Law and the U.S. Constitution in Global History

Law 101, 4 Credits, Spring 2022
Fulfills GE Requirement for Citizenship in a Global Era

<table>
<thead>
<tr>
<th>Class Meetings</th>
<th>Instructor</th>
<th>Office Hours</th>
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</table>
| M/W 11-11:50   | Professor Joe Darrow  
jdarrow@law.usc.edu | NAME  
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@lawmail.usc.edu | |
|                |            | NAME  
@lawmail.usc.edu | |
COURSE DESCRIPTION

This is a course about law and constitutionalism within and beyond the United States. It is both descriptive and prescriptive. By examining constitutional structure and rights, inside and outside our country, we will explore what basic constitutional law is, and how it has changed over time. This comparative approach will, moreover, enable us to think critically about that law, and offer various perspectives for evaluating just how just it is, and whether it can do better. To these ends, the reading is primarily that of lawyers: judicial opinions and constitutions. Additionally, we will also examine other cultural and intellectual sources offering commentary and critique on the form and development of our constitutional rights.

One of the insights that the course seeks to convey is the extent to which legal ideas have crossed and re-crossed 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.

One of the benefits of this course is that you will gain some basic understanding of how to read and utilize law like a lawyer. Regardless of whether you go on to choose a profession in the law, the ability to understand and anticipate the impact of changes in law is increasingly crucial to fulfilling basic civic obligations and professional responsibilities across all sectors in the United States. Further, the ability to argue for just outcomes utilizing sound legal reasoning from precedent will enable you to knowledgeably and efficaciously participate in the ever-ongoing public discourse regarding legal and substantive justice in the United States.

COURSE OBJECTIVES

This course aims to teach students legal 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 arguments.

LEARNING OBJECTIVES/LEARNING OUTCOMES

1. Develop the ability to think critically, analyze, synthesize ideas and concepts, employ legal reasoning, and use information to solve problems.
2. Understand the nature of empirical evidence in legal development, and assess the usefulness of different types of evidence in explaining historical and social phenomena and corresponding legal changes; become cognizant of the ethical issues presented when conducting research into evolving human subjects like history, law, and culture.
3. Be able to understand the use of interdisciplinary study for increasing human knowledge.

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 bluebooks 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.

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**EXPECTATIONS**

**Final Exam (25% of final grade)**

The final (25%) examination will cover assigned readings and media and material presented during lecture and section. It will be essay based and cover material from throughout the course. You cannot pass the course unless you take the final exam.

**Papers (50% of final grade)**

Students will write one 5-7 page paper (20%) and one 7-10 page paper (30%). For each paper, students will be provided with several topics to choose from. Both papers are to be submitted by Turnitin by the deadlines specified. This is done by going to the Blackboard site, selecting “Course Tools” (not “Tools”), then from the dropdown menu selecting .

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.

**Assignments (10% of final grade)**

There are four assignments given throughout the semester. Each is worth 2.5% of the final grade. For each assignment, a 200-300 word response must be submitted by Turnitin to the section leader. This is done by going to the Blackboard site, selecting “Course Tools” (not “Tools”), then from the dropdown menu selecting . These assignments are graded on a SAT/UNSAT/ZERO basis. Students 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 (Mandatory)**

Students are expected to study any PowerPoints or lecture notes distributed in advance 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. I will ask students to participate during the lectures. Students are expected to attend lecture consistently and on time. Students with more than five unexcused lecture absences cannot pass the course. Students who with more than five unexcused tardies to class may receive a penalty of one third of a grade on their final grade (e.g., an A- would become a B+). These rules mean that the onus is on the student to reach out to her or his section leader to explain absences and tardies. Under the circumstances of the pandemic, it is the policy of the course to be flexible in responding to student difficulties with attendance -- after the student reaches out and explains her or is circumstances.

Extra Credit

Students 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 simply attend the event. The section leaders will pull the attendance sheets and give credit that way. 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. For each event optional media assignment, students will receive a 0.5% boost in their final grade, up to a maximum of 2.5% (i.e., 5 extra credit events).

Grading Scale

Course grades will be determined using the following scale:

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<thead>
<tr>
<th>Letter grade</th>
<th>Corresponding numerical point range</th>
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<td>A</td>
<td>93-100</td>
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<tr>
<td>A-</td>
<td>90-92</td>
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<tr>
<td>B+</td>
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<td>B</td>
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<td>F</td>
<td>59 and below</td>
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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.

In-class use of laptops, tablets, cell phones, and similar devices is prohibited except as part of an official disability accommodation.

Note on Reading Assigned Legal Opinions

Unless otherwise specified, it is sufficient to read only the majority’s opinion in all assigned cases. Reading any concurrences or dissents will be edifying, and will provide assistance in thinking critically about the rationale and fairness of the majority’s decision, but it is not necessary unless I otherwise indicate.

I. HOW TO READ A CASE; LEGAL REASONING IN THE U.S. AND ABROAD; LEGAL JUSTICE

C1: 1/9 Reading: (1) District of Columbia v. Heller, 554 U.S. 570 (2008) (majority opinion and both dissents)

C2: 1/11 Reading: (1) Oliver Wendell Holmes, Jr., The Common Law (Lecture I only); (2) Joseph E. Sinnott, The Classic Civil/Common Law Dichotomy (just read through the end of section III)

MLK Jr. Day - No class 1/16

C3: 1/18 Reading: (1) Antonin Scalia, The Rule of Law as A Law of Rules; (2) Martin Luther King Jr., Letter From Birmingham Jail

C4: 1/23 Reading: (1) John Rawls, A Theory of Justice (pp. 116-181)

● What are the main differences between American/British legal reasoning versus that of continental Europe and Latin American countries?
● How do we determine the “justice” of law? Is it based on the objective meaning of the language of the constitutional or statutory provision? To what extent does the underlying substantive morality of the law matter? Or the fairness of the law to all members of society regardless of their race, class, background, religious beliefs, etc.?
II. **DEMOCRATIC CONSTITUTIONALISM: GOVERNMENTAL STRUCTURE**

C5: 1/25 Reading: (1) U.S. Constitution; (2) The Federalist Papers, Nos. 39, 45, 51.


- What did the Framers view a federalist structure and separation of powers as critical for protecting against tyranny and injustice? What effect, if any, does the historical change in distribution of power among branches and sovereignties in the United States from the Framers’ original assumptions impact the constitutional design for safeguarding liberty?
- How is power distributed between the Federal government and the States?
- How do the post-World War II constitutions of Germany and Japan reflect the influence of the U.S. Constitution? Which are the benefits and disadvantages of divergences among these constitutional frameworks?

III. **DEMOCRATIC CONSTITUTIONALISM: REVOLUTIONS AND RIGHTS**

C7: 2/1 Reading: (1) U.S. Declaration of Independence; (2) Edmund Burke, *Reflections on the Revolution in France*, pp. 142 through end.

C8: 2/6 Reading: (1) French National Constituent Assembly, *Declaration of the Rights of Man and Citizen* (1789); (2) U.S. Bill of Rights (1789–1791).

- What did the Framers view a federalist structure and separation of powers as critical for protecting against tyranny and injustice? What effect, if any, does the historical change in distribution of power among branches and sovereignties in the United States from the Framers’ original assumptions impact the constitutional design for safeguarding liberty?
- How is power distributed between the Federal government and the States?
- How do the post-World War II constitutions of Germany and Japan reflect the influence of the U.S. Constitution? Which are the benefits and disadvantages of divergences among these constitutional frameworks?

**First Paper** topics (5-7 pp) emailed out and posted to Blackboard

IV. **FREEDOM OF SPEECH**


- What are the justifications for protecting speech? What categories of speech are not protected? What are reasons for and against legal protections for hate speech?
- How does Germany’s treatment of hate speech compare and contrast with that of the United States?
● How does the United States Supreme Court reach the conclusion that restrictions on political spending are restrictions on speech? Is this conclusion consistent with the objectives of the First Amendment?

Assignment 1 due by Turnitin to section leaders by midnight 2/13

V. RELIGIOUS FREEDOM


President's Day 2/20 – No Class


● How did the United States’ protections for religious exercise change from Yoder to Smith? Which of those two opinions is Masterpiece Cakeshop closer to in rationale and conclusion? Should there be no religious exemptions from general laws addressing societal safety?

● Should a coach’s prayer on the public-school football field be considered a violation of the Establishment Clause? In what ways does it (and does it not) suggest a governmental preference for or against religion?

● Is Canadian law more or less protective of religious exercise than that of the U.S.? Whose approach is more just?

VI. CIVIL WAR, RECONSTRUCTION AMENDMENTS AND EVOLUTION OF EQUAL PROTECTION

C13: 2/27 Watch: Lincoln, Dreamworks Pictures (2012). Reading: (1) Scott v. Sandford, 60 U.S. 393 (1857) (start at page 399); (2) 13th, 14th, and 15th Amendments to the U.S. Constitution.

C14: 3/1 Reading: (1) Plessy v. Ferguson, 163 U.S. 537 (1896); (2) Brown v. Board of Education, 347 U.S. 483 (1956); (3) Universal Declaration of Human Rights, Article II only.


● What is the fundamental hypothesis of Lincoln regarding justice in a democratic country, and the logical basis for it? To what extent is such a view reflected in the Amendments to the U.S. Constitution following the Civil War? How has the historical development of those constitutional rights tracked this and other views of justice?

● Why do “separate but equal” public services fail to meet the requirements of the 14th Amendment?

● What is the burden placed on a government trying to distinguish among its citizens based on race? Does this test make sense in light of the objectives
and development of the 14th Amendment? Is it easier for a government to discriminate on the basis of gender or unlawful immigration status than race? Why? How do these principles compare with international norms?

- How does India’s rationale for legal protection of same-sex marriage compare and contrast with the United States? What are possible explanations for any divergence in approaches?

**First paper** (5-7 pp) due by Turnitin to section leader by midnight 3/8

**Second Paper** topics (7-10 pp) emailed out and posted to Blackboard

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**Spring Recess** – No class 3/12- 3/19

**VII. AFFIRMATIVE ACTION AND VOTING RIGHTS**


- How has 14th Amendment precedent regarding the lawfulness of considering race in college admissions developed over time? What historical and societal circumstances potentially played a role in this development? Is current precedent on academic affirmative action consistent with the objectives of the 14th Amendment? Is it just?
- What are the constitutional reasons for providing such latitude in gerrymandering? Are they consistent with the Framers’ intent?
- How has Fifteenth Amendment voting protection developed over time? What are the historical and societal reasons for any changes?

**VIII. CRIME AND PUNISHMENT**


[HEADS UP! Butler speaks in stark and strong terms about the experience of some black Americans with the criminal justice system.]

**Assignment 2** due by Turnitin to section leaders by midnight 3/29


- How have Fourth and Fifth Amendment criminal protections developed from their British roots based on changes in technology and psychological understandings? Are they adequate to protect reasonable expectations of privacy and avoid involuntary confessions?
- Is jury nullification an unjust yet impossible-to-eradicate side effect of the constitutional right to a criminal trial by jury? Or does it play a normative and important role permitting common citizens to check unjust laws?
• How and why does the constitution distribute sentencing powers between the judge and jury? If Congress has near unlimited authority to define crimes, why do judges retain discretion in determining sentences?
• How do each of the opinions in Roper envision the role of international law in Supreme Court decision making? To what extent are the divisions more illusory than real? Whose argument is strongest?

IX. ECONOMIC REGULATION


C21: 4/10 Reading: (1) Ferguson v. Skrupa, 372 U.S. 726 (1963); (2) United States v. Carolene Products Co., 304 U.S. 144 (1938) (focus especially on fn. 4 and the attached paragraph).
• How has 14th Amendment precedent regarding the lawfulness of considering race in college admissions developed over time? What historical and societal circumstances potentially played a role in this development? Is current precedent on academic affirmative action consistent with the objectives of the 14th Amendment? Is it just?
• What are the constitutional reasons for providing such latitude in gerrymandering? Are they consistent with the Framers’ intent?

Assignment 3 due by Turnitin to section leaders by midnight 4/10

X. DUE PROCESS


• How do the requirements of due process differ based on the type of right or benefit at issue? Are notice and a hearing sufficient safeguards to prevent wrongfully depriving a person of necessary public services?
• To what extent and why do the substantive guarantees of due process depend on historical development, international legal norms and philosophical conceptions of liberty?
• How do both the majority and dissent in Dobbs rely on British common-law origins and international legal norms in their reasoning? How would the various theories of justice we have examined come down on this issue?

XI. ASYLUM AND THE TERRITORIAL LIMITS OF THE CONSTITUTION


Second Paper due by Turnitin to section leaders by midnight 4/19

C25: 4/24 Reading: (1) Matter of A-B- (1.0), 27 I. & N. Dec. 316 (A.G. 2018); (2) Matter of A-B- (2.0),

- Do due process rights depend on citizenship? Or presence inside the United States? Or neither? How much process is due?
- How are U.S. asylum laws shaped by international political developments? Do those laws reflect an up-to-date understanding of the causes of international migration? Are those laws consistent with the United States’ guarantees to the international community?

XII. WRAP UP AND REVIEW

C26: 4/26 Final thoughts and review for final exam

Assignment 4 due by Turnitin to section leaders by midnight 4/26

TBA Final Exam All must take the final exam at the assigned date and time.

Statement on Academic Conduct and Support Systems

Academic Integrity:
The University of Southern California is a learning community committed to developing successful scholars and researchers dedicated to the pursuit of knowledge and the dissemination of ideas. Academic misconduct, which includes any act of dishonesty in the production or submission of academic work, comprises the integrity of the person who commits the act and can impugn the perceived integrity of the entire university community. It stands in opposition to the university’s mission to research, educate, and contribute productively to our community and the world.

All students are expected to submit assignments that represent their own original work, and that have been prepared specifically for the course or section for which they have been submitted. You may not submit work written by others or “recycle” work prepared for other courses without obtaining written permission from the instructor(s).

Other violations of academic integrity include, but are not limited to, cheating, plagiarism, fabrication (e.g., falsifying data), collusion, knowingly assisting others in acts of academic dishonesty, and any act that gains or is intended to gain an unfair academic advantage.

The impact of academic dishonesty is far-reaching and is considered a serious offense against the university. All incidences of academic misconduct will be reported to the Office of Academic Integrity and could result in outcomes such as failure on the assignment, failure in the course, suspension, or even expulsion from the university.

For more information about academic integrity see the student handbook or the Office of Academic Integrity’s website, and university policies on Research and Scholarship Misconduct.

Please ask your instructor if you are unsure what constitutes unauthorized assistance on an exam or assignment, or what information requires citation and/or attribution.

Students and Disability Accommodations:

USC welcomes students with disabilities into all of the University’s educational programs. The Office of Student Accessibility Services (OSAS) is responsible for the determination of appropriate accommodations for students
who encounter disability-related barriers. Once a student has completed the OSAS process (registration, initial appointment, and submitted documentation) and accommodations are determined to be reasonable and appropriate, a Letter of Accommodation (LOA) will be available to generate for each course. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at osas.usc.edu. You may contact OSAS at (213) 740-0776 or via email at osasfrontdesk@usc.edu.

**Support Systems:**

*Counseling and Mental Health* - (213) 740-9355 – 24/7 on call  
Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

*988 Suicide and Crisis Lifeline* - 988 for both calls and text messages – 24/7 on call  
The 988 Suicide and Crisis Lifeline (formerly known as the National Suicide Prevention Lifeline) provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week, across the United States. The Lifeline is comprised of a national network of over 200 local crisis centers, combining custom local care and resources with national standards and best practices. The new, shorter phone number makes it easier for people to remember and access mental health crisis services (though the previous 1 (800) 273-8255 number will continue to function indefinitely) and represents a continued commitment to those in crisis.

*Relationship and Sexual Violence Prevention Services (RSVP)* - (213) 740-9355(WELL) – 24/7 on call  
Free and confidential therapy services, workshops, and training for situations related to gender- and power-based harm (including sexual assault, intimate partner violence, and stalking).

*Office for Equity, Equal Opportunity, and Title IX (EEO-TIX)* - (213) 740-5086  
Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants.

*Reporting Incidents of Bias or Harassment* - (213) 740-5086 or (213) 821-8298  
Avenue to report incidents of bias, hate crimes, and microaggressions to the Office for Equity, Equal Opportunity, and Title for appropriate investigation, supportive measures, and response.

*The Office of Student Accessibility Services (OSAS)* - (213) 740-0776  
OSAS ensures equal access for students with disabilities through providing academic accommodations and auxiliary aids in accordance with federal laws and university policy.

*USC Campus Support and Intervention* - (213) 740-0411  
Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

*Diversity, Equity and Inclusion* - (213) 740-2101  
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  
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) 442-1200 – 24/7 on call  
Non-emergency assistance or information.

*Office of the Ombuds* - (213) 821-9556 (UPC) / (323-442-0382 (HSC)
A safe and confidential place to share your USC-related issues with a University Ombuds who will work with you to explore options or paths to manage your concern.

*Occupational Therapy Faculty Practice* - (323) 442-2850 or otpf@med.usc.edu

Confidential Lifestyle Redesign services for USC students to support health promoting habits and routines that enhance quality of life and academic performance.