

Constitutional Law II
Professor Bernstein
Spring 2023

The text for this class is Randy E. Barnett & Josh Blackman *Constitutional Law: Cases in Context* (fourth edition). You DO NOT need to buy a supplement, just the main text. If you can find someone on Amazon.com or otherwise who has used this book for a Constitutional Law I-type class (including my Con Law I students last semester), you can purchase a “marked-up” used copy of the book that will likely have almost all clean pages for this class.

Students are required to be prepared for class. Students who do not participate regularly without being called on will be expected to be ready for “cold calling.”

Jan. 18	Read Declaration of Independence; Barnett, 3-16, 17-20, 44-60
Jan. 23	Barnett, 677-713
Jan. 25	Barnett, 717-753 (extended class to make up for 1/30)
Jan. 30	No class
Feb. 2	Barnett, 754-805 (extended class to make up for 1/30)
Feb. 6	Barnett 805-832
Feb. 8	Barnett 833-59 plus Berea College v. Kentucky excerpt TBA
Feb. 13	Barnett, 859-84
Feb. 15	Barnett, 884-913
Feb. 20	Skinner v. Oklahoma, available at http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/skinner.html ; Kotch v. Pilot Commissioners, 330 U.S. 552 (1947); Goesaert v. Cleary, 335 US 464 (1948)
Feb 22	Barnett, 914-933 plus additional unenumerated rights reading
Feb. 27	Barnett, 935-55
Mar. 1	<i>Shelley v. Kraemer</i> , 334 U. S. 1 (1948); Additional state action case TBA Barnett, 971-79
Mar. 6	<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)
Mar. 8	<i>Rodriguez</i> , http://law2.umkc.edu/faculty/projects/ftrials/conlaw/sanantoniovrodriguez.html ; <i>Plyer v. Doe</i> , http://law2.umkc.edu/faculty/projects/ftrials/conlaw/plyler.html
Mar. 20	Class 1 on racial preferences/affirmative action readings TBA
Mar. 22	Class 2 on racial preferences/affirmative action readings TBA
Mar. 27	Barnett, 1033-57
Mar. 29	United States Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973); Barnett, 1058-76
April 3	Barnett, 1078-1109
April 5	Barnett 1109-24, 1142, 1158-74
April 10	Barnett, 1174-99
April 12	<i>Dobbs</i> (see TWEN for case)
April 17	Barnett 1541-84 (TBD April 19)
April 19	Finish April 17 discussion, and Barnett 1608-24
April 24	TBA

UNIVERSITY POLICIES

Course Overview

The goal of this course is to understand the evolution of Fourteenth Amendment due process and equal protection jurisprudence (and related matters, such as privileges or immunities) from the 1860s to the present, and the current status of Supreme Court doctrine with regard to these provisions.

Learning outcomes

Students who complete this course should be conversant in the substance and application of the Fourteenth Amendment, both historically and today.

Office hours

I am happy to meet with you via Zoom at any mutually convenient time. Please email me for an appointment.

Basis of Evaluation & Assessments

Students' grades will be based on a final exam, consisting of multiple choice questions and likely at least one essay. This is subject to change depending on Covid-related exam rules. There are no pluses or minuses for class participation in this class.

Instructor Expectations

This class deals with many controversial and sometimes sensitive issues. Students are expected to participate and listen respectfully, and express disagreement in a civil manner. Students (and even the professor) sometimes express their views awkwardly, which can happen when one is speaking extemporaneously rather than from a script. We should all be generous in assuming that other participants in the class are well-meaning and do not intend to express animus toward any individual or group.

Course rules

Students are expected to participate in class. The professor will announce class participation rules before the first day of class.

Email Communication

Students must use their MasonLive email account to receive important University information, including communications related to this class.

Attendance

Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.

Class Recordings Prohibited

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me, or arranged via the dean's office in case of a Covid-related exception.

Covid Health & Safety Requirements

To the extent I meet with individual students in person, students must follow all university policies. Please follow to the most up-to-date University policies.

Exam Conflicts

In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

Academic Integrity

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Classroom Accommodations: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

University Life

University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>