Constitutional Law

Instructor: Dr. Goelzhauser
Email: greg.goelzhauser@usu.edu

DESCRIPTION

This course introduces the study of constitutional law. Course coverage includes institutional powers, federalism, separation of powers, civil rights, and civil liberties. Our emphasis is on the analytical foundations underlying enduring constitutional law debates that shape American politics. Understanding these analytical foundations helps develop intuition for applying the law to new constitutional controversies as they arise. Developing intuition for the analytical foundations of constitutional law offers downstream benefits with respect to engagement in public affairs regardless of profession. Along the way we will confront foundational governance questions, situate constitutional law within the broader study of American politics, and consider how principles of institutional design impact the reciprocal relationship between law and politics.

GRADING

The following components comprise the course grade:

- **Module Quizzes (25%)**
  - Due by last date listed for each module
  - 10 total quizzes with 2 lowest grades dropped
- **Module Discussions (25%)**
  - Participate by last date listed for each module
  - Discussion Reflection due 12/14
- **Midterm Research Paper (25%)**
  - Due 10/18
  - Optional substitution with class research project
- **Final Research Paper (25%)**
  - Due 12/06

Final grades are distributed according to the following scale:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>A</td>
<td>93–100</td>
</tr>
<tr>
<td>A-</td>
<td>90–92</td>
</tr>
<tr>
<td>B</td>
<td>83–86</td>
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<tr>
<td>B-</td>
<td>80–82</td>
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<tr>
<td>C</td>
<td>73–76</td>
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<tr>
<td>C-</td>
<td>70–72</td>
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<tr>
<td>D</td>
<td>63–66</td>
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<tr>
<td>D-</td>
<td>60–62</td>
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<tr>
<td>D+</td>
<td>67–69</td>
</tr>
<tr>
<td>F</td>
<td>59–0</td>
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</tbody>
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READING

Assigned readings are hyperlinked below and freely accessible. Hyperlinked Supreme Court opinions are available in webpage format through Google Scholar. For text highlighting and note taking purposes, opinion webpages can be downloaded in PDF format or copied and pasted into word processing programs. Opinions can also be downloaded in a variety of formats through the university’s
Nexis Uni subscription. Officially paginated versions from bound volumes of the U.S. Reports are freely available through the Library of Congress or the university’s HeinOnline subscription. Officially paginated slip opinions from recently decided cases are available through HeinOnline or the Supreme Court’s webpage. University subscriptions can be accessed off campus through a VPN.

1. Course Introduction [08/31–09/06]
   - U.S. Constitution
   - Reading Supreme Court Opinions
     * No module quiz

2. Judicial Power [09/07–09/13]
   - Marbury v. Madison, 5 U.S. 137 (1803)
     * Labor Day 09/07

3. Legislative Power [09/14–09/20]

4. Executive Power [09/21–09/27]
   - Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

5. Federalism [09/28–10/04]


7. Research Immersion [10/12–10/18]
   - Allocate course time to the midterm research paper due 10/18
     * No module quiz

8. Speech Clause [10/19–10/25]
   - Morse v. Frederick, 441 U.S. 393 (2007)

9. Religion Clauses [10/26–11/01]
   - Wisconsin v. Yoder, 406 U.S. 205 (1972)
   - Terry v. Ohio, 392 U.S. 1 (1968)


   - Allocate course time to the final research paper due 12/06
     * No module quiz
     * Thanksgiving 11/25–11/27

   - Allocate course time to the final research paper
     * No module quiz

15. Career Opportunities [12/07–12/13]
   - No module quiz
   - Last class 12/10
   - The discussion reflection is due 12/14

Generally, date ranges span from Monday to Sunday. Modules open on Canvas the first date in each range and close on the second date in each range. Quizzes and discussions must be completed by the last date in each range. My advice is to consider the Friday of each week to be the informal deadline, leaving the weekend as supplemental time to use as needed. Week 14 is a continuation of week 13 following Thanksgiving. Module 15 ends on a Thursday because that is the last day of class, though the discussion will remain open through December 13. There are discussions for each module. Modules without quizzes are noted in the schedule. These include modules 1, 7, 13, 14, and 15. University holidays are incorporated through proportionate module workload reductions.

**Contact**

Messages to the class will be sent as announcements in Canvas. Individual messages will be sent through Canvas or using the email address listed in Canvas. Do not hesitate to contact me by email. For in-depth discussions, please schedule an individual meeting by emailing me a list of available dates and times to meet over Zoom. The default will be audio-only meetings but please let me know if you prefer to use video. We can also setup a telephone call. I will generally respond to emails within 24 hours excluding weekends and holidays. For example, an email received after 5:00 p.m. on Thursday may not be returned until Monday by 5:00 p.m. As a result, module-specific
questions must be submitted before Thursday at 5:00 p.m. to receive an answer before the module closes. If you do not receive a response within 48 hours excluding weekends and holidays, please send me a followup message. For module-specific questions, please contact me by email rather than asking within the discussion thread to ensure a timely response.

**ONLINE EXPECTATIONS**

This course is online due to the pandemic. Most of you registered for an in-person course and many of you have not taken an online course from beginning to end. This section analogizes the online course structure to the more familiar in-person format to help establish expectations and facilitate effective time management.

By way of background, it helps to understand that the term “credit hour” is defined by federal regulation as the “amount of work represented in intended learning outcomes and verified by evidence of student achievement...that reasonably approximates not less than...one hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks.” For a three-credit hour course, this definition requires a minimum of three hours of “in class” activities and six hours of “out of class” activities.

For purposes of establishing expectations, think of this course as having familiar “in class” and “out of class” components and expect to spend about three hours per week on the former and six hours per week on the latter as required by federal regulation and university policy. Allocations may vary any given week but these are useful guidelines for thinking about average time expenditures over the course of the semester. Remember the “rule of threes” for thinking about in class and out of class time allocations:

- **In Class**
  1. Actively engage lecture recordings
  2. Participate in weekly discussion
  3. Take weekly quiz

- **Out of Class**
  1. Actively engage assigned readings
  2. Review lecture and reading notes
  3. Work on research papers

Devoting sufficient time to these weekly tasks will set the stage for effective class performance.

**MODULE QUIZZES**

The module-specific quizzes cover lectures and readings. Questions are primarily multiple choice and true/false. Class materials such as lectures and notes may be referenced when taking quizzes but communication with other students is prohibited. Quiz questions and answers may not be disclosed in class discussions forums. Correct answers will display the day after a module ends. Most course modules have a corresponding quiz that opens on Monday when the module goes live and closes on the following Sunday. Module start and end dates are listed above. Weeks without
quizzes are noted on the course schedule; these include the first and last weeks as well as the
research immersion weeks. Overall, there are ten quizzes. The two lowest grades are dropped for
purposes of calculating the final grade.

**Module Discussions**

Discussions take place on Canvas. Some discussion questions will be provided but students should
provide their own as well. Most course modules have a corresponding discussion that opens on
Monday when the module goes live and closes on the following Sunday. Weeks 13 and 14 are the
exception, with week 14 continuing the research immersion module that begins before Thanksgiving.
Module start and end dates are listed above. In terms of engagement expectations, consider the
following rubric for discussion performance within each module:

- **A** = Multiple substantive contributions
- **B** = One substantive contribution or multiple less engaged contributions
- **C** = One less engaged contribution
- **D** = Good faith contributions that fall short of meaningful engagement
- **F** = No contribution or posting in violation of the Student Code

All contributions should demonstrate high-level engagement with course materials. Substantive
contributions are those that significantly enhance class discussion. Examples of substantive contri-
butions include but are not limited to multi-sentence reflections on the material that add insight
to the discussion; multi-sentence responses to questions; new questions combined with tentative
answers; and pointers to additional material with an explanation as to relevance. Examples of
less engaged contributions include but are not limited to clarifying questions and one sentence
of otherwise cursory remarks. Examples of good faith contributions that fall short of meaningful
engagement include but are not limited to those that fail to grapple with the course materials at
a level signifying good faith effort. Not posting and remarks that violate the student code receive
zero credit.

**Discussion Reflection**

A comprehensive course discussion reflection is due 12/14. The discussion reflection documents class
participation over the course of the semester along with an overall personal performance assessment.
Maintain this reflection over the course of the semester in order to gauge ongoing performance.
All discussion comments made throughout the semester should be included in the reflection with
module headings. The easiest way to do this is to use a word processing document to type comment
drafts before submission so there is no further need for reflection document updating with respect to
module discussions. Although module participation is the primary basis for the discussion reflection
grade, include other forms of participation such as private course-related engagement with me and
participation in the general discussion thread. Module participation should be spread evenly across
the semester rather than clustered heavily within a few weeks. There is no page limit but the final
reflection should be submitted to Canvas in PDF format.
Research Papers

The midterm and final research paper projects aim to improve analytical ability with respect to the foundations of constitutional law. Both papers should be 5–7 double-spaced pages of text with 12-point Times New Roman font, 1-inch margins, and a separate title page that does not count against the page limit. No particular citation or reference format is required. Papers must be submitted to Canvas in PDF format. Grades are based primarily on analytical quality but adherence to the aforementioned rules and effective editing are also considered.

Midterm Research Paper

For the midterm research paper, analyze oral argument from a Supreme Court case. This paper is due October 18. Consider the following questions:

1. What types of questions did the justices ask during oral argument? Question types to be on the lookout for include but are not limited to asking attorneys to clarify case facts, engage in constitutional interpretation, explain how existing precedent impacts arguments, provide limiting principles for arguments, and respond to hypotheticals about how proposed constitutional rules may play out under new factual circumstances. Provide relevant text from select questions but keep quotations as short as possible.

2. What distinguishes the effective and ineffective attorney arguments and question answers?

3. How if at all did these oral argument discussions seem to impact the Supreme Court’s opinion?

Oral argument audio for most cases decided during the last few decades is available at Oyez. The only constraints on case selection other than oral argument availability are that it must be a constitutional case and must not be a case assigned on the syllabus. This list of landmark Supreme Court decisions may be useful for finding a case.

Final Research Paper

For the final research paper, develop a comprehensive analysis of a constitutional law issue on the Supreme Court’s current docket. There is no need to take a position with respect to what you consider the correct outcome—just analyze the question from both sides. Consistent with the university’s request for final papers to be made due prior to no-test week and two weeks prior to final examinations, this paper is due December 6. Here are the constitutional questions for selection:

1. Does unsuccessfully detaining a suspect by force constitute a Fourth Amendment seizure?
   Torres v. Madrid, 19-292

2. Does the Eighth Amendment require a sentencing authority to find that a convicted juvenile is permanently incorrigible before imposing life without parole?
   Jones v. Mississippi, 18-1259

3. Does the 2017 Affordable Care Act amendment reducing the shared responsibility payment to zero dollars for failure to comply with the minimum coverage provision render it unconstitutional as no longer justified under Congress’s Article I taxing power?
   California v. Texas, 19-840
4. Do the private individuals and states suing to invalidate the Affordable Care Act satisfy Article III’s standing requirements?

California v. Texas, 19-840

Hyperlinks are to case pages hosted by SCOTUSblog. These pages compile comprehensive information about each case, including the lower court opinion and briefs.

Consider the following questions when researching and writing this paper:

1. What are the most relevant precedents for answering the question presented?
2. To what extent do those precedents dictate a particular outcome in this case?
3. How could each party’s preferred legal rule impact public policy more broadly?

**OPTIONAL CLASS RESEARCH PROJECT**

The university promotes undergraduate research as a way to enhance the college experience. To support this aspect of the university’s mission, particularly during a time when the college experience is diminished in some ways due to the pandemic, there is an optional collaborative class research project. Participation in the class research project can be substituted for the midterm research paper. Interested students will have the option to continue with the project as coauthors on any subsequent publication. Students must opt into participation by the end of the second week of class. Additional details concerning this project will be provided separately.

**POLICIES**

Applicable university policies are followed. These policies include but are not limited to matters concerning excused absence, class conduct, academic integrity, and disability accommodation. Module-specific quizzes and discussions are “time-dependent” under the university’s excused absence policy. As a result, consistent with university policy and depending on the circumstances, when an excused absence leads to a missed quiz or discussion I may identify a “suitable alternative” assignment. When an excused absence leads to a missed deadline with respect to the midterm paper, final paper, or discussion reflection, the deadline will be extended for the length of the excused absence with time tolled for weekends and university holidays. Absent excusal, the midterm paper, final paper, and discussion reflection may be turned in after the deadline with a 10% assignment grade reduction for each subsequent day the document is late, with time is tolled for weekends and university holidays. Unlike with excused absences, “suitable alternative” assignments will not be provided for missed “time-dependent” quizzes or discussions. Nonetheless, I understand that unavoidable circumstances sometimes necessitate absences that are not considered excused under university policy. As a result, multiple course design features account for unavoidable but unexcused absences. First, module-specific quizzes and discussions are available for one week. Second, the lowest two quiz grades are dropped when calculating the final grade. Third, discussion and participation are graded holistically based on semester performance rather than week to week.

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)
- **Campus Recreation** (physical wellness)
- **Career Services** (job postings and professional mentoring)
- **Counseling and Psychological Services** (mental health)
- **Disability Resource Center** (course accommodations, consultation, grievances)
- **Inclusion Center** (LGBTQA+, multicultural, and nontraditional student resources)
- **Pandemic** (seeking medical treatment, support, policies)
- **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)
- **Think, Care, Act** (assisting students 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)