

# **Law and the U.S. Constitution in Global History**

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## **Syllabus**

### **Course Description**

Law and the U.S. Constitution in Global History (Law 101) is a four-unit course. It is a course about law and constitutionalism primarily within the United States and in the global context. By examining key constitutional moments involving race, rights, and revolutions, students will explore how legal meaning changes over time. It covers the delineation of spheres of responsibility between three branches of the federal government, the federal government and the individual states, and the government and the individual. The reading is primarily that of lawyers: judicial opinions and constitutional text. This course fulfills GE Requirement for Citizenship in a Global Era.

### **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.

### **Instructor Information**

Instructor: Professor Scott Malzahn

Contact: [smmalzahn@gmail.com](mailto:smmalzahn@gmail.com)

If you wish to contact me, please email me with your question and your phone number. I will do my best to respond promptly either by providing a written response via email or by calling you to discuss the issue. I do not maintain office hours at the school.

### **Required Reading and Recommended Podcasts**

The syllabus below identifies the required reading that students are expected to complete in advance of each class. The majority of the assigned reading comes from the following two books, which students are expected to purchase from the bookstore:

O'Brien, David, "Constitutional Law and Politics: Struggles for Power and Governmental Accountability," Vol. 1 (10th ed. 2017)

O'Brien, David, "Constitutional Law and Politics: Civil Rights and Civil Liberties," Vol. 2 (10th ed. 2017)

In addition, I may post additional reading materials on Blackboard, which students are expected to read in advance of class. Finally, students are encouraged (not required) to listen to certain podcasts (e.g., “*More Perfect*”, “*We the People*”) on constitutional topics that we discuss in class.

### **Class Format**

Class generally will consist of a lecture combined with in-class discussion. On occasion, guest speakers may appear for a portion or all of a class. Please do not hesitate to ask questions or contribute to a discussion! I strongly believe that everyone enjoys a class more where many (not just a few) students actively participate in class by sharing their ideas and asking questions. To encourage participation, in-class participation will constitute 20% of your final grade.

### **Class Grade**

The course grade will be based on the following three components:

- **In Class-Participation (20%):** Students will earn points towards their final grade based on how they contributed to in-class discussions. This does not mean that students who speak more will necessarily earn more points than students who speak less; each student’s in-class participation will be evaluated based on both the quantity and *quality* of their participation. It is particularly important that students contribute to class discussion in a meaningful and respectful manner when guest speakers attend. Please do not arrive late to class. If this happens on multiple occasions, it may negatively affect your participation grade.
- **Paper (40%):** Students are required to write a typewritten paper between 10-15 pages about a recent event or issue in the news that has important constitutional dimensions. Each student must prepare a one-paragraph summary that describes the proposed topic and thesis to obtain approval from me to write on that subject. This one-paragraph summary is due by **Tuesday, May 29**. Once approval is given, the student may write on that topic. The hallmarks of an excellent paper are: (1) a narrow thesis that allows a student to explore a discrete topic in an in-depth and comprehensive manner; (2) original and critical argument based on a constitutional and historical perspective; (3) organized presentation of evidence and ideas; (4) evidence that supports the argument and clear explanations of why that is; (5) 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. Papers are due at the start of class on **Thursday, July 12**. 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 the paper.
- **Final Exam (40%):** An in-class final examination will constitute 40% of your final grade. The exam will be an essay-format and will be open-book and open-note. The length of the exam will be three hours.

## **Class Schedule & Reading Assignments**

The first week of this course will take place in Room 107. The remainder of classes will be held in Room 130. I reserve the right to reschedule any of the classes below to a different date due to other work commitments. I will do my best to schedule other commitments around this class, but on occasion cannot do so. I appreciate your understanding and patience.

### **Day 1: Thursday, May 17**

#### **The Founding Era**

- 13 Original Colonies
- American Revolution
- Articles of Confederation
- Constitutional Convention
- Bill of Rights
- Methods of Constitutional Interpretation

### **Day 2: Tuesday, May 22**

#### **The Founding Era (Judicial Branch)**

- John Marshall's Supreme Court
- Marbury v. Madison (judicial review)

#### Reading

- The Supreme Court, Judicial Review, and Constitutional Politics (Vol 1., p. 23-27)
- Establishing and Contesting the Power of Judicial Review (Vol. 1, p. 27-38)
- Marbury v. Madison (1803) (Vol. 1, p. 45-54)

### **Day 3: Thursday, May 24**

#### **The Founding Era (Congressional Branch)**

- John Marshall's Supreme Court (cont.)
- Congress' Enumerated Powers
- Necessary and Proper Clause
- Commerce Clause

#### Reading

- Congress: Legislative, Taxing and Spending Powers (Vol. 1, p. 512-514)
- The Classic View of Congress's Legislative Powers (Vol. 1, p. 515-519)

- McCulloch v. Maryland (1819) (Vol. 1, p. 520-531)
- Gibbons v. Ogden (1824) (Vol. 1, p. 531-536)

#### **Day 4: Tuesday, May 29**

##### **States' Rights, Slavery & Civil War**

- The Theory of Dual Federalism
- Slavery and the Constitution
- Civil War (1861-1865)
- Civil Rights Amendments (1865-1870)
- The Death of the Privileges & Immunities Clause

##### Reading

- The States and American Federalism (Vol. 1, p. 656-667)
- Racial Discrimination and State Action (Vol. 2, p. 1332-1346)
- Plessy v. Ferguson (1896) (Vol. 2, p. 1368-1372)
- Dred Scott v. Sandford (1857) (Vol. 2, p. 1348-1360)
- The Slaughterhouse Cases (1873) Vol. 2, p. 263-267)
- The Civil Rights Cases (1883) (Vol. 2, p. 1361-1367)

#### **Day 5: Thursday, May 31**

##### **The Substantive Due Process Pendulum**

- The Rise And Fall of the Liberty of Contract
- The Rise of Fundamental Due Process Rights

##### Reading

- The Development and Demises of a "Liberty of Contract" (Vol. 1, p. 977-989)
- Lochner v. New York (1905) (Vol. 1, p. 998-1004)
- West Coast Hotel Co. v. Parrish (1937) (Vol. 1, p. 1007-1010)
- The Nationalization of the Bill of Rights (Vol. 2, p. 307-311)
- The Selective Nationalization of Guarantees of the Bill of Rights Plus Other Fundamental Rights (Vol. 2, p. 312-321)

#### **Day 6: Tuesday, June 5**

##### **The Great Depression and Expansion of Congressional Power Under the Commerce Clause**

- Recap of Dual Federalism in the 1800s and early 1900s
- The Great Depression and FDR's "New Deal"

- “The Switch-in-Time that Saved Nine”
- The Commerce Clause as a Tool to Combat Racial Discrimination

#### Reading

- From Legal Formalism to the New Deal Crisis (Vol. 1, p. 537-543)
- From the New Deal Crisis to the Administrative State (Vol. 1, p. 553-62)
- President Roosevelt’s Radio Broadcast, March 9, 1937 (Vol. 1, p. 57-64)
- National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937) (Vol. 1, p. 559-566)
- Wickard v. Filburn (1942) (Vol. 1, p. 570-573)
- Heart of Atlanta Motel, Inc. v. United States (1964) (Vol. 1, p. 574-584)

### **Day 7: Thursday, June 7**

#### **Equal Protection and the Civil Rights Movement**

- Racial Segregation
- The Supreme Court’s Liberal Interpretation of the State Action Doctrine
- The Civil Rights Act of 1964
- The Rise of Equal Protection

#### Reading

- Racial Discrimination and State Action (Vol. 2, p. 1332-1346)
- Shelley v. Kraemer (1948) (Vol. 2, p. 1372-1374)
- The Equal Protection of the Laws (Vol. 2, p. 1322-1331)
- Brown v. Board of Education of Topeka, Kansas (Brown I) (1954) (Vol. 2, p. 1391-1395)
- Inside the Court on Brown I (Vol. 2, p. 1396-1402)

### **Day 8: Tuesday, June 12**

#### **The Right of Privacy**

- The (Failed) Equal Rights Amendment (first proposed 1921)
- Equal Protection as a Legal Solution: Gender Discrimination
- Substantive Due Process Privacy as a Legal Solution: The Right of Privacy and Bodily Integrity

#### Reading

- Nonracial Classifications and the Equal Protection of the Laws (Vol. 2, p. 1496-1498)
- United States v. Virginia (1996) (Vol. 2, p. 1514-1525)
- The Right of Privacy (Vol. 2, p. 1224-1227)
- Privacy and Reproductive Freedom (Vol. 2, p. 1228-1239)
- Griswold v. Connecticut (1965) (Vol. 2, p. 341-352)

## **Day 9: Thursday, June 14**

### **Gay Rights Movement**

- Early approaches to Sexual Orientation
- Overturning Judicial Precedent
- Justice Kennedy's Gay Legacy

#### Reading

- Discrimination against the LGBTQ Community (Vol. 2, p. 1525-1527)
- Inside the Court: Vote Switching in *Bowers v. Hardwick* and Justice Powell's April 8, 1986 Memorandum (Vol. 2., p. 1293-1296)
- *Lawrence v. Texas* (2003) (J., Kennedy) (Vol. 2, p. 1296-1307)
- *United States v. Windsor* (2013) (J., Kennedy) (Vol. 2, p. 1538-1546)
- *Hollingsworth v. Perry* (2013) (Vol. 2, p. 176-180)
- *Obergefell v. Hodges* (2015) (J., Kennedy) (Vol. 2, p. 1546-1571)

## **Day 10: Tuesday, June 19**

### **A Revival of Religious Liberty**

- Religious Liberty and the Culture Wars
- Constitutional Legal Tools: Establishment, Free Exercise and Free Speech Clauses

#### Reading

- Article(s) to be distributed on Blackboard
- *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission* (2018) (to be distributed on Blackboard)

## **Day 11: Thursday, June 21**

### **A More Conservative Court Under the Commerce Clause Today**

- Modern-Three Part Test
- A Distinction between Economic and Personal Liberty Interests
- The Strength of *Stare Decisis*
- A Distinction between Commercial Activity and Inactivity

#### Reading

- *United States v. Lopez* (1995) (Vol. 1, p. 582-594)
- *Gonzalez v. Raich* (2005) (Vol. 1, p. 620-627)
- *National Federation of Independent Business v. Sebelius* (2012) (Vol. 1, p. 639-655)

## **Day 12: Tuesday, June 26**

### **Presidential Power, War and National Security**

- President's Three Hats
- Express and Implied Powers of the Presidency
- Lincoln and the suspension of habeas corpus during the Civil War (1961-1965)
- FDR and internment of Japanese-Americans during World War II (1939-1945)
- War Powers Resolution (1973)
- Bush and the Second Iraq War (2003-2011)

#### Reading

- Office and Powers: The Two Presidencies (Vol. 1, p. 227-232)
- As Commander in Chief and in Foreign Affairs (Vol. 1, p. 234-236)
- War-Making and Emergency Powers (Vol. 1, p. 272-277)
- Ex Parte Milligan (1866) (Vol.1, p. 291-297)
- Korematsu v. United States (1944) (Vol. 1, p. 297-305)

## **Day 13: Thursday, June 28**

### **Presidential Power, War and National Security**

- Congress' relationship with the President
- Truman and the exercise of power over steel mills during the Korean War (1950-the present)
- Nixon and the Pentagon Papers (1971)

#### Reading

- The President as Chief Executive in Domestic Affairs (Vol. 1, p. 339-340)
- National Security and Inherent and Emergency Powers (Vol. 1, p. 340-344)
- Youngstown Sheet & Tube Co. v. Sawyer (1952) (Vol. 1, p. 345-358)
- New York Times Co. v. United States (1971) (Vol. 1, p. 359-368)

## **Day 14: Tuesday, July 3**

### **Trump's Travel Ban and the Establishment Clause**

- The Intersection between Presidential Power and Individual Rights
- Constitutional Tools: Due Process, Equal Protection and Establishment Clause

#### Reading

- Article(s) to be distributed on Blackboard
- Trump v. Hawaii (2018) (to be distributed on Blackboard)

**Day 15: Thursday, July 5**

**Presidential Accountability and Immunities**

- Presidential and Congressional Powers
- Significant Judicial Precedent
- Trump's Legal Troubles

Reading

- Accountability and Immunities (Vol. 1, p. 454-460)
- United States v. Nixon (1974) (Vol. 1, p. 461-469)
- Clinton v. Jones (1997) (Vol. 1, p. 470-474)
- Investigatory, Contempt and Impeachment Powers (Vol. 1, p. 498-501)
- Constitutional History: Impeachment Trials (Vol. 1, p. 510-511)

**Day 16: Tuesday, July 10**

**Right to Bear Arms**

- American Revolutionary War (1775-1793)
- Key Moments in History
- The Present

Reading

- Articles to be distributed on Blackboard
- District of Columbia v. Heller (2008) (hand-out posted on Blackboard)

**Day 17: Thursday, July 12**

**Guest Speaker(s) / Other Topics**

- TBD

**Day 18: Tuesday, July 17**

**Guest Speaker(s) / Other Topics**

- TBD



**Day 19: Thursday, July 19**

**Guest Speaker(s) / Other Topics**

- TBD

**Day 20: Tuesday, July 24**

**Review Session**