)* Due Process & Presumption of Constitutionality: <ul style="list-style-type: none"> • Barnett, 225-237 <ul style="list-style-type: none"> ○ <i>O’Gorman & Young v. Hartford Fire Ins.</i> ○ <i>Nebbia v. NY</i> 	*Available on TWEN
9 – 2/21	Presumption of Constitutionality (cont.): <ul style="list-style-type: none"> • Barnett, 237-257 <ul style="list-style-type: none"> ○ <i>West Coast Hotel v. Parrish</i> ○ <i>U.S. v. Carolene Products*</i> ○ <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** 	*Pay particular attention to footnote 4 **Available on TWEN: Note the reading is from bottom of PDF p. 5 – top of PDF p. 12
10 – 2/23	Presumption of Constitutionality (cont.): <ul style="list-style-type: none"> • Barnett, 257-269 <ul style="list-style-type: none"> ○ <i>Lee Optical v. Williams</i> ○ <i>Williams v. Lee Optical</i> ○ <i>Milnot v. Richardson</i> 	
11 – 2/28	Equal Protection: Pre-Brown <ul style="list-style-type: none"> • <i>Skinner v. Oklahoma</i>, 316 U.S. 535 (1942)* • <i>Kotch v. Board of River Port Pilot Commissioners</i>, 330 U.S. 552 (1947) • <i>Goeseart v. Cleary</i>, 335 US 464 (1948) • <i>Shelley v. Kraemer</i>, 334 U. S. 1 (1948) 	*Available on TWEN
12 – 3/2	Equal Protection – Race Discrimination:	

	<ul style="list-style-type: none"> • Barnett, 273-296 <ul style="list-style-type: none"> ○ <i>Brown I</i> ○ <i>Brown II</i> ○ <i>Bolling v. Sharp</i> ○ <i>Cooper v. Aaron</i> 	
13 – 3/7	Equal Protection – Race Discrimination (cont.): <ul style="list-style-type: none"> • <i>Reynolds v. Sims</i>, 377 U.S. 533 (1964)*; • Barnett, 311-321 <ul style="list-style-type: none"> ○ <i>Loving v. Virginia</i> ○ <i>Washington v. Davis</i> 	*A shortened version is available on TWEN
14 – 3/9	Equal Protection - Affirmative Action: <ul style="list-style-type: none"> • Barnett, 321-346 <ul style="list-style-type: none"> ○ <i>Bakke</i> ○ <i>Grutter</i> ○ <i>Gratz</i> 	
15 – 3/21	Equal Protection - Affirmative Action (cont.): <ul style="list-style-type: none"> • Barnett, 346-363 <ul style="list-style-type: none"> ○ <i>Fisher I</i> ○ <i>Fisher II</i> • Cert. Petition in <i>Students for Fair Admission v. Harvard</i> 	We may have a guest speaker on <i>SFFA v. Harvard</i>
16 – 3/23	Equal Protection - Affirmative Action (cont.): <ul style="list-style-type: none"> • <i>United States v. Paradise</i>, 480 U.S. 149 (1987), pp. 166-186, and pp. 196-201 (from O’Connor’s opinion)* • Barnett, 363-375 <ul style="list-style-type: none"> ○ <i>Adarand (1995)</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. 838-855)* 	*Available on TWEN
17 – 3/28	Equal Protection – Race & Other: <ul style="list-style-type: none"> • <i>U.S. Dept. of Agriculture v. Moreno</i>, 413 U.S. 528 (1973)* • <i>San Antonio v. Rodriguez</i>, 411 U.S. 1 (1973)** • <i>Bernal v. Fainter</i>, 467 U.S. 216 (1984)** • <i>Plyler v. Doe</i>, 457 U.S. 202 (1982)** 	*Available on TWEN **A shortened version is available on TWEN
18 – 3/30	Equal Protection – Other (cont.): <ul style="list-style-type: none"> • Barnett, 404-422 <ul style="list-style-type: none"> ○ <i>Cleburne v. Cleburne Living Center</i> 	*Available on TWEN

	<ul style="list-style-type: none"> ○ <i>Romer v. Evans</i> Equal Protection –Sex: <ul style="list-style-type: none"> ● <i>Reed v. Reed</i>, 404 U.S. 71 (1971)* 	
19 – 4/4	Equal Protection –Sex (cont): <ul style="list-style-type: none"> ● Barnett, 377-403 <ul style="list-style-type: none"> ○ <i>Frontiero v. Richardson</i> ○ <i>Craig v. Boren</i> ○ <i>United States v. Virginia</i> 	
20 – 4/6	Substantive Due Process – Privacy <ul style="list-style-type: none"> ● Barnett, 425-458 <ul style="list-style-type: none"> ○ <i>Griswold v. Connecticut</i> ○ <i>Roe v. Wade</i> ● <i>Eisenstadt v. Baird</i>, 405 U.S. 438 (1972)* 	*A shortened version is available on TWEN
21 – 4/11	Substantive Due Process – Liberty <ul style="list-style-type: none"> ● Barnett, 459-476; <ul style="list-style-type: none"> ○ <i>Bowers v. Hardwick</i> ○ <i>Washington v. Glucksburg</i> ○ <i>Troxel v. Granville</i> 	
22 - 4/13	Substantive Due Process – Liberty (cont.) <ul style="list-style-type: none"> ● Barnett, 476-519 <ul style="list-style-type: none"> ○ <i>Planned Parenthood v. Casey</i> ○ <i>Gonzalez v. Carhart</i> ○ <i>Whole Women’s Health v. Hellerstedt</i> ● <i>June Medical v. Russo</i>, 591 U.S. __ (2020)* 	* A shortened version is available on TWEN
23 – 4/18	Substantive Due Process – Liberty (cont.) <ul style="list-style-type: none"> ● Barnett, 520-540 <ul style="list-style-type: none"> ○ <i>Lawrence v. Texas</i> ● Casebook Connect Chpt. 10: “U.S. v. Windsor” ● Barnett, 543-563 <ul style="list-style-type: none"> ○ <i>Obergefell v. Hodges</i>: (Kennedy’s, Roberts,’ and Scalia’s opinions only) 	
24 – 4/20	Right to Travel: <ul style="list-style-type: none"> ● <i>Crandall v. Nevada</i>, 73 U.S. 35 (1868)* ● <i>Shapiro v. Thompson</i>, 394 U.S. 618 (1969)* ● <i>Saenz v. Roe</i>, 526 U.S. 489 (1999)* 	*Shortened versions of the <i>Crandall</i> , <i>Shapiro</i> , and <i>Saenz</i> cases are available on TWEN
25 – 4/25	Revisiting the P/I Clause <ul style="list-style-type: none"> ● Barnett, 112-132 <ul style="list-style-type: none"> ○ <i>McDonald v. City of Chicago</i> ● Timbs v. Indiana, 139 S.Ct. 682 (2019)* 	*Shortened version available on TWEN

	<ul style="list-style-type: none"> • Ramos v. Louisiana, 140 S.Ct. 1390 (2020)* (note: you will read part of each of Justice Gorsuch's and Thomas' opinions only) 	
26 – TBD	Review and Questions	We will discuss the final exam and I will answer your questions about it. The rest of the class will be devoted to review of materials covered.