

### Constitutional Principles: Core Texts

This course explores basic principles of American constitutional history through a reading of court cases and other primary documents. Topics include: the power of judicial review; federalism and state sovereignty; executive power; slavery; freedom of speech; freedom of religion; due process of law; and the equal protection of the law.

#### **Books for Purchase or on Reserve**

1. Sullivan and Feldman, *Constitutional Law*, 19<sup>th</sup> ed. (or 20<sup>th</sup> ed.)
2. Ely, *Democracy and Distrust*
3. Additional material posted on Canvas

#### **Course Requirements and Grading Policy**

This course will be graded on the plus and minus scale.

Quiz: Tuesday, Feb. 22 (25%)

Midterm Paper (10 pages): Thursday, April 8 (25%)

Final Examination (date in May to be determined) (30%)

Attendance and Participation: 20%

#### **Topics:**

##### **1. Judicial Review**

Ely, *Democracy and Distrust*, chaps. 1-4.

*Federalist Papers*, Nos. 78-82

CL 2-16 (Marbury); 17-30 (Martin; Cooper; notes); 901-906 (Boerne)

CL 61-67 (Baker and political questions)

##### **2. Federalism and State Sovereignty**

*Federalist Papers*, No. 39

CL 442-43 (Barron)

South Carolina Nullification Ordinance of 1832

Monaghan, We, the Peoples, 96 Columbia Law Review 121

CL 77-95 (McCollough and notes); 109-14 (notes).

CL 177-181 (N.Y. v. U.S)

##### **3. Federalism: the Incorporation Debate and the Bill of Rights**

CL 462-470 (criminal procedure)

CL 470-482 (Second Amendment and the Right to Bear Arms; Heller; McDonald)

##### **4. Do We Have an Unwritten Constitution?**

Laurence Tribe, *The Invisible Constitution*, pp. 1-14.

CL 449-456 (Slaughterhouse Cases and the Fourteenth Amendment)  
CL 487-494 (Lochner and Economic Liberty)  
CL 498-499 (Nebbia and the end of “Lochnerizing” During the New Deal)  
Franklin Roosevelt’s “Second Bill of Rights,”  
<https://stuff.mit.edu/afs/athena/course/21/21h.102/www/Primary%20source%20collections/World%20War%20II/FDR,%20Economic%20Bill%20of%20Rights.html>.  
CL 510-526 (Griswold; Roe) (privacy, abortion and substantive due process)  
CL 551-53 (Bowers); 561-568 (Lawrence); 581-590 (Obergefell) (sexual orientation and same-sex marriage)

#### 5. Separation of Powers: Executive Authority

Federalist Papers, Nos. 67-77.  
CL 305-314 (Steel Seizure; notes)  
CL 330-381 (War Power cases).  
Trump v. Hawaii (file on Canvas,  
[https://scholar.google.com/scholar\\_case?case=16062632215534775045&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=16062632215534775045&hl=en&as_sdt=6&as_vis=1&oi=scholarr).  
Trump v. Vance (p. 8 in Feldman and Sullivan, 2020 Supp. to Con. Law in  
“Files” tab on Canvas).  
CL 422- 439 (Nixon; Clinton; and impeachment power)

#### 6. Slavery

1807 Act Prohibiting the Slave Trade  
U.S. v. Battiste (1835),  
<https://law.resource.org/pub/us/case/reporter/F.Cas/0024.f.cas/0024.f.cas.1042.2.pdf>  
North Carolina Nullification Ordinance of 1832  
CL 445-448 (Dred Scott)  
Lincoln-Douglas Debates of 1858

#### 7. Separation of Church and State: Introduction

Jefferson, Letter to the Danbury Baptists  
Virginia Bill Establishing Religious Freedom  
Madison, Memorial and Remonstrance Against Religious Assessments  
CL 1692 (Estate of Thornton)  
CL 1280 (Christian Legal Society)  
Freedom from Religion Foundation v. Morris County (N.J.),  
<http://www.scotusblog.com/wp-content/uploads/2018/10/18-364-18-365-opinion-below.pdf>.

#### 8. The Establishment Clause: Financial Aid to Religious Institutions

CL 1555, 1608 (Everson); 1611-19 (Allen, Lemon, Wolman, Mueller, Aguilar, Widmar, Tilton); 1284 (Widmar); 1620-35 (Witters, Bowen, Zobrest,

Rosenberger, Agostini, Mitchell, Zelman); 1330, 1557 (more on Rosenberger); 1286 (Lamb's Chapel, Good News); 1648 (Good News); 1695-97 (Mergens, Kiryas Joel).

9. The Establishment Clause: Prayer in Public Schools; Prayer in Legislatures

CL 1612 (McCollum, Zorach); 1636-57 (Engel, Schempp, Wallace, Lee, Santa Fe, Stone, Elk Grove, Epperson, Edwards); 1483-84 (more on Wallace, Lee); 1658-59 (Marsh; Town of Greece).

10. Establishment Clause: Religious Symbols in Public

CL 1663-1687 (Lynch, Allegheny, Capitol Square, McCreary, Van Orden); 1288 (Pleasant Grove). American Legion v AHA World War One Cross Case (Canvas file).

11. The Free Exercise of Religion: When do laws discriminate against religion?

CL 1555, 1570 (Reynolds); 1571 (Gobitis, Barnette); 1572 (Braunfeld); 1565 (Lukumi Babalu Aye); CL 1573-1583 (Sherbert, Thomas, Yoder, Lee, Bob Jones, Goldman, Shabazz); 1688 (more on Sherbert); French ban on religious clothing in public schools.

12. The Free Exercise of Religion: When must laws discriminate in favor of religion?

CL 1583-98 (Smith, City of Boerne, RFRA, Gonzales); 1598 (Hobby Lobby); Masterpiece Cakeshop v. Colorado (on Canvas); 1605 (Holt); 1695 (Cutter); 1596 (Hosanna-Tabor and ministerial exemption); 1560-62 (military draft and conscientious objectors); 1689 (Locke); Trinity Lutheran Church v. Comer (file on Canvas); Our Lady of Guadalupe; Espinoza (pp. 13-14 on Feldman and Sullivan, 2020 Supp file on Canvas).

13. The First Amendment and Freedom of Speech

John Stuart Mill, *On Liberty*, chs. 1, 3.

CL 931-46 (overview); 1161-62 (content neutrality).

14. The First Amendment: World War One and the Birth of Clear and Present Danger

CL 947-961 (Schenck, Frohwerk, Debs, Abrams, Masses).

15. The First Amendment and Political Protest Since World War One

CL 961-86 (Gitlow, Whitney, Dennis, Brandenburg)

CL 1180-98 (O'Brien; flag burning); 1291-1293 (Tinker); 999 (Cohen).

16. The First Amendment: Should Hate Speech be Protected?

CL 987-96 (Chaplinsky, (Terminiello, Feiner); 1004 (Beauharnais); 1035-39 (Skokie, college campus speech codes); 1039-57 (R.A.V., Mitchell, Virginia, Elonis); 1031 (Snyder); 2018 Supp. to CL 40 (Tam).

17. The First Amendment: the Role of a Free Press

The John Peter Zenger Trial, [http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-01/History\\_Trial-John-Peter-Zenger.pdf](http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-01/History_Trial-John-Peter-Zenger.pdf)  
CL 1007-1013 (NY Times v. Sullivan); 1373-83 (Near, Pentagon Papers, Progressive Magazine).

**18. The Fourteenth Amendment and Racial Discrimination**

CL 659-670 (Plessy, Brown I and II).  
CL 678-681(Korematsu and Japanese internment during World War Two).  
CL 693-700 (Bakke); 712-24 (Grutter, Gratz); 731(Fisher v. UT); 2018 Supp. to CL 27 (Fisher v. UT) (affirmative action).

**19. The Fourteenth Amendment and Sex Discrimination**

CL 760-69 (Reed, Frontiero, Craig, Miss. Univ., J.E.B).  
CL 769-83 (VMI, Geduldig, Michael M., Rostker); 2018 Supp. to CL 31 (Sessions).  
CL 789-93 (Kahn, Orr, Weinberger, Goldfarb, Wengler, Schlesinger) (affirmative action).

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**Office Hours and Email Contacts**

Prof. Abramson ([jabramson@austin.utexas.edu](mailto:jabramson@austin.utexas.edu)) WED: 12:30-3:00 (by zoom).  
**(Office hours now by email)**

**Students with Disabilities**

Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>

**Religious Holidays**

Absences for religious observances will be accommodated. By university policy, you must notify me of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

**Honor Code and Academic Honesty**

The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

Plagiarism is a serious violation of academic integrity. In simplest terms, this occurs if you represent as your own work any material that was obtained from another source, regardless how or where you acquired it. For examples of

plagiarism, please see  
[http://deanofstudents.utexas.edu/sjs/scholdis\\_plagiarism.php](http://deanofstudents.utexas.edu/sjs/scholdis_plagiarism.php)

### **Use of Computers or Cell Phones in Class**

Cell phones must be off at all times in class. Laptop computers or other communication devices may NOT be used during class except by prior permission from the professor upon request.

### **Emergency Evacuation**

In the event of a fire or other emergency, it may be necessary to evacuate a building rapidly. Upon the activation of a fire alarm or the announcement of an emergency in a university building, all occupants of the building are required to evacuate and assemble outside. Once evacuated, no one may re-enter the building without instruction to do so from the Austin Fire Department, University of Texas at Austin Police Department, or Fire Prevention Services office.

Students should familiarize themselves with all the exit doors of each room and building they occupy at the university, and should remember that the nearest exit routes may not be the same as the way they typically enter buildings.

Students requiring assistance in evacuation shall inform their instructors in writing during the first week of class. Faculty members must then provide this information to the Fire Prevention Services office by fax (512-232-2759), with "Attn. Mr. Roosevelt Easley" written in the subject line.

Information regarding emergency evacuation routes and emergency procedures can be found at <http://www.utexas.edu/emergency>