

# Constitutional Law I: Structure of Government

Professor Joshua Kleinfeld

George Mason Scalia Law School

Spring 2024 • Tuesdays/Thursdays • 6:05 – 8:05pm

---

## Description:

This is a course about how the Constitution and constitutional caselaw have determined the structure of American government. We will principally study the separation of powers (that is, the division of power between legislature, executive, and judiciary, and the powers assigned to each branch) and federalism (that is, the division of power between the national government and the states). We will also touch on the protection of individual rights, because the judiciary's power to define constitutional rights is part of the structure of government.

More than any other field of law, constitutional law consists of a canon of U.S. Supreme Court cases that build on each other over time. Those cases are often famous (think *Marbury v. Madison*, *Brown v. Board of Education*, *Roe v. Wade*), they're bound up with the history of the country, and they create a body of solid legal doctrine about many constitutional questions. Getting the hang of constitutional law means learning this canon. That will be the focus of our course.

But that's not all, because the doctrine is only *semi*-solid: constitutional law develops every Supreme Court term, and it does so in response to a body of normative/interpretive argumentation about what the Constitution *should* mean or *really* means in light of its text, history, and underlying principles, as well as precedent. That normative/interpretive argumentation is not fluff. It determines how new constitutional questions get answered and old answers get revised.

To learn constitutional law is to learn both halves of this equation—that is, to understand a set of canonical cases and the legal doctrine created by those cases, and, at the same time, to develop the skillset necessary to debate constitutional questions with lawyerly skill. That is your challenge in this course. Both of these things will be tested on the exam.

---

## Learning Objectives:

- Understand the canonical constitutional cases and doctrines that have determined the structure of American government.
  - Develop the ability to debate constitutional questions with lawyerly skill.
-

## Logistics:

- The casebook is Randy E. Barnett & Josh Blackman, *Constitutional Structure: Cases in Context* (4th edition). Some notes about this casebook:
    - The casebook comes with access to a video library summarizing the cases, and the videos will be assigned along with the reading. If you get a secondhand copy of the casebook, you'll want to purchase access to the video library separately.
    - The casebook is essentially the first half of Barnett and Blackman's longer casebook, *Constitutional Law: Cases in Context* (4th edition), which covers structure *and* rights, and is consequently twice as long and twice as expensive as *Constitutional Structure: Cases in Context*. If you find a deal on this more complete casebook, there's no harm in getting it instead of the one I've assigned—the page numbers are identical—but there's no need to do so.
    - Barnett and Blackman have also released a book, *An Introduction to Constitutional Law: 100+ Supreme Court Cases that Everyone Should Know* (2nd edition), which summarizes virtually all of the cases in the casebook. (The casebook contains excerpts from Supreme Court opinions, not summaries; *100+ Cases* contains summaries, not excerpts.) *100+ Cases* is not required, but you might find it helpful as a supplement. Note that it comes with access to the video library.
    - Barnett and Blackman have created a website around these books with various helpful and interesting material, including an annotated Constitution: <https://conlaw.us>.
  - The Blackboard site is your key to this course: that's where reading assignments are posted. This syllabus is big picture; the Blackboard site is class-to-class guidance.
  - Class will be remote on Tuesdays and in-person on Thursdays.
    - During class—even if at home and certainly when in the classroom—please do not surf the net, email, virtually communicate with other students, or otherwise use your computers, phones, or other devices in ways that distract you, distract others, or undermine the spirit of the class.
    - Please don't come to class if you think you might be contagious with COVID or another illness. I will never object; just let me know if that is the case.
  - Office hours are on Thursdays immediately after class. Office hours are *your* time: please feel welcome—not just authorized, but welcome—to stop by. Bring whatever thoughts or questions engage you, big or small, course-related or more general. You can write me to make a one-on-one appointment during office hours or, if no one has individually booked a slot, I'll hold a roundtable discussion for anyone who wants to join. I'm also happy to meet outside of office hours by appointment, though I ask that you please try to make use of office hours if you can.
-

## Grading:

- Your grade will be based exclusively on your final exam, which will be anonymized and blind-graded. Please do not include any identifying information in your exam answer.
  - The entire semester of material (readings and class discussion) will be fair game on the exam.
  - As per academic regulation 4-3, the exam will be in-person and internet-blocked, and all use of generative AI is prohibited. Your computers will also be closed such that you can only type the exam, not access apps or downloaded materials. The exam is open-book, however, with respect to physical, printed materials, which you can bring to and consult during the exam.
  - Tips on studying for the exam:
    - Bear in mind the statement above: “To learn constitutional law is to learn both halves of this equation—that is, to understand a set of canonical cases and the legal doctrine created by those cases, and, at the same time, to develop the skillset necessary to debate constitutional questions with lawyerly skill. That is your challenge in this course. Both of these things will be tested on the exam.”
    - Because the exam is comprehensive, and because it requires both doctrinal knowledge and a lawyerly skillset, you’ll find it very difficult to prep by cramming for the exam while skirting the week-to-week reading and class discussion. Your best bet, both strategically and educationally, is to bring good preparation and thoughtful engagement to class every week. The exam is designed to incentivize and reward that approach.
    - Some other tips that might serve you well on the exam: try to discern the doctrinal core of the cases we read; practice coming up with factual scenarios and figuring out what the doctrine would mean in those scenarios; and practice past exams, including other professors’ exams (the material is pretty similar across courses). On a larger level, you’ll find that part of learning this material is developing your own convictions about the issues we cover—or, even better, developing your own convictions *and* being able to present, with fairness and sympathy, the best arguments on the other side.
-