

Princeton University
Department of Politics

POL 326 – Constitutional Difficulties in the Age of Trump
Fall 2019

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MW 10:00-10:50am
McDonnell A02
office hours: by appointment via online scheduler
(<https://wase.princeton.edu/>)

A smorgasbord of constitutional law and politics. The unexpected election of Donald Trump in the fall of 2016 has ushered in a host of debates about less familiar features of the U.S. Constitution. A political outsider and populist, President Trump has pushed on inherited constitutional practices and assumptions. In an era of highly polarized politics, his opponents have likewise made innovative use of constitutional institutions and powers. The Trump presidency has generated unusual concerns about the stability and robustness of the American constitutional system. This course will try to make sense of those concerns and the constitutional debates of the past three years.

This course complements rather than repeats or directly relies upon what you would study elsewhere (e.g., POL 314, POL 315 and POL 316). It is designed to survey the waterfront of constitutional debates surrounding the Trump presidency, rather than take a deep dive into any particular areas of constitutional law. As a consequence, the class will move at a rapid pace in skipping from topic to topic. The course aims to provide a basic background to current constitutional debates to set students up to be intelligent consumers of the news and responsible citizens in politically contentious times.

This semester will give particular attention to questions of presidential power and the actions of the Trump administration and its opponents.

Precepts

Precepts are a required component of the course, and you must sign up for and regularly attend a precept. Regularly attending the precept is a necessary but not a sufficient condition for a passing grade in participation. Participation in the class constitutes 15% of your grade in the class.

The lecture portions of the class will emphasize discussion as well. You will be expected to have read that day's material by the time of the class meeting so that you can productively participate in the class discussion. The daily schedule provides a list of readings for each class and precept session. Note that the precepts are designed as stand-alone sessions with their own set of readings on a distinct set of issues to be discussed.

Unless otherwise announced, the first meeting of the precepts will be in **week 3** (the week of September 23).

Materials

All readings for the class are available for free and online. You should be sure that you have access to them during class meetings and precepts so that you can reference them as needed in our discussions. Some of the readings are drawn from Howard Gillman, Mark Graber and Keith Whittington, *American*

Constitutionalism (GGW). Volume 1 of that text is available for purchase at the bookstore, but is **not** required.

The reading materials for the course can be found either on the web or on the Blackboard course website. For materials on the web, there is a hyperlink from the syllabus to the specific document.

Some of the materials that are online can be found on the supplemental website for the American Constitutionalism text (<http://global.oup.com/us/companion.websites/umbrella/gillman/>). Some of the materials consist of recent commentary on these constitutional issues. There are hyperlinks embedded in the syllabus connecting to those online articles.

Each day has several readings associated with them, but they are all relatively short. You should expect 20-40 pages of reading per class session, but the reading load will vary.

There are a number of valuable websites that regularly provide high quality constitutional commentary on current events relating to the Trump administration. You can usefully explore them at [Lawfare](#), [Take Care](#), [Just Security](#), [National Constitution Center](#) blog and podcast, [What Trump Can Teach About Constitutional Law](#) podcast, [All the President's Lawyers](#) podcast, [Can He Do That?](#) podcast, [American Constitution Society](#) blog, the [Federalist Society](#) blog, [Law & Liberty](#), [SCOTUSblog](#), [Election Law Blog](#), [Balkanization](#), [Volokh Conspiracy](#), [Concurring Opinions](#), [The Faculty Lounge](#), [Dorf on Law](#), and [PrawfsBlawg](#).

Requirements

The requirements of the course include both written and oral components. To obtain a passing grade for the course, a student must fulfill **all** course requirements. Thorough preparation for, and faithful attendance at, lectures and precepts is among these requirements. In particular, you will be expected to arrive at precepts **and** lectures fully familiar with the assigned material and prepared to discuss the issues and concepts to be covered that day. Participation will constitute 15% of your final grade.

You will be required to complete **four** written requirements. All four are short papers (6-8 double-spaced pages) with a similar format. Each paper should focus on the readings and issues associated with one day (or two closely related days). You are encouraged, but not required, to do additional research on the topic for the paper beyond the readings provided to you on the syllabus.

The **first short paper is due by 5:00pm on Monday, September 30**. It should be no longer than 6 double-spaced pages. It must answer the following question associated with the readings for the first precept: Do presidential electors have a constitutional obligation to cast their ballots for the individual who they personally think is best qualified to perform the duties of the office of president of the United States?

A **second “midterm” paper is due by 5:00pm on Friday, November 8**. You will be provided with two writing prompts during the week of October 14. Your midterm paper must answer one of those two questions in a paper that is 6-8 double-spaced pages.

The **other two short papers are on a topic of your choice**. You may choose any day's materials on the syllabus from Day 3 through Day 34 (with exception noted below). The paper is due no later than 5:00pm on the seventh calendar day (excluding holidays and breaks) after the class in which the materials appear on the syllabus (e.g., if the materials are covered on Monday, the paper discussing those materials is due the subsequent Monday). You may choose any two topics for the papers, but each paper does need to focus on a distinct day's material (i.e., you may not write two papers revolving around the Day 8

materials) and these two papers may not repeat the topics for the first short paper or the midterm paper. One paper should defend a position that is aligned with the Trump administration. One paper should defend a position that is aligned against the Trump administration. Please clearly identify in your paper whether it is pro-Trump or anti-Trump.

All the papers should be persuasive and analytical. The paper should advance a clear thesis relating to the constitutional issues associated with the chosen materials. You should marshal arguments and evidence in support of your thesis and address potential counterarguments or concerns regarding your claim.

This class will be focused on difficult and contested issues in American constitutional law and politics. Although you will no doubt have your own prior ideas about how some of these constitutional questions should be resolved, the goal of the class is to familiarize you with the complexity and difficulty of those questions and you should be prepared to consider those questions from all perspectives and grapple with the strengths and weaknesses of the competing positions on these issues. Ad hominem attacks on or insults to fellow students during class discussions will not be tolerated.

Participation will constitute 15% of your semester grade. The first short paper will constitute 10% of your grade. Each subsequent paper will constitute 25% of your grade.

Late penalty: Unless otherwise indicated, papers are due by 5:00pm on the seventh calendar day after the class in which those materials appear on the syllabus. Papers will be penalized one half letter grade if they are received with a time stamp after 5:00pm but before midnight on the date in which they are due. Papers will be penalized another half letter grade if they are received by 5:00pm on the subsequent day, and another half letter grade for each day after that. Holidays and Fall Break are excepted, so a paper relating to the materials on October 23 (the Wednesday before fall break) would be due by 5:00pm on November 6 (the Wednesday following fall break).

You may appeal any written grade within two weeks of receiving it. In order to appeal a grade, submit to me by email a copy of the paper and a short (500 words) written statement as to what error you think was made in your initial grade. Your paper will then be graded from scratch (by a different preceptor, if possible). The new grade may be **either higher or lower** than the original, and will be final.

The grading is standardized across precepts. Your final grade will not be affected by which precept you attend, though your preceptor has first responsibility for grading your work.

Daily Schedule

1. Introduction
 - a. No readings
2. What is a constitution anyway?
 - a. GGW, preface, ch. 1, appendix 2 (**Blackboard**)
 - b. Debate on Executive Power in the Constitutional Convention (**Blackboard**)
 - c. Federalist Papers Nos. 51, 70 and 71 (**Blackboard**)
 - d. Centinel Letter No. 1 (**Blackboard**)
3. Judiciary and the Executive (**NOTE: GUEST LECTURE THIS DAY**)
 - a. Marbury v. Madison (**Blackboard**)
 - b. Thomas Jefferson on Departmentalism (**Blackboard**)
 - c. Attorney General Caesar Rodney, Letter to Thomas Jefferson ([web](#))
 - d. Abraham Lincoln on Departmentalism (**Blackboard**)
 - e. Franklin Roosevelt, Undelivered Speech on the Gold Clause Cases (**Blackboard**)

- f. Franklin Roosevelt, Fireside Chat on Court-Packing Plan (**Blackboard**)
 - g. Senate Judiciary Committee Report on President Roosevelt's Court-Packing Plan (**Blackboard**)
 - h. Southern Manifesto (**Blackboard**)
 - i. Dwight Eisenhower, Address to the Nation on the Introduction of Troops in Little Rock (**Blackboard**)
 - j. Cooper v. Aaron (**Blackboard**)
 - k. Edwin Meese, The Law of the Constitution (**Blackboard**)
 - l. Youngstown Sheet & Tube Co. v. Sawyer (**Blackboard**)
4. Non-delegation I
- a. Cincinnati, Wilmington and Zanesville Rail Road Company v. Commissioners of Clinton County ([web](#))
 - b. State of Minnesota ex rel. Railroad & Warehouse Commission v. Chicago, Milwaukee & St. Paul Railway Company ([web](#))
 - c. Marshall Field & Co. v. Clark ([web](#))
 - d. J.W. Hampton, Jr. & Co. v. United States (**Blackboard**)
 - e. Schechter Poultry Corp. v. United States (**Blackboard**)
 - f. Panama Refining Co. et al. v. Ryan et al. ([web](#))
5. Non-delegation II
- a. National Broadcasting Company v. United States ([web](#))
 - b. Mistretta v. United States ([web](#))
 - c. Briefs in Whitman v. American Trucking Association, Inc. ([web](#))
 - d. Gundy v. United States ([web](#))
 - e. Jay Cost, "Congress Handed to the President the Power to Level Tariffs," [National Review](#) (March 5, 2018)
 - f. Tara Golshan, "Why Trump Can Raise Steel Tariffs without Congress," [Vox](#) (March 8, 2018)
 - g. John Fabian Witt, "National Emergencies, Then and Now," [Balkinization](#) (January 7, 2019)
 - h. Robert Chesney, "Can President Trump Fund the Wall by Declaring a National Emergency?" [Lawfare](#) (January 7, 2019)
 - i. Andrew Boyle, "An Emergency or Business as Usual? Huawei and Trump's Emergency Powers," [Just Security](#) (May 24, 2019)
 - j. Joshua Geltzer, "Blame Trump, Not the US Code, for his Abuse of Emergency Authority," [Just Security](#) (August 26, 2019)
6. Electoral College (precept 1)
- a. Carolyn Shapiro, What's Up with the Electoral College & the Hamilton Electors?, [ACS Blog](#) (December 16, 2016)
 - b. Federalist No. 68 ([web](#))
 - c. McPherson v. Blacker ([web](#))
 - d. In the Matter of William Thomas v. Cohen ([web](#))
 - e. State ex rel Nebraska Republican State Central Committee v. Wait ([web](#))
 - f. Ray v. Blair ([web](#))
 - g. Baca v. Colorado (**web**)
7. Control of Executive Branch (**NOTE: NO CLASS SESSION THIS DAY, WATCH POWERPOINT W/ AUDIO ON BLACKBOARD**)
- a. Debate over the Removal of Deposits (**Blackboard**)
 - b. William Wirt, Opinion on the President and Accounting Officers ([web](#))
 - c. Caleb Cushing, Relation of the President to the Executive Departments ([web](#))
 - d. Decatur v. Paulding ([web](#))
 - e. Abraham Lincoln, Fourth of July Message to Congress (**Blackboard**)

- f. Presidents on Presidential Power (**Blackboard**)
 - g. Bates & Guild Co. v. Payne ([web](#))
 - h. Morrison v. Olson (**Blackboard**)
- 8. Executive Orders/DACA
 - a. Hearings on the President's Constitutional Duty to Faithfully Execute the Laws ([web](#))
 - b. Karl Thompson, DHS Authority to Prioritize Removal of Some Aliens (**web**)
 - c. United States v. Juarez-Escobar (W.D. Penn., 2014) ([web](#))
 - d. Texas v. United States (S.D. Tex., 2015) ([web](#))
 - e. Josh Blackman, "The Constitutionality of DAPA Part II: Faithfully Executing the Law," *Texas Review of Law & Politics* (2015) pp. 267-284 ([web](#))
 - f. Michael Tan, "DACA Is and Will Always Be Constitutional," [ACLU Blog](#) (August 15, 2017)
 - g. Josh Blackman, "Understanding Session's Justification to Rescind DACA," [Lawfare](#) (January 16, 2018)
 - h. Vidal v. Nielsen (EDNY 2018) (**web**)
- 9. 25th Amendment (precept 2)
 - a. Hearings on Presidential Inability ([web](#))
 - b. Brian Kalt, "The Case Against Using the 25th Amendment to Get Rid of Trump," [New York Magazine](#) (October 14, 2017)
 - c. Matthew Kahn, "How 'Unraveled' Does Trump Have to Be?: Presidential Disability and the 25th Amendment," [Lawfare](#) (October 23, 2017)
 - d. Elaine Kamarck, "25th Amendment: How Do We Decide Whether the President is Competent?" [Brookings Institution](#) (January 10, 2018)
- 10. Federalism and Immigration
 - a. Passenger Cases ([web](#))
 - b. DeCanas v. Bica ([web](#))
 - c. Arizona v. United States ([web](#))
 - d. Lunn v. Commonwealth (MA 2017) ([web](#))
 - e. United States v. California (**web**)
 - f. Hans A. von Spakovsky, "Sanctuary Cities? That's a Constitutional 'Hell No,'" [Heritage Foundation](#) (April 18, 2017)
 - g. Jeff Schmitt, "Trump's Lawsuit against California and State Laws that 'Discriminate against the United States,'" [Faculty Lounge](#) (March 12, 2018)
 - h. Garrett Epps, "When Republicans Attack States' Rights," [The Atlantic](#) (March 13, 2018)
- 11. Executive Orders/Sanctuary Cities
 - a. Ramsey Clark, Power of the President to Impound Funds ([web](#))
 - b. South Dakota v. Dole (**Blackboard**)
 - c. City of New York v. Clinton (**Blackboard**)
 - d. Printz v. United States (**Blackboard**)
 - e. David Rivkin and Elizabeth Price Foley, "Can Trump Cut off Funds for Sanctuary Cities? The Constitution says Yes," [Los Angeles Times](#) (December 7, 2016)
 - f. County of Santa Clara v. Trump (ND Calf, 2017) ([web](#))
 - g. City of Los Angeles v. Barr (9th Cir. 2019) (**web**)
- 12. Appointment and Removal Power (precept 3)
 - a. House Debate on Removal of Executive Officers (**Blackboard**)
 - b. Ex parte Hennen ([web](#))
 - c. Field v. People of the State of Illinois ex rel. McClernand ([web](#))
 - d. Presidential Appointment Power in the Age of Congressional Government ([web](#))
 - e. Myers v. United States (**Blackboard**)
 - f. Humphrey's Executor v. United States (**Blackboard**)
 - g. Doolin Security Savings Bank v. Office of Thrift Supervision (DC Cir. 1998) (**web**)

- h. Free Enterprise Fund v. Public Company Accounting Oversight Board ([web](#))
 - i. Virginia Seitz, Lawfulness of Recess Appointments during a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions ([web](#))
 - j. National Labor Relations Board v. Canning ([web](#))
 - k. Ethan J. Leib and Jed Shugerman, “Mueller’s Recourse,” [Slate](#) (March 19, 2018)
 - l. Hans A. von Spakovsky, “Trump Has the Constitutional Authority to Fire Mueller – Here’s Why,” [Heritage Foundation](#) (April 23, 2018)
 - m. Adam Serwer, “The Bill to Protect Mueller May Not Survive the Supreme Court,” [The Atlantic](#) (April 23, 2018)
13. Presidential Non-Enforcement
- a. Conrad Arensberg, Official Opinion No. 78-15 on Duty to Defend (Pa. 1978) ([web](#))
 - b. Benjamin R. Civiletti, The Attorney General’s Duty to Defend and Enforce Constitutionally Objectionable Legislation ([web](#))
 - c. William French Smith, The Attorney General’s Duty to Defend the Constitutionality of Statutes ([web](#))
 - d. Walter Dellinger, Presidential Authority to Decline to Execute Unconstitutional Statutes (**Blackboard**)
 - e. Andrew Fois, Letter to Senator Orrin G. Hatch on Duty to Defend ([web](#))
 - f. Marty Lederman, “John Roberts and the SG’s Refusal to Defend Federal Statutes in Metro Broadcasting v. FCC,” [Balkinization](#) (September 8, 2005)
 - g. Eric Holder, Non-Defense of the Defense of Marriage Act ([web](#))
 - h. Nicholas Bagley, “Trump’s Legal Attack on the ACA isn’t about Health Care. It’s a War on the Rule of Law,” [Vox](#) (June 8, 2018)
 - i. Ilya Somin, “Thoughts on the Trump Administration’s Decision Not to Defend Obamacare,” [Volokh Conspiracy](#) (June 9, 2018)
14. Foreign Affairs Powers
- a. Alexander Hamilton, Pacificus No. 1 ([web](#))
 - b. James Madison, Helvidius No. 1 ([web](#))
 - c. Caleb Cushing, Opinion on Ambassadors and Other Public Ministers ([web](#))
 - d. Youngstown Sheet & Tube Co. v. Sawyer (1952) (**Blackboard**)
 - e. United States v. Curtiss-Wright Export Corp. (**Blackboard**)
 - f. Timothy Flanigan, Issuance of Official or Diplomatic Passports ([web](#))
 - g. Zivotofsky v. Kerry ([web](#))
 - h. Marty Lederman, “Thoughts on Zivotofsky, Part Seven,” [Just Security](#) (June 14, 2015)
15. Is Congress Broken? (Precept 4)
- a. Robert G. Kaiser, “Three Reasons Congress is Broken,” [Washington Post](#) (May 23, 2013)
 - b. Christopher DeMuth Sr., “A Constitutional Congress” [Weekly Standard](#) (October 27, 2014)
 - c. Joseph Postell, “What’s the Matter with Congress?” [Claremont Review of Books](#) (May 8, 2018)
 - d. Phillip Wallach and James Wallner, “Congress is Broken. But Don’t Blame Polarization,” [Real Clear Policy](#) (June 8, 2018)
 - e. Yuval Levin, “Congress is Weak Because Its members Want it to be Weak,” [Commentary](#) (June 2018)
 - f. Jeffrey Rosen, “America is Living in James Madison’s Nightmare,” [Atlantic](#) (October 2018)
 - g. Derek Willis and Paul Kane, “How Congress Stopped Working,” [ProPublica](#) (November 5, 2018).
 - h. Lee Drutman, “To Fix Congress, Make it Bigger. Much Bigger.” [Washington Monthly](#) (November/December 2018)
16. Treaties

- a. Alexander Hamilton, Camillus No. 36 ([web](#))
 - b. James Madison, Speech in the House of Representatives on the Treaty Power ([web](#))
 - c. Missouri v. Holland (**Blackboard**)
 - d. Goldwater v. Carter ([web](#))
 - e. Medellin v. Texas ([web](#))
 - f. John Yoo and Robert Delahunty, Authority of the President to Suspend Certain Provisions of the ABM Treaty ([web](#))
 - g. Julian Ku, “Preparing for Trumpxit: Could a President Trump Withdraw the U.S. from International Treaties and Agreements,” *Opinio Juris* (September 26, 2016)
 - h. Michael Ramsey, “Could President Trump Unilaterally Withdraw the U.S. from its International Agreements,” *Originalism Blog* (September 29, 2016)
 - i. Jean Galbraith, “The President’s Power to Withdraw the United States from International Agreements at Present and in the Future,” *AJIL Unbound* (2017)
17. Executive Agreements
- a. United States v. Belmont ([web](#))
 - b. United States v. Pink ([web](#))
 - c. Robert H. Jackson, Acquisitions of Naval and Air Bases in Exchange for Over-Age Destroyers ([web](#))
 - d. United States v. Guy W. Capps, Inc. (4th Cir., 1953) ([web](#))
 - e. Dames & Moore v. Regan ([web](#))
 - f. Walter Dellinger, Whether the Uruguay Round Agreements Required Ratification as a Treaty ([web](#))
 - g. Christopher Schroeder, Validity of Congressional-Executive Agreements that Substantially Modify the United States’ Obligations Under an Existing Treaty ([web](#))
 - h. David Golove, “Presidential Authority to Conclude an Iran Nuclear Agreement – and the Senate’s Self-Defeating Bill,” *Just Security* (August 20, 2014)
 - i. David Wirth, “Is the Paris Agreement on Climate Change a Legitimate Exercise of the Executive Agreement Power?” *Lawfare* (August 29, 2016)
 - j. Jack Goldsmith, “The Trump Administration Reaps What the Obama Administration Sowed in the Iran Deal,” *Lawfare* (May 9, 2018)
18. Pardons (precept 5)
- a. William Wirt, Pardons ([web](#))
 - b. United States v. Wilson ([web](#))
 - c. United States v. Klein ([web](#))
 - d. Ex parte Garland ([web](#))
 - e. Mary C. Lawton, Presidential or Legislative Pardon of the President ([web](#))
 - f. Committee Hearings on the Pardon of Richard M. Nixon ([web](#))
 - g. Bob Bauer, “The Problem of Donald Trump’s Constitution, Part II: The Prospect of an Arpaio Pardon,” *Lawfare* (August 24, 2017)
 - h. Jonathan Turley, “Yes, the President Can Pardon Himself,” *USA Today* (June 4, 2018)
 - i. Brian Kalt, “Can the President Pardon Himself?” *Foreign Policy* (May 19, 2017)
19. War power I
- a. State Department Memorandum, Authority of the President to Order the Armed Forces of the United States Abroad ([web](#))
 - b. Department of State Memorandum on the Authority of the President to Repel Attack in Korea ([web](#))
 - c. Leonard C. Meeker, The Legality of the United States Participation in the Defense of Vietnam (**Blackboard**)
 - d. J. William Fulbright, Congress and Foreign Policy (**Blackboard**)
 - e. The War Powers Act of 1973 (**Blackboard**)
 - f. Richard Nixon, Veto of the War Powers Resolution (**Blackboard**)

- g. Joseph Harmon, Presidential Power to Use the Armed Forces Abroad without Statutory Authorization ([web](#))
- 20. War power II
 - a. Timothy Flanigan, Authority to Use United States Military Forces in Somalia ([web](#))
 - b. Walter Dellinger, Proposed Deployment of United States Armed Forces into Bosnia ([web](#))
 - c. John Yoo, The President's Constitutional Authority to Conduct Military Operation (**Blackboard**)
 - d. Caroline D. Krass, Memorandum Opinion on the Authority to Use Military Force in Libya (**Blackboard**)
 - e. John Cornyn, Speech on Congressional Authorization for the Use of Military Force in Libya (**Blackboard**)
 - f. Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force ([web](#))
 - g. Steven Engel, April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities ([web](#))
 - h. Keith Whittington, "RIP Congressional War Power," [Lawfare](#) (April 20, 2018)
 - i. Curtis Bradley and Jack Goldsmith, "OLC's Meaningless National Interests Test for the Legality of Presidential Use of Force," [Lawfare](#) (June 5, 2018)
- 21. Nominations, Confirmations and Judges (precept 6)
 - a. The Nomination of Robert H. Bork to the U.S. Supreme Court (**Blackboard**)
 - b. The Nomination of Samuel Alito to the U.S. Supreme Court (**Blackboard**)
 - c. The Nomination of Merrick Garland to the U.S. Supreme Court ([web](#))
 - d. Richard J. Anderson, David Cottrell, and Charles Shipan, "The Power to Appoint: Presidential Nominations and Change of the Supreme Court," [Working Paper](#) (November 2017)
 - e. John Patty and Tom Clark, "Why Obama Should Pick a Conservative Supreme Court Nominee," [Vox](#) (February 25, 2016)
 - f. Michael D. Ramsey, "Why the Senate Doesn't Have to Act on Merrick Garland's Nomination," [The Atlantic](#) (May 15, 2016)
 - g. David H. Gans, "Republicans Who Block Obama's Supreme Court Pick Are Violating the Constitution," [The New Republic](#) (March 16, 2018)
 - h. Dawn Johnsen, "Seat Merrick," [Slate](#) (January 31, 2017)
 - i. Richard Primus, "Rulebooks, Playgrounds, and Endgames: A Constitutional Analysis of the Calabresi-Hirji Judgeship Proposal," [Harvard Law Review Blog](#) (November 24, 2017)
 - j. Keith Whittington, "Partisanship, Norms and Federal Judicial Appointments," [Balkanization](#) (November 29, 2017)
 - k. Tara Leigh Grove, "The Power of 'So-Called Judges'," [NYU Law Review Online](#) (April 2018)
 - l. Michael J. Nelson and James L. Gibson, "Has Trump Trumped the Courts?" [NYU Law Review Online](#) (April 2018)
 - m. David Faris, "Democrats Must Consider Court-Packing When They Regain Power. It's the Only Way to Save Democracy," [Washington Post](#) (July 10, 2018)
 - n. Julian Zelizer, "Packing the Supreme Court is a Terrible Idea," [New York Times](#) (October 15, 2018)
- 22. "Travel ban"
 - a. Nishimura Ekiu v. United States ([web](#))
 - b. United States ex rel Knauff v. Shaughnessy ([web](#))
 - c. Shaughnessy v. United States ex rel. Mezei ([web](#))
 - d. Kleindienst v. Mandel ([web](#))

- e. Andrew McCarthy, “Trump’s Exclusion of Aliens from Specific Countries is Legal,” [National Review](#) (January 28, 2017)
 - f. *Washington v. Trump* (9th Cir. 2017) ([web](#))
 - g. Amicus Brief of National Security Experts in *Trump v. Hawaii* ([web](#))
 - h. Peter Margulies, “The Travel Ban and Presidential Power,” [Lawfare](#) (April 23, 2018)
 - i. Benjamin Wittes, “Reflections on the Travel Ban Case and the Constitutional Status of Pretext,” [Lawfare](#) (July 6, 2018)
23. “Muslim ban”
- a. *Holy Trinity Church v. United States* ([web](#))
 - b. *Lemon v. Kurtzman* ([web](#))
 - c. *Church of Lukumi Babalu Aye v. City of Hialeah* ([web](#))
 - d. *McCreary County v. ACLU* ([web](#))
 - e. Corey Brettschneider, “Why Trump’s Immigration Rules are Unconstitutional,” [Politico](#) (February 1, 2017)
 - f. Josh Blackman, “Why Courts Shouldn’t Try to Read Trump’s Mind,” [Politico](#) (March 16, 2017)
 - g. *Trump v. Hawaii* ([web](#))
24. *Trump Twitter* (precept 7)
- a. *Greer v. Spock* ([web](#))
 - b. *Perry Education Association v. Perry Local Educators’ Association* ([web](#))
 - c. *Cornelius v. NAACP Legal Defense Fund* ([web](#))
 - d. *Walker v. Texas Div., Sons of Confederate Veterans* ([web](#))
 - e. *Davison v. Loudoun County Board of Supervisors* (EDVA 2017) ([web](#))
 - f. *Morgan v. Bevin* (EDKY 2018) ([web](#))
 - g. *Trump v. Knight First Amendment Institute v. Trump* (2nd Cir 2019) ([web](#))
 - h. Garrett Epps, “Why Jim Acosta Got His Pass Back,” [The Atlantic](#) (November 16, 2018)
 - i. Kristy Parker and Ben Berwick, “How White House Threats to Revoke Security Clearances Violate the First Amendment,” [Lawfare](#) (July 27, 2018)
25. Due Process at the Border
- a. *Wong Wing v. United States* ([web](#))
 - b. *Japanese Immigration Cases* ([web](#))
 - c. *United States v. Martinez-Fuerte* ([web](#))
 - d. *Plyler v. Doe* (**Blackboard**)
 - e. *Reno v. Flores* ([web](#))
 - f. *Zadvydas v. Davis* ([web](#))
26. Birthright Citizenship
- a. Caleb Cushing, Opinion on the Relation of Indians to Citizenship ([web](#))
 - b. Senate Debates Native American Citizenship ([web](#))
 - c. Congressional Debate over the Seating of Hiram Revels (**Blackboard**)
 - d. *United States v. Wong Kim Ark* (**Blackboard**)
 - e. *Aroyim v. Rusk* ([web](#))
 - f. John Eastman, “From Feudalism to Consent: Rethinking Birthright Citizenship,” [The Heritage Foundation](#) (2006)
 - g. James C. Ho, “Defining ‘American’” [The Green Bag](#) (2006)
 - h. Peter H. Schuck and Rogers M. Smith, “The Question of Birthright Citizenship,” [National Affairs](#) (2019)
27. Emoluments (precept 8)
- a. Laurence Silberman, Conflict of Interest Problems Arising out of the President’s Nomination of Nelson A. Rockefeller ([web](#))
 - b. Larry Simms, President Reagan’s Ability to Receive Retirement Benefits from the State of California ([web](#))

- c. Robert Shanks, Application of the Emoluments Clause of the Constitution and the Foreign Gifts and Decorations Act ([web](#))
 - d. Samuel Alito, Emoluments Clause Questions Raised by NASA Scientist's Proposed Consulting Arrangement with the University of New South Wales ([web](#))
 - e. Walter Dellinger, Applicability of the Emoluments Clause to Employment of Government Employees by Foreign Public Universities ([web](#))
 - f. David Barron, Applicability of the Emoluments Clause to the President's Receipt of the Nobel Peace Prize ([web](#))
 - g. The Debate over Donald Trump's Business Arrangements ([web](#))
 - h. David Cole, "Trump is Violating the Constitution," (**Blackboard**)
 - i. Jane Chong, "Reading the Office of Legal Counsel on Emoluments: Do Super-Rich Presidents Get a Pass?" [Lawfare](#) (July 1, 2017)
 - j. Andy Grewal, "Exploitation of Public Office and the Foreign Emoluments Clause," [Notice and Comment](#) (July 4, 2017)
28. Privilege from Judicial Proceedings
- a. Clinton v. Jones (**Blackboard**)
 - b. Nixon v. Fitzgerald ([web](#))
 - c. Mitchell v. Forsyth ([web](#))
 - d. Zervos v. Trump (Sup. Ct. NY Co. 2018) ([web](#))
 - e. Brief of Amici Law Professors in Zervos v. Trump ([web](#))
29. Executive privilege
- a. House Debate on the Jay Treaty (**Blackboard**)
 - b. William P. Rogers, Senate Testimony on Executive Privilege (**Blackboard**)
 - c. United States v. Nixon (**Blackboard**)
 - d. William French Smith, Assertion of Executive Privilege in Response to Congressional Subpoena ([web](#))
 - e. Theodore Olson, Memorandum on the Confidentiality of Attorney General's Communications ([web](#))
 - f. Eric Holder, Assertion of Executive Privilege over Documents ([web](#))
 - g. Karl R. Thompson, Immunity of the Assistant to the President from Congressional Subpoena ([web](#))
 - h. Steven Engel, Testimonial Immunity before Congress of the Former Counsel to the President (**web**)
 - i. Dylan Matthews, "A Brief Guide to Executive Privilege, and Why It Won't Save the Trump Administration," [Vox](#) (January 17, 2018)
30. Amenability to Criminal Proceedings
- a. Robert G. Dixon, Amenability of the President, Vice President and Other Civil Officers to Federal Criminal Prosecution while in Office ([web](#))
 - b. Randolph Moss, A Sitting President's Amenability to Indictment and Criminal Prosecution ([web](#))
 - c. William Barr, Mueller's "Obstruction" Theory (**web**)
 - d. Mueller Report ([web](#))
 - e. Bob Bauer, "What Tuesday's Post Story Reveals About the Absurd OLC Opinion Protecting a President from Indictment – and Mueller's Reading of his Authority," [Lawfare](#) (April 5, 2018)
 - f. Steve Vladeck and Benjamin Wittes, "Can the Presidency Trump a Special Counsel Subpoena?" [Lawfare](#) (May 2, 2018)
 - g. Keith Whittington, "Don't Subpoena Testimony to the President," [Lawfare](#) (May 4, 2018)
 - h. Corey Brettschneider, "Yes, It's Possible to Indict a Sitting President. Here's Why." [Washington Post](#) (August 29, 2018)

31. Norms and Oath of Office (precept 9)
 - a. Josh Blackman, "Donald Trump's Constitution of One," [National Review](#) (May 12, 2016)
 - b. John Yoo, "Alexander Hamilton Would be Worried, Too," [Berkeley Blog](#) (February 7, 2017)
 - c. Benjamin Wittes, "Trump and the Powers of the American Presidency, Part I," [Lawfare](#) (May 25, 2016)
 - d. Benjamin Wittes and Quinta Jurecic, "What Happens When We Don't Believe the President's Oath?" [Lawfare](#) (March 3, 2017)
 - e. Bob Bauer, "Charlottesville and the Problem of Donald Trump's Constitution," [Lawfare](#) (August 17, 2017)
 - f. Yascha Mounk, "Keeping the Oath," [Slate](#) (September 6, 2017)
 - g. Bob Bauer, "Pardons, Obstruction of Justice and the Rule of Law in the Demagogic Presidency," [Lawfare](#) (June 3, 2018)
 - h. Julia Azari and Jennifer Smith, "Unwritten Rules: Informal Institutions in Established Democracies," [Perspectives on Politics](#) (2012)
 - i. Keith Whittington, "Trump's Rhetoric is Offensive, but is it an Impeachable Offense?" [Vox](#) (August 4, 2017)
 - j. Jack Goldsmith, "Will Donald Trump Destroy the Presidency?" [The Atlantic](#) (October 2017)
 - k. Brendan Nyhan, "Norms Matter," [Politico](#) (October 2017)
32. Congressional Oversight
 - a. Anderson v. Dunn ([web](#))
 - b. Barenblatt v. United States ([web](#))
 - c. Watkins v. United States ([web](#))
 - d. Charles J. Cooper, Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act ([web](#))
 - e. Robert Raben, Letter to John Linder ([web](#))
 - f. Curtis E. Gannon, Authority of Individual Members of Congress to Conduct Oversight ([web](#))
 - g. Charles E. Grassley, Letter on Requests for Information by Individual Members of Congress ([web](#))
 - h. Steven A. Engel, Congressional Committee's Request for the President's Tax Returns ([web](#))
 - i. Josh Chafetz, "Investigating a President," [Yale University Press Blog](#) (June 2, 2017)
 - j. Douglas L. Kriner and Eric Schickler, "What Can House Democrats Accomplish with their new Oversight and Investigatory Powers?," [The Washington Post](#) (November 28, 2018)
33. Impeachment I
 - a. Debate on the Impeachment of Justice Samuel Chase ([web](#))
 - b. The Censure of President Andrew Jackson ([web](#))
 - c. The Impeachment of Andrew Johnson ([web](#))
 - d. Constitutional Grounds for Presidential Impeachment (Nixon) ([web](#))
 - e. Charges and Reply in the Impeachment of President William Clinton ([web](#))
 - f. Keith Whittington, "High Crimes after Clinton," [Policy Review](#) (March 2000)
34. Impeachment II (precept 10)
 - a. Julia Azari, "Presidential Impeachments are about Politics, not Law," [Vox](#) (May 15, 2017)
 - b. Keith E. Whittington, "How to Get Out of Impeachment Territory," [Lawfare](#) (May 19, 2017)
 - c. Victor David Hanson, "Regime Change by Any Other Name?" [National Review](#) (May 22, 2017)

- d. Gene Healy, “Americans Should Impeach Presidents More Often,” [*Reason*](#) (July 16, 2017)
- e. Jane Chong, “To Impeach a President: Applying the Authoritative Guide from Charles Black,” [*Lawfare*](#) (July 20, 2017)
- f. Bob Bauer, “The Impeachable Offense and the Modern Presidency,” [*Lawfare*](#) (September 14, 2017)