Constitutional Law

Professor: Greg Goelzhauser
Email: greg.goelzhauser@usu.edu
Office Hours: MW 11:30–12:30 (Main 324B)

DESCRIPTION

This course introduces the study of constitutional law. We develop a sophisticated understanding of enduring and contemporary debates concerning constitutional law that have important public affairs implications. Coverage includes institutional powers, separation of powers, federalism, civil rights, and civil liberties. Core questions include: How does constitutional law structure horizontal and vertical divisions of institutional power? How are standards and rules designed to balance the tradeoff between state power and individual rights? And what differentiates the legal and political arguments driving constitutional development? Although many of the topics are politically salient, our focus is on developing an analytically grounded understanding of the material. Laying this analytical foundation informs application of the law to new facts and facilitates downstream engagement with new controversies as they arise. At the same time, we situate the study of constitutional law within the broader story of American government 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:

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<th>Grade</th>
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<td>A</td>
<td>93–100</td>
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<td>A-</td>
<td>90–92</td>
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<td>B+</td>
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<td>C</td>
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<td>C-</td>
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<td>D+</td>
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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 for downloading and printing 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. Recent opinions, however, may not be available through the last two sources. The Supreme Court’s website posts 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 preliminary schedule at any given point due to variation in class comprehension and discussion, adhering to it is encouraged as convergence occurs over 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]

Part II: Powers and Constraints

A. Judicial Power

1. Judicial Review [09/02–09/06]

2. Justiciability [09/02–09/06]

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]

3. The Commerce Clause [09/16–09/20]
4. The Tenth Amendment [09/16–09/20]

C. Executive Power

1. Inherent Authority [09/23–09/27]

2. Privilege [09/23–09/27]

3. Immunity [09/30–10/04]

4. Foreign Affairs [09/30–10/04]

Part III: Rights and Liberties

A. The Bill of Rights

1. Incorporation [10/07–10/11]

2. First Amendment [10/07–10/11]

3. Second Amendment [10/14–10/18]

4. Takings [10/14–10/18]

B. The Fourteenth Amendment

1. Equal Protection [10/28–11/01]


SIMULATION

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

- Does the Second Amendment’s bear arms clause 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)]
- Does the Eight Amendment’s cruel and unusual punishment clause or the Fourteenth Amendment’s due process clause prohibit a state from abolishing the insanity defense? [Kahler v. Kansas (18-6135)]
- Does the Fourteenth Amendment’s due process clause incorporate the Sixth Amendment’s unanimous verdict clause against the states? [Ramos v. Louisiana (18-5924)]

There are two graded components. First, students participate in a simulation as an attorney presenting oral argument or as a justice posing questions to decide a case. Simulation performance is graded on the basis of preparedness, presentation quality (for attorneys), question quality (for justices), and attorney-justice interactivity. The hyperlinks above provide access to relevant material, including lower court opinions, briefs, and oral argument transcripts 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 discussing the relevant facts and precedent (not to exceed two pages), an analytical section detailing the strongest points on both sides of the issue, and a conclusion summarizing the most important points (not to exceed one page). 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—including precedents that are not 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, no particular citation or reference format is required—just be consistent. In addition to the above stated requirements, paper grades are based in part on editing quality and adherence to the following guidelines: 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 or any back matter. We will spend time discussing the simulations, analysis, and paper writing in class.

POLICIES

Applicable university policies are followed. These policies include, but are not limited to, 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.

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 granting 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 an 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** (food security)
○ 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)