

# FED CON LAW (FCGL)

## FCGL 0102. Constitutional Law. (4 Credits)

A study of the United States Constitution, judicial review and limitations, and separation of powers (both in relation to federal governmental powers and between federal and state governments), as well as the federal government's powers to tax, declare war, and regulate commerce. This course also explores constitutional rights, including the Due Process and Equal Protection clauses, as well as segregation, disenfranchisement and discrimination based on race, sex, disability and sexual orientation.

**Attributes:** JD, LMCO.

## FCGL 0129. Legislation and Regulation. (4 Credits)

Statutes and administrative regulations are fundamental to modern legal systems and their interpretation is central to much of contemporary legal practice. This course introduces students to the processes by which legislation and regulations are enacted, to the rules, conventions, and dilemmas that characterize their interpretation by courts and agencies, and to the basic structure of administrative law.

## FCGL 01315. Law of War. (2 Credits)

This seminar will examine the international law governing the reasons for going to war and its conduct. Students are expected to participate in weekly discussions and complete a take-home examination or paper.

**Attributes:** LLM, LWR.

## FCGL 0169. The Judicial Role in a Democracy: The United States and Canada . (2 Credits)

In modern constitutional democracies, supreme court judges assume a role that entangles them in many of the most contentious political and legal issues of the day. What exactly is the nature of that role? What purposes does it serve and what constrains it? How can judges most effectively play their role as guardians of the constitutional order? This course will address these themes, which arise in constitutional democracies across the globe. In addressing these questions, students will engage with legal theory and will draw on subjects that supreme courts are inevitably called upon to consider, such as freedom of association, expression and religion, as well as labor relations, privacy, and equality. Finally, they will address topical issues such as the intersections between gender, sexuality, race, the family, technology and the law.

## FCGL 0202. Environ Deal Making and Strategy. (2 to 3 Credits)

The seminar examines the intersection of law and urban policy that makes New York City so fascinating and distinctive. Questions of authority, structure, and individual rights play a central but unheralded role in nearly every aspect of the life and governance of New York City. The course begins with an introduction to the division of power between the state and local governments. We then move to the distribution of power within local government by examining intra-local conflicts, such as those between the Mayor and the City Council. We then turn to a study of significant City institutions. Finally, the course turns to current events. I have selected several issues for us to explore but I may change the syllabus based on current events. We will select additional issues together during the first weeks of class based on your interests.<p> In my view, it is important for you to hear from and engage with scholars and practitioners in the field. Thus, many of our classes will include guest speakers. The course will be highly interactive and student participation will be an important component.

**Attribute:** PIE.

## FCGL 0203. Advanced Constitutional Law. (4 Credits)

This is a course for students interested in developing a greater understanding and mastery of constitutional law through in-depth coverage of the following topics: (1) the detention and prosecution of terror suspects at Guantanamo Bay after 9/11 and the due process rights of foreign national and U.S. citizen "enemy combatants"; (2) the scope of the government's power over the admission, detention, and removal of undocumented and documented foreign nationals, with particular focus on habeas/due process, the power of the Executive both to defer action for foreign nationals and to ban others from entry; (3) the rights of LGBTQ+ persons and First Amendment objections to LGBT equality; (4) an examination the Supreme Court's "discriminatory intent" standard as well as various elevated forms of rational basis review, including the "animus" doctrine; (5) the role of the federal courts in reinforcing the representational disadvantage groups face in the democratic process; and (6) reproductive rights and the role of stare decisis and related principles in preserving the status quo (or not) around abortion access. <p> This course pursues these topics in multiple ways and at numerous levels—starting with Supreme Court case law. From there, we will delve more deeply into theory, exploring connections across seemingly disparate topics (from national security to immigration, from LGBTQ+ rights to voting, and from race discrimination to reproductive rights) to and consider a deeper fabric of rules that pervade these constitutional domains. Next, we will consider how courts have intervened in areas of law that were historically considered off-limits, as well as mechanisms by which courts often freeze in place a rights-affirming status quo despite the Justices' preference for reversing rights-affirming precedents. Along the way, we will also consider the role of non-judicial actors (executive branch officers and legislators) as constitutional interpreters. These deeper aspects of the cases we read highlight an increasingly complex interplay among the three branches of government in the interpretation, implementation and validation of laws and policies touching on constitutional issues. <p> In addition to legal doctrine and theory, we will consider the various tools of courtroom lawyers by reading a variety of court documents and filings. This more granular inquiry will help us explore features of complex litigation and the practical skills used by lawyers, including points of trial and appellate practice, litigation strategy and legal ethics, spanning government, private bar and non-for-profit actors.

## FCGL 0204. Supreme Court Seminar. (2 Credits)

This seminar will focus on significant cases pending before the United States Supreme Court during the 2018-2019 term. We will simulate the work of the Court by requiring students to write one or two briefs or bench memos to prepare the class for the cases we discuss.

**Attribute:** LLM.

## FCGL 0260. Constitutional Rights and Human Rights in Comparative Perspectives. (2 to 3 Credits)

This seminar will compare the international law of human rights with the constitutional law of rights in the United States and other national systems. The seminar will examine the history, theory, and sources of rights in these systems, the institutions for implementing them, and the remedies for violations. The course is largely organized around comparing the treatment of particular rights in various systems: for example, equality (with a focus on race, gender, sexuality, and marriage equality), speech rights and privacy (on and off line), and economic and social rights. Students will develop papers on policy projects concerning cutting edge human rights matters, working in teams, under the supervision of the professor.

**Attributes:** ICE, INLJ, PIE.

**FCGL 0262. Energy Law. (2 to 3 Credits)**

This seminar will examine the relationship among religious institutions, secular society, and the state. Readings and discussion will focus on the free exercise and establishment clauses of the U.S. Constitution but will also include comparative and international counterparts to these constitutional provisions as well as relevant readings in political theory. The course will consider such questions as the role of religious institutions in secular society, their relationship to the state, the degree to which religious minorities may demand exemption from the laws and norms of secular society, the accountability of such institutions under civil and criminal law, among others. Each student will be expected to participate in class discussion and submit a term paper. No final examination will be given. This course may be used to satisfy the writing requirement.

**Attribute:** INLJ.

**FCGL 0299. Constitutional Law. (2 to 3 Credits)**

This seminar is designed to create greater awareness and understanding of the Constitution, examining the origins of its language and the values it expresses. The course will also look to the future. It will consider how to strengthen the institutions the Constitution created by evaluating a range of democracy reforms, such as those involving the presidency and voting. Discussions of the Constitution's framing will be informed by primary sources, such as colonial charters, early state constitutions, the records of the Constitutional Convention, and the Federalist Papers. <p> A paper on a topic related to the Constitution or democracy reform is required, and it will comprise 85 percent of the final grade. The other 15 percent will be based on class participation. Students will present on their paper topics to receive feedback from the class. <p> Professor Feerick assisted in framing the Constitution's 25th Amendment and worked with members of Congress and the ABA to abolish the Electoral College. He is also teaching a seminar on the Electoral College this semester. Professor Rogan co-taught the Presidential Succession Clinic and Democracy Clinic with Professor Feerick.

**Attributes:** INLJ, JD, LLM, PIF.

**FCGL 0302. Constitution, Presidency, Law, and National Security. (2 Credits)**

This course examines the transformations of authorities, laws, and policy in national security with particular attention to the 21 st century and to issues where civil liberties and national security are in tension with one another. Topics include presidential powers; challenges in the name of national security to policy norms and constitutional protections; the role of technology in the evolution of national security law and policy; and the evolving framework for addressing current threats, including terrorism, pandemic and climate change. We will look historically at the creation of the national security state and contemporary suggestions for legal and policy reform.

**Mutually Exclusive:** .

**FCGL 0317. First Amendment. (4 Credits)**

This course covers many of the core issues of free speech, free press, freedom of religion, and the establishment clause. We will discuss Supreme Court cases, and surrounding commentary, on: political advocacy of unlawful action; fighting words; hate speech; libel; revelation of private facts; obscenity; pornography; commercial speech; prior restraints; content-based vs. content-neutral restrictions; the public forum doctrine; government speech, including government as educator; reporter's privilege; government as employer; the right not to speak and freedom of association; access to the mass media; broadcasting and content regulation; religious arguments in the lawmaking process; religious symbols in governmental space; prayer in public school; public funding of religious schools; and exemptions and accommodations for the practice of religion.

**Attributes:** INLJ, IPIF, LMCO, PIE.

**Prerequisite:** FCGL 0102.

**FCGL 0320. State and Local Government. (2 or 3 Credits)**

This course addresses major legal issues facing state and local governments in a time of rapid change, including (1) the distribution of power between federal, state and local governments; (2) how states allocate authority among legislatures, the judiciary, and the state executive branch; (3) the forms, structure, powers, financing, and liability of local governments, and (4) the relationship of state and local governments both to public employees and the public. The course will cover legal developments across the country, but will also highlight key aspects of New York State and New York City law. A key course goal is to highlight the immediate relevance of state and local governance, given that law school courses often focus on federal regulation and federal decision making. We will supplement the textbook with case studies after becoming familiar with the basic structure of state and local relationships. Students in this course will be evaluated on an end-of-semester exam.

**Attribute:** PIE.

**FCGL 0325. American Law and the Influence of Religion. (2 Credits)**

This seminar challenges students to question whether the doctrine of "separation of church and state" has ever been fully actualized, what counts as religious expression, and the limits of religious free exercise. We will examine the complex and evolving relationship between U.S. law and extant faith traditions. Students will delve into the historic-religious context of the First Amendment; research and discuss establishment case, free exercise, and free expression cases; and consider the role that religion should and does have in U.S. society. The course will also include a unit on how the construction of race has shaped the U.S. legal and religious landscape.

**FCGL 0409. Birthright Citizenship and the United States Constitution. (2 Credits)**

This seminar will examine the historical evolution of the two great principles of birthright citizenship—*jus sanguinis* or the law of blood, which flows from the Roman law tradition, and *jus soli* or the law of soil, which is rooted in English common law. We will then turn to how Americans, from the ratification of the Constitution to the present, have viewed the two great principles. Students may write short reactions papers or one long paper on a topic of their choosing.

**Attribute:** INLJ.

**FCGL 0415. Firearms Law. (2 or 3 Credits)**

This course will cover federal and state statutes, regulations and case law surrounding the acquisition, possession, sale and use of firearms. The course also will examine background federal and state constitutional issues and firearms policy questions. This is a paper course that may be used to satisfy the the writing requirement.

**Attributes:** LLM, LWR, PIE.

**FCGL 0416. Constit Democ under Pressure. (2 Credits)**

This is an advanced constitutional law seminar. Guest speakers will present current scholarly papers addressing the challenges facing constitutional democracy in the United States and around the world. Students will write short weekly papers and participate actively in discussions with speakers.

**Attribute:** LLM.

**FCGL 0419. Public Finance Law and Practice. (2 or 3 Credits)**

This course examines legal issues that arise, and finance techniques used, by governments, underwriters and borrowers in public finance transactions. We will cover the Puerto Rico financial crisis, the infamous WPPSS default, the NYC fiscal crisis, the financing of the Brooklyn Bridge, the privatization of Coney Island hospital and SEC proceedings on Miami, New Jersey, Harrisburg and Boston's Big Dig. Areas explored include legal authority, public purpose, debt, securities regulation and disclosure obligations under the Federal antifraud statutes, and the contract clause. We look at finance structures involving affordable housing and stadiums and we will have guest speakers to address these topics.

**Attribute:** LAWB.

**FCGL 0609. Sharia and Secularism in MENA Constitutional Law. (2 Credits)****FCGL 0828. Slavery and the Constitution. (2 Credits)**

This course will explore the institution of slavery as it developed in North America and the impact it has had on the United States Constitution, both its drafting and its interpretation over time. We will read and discuss both legal materials and non-legal historical materials. Students will be evaluated based on three short papers (each 2000 words max), submitted during the course of the semester. Outside research for the papers will be allowed but not required. In addition to the papers, 1/4 of the final grade will be based on class participation.

**Attributes:** INLJ, JD, LLM, LWR, PIF.

**FCGL 0904. Contemporary Free Speech & Religion Controversies. (2 Credits)**

This seminar will focus on eleven free speech and religion controversies to which courts and scholars are paying attention. In addition to an introductory session and a wrap up session, we will cover six topics that I will choose and then five topics from a class vote. Among the topics that we either will or may cover are: hate speech on campus, government and self regulation of the internet, "speech platforms" (i.e., regulation of speech on government property such as license plates, transit vehicles, and public school classrooms for after school activity), compelled speech, the Reed case and what may follow (i.e., should strict scrutiny really be applied to all content based speech regulation, and if so, how?), rethinking the Court's approach to content neutral regulation, must state funding of various programs include religious institutional recipients?, state sponsored religious symbols, should the Court overrule the Smith ("peyote") case and how should it apply strict scrutiny to generally applicable laws that cause third party harms, a subset of the Smith and compelled speech issues, i.e., how should courts resolve cases that pit gay and lesbian couples against religious providers of goods and services? (i.e., the issue that the Masterpiece Cakeshop case essentially ducked), the appropriate limits of state regulation of private religious schools and home schooling. The seminar will allow students to satisfy the upper class writing requirement, but that will be optional, so a long term paper will not be required. (Some combination of short papers will be required.)

**FCGL 0905. Democracy Reform After January 6th. (2 Credits)**

This seminar will explore reforms to strengthen US democracy in response to the events on and surrounding January 6, 2021, which placed historic stress on the country's institutions. Topics will include electoral reform (such as related to the Electoral Count Act), checks on presidential powers, presidential succession and the 25th Amendment, independence of the Justice Department, the role of lawyers in democracy, and relevant historical analogies (especially the Watergate scandal and the resulting reforms). Grades will be based on a 15-20-page paper, a presentation, and class participation. There will be several guest speakers.

**FCGL 0906. LEGISLATION AND REGULATION FOR NON-J.D.s. (3 Credits)**

From bankruptcy to labor law, and from automotive safety to securities regulation, the modern legal system is dominated by statutes and regulations. This course will introduce non-JD students to this body of law. The course will begin with an introduction to legislation, followed by an in-depth exploration of the role of federal administrative agencies in formulating policies and implementing statutes. The course will also consider executive, legislative and judicial oversight of administrative agencies. While the purpose of the course is an introduction to federal legislation and regulation generally, it will pay particular attention to the regulation of the financial services industry.

**Attributes:** CRCP, LLM.

**FCGL 0915. Constitutions and Constitutional Design: Comparative Constitutional Law. (2 Credits)**

This seminar will study major constitutional conflicts that have emerged in the United States in comparative and global perspective, focusing on the role of constitutional design to the shaping of constitutional conflict and change. Selected constitutional systems and recent developments outside the United States will be examined to explore constitutional theory and the shaping of constitutional meaning by social movements and by legal and political institutions. Drawing on comparisons with constitutional law in Europe, Latin America, and Asia, the following topics will be studied: Constitution-making, amendment processes, judicial review, design of lawmaking institutions, separation of powers, federalism, representative and popular democracy, the social welfare state, individual rights guarantees and their enforcement, and transnational constitutionalism. Course requirements: Short weekly response papers and a 10-page final paper or project.

**Attributes:** ICE, LLM.

**FCGL 0916. The Future of American Democracy. (2 Credits)**

We will explore how our election-related institutions and laws can be reformed.

**Attribute:** LLM.

**FCGL 0929. Constitution and the Presidency. (3 Credits)**

Is the president's power to launch a nuclear attack unlimited? Does the Fourteenth Amendment's Equal Protection Clause constrain a president in matters of immigration and foreign policy? Can the president be criminally indicted while in office? In this course, we will explore in-depth the powers granted to the president under Article II and expanded over time, the Bill of Rights, and the mechanisms created by the Constitution to give other branches of government the potential power to stop a president. We use as our guide founding documents (especially the Federalist Papers), case law, theoretical readings, historical examples, and recent controversies. The class is divided into three parts. Part I examines the formal and informal powers of the president (the Take Care Clause, the commander-in-chief power, and the power to hire and fire employees of the executive branch). Part II looks at the question of the extent to which the Bill of Rights constrains a president (sedition and the First Amendment, "enhanced interrogation" and the Eighth Amendment, and Trump's travel ban and the Fourteenth Amendment Equal Protection Clause). Part III looks at the removal of a president, focusing on impeachment and criminal indictment. We discuss possible grounds for removal, including obstruction of justice. Although the course includes the study of the current and recent presidents, it will aim to think about the presidency more generally as an office and the degree to which it is constrained by the Constitution. The grade will be based on an in-depth paper (25 pages), which will satisfy the writing requirement and a class presentation.

**Attributes:** LLM, LWR.