

The following syllabus is a proposed syllabus for a semester-long introduction to constitutional law and theory, designed as an upper-division course in a politics or legal studies program or as a topics in philosophy of law course.

## **Introduction to Constitutional Law and Theory (upper-division course)**

Instructor: Jonathan Gingerich, [jgingerich@humnet.ucla.edu](mailto:jgingerich@humnet.ucla.edu)  
Office Hours: TBA

### **Course Description**

This course provides an introduction to constitutional theory and American constitutional law. The first third of the course addresses basic philosophical questions about constitutional law: What is a constitution? What gives a constitution authority? What conditions must a constitution satisfy in order to be just? The second third of the course looks at how judicial interpretations of the United States constitution have shaped the structure and allocation of power among different government institutions, focusing on the issue of federalism. The final third of the course turns to constitutional guarantees of due process and equality, focusing on the Equal Protection Clause of the 14th Amendment.

In the first part of this course, we will read contemporary constitutional and political theory. In the remainder of the course, we will primarily read opinions from U.S. Supreme Court, supplemented by the occasional law review article. Students will be expected to come to class meetings prepared to discuss the assigned reading. Written work for this course will include a short essay on constitutional theory, a short “appellate brief” in which students persuasively present legal arguments to a judge, and a short “judicial opinion” in which students rule on an a legal issue and explain their reasoning.

By taking this class, students will gain an appreciation of the constitutional structure of American government, the philosophical underpinnings of constitutional law, and legal reasoning and writing. This course will provide particularly good preparation for students interested in attending law school or graduate school in public policy.

### **Texts**

The primary text for this course will be Larry Lessig’s open-source *Constitutional Law* casebook, which is available for free online. The version that we will use for this course is available at <https://h2o.law.harvard.edu/playlists/52925>. All other materials will be available on the course website.

### **Graded Coursework**

5%	Class participation
15%	First short essay on constitutional theory (5 pages)
15%	“Appellate brief” (5 pages)
15%	“Judicial opinion” (5 pages)
10%	Midterm Exam
40%	Final exam

## Participation

For each week, four or five students will be assigned as "associates." They should be prepared to be especially keen discussants and to suggest and discuss key questions regarding the week's materials. I will prepare and distribute a schedule of "associates" assignments during the second week of classes.

Students who are consistently prepared for class discussion will receive full credit for the participation component of the course grade.

## Essays

A short essay, of 5 pages double-spaced, on constitutional theory, will be **due through the course website by 5:00 PM on Friday of week 5**. Topics will be announced at the beginning of week 4.

An "appellate brief," of 5 pages double-spaced, on federalism, will be **due through the course website by 5:00 PM on Friday of week 11**. Instructions will be provided at the beginning of week 8.

A "judicial opinion," of 5 pages double-spaced, on equal protection, will be **due through the course website by 5:00 PM on Friday of week 16**. Instructions will be provided at the beginning of week 13.

## Examinations

There will be two examinations, **a midterm administered in class at the end of week 7 and a final exam. The final exam will be cumulative.** The midterm and the final will have the same format, so the midterm will provide an opportunity to practice for the final. Both exams will require the application of constitutional law to novel fact patterns.

## Academic Integrity

You are expected to abide by the university's policies on academic misconduct. A few important reminders about academic integrity are relevant to the writing assignments for this seminar: You should write your own papers and properly attribute ideas and words that you include in your writing. If you copy someone else's words into your assignment word for word, indicate that these words are a quotation, by enclosing them in quotation marks or setting them off from the text. Also provide a citation that includes enough information that your reader could locate the material that you're citing. (I don't care what style of citation you use. For our course materials, you can just give the author's last name and a page number.) You should also provide a citation if you paraphrase someone else's idea in your own writing. If you have any questions about what constitutes academic misconduct, please ask.

## Schedule of Lectures and Reading Assignments

Reading assignments marked "CB" are in the Lessig casebook.

- I. Constitutional Theory
  - A. What are constitutions? Why do we need them?
    1. Lecture 1
      - a) U.S. Constitution, art. V (CB)
      - b) Articles of Confederation art. XIII (CB)
    2. Lecture 2
      - a) Dieter Grimm, "Types of Constitutions" (course website)
    3. Lecture 3

- a) John Rawls, *Political Liberalism*, lecture 3 (course website)
  - B. What makes constitutions legitimate?
    - 1. Lecture 4
      - a) Hans Kelsen, *Pure Theory of Law*, ch. 34
    - 2. Lecture 5
      - a) John Rawls, *Political Liberalism*, lecture 6, §§ 1-6 (course website)
    - 3. Lecture 6
      - a) Frank I. Michelman, “Rawls on Constitutionalism and Constitutional Law” (course website)
  - C. What is the relationship between the constitution and democracy?
    - 1. Lecture 7
      - a) Bruce Ackerman, *We the People: Foundations*, ch. 1 & 10 (course website)
    - 2. Lecture 8
      - a) Jeremy Waldron, *Political Political Theory*, ch. 2 (course website)
    - 3. Lecture 9
      - a) Mari Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations” (skip the footnotes) (course website)
    - 4. Lecture 10
      - a) Tracy E. Higgins, “Democracy and Feminism” (skip the footnotes) (course website)
      - b) FIRST SHORT ESSAY DUE ON THE COURSE WEBSITE BY 5 PM ON FRIDAY**
- II. The American Constitution and the Distribution of State Power
  - A. Constitutionalism and Judicial Review
    - 1. Lecture 11
      - a) *Marbury v. Madison* (CB)
      - b) Federal Judiciary Act (1789) (CB)
    - 2. Lecture 12
      - a) *Stuart v. Laird* (CB)
      - b) Abraham Lincoln, First Inaugural Address (CB)
      - c) Ronald Dworkin, “Constitutional Cases” (course website)
    - 3. Lecture 13
      - a) *McCulloch v. Maryland* (CB)
      - b) U.S. Constitution, art. I, section 8 (CB)
    - 4. Lecture 14
      - a) MIDTERM EXAM IN CLASS**
  - B. Federalism
    - 1. Lecture 15
      - a) U.S. Constitution, art. I (CB)
      - b) James Madison, *The Federalist* no. 10
    - 2. Lecture 16
      - a) *Gibbons v. Ogden* (CB)
      - b) *Hammer v. Dagenhart* (CB)
    - 3. Lecture 17
      - a) *A.L.A. Schechter Poultry Corp. v. United States* (CB)
    - 4. Lecture 18
      - a) *National Labor Relations Board v. Jones & Laughlin Steel Corporation* (CB)
      - b) *Wickard v. Filburn* (CB)
    - 5. Lecture 19
      - a) *United States v. Lopez* (CB)
      - b) *United States v. Morrison* (CB)

- 6. Lecture 20
  - a) *Gonzalez v. Raich* (CB)
  - b) *National Federation of Independent Business v. Sebelius* (CB)
- C. Executive Power and Its Limits
  - 1. Lecture 21
    - a) *Youngstown Sheet & Tube Co. v. Sawyer* (CB)
  - 2. Lecture 22
    - a) *United States v. Nixon* (CB)
    - b) *William Jefferson Clinton v. Paula Corbin Jones* (CB)
    - c) **“APPELLATE BRIEF” DUE ON THE COURSE WEBSITE BY 5 PM ON FRIDAY**
- III. Equal Protection
  - A. Race and the Constitution
    - 1. Lecture 23
      - a) U.S. Constitution, art. I, section 2, clause 3
      - b) *Dred Scott v. Sandford* (CB)
    - 2. Lecture 24
      - a) U.S. Constitution, amendment XIII, amendment XIV, and amendment XV (CB)
      - b) *The Civil Rights Cases* (CB)
    - 3. Lecture 25
      - a) *Plessy v. Ferguson* (CB)
      - b) *Korematsu v. United States* (CB)
    - 4. Lecture 26
      - a) *Brown v. Board of Education (Brown I)* (CB)
      - b) *Brown v. Board of Education (Brown II)* (CB)
    - 5. Lecture 27
      - a) *Bolling v. Sharpe* (CB)
      - b) *Loving v. Virginia* (CB)
    - 6. Lecture 28
      - a) *Grutter v. Bollinger* (CB)
      - b) *Parents Involved in Community Schools v. Seattle School District No. 1* (CB)
  - B. Sex
    - 1. Lecture 29
      - a) *Bradwell v. The State* (CB)
      - b) *Reed v. Reed* (CB)
    - 2. Lecture 30
      - a) *Roe v. Wade* (CB)
      - b) *United States v. Virginia* (CB)
  - C. Sexual Orientation
    - 1. Lecture 31
      - a) *Bowers v. Hardwick* (CB)
      - b) *Lawrence v. Texas* (CB)
      - c) *Obergefell v. Hodges* (CB)
  - D. State Action
    - 1. Lecture 32
      - a) *Shelley v Kraemer* (CB)
      - b) Laurence Tribe, *American Constitutional Law*, section on “The Problem of State Action”
      - c) **“JUDICIAL OPINION” DUE ON THE COURSE WEBSITE BY 5 PM ON FRIDAY**
- IV. Final Review Session (Date, Time, and Location TBA)
- V. **FINAL EXAMINATION (DATE, TIME, and Location TBA)**