

CONSTITUTIONAL LAW II

University of California Hastings College of the Law

Spring 2012

Monday and Wednesday, 1:10-3:20 p.m.

198 McAllister Bldg, Room A

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Course Structure

Questions about the meaning of the Constitution, about what it permits and what it requires, are addressed every day in courtrooms, legislative chambers, and corporate boardrooms. This course will make you a better-informed observer/participant in these public and private debates while helping you to build a working, lawyerly understanding of the Constitution and its role in American law, government, and society.

This course focuses on individual rights, but it is only one stop on your journey through constitutional law. You have, after all, already encountered the Constitution. You have both studied it in the classroom and felt its impact in shaping your opportunities and obligations. We will narrow our reach to the aspects of constitutional law that most people think of when they consider the subject: interpreting how the Constitution defines and protects individual rights. We cannot, however, cover the full scope and historical depth of the Constitution and the rights it guarantees. Neither will your engagement with this historic legal document end with this class. The Constitution will continue to haunt, challenge, trouble, and perhaps even save you as you craft legal arguments and solve problems of law. Here, we will introduce major constitutional doctrines, historic cases, and methods of interpretation as we study the intricacies of constitutional rights and individual liberties.

Grading

Your grade will depend on how well you demonstrate your understanding of constitutional interpretation, principles, and cases during two examinations: an in-class midterm (worth 1/3 of your grade), on Monday, March 12, and a final (2/3 of your grade – or 100%, if you're unsatisfied with your midterm grade and wish the final to count for all of it). More information about the examinations will be provided in class.

I expect a high level of genuine engagement from each of you during class, and will consider your preparation and participation in calculating your final grades (you can be “bumped” one-half letter grade, from “B” to “B+” or “B-” for example, in either direction, depending on whether your contributions are extraordinarily good or remarkably deficient). It is difficult to participate if you are not present, so if you have more than two unexcused absences you will not get bumped up; if you have more than three unexcused absences, you risk losing credit for the course. Please sign in on the roster distributed at the start of each class in order to be sure that I record your attendance properly. And please notify me when you will miss class, so that I can keep accurate records of excused absences.

Preparation before class as well as active listening and participation during class are essential to your learning and the learning of your classmates. Happily, the situations, ideas, and legal problems we will discuss are of general interest, and even the cases that are historically distant involve fundamental issues of governance and social policy, all of which still resonate today. While constitutional reasoning can be opaque at first glance (and sometimes at second and third as well), these cases will reward diligent readers with insight into law, governance, and human behavior.

Course Materials (available at the Hastings bookstore)

Brest, Levinson, Balkin, Amar, and Siegel, *Processes of Constitutional Decisionmaking*, 5th ed. (Aspen, 2006); ISBN 0-7355-5062-X

2011 Supplement to the 5th ed. (Aspen), ISBN 978-0-7355-08583

Clickers for in-class polling and responses

Reading Assignments

Below is a tentative outline of our readings, organized into five sections. Because some assignments may change, and some topics will engage us longer than others, I will note any changes in the next week’s assignment at the beginning of Wednesday’s class.

I. In the beginning: the First Amendment

Jan 9

Hastings & the Supreme Court: Of Funding, Fora, and Free Expression

CLS v. Martinez, 561 U.S. __ (2010)

Jan 11

Free Speech and the Original Understanding

9-15; 84-94; 215-17

[Jan 16, no class (Martin Luther King Jr. holiday)]

Jan 18

Subversion and Association

460-68; 1533-36; Supp. 270-71

Jan 23

Subsidies, Funding, and Control

1704-41; Supp., 95-100

II. Race

Jan 25

Infamy: *Dred Scott*

226-260 (optional: *Plessy*, 359-68)

Jan 30

Glory? *Brown v. Board of Education*

893-911; 928-950

Feb 1

Desegregation Today

Supp. 183-227, *Parents Involved v. Seattle School District* (2007)

Feb 6

Suspect: *Loving* and *Korematsu*

957-79

Feb 8

Race and Reason: Examining legislative motives

1024-58; Supp. 227-33

Feb 13

Affirmative Action

1120-51

III. Gender

Feb 15

Distinction as Discrimination

1182-95; 1229-50

Feb 16 (Thursday that is treated as a Monday for class schedule)

Gender and Reason: Examining legislative motives

1262-71; 1276-94

[Feb 20, no class (Presidents Day holiday)]

Feb 22

Gendering citizenship, family leave, and military service

1296-1323; supp

III. The Scope of Liberty and Fundamental Rights

Feb 27

More suspect classes?

1327-38

Feb 29

Midterm

[Spring break, no class the first week of March]

Mar 12

Fundamental Rights: Abortion, *Roe*, and *Casey*

1387-1409; 1425-43

Mar 14

Abortion and the Court: *Casey* and *Carhart*

1425-57; Supp. 235-58

Mar 19

Sexual Orientation: From *Hardwick* to *Lawrence*

1466-1505; 1505-32

Mar 21

A Right to Die?

1569-92

IV. Rights in the modern welfare state

Mar 26

Food stamps, strikes, and due process

1592-1609

Mar 28

A Right to Education?

1623-52

Apr 2

A Right to Protection?

1652-73

Apr 4

Movement and money

1673-88

Apr 9

Same-sex marriage

1545-68

**V. Back to you, it always comes around, back to you:
The First Amendment**

Apr 11

Free exercise and the Establishment Clause

405-11; 1762-79

Apr 16

Money and speech

Citizens United v. Federal Election Commission, 558 U.S. 50 (2010)