Law and Society (LAW 200)  
Syllabus: Fall 2020

Mark E. Haddad, Lecturer in Law, USC Gould School of Law: mhaddad@law.usc.edu

Teaching Assistants: [TBD]

Class Meetings:
Lecture, M/W, Law School Room [---], 12:00-1:20 pm; Discussion, once per week.

Discussion Sections:

Office Hours: Monday and Wednesday, 1:30 – 2:30 pm, in the Law School, Room [---].

THE BASICS:

Course Description: We will approach law and society by examining how Supreme Court justices have interpreted the Constitution when deciding cases involving civil rights and liberties. Why do the justices disagree so vehemently about what these words mean? What principles, if any, constrain their interpretation? Why is principled judicial decision-making vital to the rule of law? How do these judicial decisions affect our lives? We will tackle these questions not by reading about judicial decisions, but by carefully reading the opinions and the dissents themselves. We will focus on those that involve the Constitution’s guarantees, through 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.” We will also consider the First Amendment’s protection for the freedom of speech, and the Eighth Amendment’s prohibition against cruel and unusual punishment. We will assess the historical and social context in which these cases arose and the litigants, lawyers, and judges whose vitality is also part of our constitutional history. By the end of the course, students should be able to apply the principles of constitutional interpretation to undecided questions of law, and to appreciate the role of principled judicial decision-making to a society governed by the rule of law.

Learning Objectives: The course has three principal learning objectives. The mid-term and final examinations will test your mastery of them:

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;
   d. The principal arguments supporting a dissenting opinion;
   e. The extent to which a prior decision supports the holding or a dissent.

2) Identify and evaluate principles of constitutional interpretation, including:
   a. Plain meaning of the text;
   b. Framers’ understanding (original meaning);
   c. Contemporary meaning of the text;
   d. Structure of the Constitution;
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 arguments in support of each side?

Course Requirements and Evaluation:

1. Attend all lectures and one discussion section per week.
2. Complete the reading prior to class and contribute to class discussion.
3. Complete in-class and periodic take-home written assignments.
4. Complete both the midterm (October 7) and the final examination (December 11).
5. Complete two 5-page analytical papers. The topic for the first paper will be assigned in class on Monday October 19, and Paper #1 is due Monday Nov. 2 (no later than 10:00 pm). Your topic for the second paper (we will provide suggested topics) is due by Monday, November 8 (no later than 10:00 pm) and Paper #2 is due by Monday, November 23 (no later than 10:00 pm).
6. Late papers receive a minimum 10% deduction, and potentially more at instructor’s discretion. Please be on time.
7. Evaluation: Letter grades will reflect timely completion of in-class and take-home assignments (3%); contribution to class discussion (2%); adherence to laptop and cellphone rules (deductions of 2% per violation); midterm (25 percent); first paper (15 percent); second paper (20 percent); and final exam (35 percent).
8. Laptops are not permitted in class, unless you obtain permission in writing from the instructor.
9. Cellphones must be put away during class, except when expressly permitted by the instructor.

*Required Reading:

1. Course Reader Vol. I (cases – weeks 3-6), Vol. II (cases – weeks 8-16), and Vol. III (articles and other materials):
   * NOTE: Required Reading Is Noted Below with An Asterisk *.
   Please Complete All Required Reading Before The Date Shown.

Recommended Reading:


Grades:

Your grade will be based on your mastery of the learning objectives set forth above, as demonstrated in analytical papers and examinations.
The midterm exam will consist of 11 multiple choice questions worth 1 point each, 2 short answer questions worth 2 points each, and 1 essay worth 10 points. The final exam will consist of 14 multiple choice questions worth 1 point each, 3 short-answer questions worth 2 points each, and 1 essay worth 15 points. The two analytical papers (worth 15 and 20 points respectively) will ask you to analyze one or more Supreme Court cases in light of one or more of the principles of constitutional interpretation set forth above. We will provide further guidance for the papers when we assign them.

To help you prepare for the exams and papers and achieve the learning objectives, we will announce homework assignments in class and discussion sections. Students are required to attend all lectures and discussion sections, complete all homework assignments, and participate in discussion sections. You should participate actively in your discussion, and I encourage each of you to volunteer a response to the questions I ask during the lectures.

**SCHEDULE AND COURSE OVERVIEW:**

For each week of class, there is a theme, shown in bold below. The title of each lecture is shown next to the date of class. The reading – which you must complete before class – is shown after the title of that day’s lecture. For many of the lectures, the title and the required reading are one and the same – e.g., *Roe v. Wade* (1972).

Changes to the schedule, if any, will be posted on Blackboard and announced in class.

**Week 1: Founding Principles**

Aug. 24: Goals and Expectations

Aug. 26: The Majestic Generality of the U.S. Constitution and the Judicial Challenge

  * J. Locke, Second Treatise on Government, paras. 95-99 (1689);
  * The Federalist Papers, No. 78 (Hamilton) (1788);
  * The Constitution of the United States, Article I, Sections 8, 9; Article II, Section 1 Cl. 5; Article III, Section 1 and Section 2 cl. 2; Article V; Amendments I, IV, V, IX, XIV Section 1, XIX, XXV.

**Recommended reading:**

**Week 2: The U.S. Constitution: Dead or Alive?**

Aug. 31: The U.S. Constitution: Dead or Alive?

  * W.J. Brennan, Jr., Speech On Constitutional Interpretation (1985);
  * A. Scalia, Speech, Constitutional Interpretation the Old Fashioned Way (2005);
  * B. Cardozo, The Nature of the Judicial Process, pp. 161-80 (1921)
  * E. Whelan, “Judge Kavanaugh on Justice Scalia: ‘A Hero and a Role Model’”

  National Review, July 10, 2018
Optional:
I. Kaufman, What did the Founding Fathers Intend? (NY Times Feb. 23, 1986);
A. Scalia, Speech, Judicial Adherence to the Text of Our Basic Law (1996/2003);
N. Gorsuch, Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia (2016);

Sept. 2:  *Meyer v. Nebraska (1923)

Week 3:  Liberty, Equality, and Family Rights
Sept. 7:  Labor Day Holiday – No Class
Sept. 9:  *Pierce v. Society of Sisters (1925); *Skinner v. Oklahoma (1942)

Week 4:  Marital Liberty and Equality
Sept. 16:  *Poe v. Ullman (1961) (Brennan, J., concurring; Harlan, J., dissenting (Part II.B));
*Griswold v. Connecticut (1965); *Eisenstadt v. Baird (1972)

Week 5:  Liberty and Reproductive Rights
Sept. 23:  *Whole Woman’s Health v. Hellerstedt (2016); June Medical Services LLC v. Gee (2020)

Optional:
L. Greenhouse, The United States Supreme Court, pp. 72-82.

Week 6:  The Constitutional Right to Same-Sex Marriage

Week 7:  Review and Midterm
Oct. 5:  No Lecture: Monday’s Discussion Sections DO meet (for Week 6 discussion and midterm review)
Oct. 7:  MIDTERM EXAM – in class
Week 8: Equality and Education


Oct. 14: *Cooper v. Aaron (1959)

Week 9: Is There A Fundamental Right to a Basic Education?


■ TOPIC FOR PAPER #1 DISTRIBUTED IN CLASS TODAY -


Week 10: The Death Penalty – Cruel and Unusual Today?

Oct. 26: Guest Speaker: Mark Rosenbaum, Director, Public Counsel Opportunity Under Law, speaking on the Gary B. Detroit Schools case and civil rights litigation

*Complaint in Gary B. v Snyder (filed Sept. 2016) (excerpt: pp. 1-17)

Oct. 28: *McCleskey v. Kemp (1987);
*B. Stephenson, Just Mercy: A Story of Justice and Redemption (2014): Introduction (pp. 3-18); *J.P. Stevens, On the Death Sentence (TNYRB, Dec. 2010)

Week 11: The Death Penalty – Cruel and Unusual Today?

Nov. 2: *Roper v. Simmons (2005);
*B. Stephenson, Ch. 10, Mitigation (pp. 186- 202).

■ COMPLETED PAPER #1 DUE BY 10:00 PM MONDAY Nov. 2

Nov. 4: *Glossip v. Gross (2015);
*J. Rakoff, Will the Death Penalty Ever Die? (TNYRB June 2017)

Week 12: Immigration: The Constitution and non-U.S. citizens

Nov. 9: *Kleindienst v. Mandel (1972)

■ TOPIC FOR PAPER #2 DUE BY 10:00 PM Sunday Nov. 8 -

**Week 13: Immigration Today**

Nov. 16: *Korematsu v. United States* (1944)

Nov. 18: *Trump v. Hawaii* (2018); Pending constitutional challenges to immigration orders

**Week 14: Freedom of Speech: Hate Speech**


■ COMPLETED PAPER #2 DUE BY 10:00 pm MONDAY Nov. 23 -

Nov. 25: Thanksgiving Holiday, No Class

**Week 15: Freedom of Speech, Religion, and Civil Rights**


Dec. 1: Reflections on the Rule of Law

FINAL EXAM: In class: [DATE and TIME TBD]

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**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](http://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/](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](http://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.
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.

Non-emergency assistance or information.