

Constitutional Law: Institutional Powers and Constraints
POLI/LGST 111A
Summer 2022

T, Th 6-9:30 PM
Earth&Marine B206

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Office Hours: Tuesday 2-3 PM and by appointment, Zoom

It is emphatically the province and duty of the judicial department to say what the law is. With these words in *Marbury v. Madison*, the U.S. Supreme Court began its journey into constitutional law. Here, the Court essentially declared itself the “ultimate” interpreter of the Constitution; this is a role that the Court consistently reiterates every time it denies attempts by the other branches of government to increase their own executive and legislative powers. What we must understand, however, is that the Court’s early 19th century proclamation of its power of judicial review was anything but a simple matter of constitutional interpretation; it was mired in the partisan politics of the age. Constitutional doctrine can rarely, if ever, be read outside of the political context of the time. The U.S. Supreme Court is, and always has been, a *political* Court.

This course provides an upper division introduction to U.S. Constitutional Law, emphasizing foundations, limitations on the judiciary, legislative and executive power, separation of powers, federalism, and interstate commerce. Although we will consider history and context, this class ultimately focuses on constitutional *doctrine*, i.e., the rules and debates generated by the members of the U.S. Supreme Court. As such, course readings focus almost exclusively on U.S. Supreme Court opinions. Careful reading and scrutiny of Supreme Court opinions is necessary for successful completion of this course.

Goals

As this course progresses, the successful student will attain: (1) a substantive command of major debates and rules from assigned Supreme Court decisions; (2) increased skills reading and understanding Supreme Court cases; (3) a command of basic legal analysis; (4) an appreciation of the political nature of the Court.

Understanding U.S. Constitutional Law is not a self-evident endeavor. It requires the development of reading skills relatively exclusive to lawyers, judges, and other participants in the legal process. If this is your first time reading cases and/or case excerpts, the process of developing reading skills will likely be very difficult at first. However, if you fully and faithfully prepare for and attend class, you’ll find yourselves becoming increasingly socialized by the endeavor.

Grades

Each student is required to: (1) read all assignments; (2) participate in classroom discussions and activities (10%); (3) participate in one on-call exercise (10%); (4) complete the take-home quiz (20%); (5) complete the take-home midterm exam (30%); (6) complete the take-home final exam (30%). Failure to complete any one of these assignments will result in a failing grade.

Office Hours

I will hold office hours on Tuesdays from 2-3 PM on Zoom. They are “walk-in,” and I will see students in the order you appear. You may make an appointment with me if you like, and such appointments will take precedence over walk-ins. Appointments will occur during office hour times.

If you cannot meet with me during office hours, please contact me so we can set up a meeting time. (Please remember that office hour times are the most convenient for me.) I'm on campus on Tuesdays and Thursdays, so if you have a scheduling conflict, we should be able to work something out.

On-call Exercise

Students must sign-up to perform the on-call exercise for one class period; sign-ups will occur on Canvas via the Calendar function beginning at 10 AM on Friday, 6/24. The sign-up days are first-come, first-served, and when a day is filled up, there will be no more slots; each day has a maximum of 8 students. Given that daily attendance is required, this should not be a problem for anybody. You must sign up by Tuesday, 6/28, the day we will begin the exercise.

Although you can feel free to consider the subject matter when deciding on your date, I cannot guarantee that we will not fall a touch behind with our schedule. Therefore, please note that you are signing up for a particular *day*, and not for a particular case or subject matter. Whatever the material is for that day, you will be responsible for it. I *do* hope to keep to our schedule.

For the exercise, you will be responsible for the full case edits to be discussed that particular class period; these cases are listed in the syllabus. We will not discuss these cases beforehand.

My questions to on-call students will initially be structured around the notion of a *brief* of each case. A basic case brief consists of: (1) the relevant **facts** that brought the parties to the Court; (2) the legal **issue(s)** (or "question presented") before the Court; (3) the **rule(s)** upon which the case was decided; (4) the **analysis** (or "reasoning") that applied the rule to the facts of the case; (5) the **conclusion**, i.e., which side won the case. (Note that your

textbook helps you out by providing the facts for you in the style of a brief.) This method is abbreviated "FIRAC" – facts, issue, rule, analysis, conclusion.

Law students learn how to write case briefs during the first year of law school. A brief is basically a means of taking organized notes on a case so that you have something to reference when you discuss or review it in class. If it helps you to formally write out case briefs, I encourage you to do so. Briefs are for your own purposes; therefore, in this class, there is no "right" or "wrong" way to do it.

In addition to asking you FIRAC recall questions, I may ask you to compare cases, or I may provide hypothetical fact changes to see if it changes how we reason a case.

This "Socratic method" is the primary way that law students learn cases. It forces students to work with cases critically and precisely, as opposed to simply passively listening to a lecture.

A "Disclaimer" on Debate

This is a case-driven class, but given the nature of the subject matter, political discussion may ensue. The discussion of contentious issues can induce emotional responses at times. If you do not desire – or are otherwise uncomfortable with – debate and disagreement on contentious issues, you should consider taking another class. Legitimate viewpoints in this class consist of arguments supported by appropriate evidence. Insulting opinions will not be tolerated. *Please* let me know if you have any questions on this policy.

Classroom Policies

Unless you have already taken several other case-driven law classes, I cannot imagine how any student could understand this material on your own. Therefore, attendance is required. If for some reason you must miss class, me via e-mail. Note that attendance will not increase your participation grade, but lack of attendance can hurt it.

Please arrive to class on time, as I do *not* tolerate lateness. Late arrivals will count as absences.

During discussions or lectures, raise your hand and wait for me to call on you before you speak. When I don't enforce this rule, the class tends to devolve into chaos.

Academic Dishonesty

If you are caught plagiarizing or cheating in any other way, you will be subject to academic discipline. In this course, please abide by the values of honesty, respect, and civility. Read and understand the university's policies on academic integrity:

<https://ue.ucsc.edu/academic-misconduct.html>

Plagiarism occurs when a writer fails to cite ideas or words that are not their own. All cases of plagiarism will be prosecuted per university policy. If you have any questions, on this policy, please feel free to ask.

I have prosecuted offenses in the past and, unfortunately, I'm likely to do so again in the future. This class has a waitlist, so please, if you're not interested in doing the work, drop the course because there are students eager to maximize their time, efforts, and money on this class.

Disability Accommodations

UC Santa Cruz is committed to creating an academic environment that supports its diverse student body. If you are a student with a disability who requires accommodations to achieve equal access in this course, please send your Accommodation Authorization Letter from the Disability Resource Center (DRC) to me as soon as possible, preferably within the first two weeks of the quarter. If you like, we can discuss ways we can ensure your full participation in the course. I encourage all students who may benefit from learning more about DRC services to contact DRC by phone at [831-459-2089](tel:831-459-2089) or by email at drc@ucsc.edu.

Please see the DRC website for more details: <https://drc.ucsc.edu>

In this class, I will do my best to honor the ideals of Universal Design. If you require an accommodation, please let me know by Thursday, 7/1.

A Note on Adulthood and Personal Responsibility

(I fully realize that the following paragraphs apply to small minority of students, so please don't be insulted.)

You are all adults, and I will treat you accordingly. This means that you are responsible for completing all requirements. I will not contact you if you miss classes and/or assignments. I will not double-check if you've turned your assignments into Canvas in the proper formats.

Additionally, I will not compute preliminary grades to determine what you need in order to achieve a particular grade. If you ask me to do so, I will assume that you haven't read this syllabus – which is assigned reading – and I will make note of this for your participation grade.

Crowdsourcing of Notes

You are more than welcome to share notes with each other, but please do not do so during class time. If you have a question, raise your hand and ask me, but please don't distract yourselves by using other applications to communicate with each other during class.

Assignments

All readings are from *Constitutional Law for a Changing America: Institutional Powers and Constraints* (11th ed., 2022) by Lee Epstein and Thomas Walker.

WEEK ONE

6/21 Introduction and Constitutional Foundations

Read the syllabus and email any questions to me.
Be sure you can login to Canvas.
Consider on-call date.
Read U.S. Constitution.

6/23 Origins of Constitutional Law

Read pp. 50-84:

Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
Eakin v. Raub (1845)

Constraints on the Judiciary

Read pp. 84-116:

Ex Parte McCardle (1869)
Patchak v. Zinke (2018)
Baker v. Carr (1962)
Nixon v. U.S. (1993)
Flast v Cohen (1968)

**6/24 TAKE-HOME QUIZ RELEASED AT TIME TBA.
ON CALL SIGNUPS OPEN AT 10 AM.**

WEEK TWO

6/27 TAKE-HOME QUIZ DUE TO CANVAS BY 5 PM

6/28 Legislative Power

Read pp. 117-176:

Powell v. McCormack (1969)
U.S. Term Limits, Inc. v. Thornton (1995)
Gravel v. U.S. (1972)
McCulloch v. Maryland (1819)
McGrain v. Daugherty (1927)
Watkins v. U.S. (1957)
Barenblatt v. U.S. (1959)
South Carolina v. Katzenbach (1966)

6/30 Executive Power I

Read pp. 177-225:

Bush v. Gore (2000)
In Re Neagle (1890)
Clinton v. City of New York (1998)
Morrison v. Olson (1988)
Myers v. U.S. (1926)
Humphery's Executor v. U.S. (1935)
U.S. v. Nixon (1974)

WEEK THREE

7/5 Executive Power II

Read pp. 226-246

Mississippi v. Johnson (1867)
Clinton v. Jones (1997)
Trump v. Vance (2020)
Ex Parte Grossman (1925)
Murphy v. Ford (1975)

Separation of Powers I

Read 247-276:

Grundy v. U.S. (2019)
INS v. Chadha (1983)
Bowsher v. Synar (1986)
The Prize Cases (1863)
Ex Parte Milligan (1866)

7/7 NO CLASS EXAM PERIOD; EXAM RELEASED 10 AM

WEEK FOUR

7/11 EXAM DUE 10 AM ON CANVAS

7/12 Separation of Powers II

Read 277-308:

Korematsu v. U.S. (1944)
Youngstown Sheet and Tube Co. v. Sawyer (1952)
Dames & Moore v. Regan (1981)
Zivotofsky v. Kerry (2015)
Hamdi v. Rumsfeld (2004)

Federalism I

Read pp. 311-340:

McCulloch v. MD (1819)
Scott v. Sandford (1857)
Coyle v. Smith (1911)
Garcia v. San Antonio Metropolitan Transit Authority (1985)

7/14 Federalism II

Read pp. 340-353; 359-373:

New York v. U.S. (1992)
Printz v. U.S. (1997)
Murphy v. National Collegiate Athletic Association (2018)
State of Missouri v. Holland (1920)
Crosby v. National Foreign Trade Council (2000)
Arizona v. U.S. (2012)

WEEK FIVE

7/19 The Commerce Power I

Read pp. 375-429:

Gibbons v. Ogden (1824)

U.S. v. E.C. Knight Co. (1895)
Stafford v. Wallace (1922)
Champion v. Ames (1903)
Hammer v. Dagenhart (1918)
A.L.A. Schechter Poultry Corp. v. U.S. (1935)
National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937)
U.S. v. Darby (1941)
Wickard v. Filburn (1942)
Heart of Atlanta Motel, Inc. v. U.S. (1964)

7/21 The Commerce Power II

Read pp.: 430-456

U.S. v. Lopez (1995)
U.S. v. Morrison (2000)
Gonzalez v. Raich (2005)
National Federation of Independent Business v. Sebelius (2012)

Economic Substantive Due Process (pages TBA)

7/22 Final exam released on Canvas at time TBA.

Final Examination Due Monday, 7/25 by 10 AM on Canvas.

Have a great break!