

USC Gould

School of Law

LAW 200: Law and Society

Fall 2020 - Mondays and Wednesdays, 12:00-1:20 pm - Zoom

Instructor: Mark E. Haddad: mhaddad@law.usc.edu or markhadd@usc.edu

Office Hours: Monday and Wednesday, 1:30-2:30 pm, in my Zoom room, and by appointment.

Teaching Assistants:

Daniel Lim: daniel.lim.2021@lawmail.usc.edu – office hours: Mon. 2:00-3:00 pm

Olivia Treister: olivia.treister.2021@lawmail.usc.edu – office hours: Wed. 3:00-4:00pm

Michael Weinstein: michael.weinstein.2021@lawmail.usc.edu – office hours: Mon. 3:00-4:00pm

Prerequisite(s); co-requisite(s), or recommended preparation: None. **Units:** Four (4)

All class meetings are over **USC Zoom**. **NB: To access the link for class, please go first to usc.zoom.us and then “Sign In” using the “SSO” option; after that, access the zoom link for each individual class meeting through Blackboard.**

Class is Mon. and Wed. from 12:00 to 1:20pm. Discussion sections meet once per week:

02620R: M 2:00-2:50pm Michael Weinstein 02612R: W 2:00-2:50pm Michael Weinstein

02608R: M 2:00-2:50pm Olivia Treister 02662R: W 2:00-2:50pm Olivia Treister

02606R: M 3:00-3:50pm Olivia Treister 02611R: W 3:00-3:50pm Michael Weinstein

Course Description

We will approach law and society through landmark Supreme Court decisions involving civil rights and liberties. How do these decisions affect our lives? What do key words in the Constitution mean? Why do the justices disagree about the meaning, and what principles, if any, constrain their interpretation? Do we help determine what the Constitution means? Should we?

We will tackle such questions not by reading *about* judicial decisions, but by carefully reading the actual majority and dissenting opinions themselves. We will consider whether certain rights are protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment (that States will neither “deprive any person of life, liberty, or property without due process of law” nor deny to any person “the equal protection of the laws.”), and by the Eighth Amendment’s prohibition against “cruel and unusual punishment.” We will assess the historical and social context in which these seminal cases arose and the litigants, lawyers, and judges who lived those cases and whose vitality is part of our constitutional history.

Having completed the course, students should be able to read cases on their own, to apply the principles of constitutional interpretation to undecided constitutional questions, and to appreciate the role of principled judicial decision-making in a society governed by the rule of law.

Learning Objectives

This course has three principal learning objectives:

- 1) Analyze decisions of the U.S. Supreme Court, so that you can accurately identify:
 - a. The question(s) presented;
 - b. The holding;
 - c. The principal arguments supporting the holding, and those supporting a dissent;
 - d. The extent to which a prior decision supports the holding or a dissent.

- 2) In the context of decisions by the U.S. Supreme Court, identify and evaluate principles of constitutional interpretation, including:
 - a. Plain meaning of the text;
 - b. Structure of the Constitution;
 - c. Framers' understanding (original meaning);
 - d. Contemporary meaning of the text;
 - e. Precedent/stare decisis;
 - f. Policy and practical implications.

- 3) Identify, with respect to a question that has not yet been decided by the Supreme Court:
 - a. What important questions would a judge expect each side to answer?
 - b. What are the best constitutional arguments in support of each side?
 - c. How do principles of constitutional interpretation affect the answer?

Required Reading

- Each class has a specific reading assignment, listed below and posted on Blackboard.

Course Requirements and Evaluation

1. Attend each class meeting punctually.
2. Complete the assigned reading before class begins.
3. Complete in-class and homework assignments earnestly and punctually.
4. Contribute to class discussion with sincerity and courtesy.
5. Complete two analytical papers. The first (approximately 3 pages) is due Monday, September 21 (for students in Wednesday sections), or Tuesday, September 22 at 11:00 am (for students in Monday sections) The second paper (approximately 7 pages) is due Monday, November 9, at 11:00 am (same date for all students). Papers submitted late will receive a 10% deduction or more at instructor's discretion. Please be on time.
6. Complete both the midterm (September 30) and the final exam (November 20).
7. See below for information on grading and assessments.

Description of Assessments

The first paper (approximately 3 pages) will address the relationship between the Supreme Court's decisions in *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992). This analytical paper that will provide you an opportunity to demonstrate mastery of the first set of learning objectives. The due date for this paper depends on whether the student is in a Monday or a Wednesday discussion section; see weekly schedule and Blackboard for the dates and details.

The second paper (approximately 7 pages) will ask you to resolve the central legal question in *Gary B. v. Snyder* – a question not yet answered by the U.S. Supreme Court – which is whether States are bound, by the Due Process Clause, to provide all children with the opportunity at school to acquire literacy. This paper will be written in the form of a judicial opinion, and will provide you an opportunity to demonstrate mastery of all three sets of learning objectives. Papers are submitted through Turn-it-in; to use Turn-it-in, please (1) save and close your file; (2) quit your word processing application; (3) use Firefox to upload your file to Turn-it-in; and (4) save the digital receipt you receive from Turn-it-in that confirms your submission.

The midterm and final examinations each will consist of 10 multiple choice questions and one essay. Each will be structured to allow you to demonstrate mastery of one or more of the learning objectives. Essays are submitted through Turn-it-in. Additional information about the examinations will be provided during class.

Homework and in-class activities prepare you for these other assessments. Written homework assignments, including discussion board contributions, are graded on a 3-point scale: 3 is timely and complete; 2 is timely but incomplete, or untimely but complete; 1 is untimely and incomplete; 0 is not submitted. In-class projects (break-out groups) are graded on a 2-point scale: 2 is complete; 1 is incomplete; 0 is not submitted. More information and links for submitting each homework assignment, discussion board, and in-class project will be provided in Blackboard and, where applicable, in class.

Grading Weight

Assignment	Percentage of Final Grade
Homework and in-class work	25%
Paper 1: (3 pages)	10%
Mid-Term: Multiple Choice	10%
Mid-Term: Essay	10%
Paper 2: (7 pages)	20%
Final Exam: Multiple Choice	10%
Final Exam: Essay	15%
Total	100

Course-Specific Policies

1. Complete each day's assigned reading and homework before class.
2. Arrive on time: we start at 12:00 noon sharp.
3. We prefer and expect, but cannot require, your web camera to be on throughout class.
4. Mute your microphone at all times, unless called upon to ask or answer a question.
5. Listen carefully and respectfully to what others say, especially when you disagree.
6. Contribute constructively to class discussion and break-out rooms.
 - a. Speak and listen with sincerity, courtesy, and respect.
 - b. Make one point at a time.
 - c. Trust that others mean well and wish to learn.
 - d. Be open to changing your mind.
7. Questions during class? You may raise them either:
 - a. By clicking the "raise hand" feature in Zoom; I will do my best to call on you at the next appropriate break; or
 - b. By typing your question into the "chat" box.
 - i. Chat questions must be directed to "Everyone"; the private chat button is not available during class.
 - ii. The TAs will monitor the chat, and will respond either in the chat box or by raising them for discussion in class
8. Please do not text during class. Please avoid multi-tasking.
9. Late submissions will receive a deduction or no credit, at the instructor's discretion. Please notify your TA of any scheduling conflicts *before* the due date; we recognize that these are challenging times.
10. If you will miss a class, please notify your TA before class begins and provide the explanation. Excused absence is at the instructor's discretion. Classes are recorded and may be reviewed afterwards, but breakout rooms are not recorded and missed breakout assignments may be excused but not made up. Please do your best not to miss class.

Weekly Schedule

Week	Topics in Class	Required Reading	Written Homework and Assignments
Week 1	<p>Class is M/W 12:00-1:20 pm</p> <p>Aug. 17: Introduction: class goals and expectations; personal goals.</p> <p>The social contract.</p>	<p>Reading must be completed <u>before class</u> on the date shown.</p> <p>Aug. 17:</p> <ul style="list-style-type: none"> • J. Locke, Second Treatise on Government, paras. 95-99 (1689); • Trevor Noah, The Daily Social Distancing Show, May 29, 2020 https://T-Noah (5-29-20) 	<p>Written Homework is due no later than <u>11:00 a.m.</u> on the date shown.</p> <p>Aug. 17: no written work due; but do try to read the (very short) excerpt of Locke and to listen to the Trevor Noah clip (all 18 minutes if you can, or from 5:40 to 12:25 if time is short).</p>

	<p>Aug. 19:</p> <p>The U.S. Constitution: Majestic generalities and the Judicial role.</p>	<p>Aug. 19:</p> <ul style="list-style-type: none"> • The Constitution of the United States. Focus especially upon: <ul style="list-style-type: none"> - Article III; Article VI - Amendments I, IV, VIII, IX, XIII, XIV, XV, XIX. • The Federalist Papers, No. 78 (Hamilton) (1788); 	<p>Aug. 19:</p> <ul style="list-style-type: none"> • If Congress enacts and the President signs a law, and then the Supreme Court rules that the law conflicts with the Constitution, is the law still valid? Why or why not? Does Federalist No. 78 address this issue?
Week 2	<p>Aug. 24:</p> <p>Interpreting the Constitution</p>	<p>Aug. 24:</p> <ul style="list-style-type: none"> • W.J. Brennan, Jr., <i>On Constitutional Interpretation</i> (1985); • I. Kaufman, <i>What Did the Founding Fathers Intend?</i> (NY Times Feb. 23, 1986). • A. Scalia, <i>Constitutional Interpretation, the Old-Fashioned Way</i> (2005); • E. Whelan, “Judge Kavanaugh on Justice Scalia: ‘A Hero and a Role Model’” National Review, July 10, 2018. 	<p>Aug. 24:</p> <p>In your view, what is the single best reason for:</p> <ul style="list-style-type: none"> • an originalist approach to constitutional interpretation? • a contemporary meaning approach?
	<p>Aug. 26:</p> <p>Liberty and Family Rights</p>	<p>Aug. 26:</p> <ul style="list-style-type: none"> • <i>Meyer v. Nebraska</i> (1923) 	<p>Aug. 26:</p> <ul style="list-style-type: none"> • <i>Meyer</i>: • What was the question presented? • What was the holding? • What was a principal argument supporting the holding?

Week 3	<p>Aug. 31: Liberty, Equality, and Family Rights</p>	<p>Aug. 31:</p> <ul style="list-style-type: none"> • <i>Pierce v. Society of Sisters</i> (1925); • <i>Skinner v. Oklahoma</i> (1942). 	<ul style="list-style-type: none"> • Aug. 31: <i>Pierce</i>: • What was the question presented? • What was the holding? • On which one of the principles of constitutional interpretation does the Court rely? <p><i>Skinner</i>:</p> <ul style="list-style-type: none"> • On which clause of the Constitution does the Court base its holding?
	<p>Sept. 2: Liberty, Equality, and Family Rights</p>	<p>Sept 2:</p> <ul style="list-style-type: none"> • <i>Loving v. Virginia</i> (1967) 	<p>Sept. 2:</p> <ul style="list-style-type: none"> • Case brief: <i>Loving v. Virginia</i>: on which clauses of the Constitution is the decision based? What is the principal reasoning under each clause?
Week 4	<p>Sept 7: Labor Day</p>	<p>Sept. 7:</p> <ul style="list-style-type: none"> • <u>Holiday – no class</u> 	<p>Sept. 7:</p>
	<p>Sept. 9: Liberty, Equality, and Contraception</p>	<p>Sept. 9:</p> <ul style="list-style-type: none"> • <i>Poe v. Ullman</i> (1961) (Harlan, J., dissenting - Part II.B only); • <i>Griswold v. Connecticut</i> (1965); • <i>Eisenstadt v. Baird</i> (1972) 	<p>Sept. 9:</p> <ul style="list-style-type: none"> • Compare the principal arguments in one of the concurring opinions in <i>Griswold</i> to the majority opinion: which is more persuasive to you?
Week 5	<p>Sept. 14: Liberty and Reproductive Rights: Abortion</p>	<p>Sept. 14:</p> <ul style="list-style-type: none"> • <i>Roe v. Wade</i> (1973); • R.B. Ginsburg, <i>Some Thoughts on Autonomy and Equality In Relation to Roe v. Wade</i> (1985). • 	<p>Sept. 14: Paper #1: On <i>Roe</i> and <i>Casey</i>: a detailed prompt will be provided.</p>
	<p>Sept. 16: Liberty and Reproductive</p>	<p>Sept. 16:</p> <ul style="list-style-type: none"> • <i>Planned Parenthood v. Casey</i> (1992); • <i>Whole Woman’s Health v. Hellerstedt</i> (2016); 	<p>Sept. 16:</p>

	Rights: Abortion	<ul style="list-style-type: none"> • <i>June Medical Services LLC v. Gee</i> (2020) (Roberts, C.J., concurring in the judgment) 	
Week 6	Sept. 21: Liberty and Sexual Orientation	Sept. 21: <ul style="list-style-type: none"> • <i>Bowers v. Hardwick</i> (1986) • <i>Lawrence v. Texas</i> (2003) 	Sept. 21: Paper #1: Due (Weds. Sections); Sept. 22: Paper #1 Due (Mon. Sections)
	Sept. 23: Liberty, Equality, and Same-Sex Marriage	Sept. 23: <ul style="list-style-type: none"> • <i>Obergefell v. Hodges</i> (2015) 	Sept. 23:
Week 7	Sept 28: Review and reflect	Sept. 28: <ul style="list-style-type: none"> • Midterm review 	Sept. 27: First paper graded.
	Sept. 30: Midterm Exam	Sept. 30: Midterm Exam	Sept. 30: Exam is open from 12:00-1:20 MC: closes at 12:30. Essay: closes at 1:20. No Wednesday Section
Week 8	Oct. 5: Equality and Education	Oct. 5: <ul style="list-style-type: none"> • <i>Plessy v. Ferguson</i> (1896) • <i>Brown v. Board of Education</i> (1954) (<i>Brown I</i>) 	Oct. 5:
	Oct. 7: Equality and Education	Oct. 7: <ul style="list-style-type: none"> • <i>Brown v. Board of Education</i> (1954) (<i>Brown II</i>) • <i>Cooper v. Aaron</i> (1959) 	Oct. 7:
Week 9	Oct. 12 How unequal may public schools be?	Oct. 12: <ul style="list-style-type: none"> • <i>San Antonio Ind. School Dist. v. Rodriguez</i> (1973); • <i>Plyler v. Doe</i> (1982) 	
	Oct. 14: Who is responsible for responding to segregation?	Oct. 14: <ul style="list-style-type: none"> • <i>Milliken v. Bradley</i> (1974) • Civil Complaint in <i>Gary B. v. Snyder</i> (filed Sept. 2016) (excerpts) 	

Week 10	Oct. 19: Is there a fundamental right to a basic education?	Oct. 19: <ul style="list-style-type: none"> • <i>Gary B. v. Whitmer</i> (6th Cir. 2020) vacated and dismissed (majority opinion of J. Clay) 	Oct. 19: Paper #2: On access to literacy; Initial Outline of Paper #2 Due
	Oct. 21: Is there a fundamental right to a basic education?	Oct. 21: <ul style="list-style-type: none"> • <i>Gary B. v. Whitmer</i> (6th Cir. 2020) vacated and dismissed (dissenting opinion of J. Kelly) 	Friday Oct. 23: Paper #2: Revised Outline of Paper #2 Due
Week 11	Oct. 26: Death Penalty: Overview	Oct. 26: <ul style="list-style-type: none"> • U.S. Constitution, Am. VIII • B. Stephenson, <i>Just Mercy: A Story of Justice and Redemption</i> (2014): Introduction (pp. 3-18); Ch. 10, Mitigation (pp. 186-202) • J.P. Stevens, <i>On the Death Sentence</i> (TNYRB, Dec. 2010) 	Oct. 26:
	Oct. 28: Capital Punishment and Racial Discrimination	Oct. 28: <ul style="list-style-type: none"> • <i>McCleskey v. Kemp</i> (1987); • A. Liptak, "A Vast Racial Gap in Death Penalty Cases, New Study Finds," N.Y. Times, Aug. 3, 2020 	Oct. 28: Oct. 30: Outlines returned

Week 12	Nov. 2: Equality and Voting	Nov. 2: <ul style="list-style-type: none"> • <i>Bush v. Gore</i> (2000) 	
	Nov. 4: Capital Punishment: Is it cruel and unusual to execute someone who committed murder when a minor?	Nov. 4: <ul style="list-style-type: none"> • <i>Roper v. Simmons</i> (2005) 	
Week 13	Nov. 9: Capital Punishment: Inevitably cruel and unusual?	Nov. 9: <ul style="list-style-type: none"> • <i>Glossip v. Gross</i> (2015) 	Nov. 9: Paper #2: Final paper Due

	Nov. 11: Final review. Reflections on Law and Society.	Nov. 11: • B. Cardozo, <i>The Nature of the Judicial Process</i> , pp. 161-80 (1921)	
Week 14	Finals Week		Nov. 20: Final Exam 11:00 am to 1:00 pm MC: closes at 11:30. Essay: closes at 1:00 pm.

Statement on Academic Conduct and Support Systems

Academic Conduct:

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” 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, policy.usc.edu/scientific-misconduct.

Support Systems:

Student Health Counseling Services - (213) 740-9355 (WELL) – 24/7 on call

<https://studenthealth.usc.edu/counseling/>

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call

suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-9355 (WELL) – 24/7 on call

<https://studenthealth.usc.edu/sexual-assault/>

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

Office of Equity and Diversity (OED) | Title IX - (213) 740-5086

equity.usc.edu, titleix.usc.edu

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

Bias Assessment Response and Support - (213) 740-2421

studentaffairs.usc.edu/bias-assessment-response-support

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

The Office of Disability Services and Programs - (213) 740-0776

dsp.usc.edu

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

USC Support and Advocacy - (213) 821-4710

studentaffairs.usc.edu/ssa

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity at USC - (213) 740-2101

diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call

dps.usc.edu

Non-emergency assistance or information.