

Law and the U.S. Constitution in Global History



Law 101, 4 Credits, Spring 2020
Fulfills GE Requirement for Citizenship in a Global Era



Class Meetings	Instructor	Office Hours
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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 will be provided with bluebook for exams. 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. Students must have access to the Poll Everywhere app when in lecture.

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. The hallmarks of an excellent paper are: (1) original and critical argument; (2) organized presentation of evidence and ideas; (3) evidence

drawn from the course materials 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.

Special Assignments (5% of final grade)

Weeks 8, 10, and 11 have special assignments. For each, an image or write up must be posted to blackboard. This is done by going to the blackboard site, selecting “Course Tools” (not “Tools”), then from the dropdown menu selecting “Discussion Board,” then navigating to the proper week and posting. Special are graded on a SAT/UNSAT/ZERO basis. A student will receive feedback if and only if a posted paragraph is UNSAT. Students will not receive notice of their grade or feedback if they post SAT work.

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, and how well students listen to and respond to each other. Students who add the course once the term has started are not responsible for attending section prior to enrolling in the course.

Lecture (5% of final grade)

Students will have access to lecture notes and PowerPoint slides before lecture. Students are expected to study these and to complete other assigned reading and media prior to lecture (except where noted otherwise below). Lecture is designed to help students consolidate and master this material. Students will be called on individually and will be asked to answer questions collectively using the Poll Everywhere app. Students are expected to attend lecture consistently and on time. Everyone begins with full credit on the lecture grade. Students who make good-faith efforts to grapple with the material when called upon will retain full credit. Students who are repeatedly unprepared will receive markdowns. Each student may be late to lecture once without penalty and may also miss one lecture without penalty. Because students cannot answer questions when they are not present, all other tardiness and absence will lower their lecture grades. Those reductions will be smaller if students provide their section leaders with advance notice. Students who add the course once the term has started are not responsible for attending lecture prior to enrolling in the course. Attendance is taken through the Poll Everywhere app. It is a form of academic dishonesty to participate in the attendance poll when you are not in attendance at lecture.

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 post a paragraph-long response on the blackboard discussion board to the “Extra Credit” forum. The schedule of events for the Center for Law, History and Culture is available at https://gould.usc.edu/centers/clhc/events/feature/featured_workshops.cfm. Other eligible events will be announced in advance. Students may also receive extra credit by watching an optional media assignment and posting a paragraph-long response. For each event/optional media assignment, students will receive a 0.5% boost in their final grade. There is no limit on extra credit. Extra credit is graded on a SAT/UNSAT/ZERO basis. A student will receive feedback if and only if a posted paragraph is UNSAT. Students will not receive notice of their grade or feedback if they post SAT work. To receive credit, extra credit must be turned in within one week of the relevant event or during the week of the relevant optional media assignment.

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.

STATEMENT ON ACADEMIC INTEGRITY

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

STATEMENT ON SUPPORT SYSTEMS

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

<https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class.

<https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC – <https://diversity.usc.edu/>

Tab for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students

STATEMENT ON LEARNING EXPERIENCE EVALUATIONS

“Learning Experience Evaluations will be conducted in discussion sections during the final week of classes. This will be your opportunity to provide feedback about your learning experience in the class. This feedback helps the instructor determine whether students are having the intended learning experiences for the class. It is important to remember that the learning process is collaborative and requires significant effort from the instructor, individual students, and the class as a whole. Students should provide a thoughtful assessment of their experience, as well as of their own effort, with comments focused on specific aspects of instruction or the course. Comments on personal characteristics of the instructor are not appropriate and will not be considered. For this feedback to be as comprehensive as possible, all students should complete the evaluation.”

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. For every assignment turned in, students are responsible for refreshing the page and confirming that the assignment has posted. An assignment that never posted will receive no credit.

Cell Phones, Laptops, Tablets, Etc.

Except as needed to use the Poll Everywhere app, in-class use of laptops, tablets, cell phones, and similar devices is prohibited except as part of an official disability accommodation.

I. THE IDEA OF A CONSTITUTION

- Week 1 C1: 1/13: Written & Unwritten Constitutions. Democracy, Popular Sovereignty, & Representation
- C2: 1/15: Separation of Powers, Limited Government, and the Bill of Rights
- Reading: Matherson v. Marchello, 473 N.Y.S.2d 998 (by Supreme Court of N.Y., Appellate Division, 1984) (excerpts); Yonaty v. Mincolla, 945 N.Y.S.2d 774 (by Supreme Court of N.Y., Appellate Division, 2012) (excerpts); lecture notes
- What is at issue in these cases? How and under what reasoning do the courts resolve the issue(s)?
 - Are the decisions fair? Why or why not? How could the decisions be improved?
- Media: *John Adams Miniseries*, Part I: Join or Die (by HBO, United States, 2008), available on Amazon streaming
- Week 2 1/20 MLK Jr. Day
- C3: 1/22: The British Constitution in the Colonies
- Reading: Declaration of Independence (by Thomas Jefferson on behalf of the Continental Congress, Philadelphia, 1776) ; lecture notes
- What is the purpose of the Declaration of Independence? How does it justify that purpose?
 - Is the Declaration of Independence law?
- Optional Media: *Drums along the Mohawk* (Twentieth Century Fox 1939), available on Amazon streaming and Google Play
- Week 3 C4: 1/27: The British Constitution in the States
- C5: 1/29: Ratification and the Bill of Rights
- Reading: U.S. Constitution as ratified (by delegates to the constitutional convention and ratified by the United States, United States, 1787–1788) (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; lecture notes
- What does the Constitution say about slavery? Why does it address slavery in this way?
 - What does the Constitution say about citizenship? Why does it address citizenship in this way?

Media: *The Liberator* (by Producciones Insurgentes & San Mateo Films, Venezuela, 2013), available on Amazon streaming and Google Play

II. REVOLUTION, SLAVERY, & EMPIRE

Week 4 C6: 2/3: French & Haitian Revolutions

C7: 2/5: The Spanish Empire in the Age of Revolutions

Reading: Declaration of the Rights of Man and Citizen (by the French National Constituent Assembly, France, 1789); Bill of Rights (by James Madison and Congress, United States, 1789–1791); lecture notes (and get a head start on next week's reading, which is substantial)

- How does the Declaration of the Rights of Man and Citizen compare and contrast with the Bill of Rights?

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, <https://www.indiewire.com/2015/07/danny-glovers-toussaint-louverture-film-that-never-was-but-could-still-be-other-films-on-the-haitian-revolutionary-235064/>
- 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 C8: 2/10: The Fugitive Slave Clause in Practice: the Fugitive Slave Law of 1793, *Prigg v. Pennsylvania* (1842), and the Compromise of 1850

C9: 2/12: Illegal Enslavement, Jus Soli Citizenship, *Dred Scott*, and Federal Power over Slavery I

Reading: Solomon Northrup, *Twelve Years a Slave* (New York, Millery, Orton & Mulligan, 1855); lecture notes

- How is slavery depicted by Northrup?
- *Twelve Years a Slave* was published as propaganda for the abolitionist movement. How does this affect your understanding of the text?
- How is the law depicted by Northrup? Does the law protect slavery? Does the law protect free people?

Media: *Twelve Years a Slave* (by Fox Searchlight Pictures, United States, 2013), available on Amazon streaming and Google Play

Week 6 2/17 President's Day
C10: 2/19: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery II
Reading: *Scott v. Sandford*, 60 U.S. 393 (by U.S. Supreme Court, United States, 1857) (excerpts); lecture notes (read notes for C10 and C11)

- What are the two main issues in the case? How does the Court come out on each issue? Why?
- How does the Court frame the issue of citizenship and how does this influence the Court's analysis?
- How does the Court define citizenship? What sources does the Court use in determining this definition? Does the Court's analysis make sense?

Media: *Amistad* (by DreamWorks Pictures, United States, 1997), available on Amazon and Google Play

Week 7 C11: 2/24: Midterm Review Session
2/26: **Midterm**
No section this week to make time for library visit in week 10.
Optional Media: *Glory* (1989), available on Amazon and Google Play
Paper: Topics for 5-7 page paper distributed following midterm, emailed to all enrolled students, and posted to blackboard site

III. RACE & RIGHTS AFTER SLAVERY

Week 8 C12: 3/2: Reconstruction
C13: 3/4: 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 (by U.S. Congress, Washington, D.C., 1872), available at <http://onlinebooks.library.upenn.edu/webbin/metabook?id=insurrection1872>; lecture notes

- In what ways are the KKK empowered by the law?
- What tools and methods are used by the KKK to exercise influence? What does this signify about the nature of social and legal change?

Assignment: Analyze one page from the above *Report*. Post a copy of the page to the relevant discussion board on blackboard. 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* (by D.W. Griffith, United States, 1915), available at <https://www.youtube.com/watch?v=I3kmVgQHIEY>

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 a grade on the midterm.

Week 9

C14: 3/9: Reconstruction before the Court; Introduction to Library Assignment

C15: 3/11: White Supremacists Seek Political Lockup

Reading: *Plessy v. Ferguson*, 163 U.S. 537 (by U.S. Supreme Court, United States, 1896); lecture notes

- In what ways is the Court's decision based on the Constitution?
- What is the difference between social rights and political/civil rights? Why does this matter to the Court?
- In what ways does Justice Harlan's dissent embrace the notion of a "color-blind" constitution that bars officials from noting race? In what ways does Harlan's dissent suggest that officials must sometimes be aware of the realities of race in carrying out their jobs?

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* (by David Selznick, United States, 1939), available on Amazon and Google Play

-----**SPRING BREAK**-----

Week 10

C16: 3/23: Jurists Contemplate the Spanish American War & the *Insular Cases* of 1901

C17: 3/25: White-Supremacist Political Lockup Arrives

Reading: Brief of Petitioner, No. 225, *Gonzales v. United States*, 192 U.S. 1 (by Frederic Coudert, United States, Nov. 30, 1903); lecture notes

- 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: 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 relevant 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.

Week 11

C18: 3/30: *Gonzales v. Williams* (1904)

C19: 4/1: Empire and Reconstruction

Reading: Selected writings by Isabel Gonzalez (New York, early 20th century); Luis Muñoz Rivera to Woodrow Wilson, Nov. 18, 1913 (United States), Maryland Branch of the National Archives and Records Administration, Record Group 350, Series 5A, File 26429-33; House of Representatives Committee on Insular Affairs, *A Civil Government for Porto Rico* (Washington, D.C.: Government Printing Office, 1916), 15-16; Senate Committee on Pacific Islands and Porto Rico, *Government for Porto Rico* (Washington, D.C.: Government Printing Office, 1916), 62; 53 *Congressional Record* 7471-7473 (1916) (speech of Luis Muñoz Rivera, Washington, D.C.); 54 *Congressional Record* 2250, 4170 (by Congress, Washington, D.C., 1917); Woodrow Wilson, Fourteen Points Speech (United States, Jan. 8, 1918); lecture notes

- 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: 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. Post a copy of the image to the relevant discussion board on blackboard. Bring the image to section and be prepared to discuss it there.

IV. WAR & HUMAN RIGHTS

Week 12 C20: 4/6: World War I and the Anti-Colonial Feint

C21: 4/8: 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 (by U.S. military officials and the Japanese people, Japan, 1947); Preamble and Arts. 1-19 of the Basic Law for the Federal Republic of Germany (by the German people, Germany, 1949); The Universal Declaration of Human Rights (by the United Nations, Paris, 1948); lecture notes

- 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?

Optional Media: *Separate But Equal* (1991), part 1,
<https://www.youtube.com/watch?v=aV2MTXTkpm>

Week 13 C22: 4/13: The Universal Declaration of Human Rights

C23: 4/15: The Lead up to *Brown v. Board of Education* (1954)

Reading: *Brown v. Board of Education*, 347 U.S. 483 (by U.S. Supreme Court, United States, 1954); lecture notes

- 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?

Optional Media: *Separate But Equal* (1991), part 2,
<https://www.youtube.com/watch?v=wLX3mNmSxtY>

Week 14 C24: 4/20: Desegregation

V. AFFIRMATIVE ACTION

C25: 4/22: U.S. Affirmative Action I

Reading: *Fisher v. University of Texas at Austin*, ___ U.S. ___ (by U.S. Supreme Court, United States, 2013); lecture notes for April 15.

- 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: "True Colors – Racial Discrimination in Everyday Life," *Primetime Live* (by ABC, United States, Nov. 26, 1992),

https://www.youtube.com/watch?v=oi_DF9Iu2xA&t=6s

- Whom does affirmative action help? To what degree?
- Whom does affirmative action harm? To what degree?
- To what extent has racism and racial discrimination changed across the twentieth century? What continuities remain?
- Does the moral or legal valence of racial discrimination change with the race of the victim, the motive of the person engaging in the differential treatment, or the impact of the differential treatment on society?

Week 15

C26: 4/27: U.S. Affirmative Action II

C27: 4/29: Final Exam Review

Reading: *Roper v. Simmons*, 543 U.S. 551 (by U.S. Supreme Court, United States, 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)); lecture notes for April 24

- 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?

Students should bring a device on which to complete Learning Experience Evaluations at the start of section and at the start of Wednesday's lecture

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.