

**Yale Law School
Keith E. Whittington**

**Constitutional Law I
Fall 2025**

Keith E. Whittington
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MW 10:10 am - noon
Baker 122

office hours: by appointment via online scheduler

Coker Fellows: Daniel Browning (Daniel.browning@yale.edu)
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This course will examine how the United States has grappled with limits on government power. The course will survey the rights of individuals and the justifications for the use of force from the founding period to today. We will examine how the U.S. Supreme Court has interpreted the Constitution over time to define and enforce rights, but we will also be interested in how other courts and political actors have argued about, imagined, and tried to effectuate limits on government power.

The class is particularly concerned with thinking about American constitutionalism from a political perspective. Rather than abstracting constitutional law into ahistorical doctrines, we will situate constitutional debates within the political, social and intellectual environments within which they occur. We will be interested not only in the major decisions of the U.S. Supreme Court but also the debates and decisions that occur within the Court, Congress, the executive branch, the states, and the larger public sphere. In keeping with that goal, the material is arranged chronologically, rather than thematically. Hopefully as a result, we will see familiar issues in a new light, encounter unfamiliar issues that have been pushed into the background, and attend to the processes by which constitutional claims are asserted, contested, and settled.

Please note that this class does not attempt to provide a comprehensive overview of constitutional law topics. Specific areas of focus can be explored in greater detail in our Advanced Constitutional Law and Criminal Law classes. In particular, this course gives limited attention to issues of governmental structure -- topics that I consider in detail in a separate course.

Materials:

All readings are in Howard Gillman, Mark Graber, and Keith Whittington, *American Constitutionalism, vol. 2, Rights and Liberties*, 3rd ed. The book is available for purchase at the university bookstore.

Some additional readings will be available on the Canvas course website

Attendance and Participation

For a small group, regular attendance and participation is essential. Please send me an email as soon as you know you will have to miss a session. More than two absences will require an explanation.

It is disruptive to your fellow students to arrive late for class. Please be ready to go by the start of class.

Regular participation is essential to make the most of the small group experience, and it is an important habit for the rest of your law school career. I will not insist on participation from everyone every day, but

you should look for opportunities to be an active participant in the discussion and if you are quiet for too long expect a cold call.

Use of electronic devices **for class purposes** during the class is acceptable. If, however, you create a distraction for others or use electronics to avoid participating on your own, the use of electronics might need to be restricted. Don't let electronic devices become a substitute for actively listening, thinking, and participating in the class sessions.

Yale Law School values the free exploration of ideas in and out of class. Ideas are the lifeblood of the School, and disagreement and debate are central to our shared intellectual life. Students and faculty alike are members of an academic community and a professional school, and it is critical that we engage with one another with professionalism, integrity, and respect. With the aim of advancing and deepening everyone's understanding of the issues addressed in the course, students are urged to speak their minds, explore ideas and arguments, play devil's advocate, and engage in civil but robust conversations. We are not expected to agree with one another, but we are expected to engage one another in charity and good faith and with reasons, evidence, and arguments. No ideas germane to the course are out of bounds, but invective and disruption will not be tolerated.

Accommodations

Students with documented disabilities should register with [Student Accessibility Services \(SAS\)](#) to request reasonable disability-related accommodation. [Supporting documentation](#) will be required. If approved, SAS will work with the YLS Academic Affairs Office to implement accommodations. More information for YLS students can be [found online](#). Professors are not notified of requested or approved accommodations except when needed to coordinate accommodations.

Requirements:

Readings assigned for each day's session will appear in the syllabus. You are expected to have read and thought about the material before arriving in class and to have access to that material in class.

There will be two written assignments for the class. A brief for the moot court session, and a final exam. The question for the brief will be provided in the second half of the semester.

Schedule:

Introduction

Week 1 and 2: Constitutionalism and the Tradition of Liberty

Chapter 1

Chapter 2, pp. 27-35 (Foundations)

Chapter 3, pp. 69-95 (Foundations, Bill of Rights)

Chapter 4: pp. 119-131 (Foundations, judicial review)

Appendix 2, pp. 897-906 (reading government documents) (recommended)

Canvas: Brutus & Federalist on judicial review

Kemper v. Hawkins (VA 1788)

Jefferson on Departmentalism

Martin v. Hunter's Lessee (1816)

Barron v. Baltimore (1833)

Campbell v. State (GA 1852)

Kerr, How to Read a Legal Opinion (recommended)

Early Republic and Jacksonian Era

Week 3: Forming the Republic (Speech and Religion)

Chapter 3, pp. 97-102 (Religious Establishment)
Chapter 4, pp. 136-140, 142-146 (Establishment, Sedition Act)
Chapter 5, pp. 188-193 (Incendiary Publications)
Canvas: Thanksgiving Proclamations
Leggett on Thanksgiving
People v. Ruggles (NY 1811)
Commonwealth v. Sharpless (PA 1816)
State v. Willson (SC 1823)
The Debate over Sunday Mails
Donahoe v. Richards (ME 1854)

Week 4: Property, Personal Liberty, and Slavery

Chapter 4, pp. 131-136, 154-157 (Contracts, slavery)
Chapter 5, pp. 169-173, 180-184, 196-207 (due process, slavery)
Canvas: University of North Carolina v. Foy (NC 1805)
Wally's Heirs v. Kennedy (TN 1831)
Hoke v. Henderson (NC 1833)
Mayor and Alderman of Mobile v. Yuille (AL 1841)
People v. Gallagher (MI 1856)
Daniel Webster, Seventh of March Speech
Wendell Phillips, The Constitution: A Pro-Slavery Compact
Frederick Douglass, The Constitution of the United States
Lemmons v. the People (NY 1860)

War and Reconstruction

Week 5: War and Reconstruction

Chapter 6, pp. 223-237, 247-251, 272-277 (Vallandigham, Milligan)
Canvas: Ex parte Merryman and Habeas Debate
Emancipation Proclamation Debate
Speed on Military Commissions
Ex parte McCordle (1868)
Senate Debate on the Civil Rights Act

Week 6: The Fourteenth Amendment

Chapter 6, pp. 237-241, 251-252 (Slaughterhouse, Cooley)
Chapter 7, pp. 296-301, 338-341 (state action doctrine, citizenship)
Canvas: Calvin's Case (1608)
State v. Manuel (NC 1838)
Lynch v. Clarke (NY 1844)
Edward Bates, Citizenship (1862)
Congressional Debate over the Seating of Hiram Revels
United States v. Hall (CC Ala. 1871)
United States v. Cruikshank (1875)

Fong Yue Ting v. United States (1893)

Constructing the Modern State

Week 7 and 8: Liberty and Property

Chapter 7, pp. 279-285, 289-294, 307-315, 318-338 (Lochner, Liberty, Religion, Speech)

Canvas: Thomas M. Cooley, Treatise on Constitutional Limitations (Speech)

In re Jacobs (NY 1885)

Territory v. Ah Lim (WA 1890)

Lawton v. Steele (1894)

City of Chicago v. Netcher (1899)

Bradfield v. Roberts (1899)

People v. Most (NY 1902)

People v. Pierson (NY 1903)

Commonwealth v. Campbell (KY 1909)

Wilkerson v. City of Rome (GA 1922)

Week 8 and 9: The New Deal

Chapter 8, pp. 371-381, 418-430 (judicial review, speech)

Canvas: James Bradley Thayer, "Origin and Scope"

Stephen Field, "The Centenary of the Supreme Court"

Judicial Supremacy (from GGW vol. 1)

Terminiello v. City of Chicago (1949)

Pennsylvania v. Nelson (1956)

Baker v. Carr (1962)

Flast v. Cohen (1968)

The New Rights Revolution

Week 9: Due Process and Civil Rights

Chapter 6, pp. 261-263 (race)

Chapter 7, pp. 344-353 (race)

Chapter 8, pp. 381-391, 396-400, 450-466, 468-471 (due process, race)

Canvas: Palko v. Connecticut (1937)

Adamson v. California (1947)

Rochin v. California (1952)

Ferguson v. Skrupa (1963)

Week 10: Sex and Gender

Chapter 9, pp. 506-513, 544-550

Chapter 10, pp. 646-650, 600-612

Chapter 11, pp. 698-703, 737-742

Chapter 12, pp. 807-820

Canvas: Dobbs v. Jackson Women's Health Organization (2022)

Week 11: Religion and Speech

Chapter 8, pp. 400-407
Chapter 9, pp. 583-596, 612-620
Chapter 12, pp. 788-805
Canvas: Roman Catholic Diocese of Brooklyn v. Cuomo (2020)
Fulton v. City of Philadelphia (2021)
Carson v. Makin (2022)
303 Creative LLC v. Elenis (2023)

Week 12: Guns and Race

Chapter 9, pp. 536-544
Chapter 10, pp. 642-646
Chapter 11, pp. 692-698, 725-737
Canvas: United States v. Miller (1939)
New York State Rifle & Pistol Association v. Bruen (2022)
Students for Fair Admission v. Harvard (2023)