

Constitutional Law

Political Science 470 – Winter 2024

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Class Session: M/W 10-1120 // Location: GSH 132

Course Description

This course is designed to enhance your understanding of the Constitution as both a foundational structural document that shapes the politics of federalism in the United States, but also as an artifact of ideologies including liberalism, capitalism, and Christianity broadly construed. Bringing together competing interpretations and analyses of historical materialism and legal jurisprudence this course offers students a chance to (re)examine the history, events, and ideas that the US Constitution brings to bear on our shared collective lives, not just as citizens or residents of the US, but all inhabitants of planet earth. Three key questions will guide our study of Constitutional Law:

- *Why is the relationship between law (the state) and society (the people) uneasy, and how has it evolved over time?* The architects of the U.S. Constitution were wary of investing too much power into a federal government, but also feared “democracy” as tyranny of the masses. Over time all three branches of the federal government have grown more powerful, leading to frequent and significant disputes between state law and federal law. Questions we will explore further in this vein are when can the federal judiciary reverse the judgment of a state court? To what extent can the federal government interfere with other state operations? Under what circumstances should federal law pre-empt state law?
- *How effectively does the U.S. Constitution balance power between the federal government and the states and how has this dynamic evolved over time?* States and Governments are not monolithic structures, but rather are composed of diverse peoples, places, and preferences. Federalism, or separation of powers, is simultaneously an advantage and an obstacle for government. We dig deeper into this by asking how much authority do the courts have to overrule the will of the executive or legislative branches? What is the extent of executive immunity from judicial or legislative oversight? How can each branch keep the other two in check if and when they overreach?
- *What is the relationship between property, time, and sovereignty, and how does it shape our political bodies?* These three concepts are the fundamental ingredients in liberalism, capitalism, and Christianity which as mentioned above are core ideologies that both shape and are shaped by the US constitution and its interlocutors. We, as embodied subjects, are political and politicized, perhaps most when we claim to be neither. Together we form more complex political bodies, like governments with three main organs decreed in a document two centuries old. Some questions we will ask about the tensions between the past, the present, and future political bodies include, can an earlier legislature legitimately entrench a law or policy so that later legislatures (and the later generations whom they represent) cannot reverse it? Are later generations obligated to honor national debts created

to fund short-term interests of earlier generations? Can the government legitimately engage in or facilitate activities that cause species extinction or climate change, or that otherwise permanently injure critical interests of posterity? To what extent are later generations bound to honor property rights and other natural resources created by earlier generations? Should public inheritance outweigh individual inheritance?

Course Organization and Policies

The first half of this course focuses on the social, political, and economic origins of the US constitution and the progression of American political development in each of the three branches of government. Throughout the course the required texts will provide salient historical context and depictions of politics unfolding across different periods and issue areas. In the second half of the term, we pick up with the turn of the 20th century and examine the rise of the modern presidency, adversarial legalism, and the quest for expanding civil rights effects on judicial reasoning, supreme court decisions, the future of American politics, and ultimately our part in the fate of planet earth.

For most of our class sessions, we will follow a clear agenda:

- ***Democracy Now!*** (*Watch headlines from news around the world, brief discussion*)
- ***Lecture w/ Talking points*** (a few key highlights on the days materials from me)
- ***Q & A*** (opportunity for you to raise questions drawn from the lectures, readings, podcasts, and other materials)
- ***Breakout Session*** (a focused activity for smaller breakout groups, followed by a larger class discussion)
- ***Unplugged Time*** (I will stay around at the end of class to talk and field lingering questions) This should be the ideal opportunity for informal office hours. If you need *formal* office hour arrangements, please contact me and we can schedule it.

Course Grades and Assignments

Formatting for all assignments should be follow these guidelines: 12-point font, Times New Roman, Double spaced, 1” margins, footnotes (in 10pt font), page numbers. No bibliography is necessary (citations can be, for example, Amar, 30-34).

Chapter Analysis: Each student will complete two unique chapter analyses. Each analysis should be roughly 2-3 pages and engage key criteria that includes: (1) What is the argument or central thesis of the chapter? (2) What is the core issue or crux of the legal challenge and why/how does it matter? That is, what are the key concepts/terms? (3) What key court cases or legal battles are highlighted in the chapter? (4) What surprised or challenged your expectations or assumptions while completing this assignment? (5) Your analysis should evidence clear engagement with assigned material, be written clearly, and be proofread before submission.

Class Presentation: Students will present their chapter analysis and include a one-page (2-sided) handout that captures the key elements to the main questions of the analysis. This is not like a formal presentation with PowerPoints and standing in front of class. It is more like having capacity to be the “expert” for the day on a particular chapter and be able to help guide fellow classmates alongside the instructor with the key takeaways, insights, and controversies worth discussing. The

handout does not need to be printed but it should be uploaded to Canvas so all can access it. Students are encouraged to collaborate, but it is not required. The purpose of this is merely to generate some catch-up discussion for the rest of the class and to share responsibility with the crowd-sourced method of reading our textbooks.

Case Brief: A cornerstone assignment for constitutional law courses. Students will prepare two case briefs that pertain to the theme of the week in which they sign-up on Canvas. A template will be provided on Canvas. Students should avoid doing the same case as another student which is facilitated by the sign-up process on Canvas. Case briefs may be used in class as part of lecture and discussions so please be prepared for the day you sign-up!

Movie Analysis: Each student will present a short summary and analysis of one film of their choosing that intersects with a concern in constitutional law (a list will be on Canvas). The analysis should include the following elements (1) What is the central issue and what court case best captures the controversy? (2) Synopsis of the film (2) What really happened (case brief style) – that is, the actual court cases, legal battle, and what was exaggerated or entirely false in the film? (3) What does our text(s) say in relation to this event? (3) What are changes enacted because of this case and/or the challenges that still remain—are more cases pending, etc?

Discussion Posts: Some weeks there will be discussion posts for students to engage beyond the classroom. The prompts will be related to weekly materials and be reference material for continuing in class conversation and debates.

Participation/Attendance: Debate, discussion, and conversation are essential to classes concerned with politics, the state, and history. Therefore, everyone starts the class with 15/15 points. Missing a class reduces your count by 1 per class. In exceptional circumstances points can be made up, please contact me if you have questions.

Late submission policy: All assignments will have due dates listed in Canvas. Generally, all assignments are due Sunday at 11:59 pm—but I don't penalize assignments submitted within a day. If you become more than a day late, penalties may apply unless you contact me.

Your final grade will be calculated based on the following:

Class Attendance	15%
Chapter Analysis (x2)	20%
Class Presentations (x2)	20%
Movie Analysis	20%
Case Brief (x2)	10%
<u>Discussion Posts (x4)</u>	<u>15%</u>
TOTAL:	100%

**Extra credit may be available depending on campus related events or extenuating circumstances.

Learning Outcomes

Students who complete this course and its assignments will develop an understanding of the key institutions, ideas, and interests at work in American politics, and will gain knowledge about a variety of key substantive policy and issue areas. This course also is designed to help build important critical skills and tools, including the following:

- To gain a demonstrated working knowledge of several major policy and political issues that lie at the heart of U.S. political debates today.
- Improving ability to analyze tensions between public and private interests, and related jurisprudence, by applying political theory and schools of constitutional interpretation.
- To develop a deeper understanding of the workings and impact of the American political system at the local, state, national, and international levels.
- To grasp and apply important political concepts and theories of constitutional democracy.
- To help you reason well through varied problems and issues, whether in the classroom or in your personal and professional life. As Paul and Elder note, critical thinking “involves three interwoven phrases: It analyzes thinking, it evaluates thinking, and it improves thinking.” The work you do in and for this class is designed to enhance your critical thinking skills and tools, whether you are engaged in discussions or debates, presentations, or writing. That is, we hope to encourage all participants to ask good questions that reach past the allure of easy answers.

Required Readings

This course allows students to **pick one of two texts**, which can be digital or physical. It is impossible to pass this course without at least one, as it will be necessary for the journal entries and Canvas discussions. All other readings will be available on our Canvas site. Choose one of the required texts:

Amar, A. R. (2005). *America's Constitution: A Biography*. Random House.

Amar, A. R. (2012). *America's Unwritten Constitution: The Precedents and Principles We Live By*. Basic Books.

COURSE ROADMAP: TERM OUTLINE AND SCHEDULE

Class #1 Jan 8—Class Introductions and Course Overview

1. Name card activity, introductions, civics quiz.
2. Review Syllabus and class meeting schedule.
3. Establish Course and Classroom expectations.
4. Make sure you have obtained the required books.
5. Sign-ups on Canvas

Class #2 Jan 10—Seeing Like a Political Scientist and Studying Con Law

1. Lecture

2. Discussion and Review

Assignments Due by Sunday

1. Discussion #1 on Canvas

Class #3 Jan 15—No Class. Martin Luther King, Jr. Day.

Class #4: Jan 17—What are the origins of the Constitution?

1. Lesson Includes Materials From:
 - a. Amar (2005) Chapter 1 & 2
 - b. Amar (2012) Chapter 1 & 2
 - c. Handout example
2. Discussion and Review

Class #5 Jan 22—The Origins of Congress

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 3: Congressional Powers
3. Case Briefs
4. Discussion and Review

Class #6 Jan 24— The Evolution of Congress

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 9: Interpreting Government Practice
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 3 Group: Chapter Analysis, Handout, Case Brief

Class #7 Jan 29— The Origins of the Executive

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 4: America's First Officer
 - b. Amar (2005) Chapter 5: Presidential Power
3. Case Briefs
4. Discussion and Review

Class #8 Jan 31—The Evolution of the Executive

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 8: Following Washington's Lead
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 4 Group: Chapter Analysis, Handout, Case Brief

Class #9: Feb 5—The Origins of the Judiciary

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 6: Judges & Juries
3. Case Briefs
4. Discussion and Review

Class #10 Feb 7—The Evolution of the Judiciary

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 5: Putting Precedent in Its Place
 - b. Amar (2012) Chapter 11: Doing the Right Thing
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 5 Group: Chapter Analysis, Handout, Case Brief
2. Class: Discussion Post #2 on Canvas

Class #11 Feb 12—The Origins of Federalism

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 7: States & Territories
 - b. Amar (2005) Chapter 8: Law of the Land
3. Case Briefs
4. Discussion and Review

Class #12 Feb 14—The Evolution of Federalism

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 10: Joining the Party
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 6 Group: Chapter Analysis, Handout, Case Brief

Class #13 Feb 19—The Origins of Civil Liberties

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 9: Making Amends
3. Case Briefs
4. Discussion and Review

Class #14 Feb 21—The Evolution of Civil Liberties

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 4: Confronting Modern Case Law
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 7 Group: Chapter Analysis, Handout, Case Brief

Class #15 Feb 26—The Origins of Civil Rights

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 10: A New Birth of Freedom
3. Case Briefs
4. Discussion and Review

Class #16 Feb 28—The Evolution of Civil Rights

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 7: Remember the Ladies
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 8 Group: Chapter Analysis, Handout, Case Brief

Class #17 Mar 4—Expanding the Scale and Scope of Rights & Liberties

1. Lesson Material
2. Student Presentations
 - a. Amar (2005) Chapter 11: Progressive Reforms
3. Case Briefs
4. Discussion and Review

Class #18 Mar 6—The Futures and Fictions of Rights & Liberties

1. Lesson Material
2. Student Presentations
 - a. Amar (2012) Chapter 3: Hearing the People
3. Case Briefs
4. Discussion and Review

Assignments Due by Sunday

1. Week 9 Group: Chapter Analysis, Handout, Case Brief

Class #19 Mar 11—Final Thoughts, Review, Make-Up Presentations

Class #20 Mar 13—Trivia Game, Snacks, Fun!

Assignments Due by Sunday

1. Discussion Post #3 on Canvas

No Class Finals Week for Class #21/22 March 18-22

Assignments Due by Sunday

1. Any and all late work!
2. Discussion Post #4 on Canvas
3. Final Draft of Movie Analysis

OTHER INFORMATION

Office Hours and Communications

Office hours will be by appointment only. Usually most questions can be addressed immediately after class, but if you want to schedule formal office hours then please contact me and it can be arranged.

You also can reach me via email at dellis@uoregon.edu (I check this regularly).

Class Etiquette: Try to sit such that 1 desk/seat is empty between each person. Generally practice safe and clean hygiene (like wash your hands, don't cough/sneeze on someone). You can get up the use the restroom without permission, just be respectful and mindful of the shared space.

Guidelines for Class Discussions: Below are some useful guidelines for discussions to keep in mind this term for both general discussions and in-class debates:

Discussing to Learn: Contribute ideas and views in the spirit of inquiring and learning together, rather than trying to debate or win arguments (unless the activity is designed as a debate or to assess best arguments).

Mindful Listening: Listen actively with attention and respect for what others are saying, without interrupting or tuning out to focus on preparing one's own contribution.

Stepping Up/Stepping Back: Pay attention to the voices in the room and be mindful of one's contributions. Are there patterns regarding which voices are being heard and which are not? How do I fit in these patterns? Is there need to step back and let others have opportunity to contribute? Is there need to step up and contribute more? Do we feel empowered to hold ourselves accountable for our class participation dynamics?

Listening Lenience: Remember that we are learning together and may not necessarily get something right the first or even second try. Practice being lenient with oneself and with others. Restating what someone just said can provide them an opportunity to clarify or revise their

statement. Similarly, it is good practice to state when you say something not quite right and then try to state it again or ask for help in saying it.

Ideas not Individuals: Focus on engaging others' ideas not judging or criticizing individuals. Asking for clarification can be helpful, and using language such as "The idea I hear you saying is..." (rather than "you said") or "I don't agree with that idea..." (rather than "I don't agree with you).

Support Our Statements: Offer supporting evidence of some kind to back up your contributions, such as data, clear reasoning or reference to a text, and be aware that your own experience or an anecdotal story may not fit a larger pattern. Remember that being an exception does not discredit a rule.

A Part is Not the Whole: Remember that your view or experience is your view or experience, a partial opening onto the whole, and not necessarily a general view or experience of everyone; nor are the views or experiences of others necessarily going to match your own. And, just as you cannot represent an entire group of people, nor can anyone else represent a group of people. It is quite okay for everyone to speak their truth and their experience, but working from individual views and experiences to more general ideas or conclusions often requires considerable work.

Mutual Respect: A key goal is to respect diverse experiences, viewpoints, approaches, and identities. Even when we disagree, please do not undermine, demean, or marginalize others.

Academic Integrity: The University Student Conduct Code defines academic misconduct, which includes unauthorized help on assignments and examinations and the use of sources without acknowledgment. Dishonest behavior includes both "giving" and "taking" of improper assistance on exams, papers, or any other form of attempting to take credit for work that is not your own. If you are uncertain what plagiarism entails, please see the following site: <http://libweb.uoregon.edu/guides/plagiarism/students/>.

Accessible Education

If you have a condition that inhibits learning or evaluation under customary circumstances, please let me know. In addition, please request a letter from the Accessible Education Center (346-1155, 164 Oregon Hall) that verifies your disability and states the accommodations that I can make. I will make any reasonable adjustments necessary to improve your learning environment.

Notice of duty to report

We support Title IX and have a duty to report relevant information. The UO is committed to providing an environment free of all forms of prohibited discrimination and sexual harassment, including sexual assault, domestic and dating violence and gender-based stalking. Any UO employee who becomes aware that such behavior is occurring has a duty to report that information to their supervisor or the Office of Affirmative Action and Equal Opportunity. The University Health Center and University Counseling and Testing Center can provide assistance and have a greater ability to work confidentially with students.

University Health and Counseling Services

University Health Services help students cope with difficult emotions and life stressors. If you need general resources on coping with stress or want to talk with another student who has been in the same place as you, visit the Duck Nest (located in the EMU on the ground floor) and get help from one of the specially trained Peer Wellness Advocates. Find out more at health.uoregon.edu/ducknest.

University Counseling Services (UCS) has a team of dedicated staff members to support you with your concerns, many of whom can provide identity-based support. All clinical services are free and confidential. Find out more at counseling.uoregon.edu or by calling 541-346-3227 (anytime UCS is closed, the After-Hours Support and Crisis Line is available by calling this same number).