

# Constitutional Law

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office hours: MW 11:30–12:30 (Main 324B)

## DESCRIPTION

This course offers an introduction to U.S. constitutional law. Our core goal is to foster intelligent engagement with constitutional law debates that have important implications for public affairs. We cover fundamental topics such as institutional powers, separation of powers, federalism, civil rights, and civil liberties. Fundamental questions of interest include: How does constitutional law structure horizontal and vertical divisions of institutional power? How are standards and rules devised to balance the tradeoff between state power and individual rights? And what differentiates legal and political arguments in constitutional law? Although many of the topics we address are politically salient, our focus is on developing analytically grounded understandings of the legal arguments driving these disputes. Having developing understandings of the analytical frameworks that structure constitutional decision making, we then practice applying the law to different facts, which in turn offers preparation for informed engagement with new controversies as they arise. At the same time, we situate the study of constitutional law within the broader story of American politics to better understand the reciprocal relationship between law and politics.

## GRADING

The following components comprise the course grade:

- First Exam (35%) [10/02]
- Second Exam (35%) [11/13]
- Research Paper (20%) [12/02]
- Simulations (10%) [11/18–12/06]

Final grades are distributed according to the following scale:

A	93–100	B	83–86	C	73–76	D	63–66
A-	90–92	B-	80–82	C-	70–72	D-	60–62
B+	87–89	C+	77–79	D+	67–69	F	59–0

## READING

The readings are primarily U.S. Supreme Court opinions, which are in the public domain and freely available online through sites such as [Google Scholar](#) and [Court Listener](#). Assigned cases are hyperlinked below to their respective Google Scholar pages. There are several options if you want to download or print opinions. First, you can copy and paste from Google Scholar into a word processing program such as Microsoft Word. Second, you can use the citation information included below to download opinions in a variety of formats through the university's subscription to [Nexis](#). Third, you can use the citation information to download opinions with original pagination as printed in the U.S. Reports through the university's subscription to [HeinOnline](#) or without a subscription through the [Library of Congress](#). However, recent opinions may not be available through these last

two sources. The Supreme Court’s website has recent [slip opinions](#) listed by docket number and a limited [back catalog](#) of bound U.S. Reports volumes in PDF format. Coverage dates listed below are tentative. Although we may be slightly ahead or behind the schedule at any given point due to variation in class comprehension and discussion, adhering to it is encouraged as convergence occurs with time.

## TOPICS

### Part I: Foundations

1. The Supreme Court in American Politics [08/26–08/30]
  - [The U.S. Constitution](#) [emphasize Articles I–III and the Bill of Rights]
2. Constitutional Decision Making [08/26–08/30]
  - Bobbitt, [Constitutional Fate](#), *Texas Law Review* (1980) [read pp. 700–725]
3. State Action [08/26–08/30]
  - [Shelley v. Kraemer](#), 334 U.S. 1 (1948) [read pp. 5–6, 18–21]
4. Remedies [08/26–08/30]
  - [Buckley v. Fitzsimmons](#), 509 U.S. 259 (1993) [read pp. 261–264, 268–271]

### Part II: Powers and Constraints

#### A. Judicial Power

1. Judicial Review [09/02–09/06]
  - [Marbury v. Madison](#), 5 U.S. 137 (1803) [read pp. 153–179]
2. Justiciability [09/02–09/06]
  - [Elk Grove v. Newdow](#), 542 U.S. 1 (2004) [read pp. 11–16]
  - [Powell v. McCormack](#), 395 U.S. 486 (1969) [read pp. 490–495, 518–549]

#### B. Legislative Power

1. Foundations [09/09–09/13]
  - [McCulloch v. Maryland](#), 17 U.S. 159 (1819) [read pp. 197–213]
2. Taxing and Spending [09/09–09/13]
  - [NFIB v. Sebelius](#), 132 S. Ct. 2566 (2012) [read pp. 2593–2600, 2651–2655, 2661–2667]

3. The Commerce Clause [09/16–09/20]
  - *Wickard v. Filburn*, 317 U.S. 111 (1942) [pp. 113–129]
  - *United States v. Lopez*, 514 U.S. 549 (1995) [pp. 551–552, 558–567, 615–625]
4. The Tenth Amendment [09/16–09/20]
  - *Printz v. United States*, 521 U.S. 898 (1997) [pp. 902–925, 939–962]

### C. Executive Power

1. Inherent Authority [09/23–09/27]
  - *Youngstown v. Sawyer*, 343 U.S. 579 (1952) [pp. 590–592, 634–651, 701–704]
2. Privilege [09/23–09/27]
  - *United States v. Nixon*, 418 U.S. 683 (1974) [pp. 686–690, 703–716]
3. Immunity [09/30–10/04]
  - *Clinton v. Jones*, 520 U.S. 681 (1997) [pp. 686–686, 692–706, 708–709]
4. Foreign Affairs [09/30–10/04]
  - *Korematsu v. United States*, 323 U.S. 214 (1944) [pp. 216–223, 243–248]

## Part III: Rights and Liberties

### A. The Bill of Rights

1. Incorporation [10/07–10/11]
  - *Timbs v. Indiana*, 139 S. Ct. 682 (2019) [read pp. 686–689]
2. First Amendment [10/07–10/11]
  - *Brandenburg v. Ohio*, 395 U.S. 444 (1969) [read pp. 445–449]
  - *Employment Division v. Smith*, 494 U.S. 872 (1990) [read pp. 874, 877–880, 899–903]
  - *Lee v. Weisman*, 505 U.S. 577 (1992) [read pp. 581–583, 595–599, 641–644]
3. Second Amendment [10/14–10/18]
  - *DC v. Heller*, 128 S. Ct. 2783 (2008) [read pp. 2788–2804, 2817–2836, 2851–2853]
4. Takings [10/14–10/18]
  - *Kelo v. New London*, 545 U.S. 469 (2005) [read pp. 472–475, 477–483, 496–503]
5. Crime Provisions [10/21–10/25]
  - *Graham v. Connor*, 490 U.S. 396 (1989) [read pp. 388–390, 396–398]
  - *Miranda v. Arizona*, 384 U.S. 436 (1966) [read pp. 467–479]
  - *Atkins v. Virginia*, 536 U.S. 304 (2002) [read pp. 307–309, 311–321, 340–348]

## B. The Fourteenth Amendment

### 1. Equal Protection [10/28–11/01]

- [Brown v. Board of Education](#), 347 U.S. 483 (1954) [read pp. 486–496]
- [Grutter v. Bollinger](#), 539 U.S. 306 (2003) [read pp. 311–318, 323–343, 379–387]
- [United States v. Virginia](#), 518 U.S. 515 (1996) [read pp. 519–520, 531–546, 576–586]

### 2. Due Process [11/04–11/08]

- [Mathews v. Eldridge](#), 424 U.S. 319 (1976) [read pp. 323–325, 332, 335, 340–349]
- [Lochner v. New York](#), 198 U.S. 45 (1905) [read pp. 52–76]
- [Roe v. Wade](#), 410 U.S. 113 (1973) [read pp. 153–166, 171–178]
- [Washington v. Glucksberg](#), 521 U.S. 702 (1997) [read pp. 705–736, 790–792]
- [Obergefell v. Hodges](#), 135 S.Ct. 2584 (2015) [read pp. 2589–2612, 2620–2646]

## SIMULATION

We will conduct Supreme Court simulations involving constitutional questions on the Court’s current docket. The simulations include:

- Does the Second Amendment, (dormant) commerce clause, or right to travel prohibit a city’s ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits? [[New York State Rifle & Pistol Association v. City of New York](#) (18-280)]
- Should the Sixth Amendment’s unanimous verdict guarantee be incorporated against the states? [[Ramos v. Louisiana](#) (18-5924)]
- Do the Eight or Fourteenth Amendments prohibit a state from abolishing the insanity defense? [[Kahler v. Kansas](#) (18-6135)]

The simulation includes two graded components. First, students participate in a simulation as an attorney presenting oral argument or as a justice posing questions to help decide the case. Simulation performance is graded on the basis of preparedness, presentation quality (for attorneys), question quality (for justices), and interactivity with justices (for attorneys) or attorneys (for justices). The hyperlinks above provide access to relevant material, including the lower court opinion, briefs, and oral argument transcripts and audio if available. Second, students write a paper analyzing the question presented based on standard modes of constitutional inquiry (e.g., precedent, history, structure, and textual analysis). The paper should include three labeled substantive sections: an introduction briefly discussing the relevant facts and precedent (not to exceed two pages), an analytical section detailing the strongest points on both sides of the question, and a conclusion briefly summarizing the most important points (not to exceed one page). Note that there is no need to take a position on how the question should be decided but you are free to do so in the conclusion.

Paper grades are primarily based on analytical thoroughness and quality. Engagement with the relevant material (e.g., precedents)—including cases that do not appear on the syllabus—is expected. Since we’re reading Supreme Court opinions all semester, the easiest citation and reference format

is to write the paper in the form of an opinion. However, there are no particular citation and reference format course rules—just be consistent. In addition to the above stated requirements, paper grades are based in part on editing quality and adherence to the following: 7–10 paginated double-spaced pages of text with no extra space between paragraphs, 12-point Times New Roman font, 1-inch margins, and a title page with your name, case name, and course information. The 7–10 page text requirement does not include the title page and any separately listed references or notes. We will spend time discussing the simulations and paper writing in class.

## POLICIES

Applicable [university policies](#) are followed. These include, but are not limited to, policies on matters such as [excused absences](#), [classroom conduct](#), [academic integrity](#), and [disability-related accommodation](#). Students are bound by university policies regardless of prior knowledge or understanding. As a result, it is good practice to periodically review these policies.

Although the university’s policy on [excused absences](#) addresses numerous contingencies, it delegates faculty discretion with respect to several matters. As a result, the following gap-filling policies are adopted pursuant to university regulations. First, excused absences are generally limited to the mandatory and “other allowable” reasons delineated by university policy. There is a presumption against the grant of excused absences for other reasons, though exceptions may be considered on a case by case basis. Second, appropriate independent documentation must generally be provided for any excused absence. If documentation cannot be provided for good reason, other verification may be required. I reserve the right to determine what constitutes acceptable documentation or verification for purposes of classifying an absence as excused subject to applicable university policy. Third, without an excused absence, make-up exams can be taken and late papers submitted within twenty-four hours of the original deadline with a 20% reduction in grade for that course component. Time is tolled on non-business days, including weekends and university holidays. Missed simulations cannot be made up without an excused absence.

The syllabus is subject to change.

## RESOURCES

A nonexhaustive list of university resources for students:

- [Academic Success Center](#) (studying, test taking, and stress management)
- [Allies on Campus](#) (LGBTQA+ support training)
- [Counseling and Psychological Services](#) (mental health)
- [Disability Resource Center](#) (course accommodations, consultation, grievances)
- [Inclusion Center](#) (LGBTQA+, multicultural, and nontraditional student resources)
- [Public Safety](#) (campus police)
- [SAAVI Office](#) (advocates for sexual assault and stalking victims)
- [Sexual Misconduct](#) (reporting, advocates, counseling, medical attention, preserving evidence)

- [Student Nutrition Access Center](#) (groceries)
- [Student Support Services](#) (services for low income, first generation, and disabled students)
- [Student Wellness](#) (mental, physical, relationship, supporting others in distress)
- [Title IX and Nondiscrimination](#) (sexual misconduct and differential treatment)
- [Veterans Resource Office](#) (transition support, financial resources, mentoring)
- [Upstanding](#) (bystander intervention against sexual violence and other interpersonal harm)
- [Writing Center](#) (tutoring)