

Law 620 – Constitutional Law Spring, 2022

Instructor Information

Instructor: Scott Bloomberg

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Office: 217

Phone: 207-780-4360

Office Hours: After class on Thursdays (3:30pm-4:30pm), or by appointment. I will hold office hours in person or on Zoom, depending on COVID stuff. When office hours are on Zoom, they will be held in my personal Zoom room, here:

<https://maine.zoom.us/j/6469342167?pwd=eFlNRlV6djNoMzR2dzVtT1lsWEEd3dz09>

Teaching Fellow (TF): Fred Kerrigan

TF Email: fred.kerrigan@maine.edu

Course Information

Meetings: Tuesday / Thursday, 1:20pm-3:20pm

Location: Hannaford Hall (Abromson 103)*

*On April 7 and April 21, class will be held in Luther Bonny Auditorium.

Credit Hours: 4

Textbook/Course Materials

- Erwin Chemerinsky, *Constitutional Law (Sixth Edition)*, published by Wolters Kluwer
- “Coursepack” readings posted to Brightspace.
- **Suggested:** Purchase a pocket Constitution, [such as this one](#), for quick reference during class and while doing the readings. Plus, every lawyer should own a pocket Constitution.
- **Suggested:** From time to time I will post optional materials on Brightspace that are designed to provide you additional context or a unique perspective on the issues we are discussing in class.

Course Management System

We will be using Brightspace as the course management system for this course. I will post any updates to this syllabus on Brightspace and will email you when I make any such updates. I will also post readings from the Coursepack on Brightspace.

Course Description

In this class, we will examine constitutional principles establishing the powers of the federal government, the relationship between the federal branches of government (separation of powers), the relationship between the state and federal government (federalism), the role of the judiciary in protecting individual rights under the equal protection and due process guarantees in the Fourteenth and Fifth Amendments, and other topics in constitutional law.

Course Goals & Learning Objectives

Upon successful completion of this course, you should understand key constitutional doctrines like federalism, separation of powers, and individual rights. You should have a strong understanding of the role of various key institutions in a constitutional democracy, including the legislature, the executive, and

the judiciary. You should also be able to employ various tools of constitutional interpretation to make arguments about the meaning of constitutional text.

Final Examination

This class will have one final examination. The format of the final examination will be discussed in class later in the semester.

Grading/Evaluation

Your grade for this class will be based on the final examination.

In addition, class participation is crucial to both your individual success and the class's collective success in this course. Your education in the field of constitutional law would be incomplete without the opportunity to engage in meaningful discussion regarding the underlying principles and policies at issue in the cases we will read. Accordingly, your performance in class can affect your grade by **up to a half-letter**, with one exception noted below. For example, if you would have received a B+ based on your final exam, but your performance in class was exemplary, I will boost your grade to an A-. If your performance was substantially sub-par, I will decrease your grade to a B.

A few additional details about the class participation component of your grade:

- Nobody's perfect. Botching a cold call here or there won't hurt your grade. I'll be looking at your aggregate performance over the course of the semester.
- I look for both quantity and quality in assessing performance in class participation. Frequent participation that does not reflect an understanding of the reading and does not contribute to a positive learning experience for the rest of the class will not result in a grade increase. Infrequent but valuable contribution likewise will not result in a grade increase.
- Please make an effort to be punctual. Consistently showing up to class late or leaving early will hurt your ability to receive a class participation grade increase.
- **The complete failure to meaningfully participate in class can negatively affect your grade by more than a half-letter.**

Course Expectations & Requirements

It is important to come to class prepared. The American Bar Association standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA's policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, you should spend approximately 2 hours 20 minutes on academic work out of class per credit per week. Since this is a 4-credit course, you should be spending approximately 9 hours 20 minutes on academic work out of class per week.

COURSE POLICIES

Academic Integrity Policy

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the [University of Maine System website](#) or the [MyLaw Portal](#).

Attendance & Participation Policy

*****COVID-19-Related Attendance Policy: If you have any concern about your own health or that of your immediate family, please do not come into the Law School. A health-concern based absence will not count against your grade during the COVID-19 pandemic.*****

Life happens; especially nowadays. Missing a class or two won't impact your grade. If you're unable to attend a class please be a professional and notify me in advance.

Attendance: Inclement Weather Policy

For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, students will be notified and sent a ZOOM link. If you are unable to attend class due to the inclement weather, you should notify me.

If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy

As a general rule, the recording of all classes is prohibited without permission. If you will be absent from class and wish to record a missed class session, you must first contact me for permission. If permission is granted, you must either: (a) arrange for a classmate to facilitate the recording; or (b) ask me to send you a Zoom recording of the class, which I will provide when it is technologically feasible. (Suggested mobile apps for self-directed audio recording can be found in the MyLaw Portal.) All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without the prior consent of the professor. If permission is denied, then you must find an alternative method for making up the missed material.

If you are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as severe illness or hospitalization, you should contact the Dean of Students.

*****If you are requesting the recording of classes for reasons related to COVID-19 isolation, quarantine, or family care, please contact me before the class to request the recording. Recordings will be provided by me for absences in these cases. If you anticipate missing multiple sessions of a class for health, family care, quarantine, or other reasons, please contact the Dean of Students.*****

Past & Practice Examination Policy

Later in the semester I will create a folder on Brightspace called “Final Exam Preparation” (or something similar). I will include a practice exam in the folder and we will review the practice exam during class. I may also make all or part of last year’s final exam available to you in this folder. Any past exams or practice exams that I provide should be used solely for the purpose of your own preparation for the examination and should not be shared or distributed without my consent.

Laptop/Technology Policy

- Please turn off your cell phones in class. If you need to keep your cell phone on for a compelling personal reason (e.g., a family situation), please put your phone on vibrate.
- Although I permit laptops in class, I strongly advise against using a laptop for taking notes. Laptops interfere with face-to-face connectivity, and a growing number of studies demonstrate that taking handwritten notes increases how much your brain processes information and thus increases how much you are likely to remember later. In my experience, they can also detract from classroom discussions. So, while you know what works best for you, I strongly encourage you to take handwritten notes. Give it a shot, at least.

Zoom Etiquette (In the event we need to hold a class on Zoom)

- Please login on time and be ready to go.
- Keep your camera on so I know that you are present. If you need to turn your camera off for short periods of time during class, that’s no problem. If you need to have your camera off for an extended period of time, please let me know in advance.
- Use the hand-raise function if you’d like to speak.
- Please avoid using the chat function as it can be distracting for fellow students.

MAINE LAW POLICIES AND RESOURCES

Disability Accommodations

The Law School is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Dean of Students Scheherazade Mason who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources for Maine Law Students

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the [Health & Wellness Resources](#) listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law [Office of Student Affairs](#). Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact the Dean of Students Scheherazade Mason as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar.*

Statement on Religious Observance for Maine Law Students

Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement

The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence (sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357).

COURSE SCHEDULE

The schedule, policies, procedures, and assignments in this course are subject to change in the event of extenuating circumstances, by mutual agreement, and/or to ensure better student learning.

(All page numbers refer to Erwin Chemerinsky, Constitutional Law (Sixth Edition))

| <u>Date</u> | <u>Topic</u> | <u>Readings / Sub-Topics</u> |
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| Introduction | | |
| 1. Jan. 18 | About Constitutions... | A Few Words on this Course (Brightspace) The Declaration of Independence (Brightspace) The Articles of Confederation (Brightspace) The U.S. Constitution Britain's Unwritten Constitution (Brightspace) Odyssey excerpt (Brightspace) Federalist No. 1 (Brightspace) |
| Part I: Structure | | |
| Part I(a): The Judicial Power | | |
| 2. Jan. 20 | Judicial Review and Supremacy | 1-9 (<i>Marbury v. Madison</i>) <i>Jefferson Letter</i> (Brightspace) <i>Cooper v. Aaron</i> (Brightspace) Federalist No. 78 (Brightspace) |
| 3. Jan. 25 | Limits on Judicial Review | 11-13 (<i>note on Interpretive Limits</i>) 44-52 (<i>Allen v. Wright</i>) 58-60 (<i>City of L.A. v. Lyons</i>) 90-94 (<i>Baker v. Carr</i>) <i>Michigan v. Long</i> (Brightspace) A Few Words on Ripeness and Mootness (Brightspace) |
| Part I(b): The Legislative Power | | |
| 4. Jan. 27 | Introduction to Federalism; The Necessary and Proper Clause | 119-130 (<i>McCulloch v. Maryland</i>) <i>U.S. Term Limits v. Thornton</i> (Brightspace) |
| 5. Feb. 1 | Commerce Clause: The Early Republic Through the Laissez Faire Era | 156-59 (<i>Gibbons v. Ogden</i>) <i>United States v. E.C. Knight</i> (Brightspace) <i>Hammer v. Dagenhart</i> (Brightspace) <i>Carter v. Carter Coal Co.</i> (Brightspace) <i>A.L.A. Schechter Poultry Corp. v. United States</i> (Brightspace) Franklin D. Roosevelt, Radio Address on the Reorganization of the Judiciary (read or listen) |
| 6. Feb. 3 | Commerce Clause: The Switch in Time that Saved Nine, Through the Civil Rights Era | 167-79 (<i>NLRB v. Jones & Laughlin Steel Corp.</i> , <i>United States v. Darby</i> , <i>Wickard v. Filburn</i> , <i>Heart of Atlanta Motel, Inc. v. United States</i> , <i>Katzenbach v. McClung</i>) Barry Goldwater Speech (Brightspace) |

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| 7. Feb. 8 | Commerce Clause: Limits(?) | 188-204 (<i>United States v. Lopez</i> , <i>United States v. Morrison</i>) 207-215 (<i>Gonzales v. Raich</i>) |
| 8. Feb. 10 | Other Sources of Power: Treaties, Taxing, and Spending Tenth Amendment Limits: Non-Starters | <i>Missouri v. Holland</i> (Brightspace) <i>Bailey v. Drexel Furniture</i> (Brightspace) <i>United States v. Kahriger</i> (Brightspace) 240-42 (<i>United States v. Butler</i>) 245-47 (<i>South Dakota v. Dole</i>) 181-87 (<i>Garcia v. San Antonio Metropolitan Transit Authority</i> , including note on the <i>Nat'l League of Cities</i> case) |
| 9. Feb. 15 | Tenth Amendment Limits: Starter | 216-36 (<i>New York v. United States</i> ; <i>Printz v. United States</i> ; <i>Reno v. Condon</i>) |
| 10. Feb. 17 | Tying it all together | 133-54 (<i>NFIB v. Sebellius</i>) |
| 11. Feb. 22 | Limits on the States | 444-46 (From Section (B) through the end of the excerpt from <i>H.P. Hood & Sons v. Du Mond</i>) 458-61 (<i>Philadelphia v. New Jersey</i>) 473-75 (<i>Maine v. Taylor</i>) 462-64 (<i>Hunt v. Washington</i>) 475-77 (<i>Pike v. Bruce Church</i>) 489-492 (Explanation of the Art. IV, § 2 Privileges and Immunities Clause) 496-501 (<i>Baldwin v. Fish & Game Comsn. Of MT</i> ; <i>Supreme Ct. of NH v. Piper</i>) |
| Part I(c): The Executive Power | | |
| 12. Feb. 24 | A Framework for Executive Power; Foreign Affairs and National Security | Article II of the U.S. Constitution 276-284 (<i>Youngstown Sheet & Tube Co. v. Sawyer</i>) 340-41 (<i>United States v. Curtiss-Wright Export Co.</i>) 343-51 (<i>Zivotoksky v. Kerry</i>) A Few Words on <i>Trump v. Hawaii</i> (BrightSpace) |
| 13. Mar. 1 | Separation of Powers and The Administrative State | 292-295 (<i>A.L.A Schechter</i> and the Note on p. 295. You do not need to read <i>Panama Refining Co.</i>) 290-291 (note on <i>Clinton v. City of New York</i>) 305-312 (<i>INS v. Chadha</i>) <i>Seila Law v. CFPB</i> (Brightspace) |

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| 14. Mar. 3 | Presidential Misconduct: Privileges, Immunities, and Checks | 285-289 (<i>United States v. Nixon</i> . Be sure to read the note before the case.) A Few Words on the Trump Subpoena Cases (Brightspace) 406-417 (<i>Fitzgerald v. Nixon</i> ; <i>Clinton v. Jones</i> ; note on indicting a sitting President; section on Impeachment) |
| Part II: Individual Rights | | |
| Part II(a): The Fourteenth Amendment | | |
| 15. Mar. 8 | Before the Civil War; Civil War; Reconstruction | 504-506 (<i>Barron v. Baltimore</i>) 712-717 (<i>Scott v. Sanford</i>) Frederick Douglass: "The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?" (1860) (Brightspace) The Thirteenth (1865), Fourteenth (1868), and Fifteenth (1870) Amendments The Civil Rights Act of 1866 (Brightspace) 506-513 (<i>The Slaughterhouse Cases</i>) |
| 16. Mar. 10 | The Fourteenth Amendment: Structure and Scrutiny | 516-523 (Notes on Incorporation; <i>Palko v. Connecticut</i> ; <i>Adamson v. California</i>) The Civil Rights Act of 1875 (Brightspace) 532-535 (<i>The Civil Rights Cases</i>) 728-731 (<i>Plessy v. Ferguson</i>) 602-603 (<i>United States v. Carolene Products</i>) 719-724 (<i>Korematsu v. United States</i>) |
| 17. Mar. 22 | Equal Protection: Racial Classifications (I of II) | 684-689 (<i>A Framework for Equal Protection Analysis</i>) 732-736 (<i>The Initial Attack on "Separate But Equal"</i> ; <i>Brown v. Board</i> (1954)) <i>Bolling v. Sharpe</i> (Brightspace) 761-765 (<i>Brown v. Board</i> (1955); <i>Massive Resistance</i>) 725-726 (<i>Loving v. Virginia</i>) 738-741 (<i>Washington v. Davis</i> and the note before it) 752-754 (<i>Palmer v. Thompson</i> and the note before it) |
| 18. Mar. 24 | Equal Protection: Racial Classifications (II of II) | 790-799 (Note on "Racial Classifications..."; <i>Richmond v. J.A. Croson Co.</i>) 803-824 (<i>Grutter v. Bollinger</i> ; <i>Gratz v. Bollinger</i>) |

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| 19. Mar. 29 | Equal Protection: Gender and Animus | 838-850 (notes on gender discrimination; <i>Frontiero v. Richardson</i> ; <i>Craig v. Boren</i> ; <i>U.S. v. Virginia</i>) 707-711 (<i>City of Cleburne v. Cleburne Living Center</i>) 691-696 (<i>Romer v. Evans</i>) |
| 20. Mar. 31 | Substantive Due Process: The Rise and Fall and Rise Again | <i>Calder v. Bull</i> (Brightspace) 586-591 (<i>Lochner v. New York</i>) 599-602 (<i>West Coast Hotel v. Parrish</i>) 603-605 (<i>Williamson v. Lee Optical</i>) 953-959 (<i>Griswold v. CT</i>) |
| 21. Apr. 5 | Substantive Due Process: Privacy and Bodily Autonomy (I of II) | 961-981 (<i>Roe v. Wade</i> ; <i>Planned Parenthood v. Casey</i>) 1023-1028 (<i>Washington v. Glucksberg</i>) |
| 22. Apr. 7 (Class held in Luther Bonny Auditorium) | Substantive Due Process: Privacy and Bodily Autonomy (II of II) Rethinking the Tiers of Scrutiny | 1030-1042 (Note on <i>Bowers</i> ; <i>Lawrence v. Texas</i>) 915-929 (<i>Obergefell v. Hodges</i>) 1121-1127 (<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i>) A Brief Excerpt from Justice Marshall's Dissent (<i>Brightspace</i>) |
| 23. Apr. 12 | Procedural Due Process Practice Exam Review Session | 1128-1129 (note on Procedural Due Process) 1146-1149 (<i>Board of Regents v. Roth</i>) 1151-1154 (<i>Goss v. Lopez</i>) 1163-1166 (<i>Mathews v. Eldridge</i>) |
| 24. Apr. 14 | Congress' Power to Enforce the 14th (and 15th) Amendments. | 257-274 (Note on p. 257; <i>City of Boerne v. Flores</i> ; <i>Shelby County v. Holder</i>) A More Perfect Union (<i>Brightspace</i>) |
| Part II(b): Concluding Classes | | |
| 25. Apr. 19 | Speech | TBD |
| 26. Apr. 21 (Class held in Luther Bonny Auditorium) | The Court and the Constitution | TBD |