

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*, 19th ed. (or 20th 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. 24 (25%)

Midterm Paper (10 pages): April 7 (25%)

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

Attendance and Participation: 20%

Topics:

1. Introduction: Some Puzzling Cases to Get us Started (Christian Science and freedom of religion; "Dwarf tossing as a sport;" Ballerinas, and Golf) (Jan. 18).
2. Judicial Review (Jan 20; Jan 27)
Ely, *Democracy and Distrust*, chaps. 1-4.
Federalist Papers, Nos. 78-82
CL 2-16 (Marbury); 17-30 (Martin; Cooper; notes); 901-906 (Boerne)
Whole Women's Health v. Jackson (new TX abortion law) (C.J. Roberts decision only, https://www.supremecourt.gov/opinions/21pdf/21-463_3ebh.pdf).
CL Shelley v. Kraemer, 334 U.S. 1 (1948), 861-86
3. Federalism and State Sovereignty (Feb. 1)
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 (McCullough and notes); 109-14 (notes).
CL 884-85 (Jones v. Alfred H. Mayer, Co.,
https://scholar.google.com/scholar_case?case=17357719541747913405&hl=en&as_sdt=6&as_vis=1&oi=scholarr
[, Jones v. Alfred H. Mayer Co., 392 U.S. 409](https://scholar.google.com/scholar_case?case=17357719541747913405&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

4. Federalism: the Incorporation Debate and the Bill of Rights (Feb 3)
 - CL 462-470 (criminal procedure)
 - CL 470-482 (Second Amendment and the Right to Bear Arms; Heller; McDonald)

5. Do We Have an Unwritten Constitution? (Feb 8, 10)
 - 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)
 - Dobbs v. Mississippi (transcript of oral argument),
https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/19-1392_4425.pdf
 - CL 551-53 (Bowers); 561-568 (Lawrence); 581-590 (Obergefell) (sexual orientation and same-sex marriage)

6. Separation of Powers: Executive Authority (Feb 12)
 - Federalist Papers, Nos. 67-77.
 - CL 305-314 (Steel Seizure; notes)
 - CL 330-381 (War Power cases).
 - CL 422- 439 (Nixon; Clinton; and impeachment power)
 - Trump v. Thompson (Trump assertion of executive privilege in regard to Congressional subpoenas in investigation of Jan. 6 Capitol riots),
[https://www.cadc.uscourts.gov/internet/opinions.nsf/913002F9EFB94590852587A60075CC4F/\\$file/21-5254-1926128.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/913002F9EFB94590852587A60075CC4F/$file/21-5254-1926128.pdf).

7. Slavery (Feb 17)
 - 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

8. Separation of Church and State: Introduction (Feb 22)
 - 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)
CL 1689 (Locke v. Davey)
Trinity Lutheran Church v. Comer
https://www.supremecourt.gov/opinions/16pdf/15-577_khlp.pdf

9. The Establishment Clause: Financial Aid to Religious Institutions (Feb 24, March 1)

QUIZ on FEB 24

CL 1555, 1608 (Everson); 1611-19 (Allen, Lemon, Wolman, Mueller, Aguilar, Widmar, Tilton); CL 1284 (Widmar); 1620-35 (Witters, Bowen, Zobrest, Rosenberger, Agostini, Mitchell, Zelman); 1330, 1557 (more on Rosenberger); CL 1286 (Lamb's Chapel, Good News); 1648 (Good News); 1695-97 (Mergens, Kiryas Joel).

10. The Establishment Clause: Prayer in Public Schools; Prayer in Legislatures (March 3)

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).

11. Establishment Clause: Religious Symbols in Public (March 8)

CL 1663-1687 (Lynch, Allegheny, Capitol Square, McCreary, Van Orden); 1288 (Pleasant Grove). American Legion v AHA World War One Cross Case (Canvas file), https://www.supremecourt.gov/opinions/18pdf/17-1717_4f14.pdf.

12. The Free Exercise of Religion: When do laws discriminate against religion? (March 10)

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.

(Spring Break, March 15,17)

13. Free Exercise of Religion: When must laws discriminate in favor of religion? (March 22-24)

CL 1583-98 (Smith, City of Boerne, RFRA, Gonzales); CL 1598 (Hobby Lobby); Masterpiece Cakeshop v. Colorado (on Canvas); CL1605 (Holt); CL 1695 (Cutter); CL 1596 (Hosanna-Tabor and ministerial exemption); CL 1560-62 (military draft and conscientious objectors); CL 1689 (Locke); Trinity Lutheran Church v. Comer (on Canvas).

14. The First Amendment and Freedom of Speech (March 29)

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

CL 931-46 (overview); 1161-62 (content neutrality).
(see Module 13 for more readings for this week)

15. First Amendment: World War I -- Birth of Clear and Present Danger (March 31)
CL 947-961 (Schenck, Frohwerk, Debs, Abrams, Masses).
16. The First Amendment and Political Protest Since World War I (April 5, 7)
Midterm paper due in class April 7
CL 961-86 (Gitlow, Whitney, Dennis, Brandenburg)
CL 1180-98 (O'Brien; flag burning); 1291-1293 (Tinker); 999 (Cohen).
17. The First Amendment: Should Hate Speech be Protected? (April 12, 14) CL 987-96
(Chaplinsky, (Terminiello, Feiner); 1004 (Beauharnais); 1035-39
(Skokie, college campus speech codes); CL 1039-57 (R.A.V., Mitchell, Virginia, Elonis);
1031 (Snyder); 2020 Supp. to CL 40 (Tam).
18. The First Amendment: the Role of a Free Press (April 19)
The John Peter Zenger Trial, http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-01/History_Tryal-John-Peter-Zenger.pdf
CL 1007-1013 (NY Times v. Sullivan); 1373-83 (Near, Pentagon Papers, Progressive Magazine).
19. The Fourteenth Amendment and Racial Discrimination (April 21, 26)
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)
2020 Supp. to CL 27 (Fisher v. UT) (affirmative action), and
https://scholar.google.com/scholar_case?case=6883717302676149601&hl=en&as_sdt=6&as_vis=1&oi=scholarr.
20. The Fourteenth Amendment and Sex Discrimination (May 3)
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).
21. Review and Conclusion (May 5)

Assignments:

Feb 24 Quiz (20%)

April 7: Midterm Examination (30%)

Attendance and Participation (20%)

Final Examination to be Scheduled by Registrar (30%)

Office Hours and Email Contacts

Prof. Abramson (jabramson@austin.utexas.edu) WED: 11:30-1:00 (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

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>