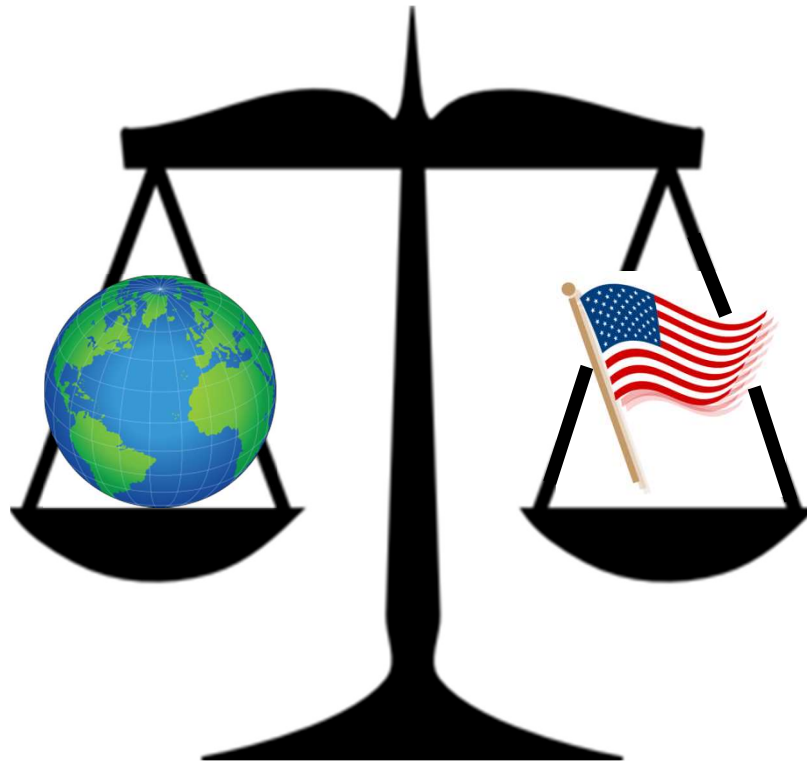


Law and the U.S. Constitution in Global History



Law 101, 4 Credits, Spring 2016
Fulfills GE Requirement for Citizenship in a Global Era

Class Meetings	Instructor	Office Hours
M/W 11-12, ___	Professor Sam Erman Law 438 serman@law.usc.edu	M/W 9-11 and by appt. Law 438
M 1:00 – 1:50, ___	[Name]	[Day, time]
T 3:00 – 3:50, ___	[Email]	[Place]
W 10:00 – 10:50, ___	[Name]	[Day, time]
W 1:00 – 1:50, ___	[Email]	[Place]

*Professor Erman's Assistant, Shirly Kennedy, is in Law 401, skennedy@law.usc.edu, 213.740.2569

COURSE DESCRIPTION

This is a course about law and constitutionalism within and beyond the United States. By examining key constitutional moments involving race, rights, and revolutions, students will explore how legal meaning changes over time. The reading is primarily that of lawyers: judicial opinions and

constitutions. Students will also engage visual media like movies and television programs as part of exploring the cultural reception of legal change and the role of popular culture in altering law.

One of the insights that the course seeks to convey is the extent to which legal ideas have crossed and recrossed borders. Here, the approach is both comparative and dynamic. It is comparative in asking how the U.S. Constitution differs from and resembles the organic charters of other nations (and groups of nations). Such questions clarify what choices the United States and other nations have made and illuminate alternatives that they could have – and still could – pursue. The approach is dynamic in recognizing that members of nations do not act in isolation as they construct constitutional systems. In interpreting the U.S. Constitution, U.S. jurists have turned to and altered many ideas with foreign pedigrees. In turn, as members of other polities elaborated their own constitutional schemes, they have borrowed and reworked aspects of the U.S. approach.

COURSE OBJECTIVES

This course aims to teach students legal and historical approaches to analyzing important social problems. Students will learn to read judicial opinions and legislative enactments and to use those sources as evidence for legal and historical arguments.

REQUIRED MATERIALS

All texts and media will be available on the blackboard site under content except as indicated below. Items listed below as available on Amazon streaming or Google Play are often available only at a cost, which is the student's responsibility. Students must purchase a TurningPoint RF polling "clicker" (register @Blackboard/Tools) and 3 blank 8.5" x 11" blue books for exams (give these to your TA in section by week 3). To reach material streamed through blackboard, navigate to the course page on blackboard, click Content on the left-hand side, click Streaming Media, and then scroll down to the relevant item.



EXPECTATIONS

Exams (35% of final grade)

The midterm (15%) and final (20%) examinations will cover assigned readings and media and material presented during lecture and section. They will be essay based. The midterm will cover all material in the course up to that point. The final exam will primarily but not exclusively cover material from after the midterm. You cannot pass the course unless you take both the midterm and the final exam. Lectures given during the drop-add period will be videotaped and made available online to all students.

Papers (40% of final grade)

Students will write one 5-7 page paper (15%) and one 7-10 page paper (25%). For each paper, students will be provided with several topics to choose among. Students may also design their own paper topic in consultation with their section leader. The hallmarks of an excellent paper are: (1) original and critical argument; (2) organized presentation of evidence and ideas; (3) evidence that supports the argument and clear explanations of why that is; (4) well-chosen, readable, error-free prose. In particular, a paper should have a clear thesis that is laid out in the first paragraph. Each subsequent paragraph should advance that argument. Each paragraph should also have a topic

sentence that foreshadows what the paragraph as a whole will say while also signaling how the paragraph advances the argument. Section leaders are available to help students at every stage of the writing process. The USC Dornsife Writing Center is also an excellent resource for student writers (<http://dornsife.usc.edu/writing-center/>). Papers will be graded down 1/3 of a grade for each day late. Thus, papers that would have received an A- if turned in on time will receive a B+ if turned in one day (up to 24 hours) late. You cannot pass the course unless you turn in both papers.

Lectures & Quizzes (5% of final grade)

Students are expected to attend each lecture and be on time. Quizzes occur at the beginning of each lecture (except for the first one) and focus on content from the prior lecture. Each quiz includes 2 multiple-choice questions that students will answer by clicker. Non-participating students receive a zero on the quiz. Participating students receive full credit if they get either question correct and half credit if they get neither question correct. Students' 8 lowest quiz scores are dropped. Students who join the class late will receive zeroes on the quizzes prior to their joining the course (that is, those quizzes will count against the 8 quizzes that they may drop).

Section (15% of final grade)

Students are expected to complete the assigned reading, media, and other assignments prior to section and to attend section consistently and on time. Each student may be late to section once without penalty and may also miss one section without penalty. All other tardiness and absence will result in reductions in students' section-participation scores. Those reductions will be smaller if students provide their section leaders with advance notice. Participation in section will be measured by students' preparation, the thoughtfulness of students' comments, how well students listen to and respond to each other, and performance on the assignments in weeks 4, 7, and 9.

Media & Blackboard (5% of final grade)

Each week, students will be assigned a film or other form of media. Except where otherwise noted below, students should screen the media online before section and post one comment each week to a relevant Blackboard discussion thread. Participation on Blackboard will be measured by the quality of students' posts, which are graded on a SAT/UNSAT/ZERO basis, and by performance on the assignment in week 8. Students will receive feedback on their comments if they post comments that are UNSAT. They will not receive notice of their grade or feedback if they post SAT work or fail to post comments.

Extra Credit

Student may receive extra credit by attending substantive events put on by the Center for Law, History and Culture or by the Law, History and Culture major. To receive credit, students must sign the attendance sheet for Law 101 distributed at the event and post a paragraph-long response on the blackboard discussion board to the forum corresponding to the event. Eligible events will be announced in advance. For each event, students will receive credit equivalent to one standard media assignment (i.e., viewing a media assignment and posting two comments is worth as many points as attending an extra credit event and posting a paragraph). There is no limit to how many extra credit events student may attend and post about. Extra credit is graded the same as other discussion-board comments: ZERO/UNSAT/SAT. TAs will contact students whose posting receive a grade of UNSAT.



STATEMENT ON ACADEMIC INTEGRITY

USC seeks to maintain an optimal learning environment. General principles of academic honesty include the concept of respect for the intellectual property of others, the expectation that individual work will be submitted unless otherwise allowed by an instructor, and the obligations both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are expected to understand and abide by these principles. *Scampus*, the Student Guidebook, contains the Student Conduct Code in Section 11.00, while the recommended sanctions are located in Appendix A: <http://www.usc.edu/dept/publications/SCAMPUS/gov/>. Students will be referred to the office of Student Judicial Affairs and Community Standards for further review should there be any suspicion of academic dishonesty. The review process can be found at <http://www.usc.edu/student-affairs/SJACS/>.

STATEMENT FOR STUDENTS WITH DISABILITIES

USC adheres to a non-discrimination policy; see http://www.usc.edu/dept/publications/cat2010/about_catalogue/nondiscrimination_policy.html

Any student requesting academic accommodations based on a disability is required to register with Disability Services and Programs (DSP) each semester. A letter of verification for approved accommodations can be obtained from DSP. Please be sure the letter is delivered to me (or to your TA) as early in the semester as possible. DSP is located in GFS 120 and is open 8.30 a.m.- 5.00 p.m., Monday through Friday. The phone number for DSP is (213) 740-0776.



TECHNOLOGY POLICIES

Blackboard

This course presumes that students have regular access to and facility with the internet, including the course website on Blackboard. The URL for the site is: <https://blackboard.usc.edu/>. To access it, you must activate your USC e-mail account, which you can do by visiting the ITS activation page at <http://www.usc.edu/firstlogin>. For assistance, contact Blackboard's 24 hour tech support online or at 213-740-5555.

Clickers

Clickers are required at all lectures. After you buy a Turningpoint RF polling device from the USC bookstore, log into Blackboard and register the device under the "Tools" menu for this course. Label your clicker with your contact information in case you misplace it. For help with clickers, please contact the manufacturer's technical support hotline and/or USC's Center for Scholarly Technology. If your clicker stops working and it's not the fault of the battery or a problem of being on the wrong "channel," you can exchange the clicker for a working one at the bookstore (not all of the employees there may be aware of this policy, so if you have a problem, please ask for Raymond McDermott).

Cell Phones, Laptops, Tablets, Etc.

In-class use of laptops, tablets, cell phones, and similar devices is prohibited except as part of an official disability accommodation. Two students will be chosen who will take lecture notes by laptop that will be posted to blackboard on a rolling basis.



I. THE IDEA OF A CONSTITUTION

- Week 1 1/9: Written & Unwritten Constitutions. Democracy, Popular Sovereignty, & Representation
1/11: Separation of Powers, Limited Government, and the Bill of Rights
Reading: Matherson v. Marchello, 473 N.Y.S.2d 998 (1984) (excerpts); Yonaty v. Mincolla, 945 N.Y.S.2d 774 (2012) (excerpts)
Media: *John Adams Miniseries*, Part I: Join or Die (HBO, 2008), available on Amazon streaming
- Week 2 1/16: MLK Day
1/18: The British Constitution in the Colonies
Reading: Declaration of Independence
Media: *Drums along the Mohawk* (Twentieth Century Fox 1939), available on Amazon streaming and Google Play
- Week 3 1/23: The British Constitution in the States

II. REVOLUTION, SLAVERY, & EMPIRE

- 1/25: The Constitutional Convention
Reading: U.S. Constitution as ratified (identify all provisions concerning citizenship or slavery); Derrick A. Bell, The Chronicle of the Constitutional Contradiction, in *And We Are Not Saved* (New York: Basic Books, 1987), 28-42
Media: *The Liberator* (Producciones Insurgentes & San Mateo Films, 2013), available on Amazon streaming and Google Play
- Week 4 1/30: Ratification and the Bill of Rights
2/1: French & Haitian Revolutions
Reading: Declaration of the Rights of Man and Citizen; Bill of Rights (and get a head start on next week's reading, which is substantial)
Media: Explore Danny Glover's attempt to make a biopic about Toussant L'Ouverture online. Some potential starting places:
- Stuart Jeffries, "Danny Glover: The Good Cop," *The Guardian*, online edition, 18 May 2012, <http://www.theguardian.com/film/2012/may/18/danny-glover-good-cop>

- Tambay A. Obenson, “Danny Glover’s Toussaint L’Ouverture Film that Never Was, but Could Still Be & Other Films on the Haitian Revolution,” Shadow and Act Blog, 31 Jul. 2015, <http://blogs.indiewire.com/shadowandact/danny-glovers-toussaint-louverture-film-that-never-was-but-could-still-be-other-films-on-the-haitian-revolutionary-20150731>
- Rebecca Frasquet, “Danny Glover Makes Black Film,” *News24*, Archives, 28 Jul. 2008, <http://www.news24.com/Entertainment/CelebNews/Danny-Glover-makes-black-film-20080725>
- Rory Carroll, “Venezuela Giving Danny Glover \$18m to Direct Film on Epic Slave Revolt,” *The Guardian*, online edition, 20 May 2007, <http://www.theguardian.com/world/2007/may/21/film.venezuela>

- Week 5 2/6: The Spanish Empire in the Age of Revolutions
 2/8: The Fugitive Slave Clause in Practice: the Fugitive Slave Law of 1793, Prigg v. Pennsylvania (1842), and the Compromise of 1850
 Reading: Solomon Northrup, *Twelve Years a Slave* (New York, Millery, Orton & Mulligan, 1855)
 Media: *Twelve Years a Slave* (2013), available on Amazon streaming and Google Play
- Week 6 2/13: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery I
 2/15: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery II
 Reading: *Scott v. Sandford*, 60 U.S. 393 (1857) (excerpts)
 Media: *Amistad* (1997), available on Amazon and Google Play
- Week 7 2/20: President’s Day
 No section this week to make time for library visit in week 10.
 Media: *Glory* (1989), available on Amazon and Google Play

III. RACE & RIGHTS AFTER SLAVERY

2/22: **Midterm**

Paper: Topics for 5-7 page paper distributed at the end of class, emailed to all enrolled students, and posted to blackboard site

HALFWAY MARK: By this point in the course, students will be able to gain a preliminary sense of how they are performing in the class. Each will have already received grades on 12 quizzes and a midterm.

- Week 8 2/27: Reconstruction
 3/1: Redemption?

Reading: 25 pages of your choosing from the *Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States*, vols. 1-13 (1872), available at

<http://onlinebooks.library.upenn.edu/webbin/metabook?id=insurrection1872>.

Assignment: Analyze one page from the above *Report*. Come to discussion prepared to discuss why you chose your page, who testifies, what events and other people it describes, and how those events and people fit into the broader themes of Reconstruction. Also, be prepared to discuss what role law does or does not play in these events.

Media: *Birth of a Nation* (1915), available at

<https://www.youtube.com/watch?v=I3kmVgQHIEY>

Week 9

3/6: Reconstruction before the Court

3/8: White Supremacists Seek Political Lockup

Reading: *Plessy v. Ferguson*, 163 U.S. 537 (1896)

Assignment: First paper (5-7 pages) due by email to section leader by midnight on Wednesday night

Paper: Paper topics for 7-10 page paper emailed to all enrolled students and posted to the blackboard site

Media: *Gone with the Wind* (1939), available on Amazon and Google Play

Week 10

3/20: Jurists Contemplate the Spanish American War & The *Insular Cases* of 1901

3/22: White-Supremacist Political Lockup Arrives

Reading: Brief of Petitioner, No. 225, *Gonzales v. United States*, 192 U.S. 1 (Nov. 30, 1903)

- Does the petitioner seek to be a citizen, or merely a national?
- What is the difference between a citizen and a national? Why does it matter?
- How do American Indians, African Americans, and the French Imperial experience figure into the argument?
- How are Puerto Ricans portrayed in the brief? To whom are they compared or analogized?

Media Assignment: Visit the library. The library staff will lay out a variety of primary sources involving race and law in the United States. Spend an hour to choose and examine one. Make a photocopy, scan, or photograph of the document. Bring the image to section and be prepared to discuss it there.

Week 11

3/27: *Gonzales v. Williams* (1904)

3/29: Empire and Reconstruction

Reading: Selected writings by Isabel Gonzalez; Luis Muñoz Rivera to Woodrow Wilson, Nov. 18, 1913, Maryland Branch of the National Archives and Records Administration, Record Group 350, Series 5A, File 26429-33; *A Civil Government for*

Porto Rico (Washington, D.C.: Government Printing Office, 1916), 15-16; *Government for Porto Rico* (Washington, D.C.: Government Printing Office, 1916), 62; 53 *Congressional Record* 7471-7473 (1916) (speech of Luis Muñoz Rivera); 54 *Congressional Record* 2250, 4170 (1917); Woodrow Wilson, Fourteen Points Speech (Jan. 8, 1918)

- How does Isabel Gonzalez the letter writer compare to Isabel Gonzales the litigant?
- What did the litigation mean to Gonzalez? What were her goals? How did she understand the result?
- Luis Muñoz Rivera is the leader of the dominant political party on the island. Woodrow Wilson was a Democrat who became president in 1913, which was the first time Democrats had taken control of Congress and the White House since the annexation of Puerto Rico.
- What were Muñoz Rivera's goals? Did they change over time? Did his views of Wilson and the Democrats change over time? How?
- What ideals animated Wilson's Fourteen Points Speech? What would have been the result of applying those ideals to Puerto Rico.

Media Assignment: Locate an artifact on ebay related to Reconstruction, its rollback, the Spanish American War, or the early years of the U.S. imperial turn. Post the listing to the discussion board along with a 300-word analysis. In your discussion, address the historical significance of the item, its price on ebay, the description of the item on ebay and what it seeks to convey about the historical context of the item, to whom the item is being marketed, and what the seller presumes about potential buyers' understandings about the historical context of the item.

IV. WAR & HUMAN RIGHTS

Week 12 4/3: World War I and the Anti-Colonial Feint

4/5: The Japanese and German Post-War Constitutions

Assignment: Final papers due by email to section leaders by midnight on Wednesday night

Reading: Preamble and Chapter I-III and IX-X of the Constitution of Japan (1947); Preamble and Arts. 1-19 of the Basic Law for the Federal Republic of Germany (1949); The Universal Declaration of Human Rights

- Knowing what you do about the U.S. Constitution, what is familiar in each of the three documents? What is unfamiliar in each of them?
- Where does U.S. influence seem greatest? Least?

Media: *Separate But Equal* (1991), part 1, available on blackboard

Week 13 4/10: The Universal Declaration of Human Rights

4/12: The Lead up to *Brown v. Board of Education* (1954)

Reading: *Brown v. Board of Education*, 347 U.S. 483 (1954)

- What were the issues in the various cases before the Court?
- How did the lower courts seem to be treating *Plessy v. Ferguson*? How did the Supreme Court treat *Plessy*?
- What evidence was there that segregation hurts African American children? Would the case against segregation have been weaker without that evidence?
- The case put off deciding on a remedy until later. What remedy do you think would be appropriate? Why?

Media: *Separate But Equal* (1991), part 2, available on blackboard

Week 14 4/17: Desegregation

V. AFFIRMATIVE ACTION

4/19: U.S. Affirmative Action I

Reading: *Fisher v. University of Texas at Austin*, ___ U.S. ___ (2013). Please complete the reading before the first lecture this week.

- This is a case where the Supreme Court applies strict scrutiny to an affirmative action program. What is the reason that the Court applies strict scrutiny instead of normal scrutiny? What is the test for strict scrutiny? What part of the test is at issue here?
- What is the role of diversity in the case? What is the role of the long history of U.S. discrimination in the United States?
- What is the specific doctrinal issue that this case settles? How does the decision alter the doctrinal landscape?

Media: "Affirmative Action: Diversity or Double-Standard," *60 Minutes* (2000), available at: <http://www.cbsnews.com/news/affirmative-action-diversity-or-double-standard/>; "True Colors – Racial Discrimination in Everyday Life 1/2," *Primetime Live* (Nov. 26, 1992), <http://www.youtube.com/watch?v=YyL5EcAwB9c>; & "True Colors – Racial Discrimination in Everyday Life 2/2," *Primetime Live* (Nov. 26, 1992), <http://www.youtube.com/watch?v=gOS3BBmUxvs>

Week 15 4/24: U.S. Affirmative Action II

4/26: Affirmative Action in India

Reading: *Roper v. Simmons*, 543 U.S. 551 (2005) (read all of the majority opinion (focusing on Part IV); Part II.D of O'Connor's dissent, and all of Scalia's dissent (focusing on Part III))

- How do each of the opinions envision the role of international law in Supreme Court opinion writing and decision making? To what extent are the divisions more illusory than real? Who has the better of the argument?

Media: *India Untouched* (2007), <http://www.cultureunplugged.com/play/5752/India-Untouched---Stories-of-a-People-Apart->

Week 16

Final Exam. It is the university and the course policy that all students must take the final exam at the assigned date and time.