Constitutional Law I
Political Science 271

Fall Term 2023
Instructor: Steven Poskanzer

Course Hours:
Monday 11:10-12:20
Wednesday 11:10-12:20
Friday 12:00-1:00
Location: Hasenstab Hall 105

Course Description

This course will explore the United States Constitution and the legal doctrines that have emerged from it, using them as lenses through which to understand the history—and shape the future—of this country. Using prominent Supreme Court opinions as teaching tools and loci of debate (including cases on the Court’s recent and current docket), this course will explore the different kind of theoretical approaches with which to make Constitutional arguments and interpret the Constitution. It is one of two paired courses (the other being POSC 272) that complement each other. Both courses will address the structure and functioning of the United States government, and will explore in greater depth the historic Constitutional “trends” towards greater equality and more liberty (albeit slowly, haltingly, and with steps both forward and backward).

This course will focus in particular on how matters of racial justice have been a Constitutional issue from the very beginning of the nation—and very much remain unfinished legal work. In exploring matters of personal liberty, this course will focus in particular on First Amendment freedom of religion. Finally, in examining governmental structures, this course will emphasize federalism and the distribution of power between the national and state governments, including the rise of a nationwide economic system and the modern administrative state. The course will require close reading of judicial opinions and other texts, and learning how to construct arguments using logic and precedent.

A special feature of this course will be an intra-class “moot court” exercise using the case of Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited. As described below, this case concerns the validity of the creation of the CFPB and the meaning of the Constitution’s Appropriations Clause. It has potentially far-reaching implications about the modern federal administrative state. The Supreme Court is scheduled to hear oral argument in this case in October 2023, and its decision is expected next spring.

Learning Outcomes/Assessment Goals

My hope and expectation is that, by taking this course, students should:

- Understand the genius—as well as the complexity, contradictions, and flaws—of the Constitution of the United States.
• Appreciate how the Constitution can be used as a powerful lens through which to view and understand the history—and shape the future—of this country. This will include a solid grasp of both historic trends and major emerging issues in constitutional law.

• Gain a sophisticated knowledge of the structure and functioning of government (especially the federal government) in the United States. This will include a particular focus on the role of the federal judiciary, especially the Supreme Court.

• Understand and be able to use a range of theoretical approaches/tools to make constitutional arguments and interpret the Constitution.

• Understand the unsettled and sometimes contradictory nature of legal argumentation and adjudication (in common parlance, to grasp that “The Law’s favorite color is gray”).

• Learn how to craft and articulate arguments based on legal principles/reasoning.

This course is also meant to give students a good perspective on what law school/legal practice entails, thereby helping them gauge their level of interest in a legal career.

Finally, through this course I want students to acquire a continuing interest in/commitment to their responsibilities as citizens and/or participants in our legal system.

Six (6) credits

This course can be applied to satisfy the Social Inquiry graduation requirement.

**Course Materials**

We will be reading large portions of Daniel Farber and Neil S. Siegel’s book *United States Constitutional Law* (Foundation Press: 2019). You should purchase this volume at the College bookstore or online.

While not a required text, many students have found it useful to acquire a pocket copy of the United States Constitution for handy reference. Such a document can be acquired through many online sources or simply printed out, see, e.g.: https://nccs.net/products/pocket-constitution-of-united-states

We will also be reading a large number of Supreme Court opinions (typically in edited form)

I have posted all of these readings on the Moodle site for this course.

Depending on legal developments, supplemental readings may also be assigned and posted on the course’s Moodle site.
Course Requirements

Exams

There will be a midterm examination AND a final examination for this course. Both will be closed-book exams.

Moot Court

As part of this course, everyone will have the opportunity—as part of a group team project—to hone your oral presentation and legal argument crafting skills.

In Week 8, we will conduct a “moot court” on the case of *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*. This case raises an important question whether the creation and operation of the CFPB violates the Appropriations Clause (Article I, Section 9) of the Constitution. The CFPB was established by Congress after the financial crisis of 2008 in order to safeguard individual consumers of financial products and services. It has long been a target of banks, other lending businesses, and skeptics of federal regulatory bureaucracy. This litigation initially arose as a challenge to “Payday Lending” rules adopted by the CFPB, but it has now expanded to involve the structure and even the very existence of the Bureau itself.

About a month before the moot court argument, I’ll randomly assign students to one of three groups: one to take the position of the petitioner in the case; another to take the position of the respondent; and the third to act as Justices on our own Carleton version of the Supreme Court. We’ll devote one full class session to oral arguments in the case, with each group having half of the session (approximately 30 minutes) to make the best argument it can for the side of the case to which it has been assigned. The Justices will ask questions of the parties during these presentations, just as occurs with the real Supreme Court. Following these oral arguments, at a session the next week, the Justices (having conferred in the interim to make their decision) will present their conclusions and supporting justifications. We’ll then take some time to consider what we’ve learned from the debates, and to predict how the actual decision will play out.

While the litigant groups will not be asked to write a formal legal brief for the oral argument, nor will the group assigned to be Justices have to write a formal legal opinion, each group will be asked to prepare a two-three page written outline of their arguments/conclusions. I will give each group a collective grade for the project, based on the rigor and tightness of its reasoning and quality of its oral presentation. But as an added incentive, the Justices will decide the case on the basis of the submitted outlines and the oral arguments made in the moot court (not on their preconceptions of the case), and the side that wins will receive a bonus grade!

To help the groups with this assignment, we will be reading the 5th Circuit Court of Appeals decision in *CFPB v. Community Financial Services Association*, and also the briefs submitted to the Supreme Court by the actual litigants in the case. Groups can be creative in devising and presenting their arguments (using any other outside sources they wish), and I will also be available to offer help and guidance. The point of this exercise is to give you a more practical taste of how lawyers—and judges!—think and work.
Class Participation

You are also expected to participate in class discussions and, on occasion, to post discussion post-class reflections on the course’s Moodle site. (See the discussion on Preparation for Class, Attendance and Class Participation below). You will receive a grade for class participation that will figure into your final grade.

Course Outline and Reading Assignments

While this syllabus presents an estimated, session-by-session, schedule of where we should be, this may vary a bit, depending on how fast we’re moving. I shall try to keep everyone regularly apprised of where we are on the syllabus. But I also want to ensure that we spend sufficient time on each part of the course so that you understand the concepts and we can explore the issues adequately before we move to the next unit. If you miss class, please contact a fellow student or me to learn at what point on the syllabus we ended and the topics we will be covering in the next class. It is always a good idea to read ahead if you can, since the reading for some units will be more voluminous than for others.

A note about the selection of topics: Constitutional law is a vast field, and even in two 10-week courses it is not possible to cover it all. Therefore, just as with most law school courses on this subject, I have had to leave out some topics entirely (e.g., constitutional procedure related to criminal law; some sections of First Amendment law) or touch upon them only briefly (federal Courts and their jurisdiction; constitutional history). If you have an interest in topics that are not covered, I am happy to provide suggestions for supplemental reading on your own.

A note about the readings: As I noted above, we will be reading a large number of Supreme Court opinions and using what is commonly known as the “case method” in our learning. I am consciously following this approach because I want you to appreciate and to grow in comfort with how lawyers and judges reason and write. Distilling the principal holdings and meaning of a judicial opinion is an acquired skill (indeed, it’s a critical aim of the first year of law school!), but I assure you that you can develop this ability even in our undergraduate-level class. To that end, the following observations are meant to give guidance—and reassurance:

- You do not need to understand—much less master!—every jurisdictional or procedural point made in the opinions, all the references made to other cases, or analytic frameworks that we have not discussed in class.

- Try to be alert to the particular kinds of arguments the judges or the litigants are trying to make, and how you might strengthen or rebut the position. To help you do this, we will spend time in the first few weeks reviewing many of the different approaches for making constitutional arguments.

- Judicial precedents are not consistent in their reasoning and results. Indeed, I’ve purposefully included cases that directly contradict each other for you to see and to grow comfortable with this.
Many opinions address more than one issue or topic, and litigants typically offer alternative arguments in support of the result they seek. Do not be surprised, therefore, when you see us cycle back to the same case(s) to elucidate different points. And don’t worry if the first time you read an opinion some of the topics addressed therein don’t make sense or haven’t been covered yet (we’ll get there eventually!)

Some of the older Supreme Court opinions we will be reading (in particular, those dealing with slavery and Indigenous rights) rest upon arguments and use terminology that many of us would find offensive today. An honest and searching study of constitutional law and history requires us to engage directly with these decisions and their consequences (which of course does not mean that we agree with their reasoning or results).

Week 1

September 11 (Class 1)

Introductions/Housekeeping matters

Goals of the Course

The Purposes the Constitution Serves

The Constitution Itself

Readings:

The United States Constitution. This may be found in Farber and Siegel, *United States Constitutional Law* (hereafter “Farber/Siegel”), pp. 455-473

Declaration of Independence

September 13 (Class 2)

Brief Account of Constitutional History

Primers on:

Sources of Law/Precedent

Federal Judiciary

How Cases Get to the Supreme Court

Readings:

Articles of Confederation

Amar, *The Words that Made Us*, Chapter 4, pp. 151-179
Farber/Siegel, Chapter 2, pp. 31-41

Note on “The certiorari process”

September 15 (Class 3)

How and Why Constitutional Disputes Arise

Nature of the U.S. Legal System and its Consequences

Jurisdictional and Decisional Constructs

Readings:

Farber/Siegel Chapter 3, pp. 43-60

Lujan v. Defenders of Wildlife (1992)


Suggested Additional Reading:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in Postmodern Legal Movements

Week 2

September 18 (Class 4)

Nature of the U.S. Legal System and its Consequences (continued)

Jurisdictional and Decisional Constructs (continued)

Readings:

Farber/Siegel Chapter 3, pp. 43-60

Lujan v. Defenders of Wildlife (1992)


Suggested Additional Reading:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in Postmodern Legal Movements
September 20 (Class 5)

Different Approaches for Making Constitutional Arguments

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”


*Youngstown Sheet & Tube v. Sawyer* (1952)


Note on “Some Historical Detail” (including Souter concurrence in *Lee v. Weisman* [1992])


*McCulloch v. Maryland* (1819)

*National League of Cities v. Usery* (1976)

*Goldwater v. Carter* (1979)


*Fletcher v. Peck* (1810)

Note on “The Natural Law Tradition in America”

*Moore v. City of East Cleveland* (1977)

Bobbitt, *Constitutional Fate, on the Cherokee Cases*, pp. 108-118


---

September 22 (Class 6)

Different Approaches for Making Constitutional Arguments (continued)

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”


*Youngstown Sheet & Tube v. Sawyer* (1952)

Note on “Some Historical Detail” (including Souter concurrence in Lee v. Weisman [1992])


McCulloch v. Maryland (1819)

National League of Cities v. Usery (1976)

Goldwater v. Carter (1979)


Fletcher v. Peck (1810)

Note on “The Natural Law Tradition in America”

Moore v. City of East Cleveland (1977)

Bobbitt, Constitutional Fate, on the Cherokee Cases, pp. 108-118

Roper v. Simmons (2005)

Week 3

September 25

YOM KIPPUR—No Class

September 27 (Class 7)

Different Approaches for Making Constitutional Arguments (continued)

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”


Youngstown Sheet & Tube v. Sawyer (1952)


Note on “Some Historical Detail” (including Souter concurrence in Lee v. Weisman [1992])

McCulloch v. Maryland (1819)

National League of Cities v. Usery (1976)

Goldwater v. Carter (1979)


Fletcher v. Peck (1810)

Note on “The Natural Law Tradition in America”

Moore v. City of East Cleveland (1977)

Bobbitt, Constitutional Fate, on the Cherokee Cases, pp. 108-118

Roper v. Simmons (2005)

September 29 (Class 8)

Structure/Functions of the United States Government

Readings:

Farber/Siegel Chapter 4, pp. 79-106; Chapter 6, pp. 163-182

Note on “The Values of Federalism”

New York v. United States (1992)

National Federation of Independent Business v. Sebelius (2012) (pp. 704-710 on the individual mandate under the Taxing Clause; pp. 714-720 on Medicaid rules under the Spending Clause)

McCulloch v. Maryland (1819)

Week 4

October 2 (Class 9)

Rise/Role of the Modern Administrative/Welfare State

Readings:

Farber/Siegel Chapter 5, pp. 107-162; Chapter 9, pp. 255-267

Gibbons v. Ogden (1824)
Rise/Role of the Modern Administrative/Welfare State (continued)

Readings:

Farber/Siegel Chapter 5, pp. 107-162; Chapter 9, pp. 255-267

Gibbons v. Ogden (1824)

Lochner v. New York (1905)

Carter v. Carter Coal Co. (1936)

Roosevelt, “Fireside Chat,” March 1937

West Coast Hotel v. Parrish (1937)

Wickard v. Filburn (1942)

Heart of Atlanta Motel Inc. v. United States (1964)


West Virginia v. EPA (2022)
October 6 (Class 11)

Rise/Role of the Modern Administrative/Welfare State (continued)

Readings:

Farber/Siegel Chapter 5, pp. 107-162; Chapter 9, pp. 255-267

Gibbons v. Ogden (1824)

Lochner v. New York (1905)

Carter v. Carter Coal Co. (1936)

Roosevelt, “Fireside Chat,” March 1937

West Coast Hotel v. Parrish (1937)

Wickard v. Filburn (1942)

Heart of Atlanta Motel Inc. v. United States (1964)


West Virginia v. EPA (2022)

Week 5

October 9 (Class 12)

The Push for More Equality

The Adoption/History of the Fourteenth Amendment

Introductory Background on Equal Protection Analysis

Readings:

Farber/Siegel Chapter 8 pp. 231-241 and pp. 245-253

Note on “The Fourteenth Amendment”

Note on “The Unusual Procedural History of the Fourteenth Amendment”

United States v. Carolene Products Co. (1938) (Footnote 4 especially!)
Note on “Four Concepts of ‘Race’: Status-Based, Formal, Historical, and Cultural”

**How Race has been a Constant Constitutional Theme—and the Unfinished Business and Shame of the Nation**

Readings:

Farber/Siegel Chapter 10 pp. 279-308; Chapter 13 pp. 427-453

*Prigg v. Pennsylvania* (1842)

*Dred Scott v. Sandford* (1857)

*The Slaughterhouse Cases* (1873)

*The Civil Rights Cases* (1883)

*Plessy v. Ferguson* (1896)

Note on “Background to the School Desegregation Case”

*Brown v. Board of Education* (1954)

*Katzenbach v. McClung* (1964)

*Burton v. Wilmington Parking Authority* (1961)


*Shelby County, Alabama v. Holder* (2013)


*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023)


Rumpf-Whitten, “Kansas State University faces civil rights complaint over racially discriminatory scholarship,” *Fox News* 8/17/23

MacIntosh, “The one group with a huge advantage in college admissions,” *CNN* 7/10/23
Cherokee Nation v. Georgia (1831)

United States v. Kagama (1886)

City of Cleburne, Texas v. Cleburne Living Center (1985)

October 11 (Class 13)

The Push for More Equality (continued)

How Race has been a Constant Constitutional Theme—and the Unfinished Business and Shame of the Nation (continued)

Readings:

Farber/Siegel Chapter 10 pp. 279-308; Chapter 13 pp. 427-453

Prigg v. Pennsylvania (1842)

Dred Scott v. Sandford (1857)

The Slaughterhouse Cases (1873)

The Civil Rights Cases (1883)

Plessy v. Ferguson (1896)

Note on “Background to the School Desegregation Case”

Brown v. Board of Education (1954)

Katzenbach v. McClung (1964)

Burton v. Wilmington Parking Authority (1961)


Shelby County, Alabama v. Holder (2013)


Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (2023)


Rumpf-Whitten, “Kansas State University faces civil rights complaint over racially discriminatory scholarship,” *Fox News* 8/17/23

MacIntosh, “The one group with a huge advantage in college admissions,” *CNN* 7/10/23

*Cherokee Nation v. Georgia* (1831)

*United States v. Kagama* (1886)

*City of Cleburne, Texas v. Cleburne Living Center* (1985)

October 13 (Class 14)

MID-TERM EXAM (in class)

Week 6

October 16

MID-TERM BREAK—No Class

October 18 (Class 15)

**Moot Court Preparation: the Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited Litigation**

Readings:

Totenberg, “Supreme Court to hear case that threatens existence of consumer protection agency,” National Public Radio 4/27/23

*Community Financial Services Association of America, Ltd. v. CFPB* (5th Cir. 2022 excerpts)

October 20 (Class 16)

**The Push for More Equality (continued)**

How Race has been a Constant Constitutional Theme—and the Unfinished Business and Shame of the Nation (continued)

Readings:
Farber/Siegel Chapter 10 pp. 279-308; Chapter 13 pp. 427-453

*Prigg v. Pennsylvania* (1842)

*Dred Scott v. Sandford* (1857)

*The Slaughterhouse Cases* (1873)

*The Civil Rights Cases* (1883)

*Plessy v. Ferguson* (1896)

Note on “Background to the School Desegregation Case”

*Brown v. Board of Education* (1954)

*Katzenbach v. McClung* (1964)

*Burton v. Wilmington Parking Authority* (1961)


*Shelby County, Alabama v. Holder* (2013)


*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023)


Rumpf-Whitten, “Kansas State University faces civil rights complaint over racially discriminatory scholarship,” *Fox News* 8/17/23

MacIntosh, “The one group with a huge advantage in college admissions,” *CNN* 7/10/23

*Cherokee Nation v. Georgia* (1831)

*United States v. Kagama* (1886)

*City of Cleburne, Texas v. Cleburne Living Center* (1985)
Week 7

October 23 (Class 17)

The Push for More Equality (continued)

How Race has been a Constant Constitutional Theme—and the Unfinished Business and Shame of the Nation (continued)

Readings:

Farber/Siegel Chapter 10 pp. 279-308; Chapter 13 pp. 427-453

Prigg v. Pennsylvania (1842)

Dred Scott v. Sandford (1857)

The Slaughterhouse Cases (1873)

The Civil Rights Cases (1883)

Plessy v. Ferguson (1896)

Note on “Background to the School Desegregation Case”

Brown v. Board of Education (1954)

Katzenbach v. McClung (1964)

Burton v. Wilmington Parking Authority (1961)


Shelby County, Alabama v. Holder (2013)


Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (2023)


Rumpf-Whitten, “Kansas State University faces civil rights complaint over racially discriminatory scholarship,” *Fox News* 8/17/23

MacIntosh, “The one group with a huge advantage in college admissions,” *CNN* 7/10/23

*Cherokee Nation v. Georgia* (1831)

*United States v. Kagama* (1886)

*City of Cleburne, Texas v. Cleburne Living Center* (1985)

October 25 (Class 18)

**ZOOM Class Session**

**The Push for More Equality (continued)**

**How Race has been a Constant Constitutional Theme—and the Unfinished Business and Shame of the Nation (continued)**

Readings:

Farber/Siegel Chapter 10 pp. 279-308; Chapter 13 pp. 427-453

*Prigg v. Pennsylvania* (1842)

*Dred Scott v. Sandford* (1857)

*The Slaughterhouse Cases* (1873)

*The Civil Rights Cases* (1883)

*Plessy v. Ferguson* (1896)

Note on “Background to the School Desegregation Case”

*Brown v. Board of Education* (1954)

*Katzenbach v. McClung* (1964)

*Burton v. Wilmington Parking Authority* (1961)


*Shelby County, Alabama v. Holder* (2013)

*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023)


Rumpf-Whitten, “Kansas State University faces civil rights complaint over racially discriminatory scholarship,” *Fox News* 8/17/23

MacIntosh, “The one group with a huge advantage in college admissions,” *CNN* 7/10/23

*Cherokee Nation v. Georgia* (1831)

*United States v. Kagama* (1886)

*City of Cleburne, Texas v. Cleburne Living Center* (1985)

October 27 (Class 19)

**Catch-up and Moot Court Preparation**

Readings:

Briefs before the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*

Petitioner’s Brief

Respondent’s Brief

Petitioner’s Reply Brief

Week 8

October 30 (Class 20)

**Moot Court Oral Argument**

Readings:

Briefs before the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*

Petitioner’s Brief
The Push for More Liberty

Incorporation of (much of) the Bill of Rights

Readings:

Farber/Siegel, pp. 241-245

Note on “The Evolution of the Bill of Rights and Its ‘Incorporation’ Against the States”

Note on “The Incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment”

Liberty in Religion

Readings:

Note on “The Compatibility and Tension Between the Provisions”

Note on “Competing Theories of the Establishment Clause”

*Lemon v. Kurtzman* (1971)

*County of Allegheny v. ACLU* (1989)


*Carson v. Makin* (2022)


*Our Lady of Guadalupe School v. Morrissey-Berru* (2020)

Moot Court Decision and Discussion
Week 9

November 6 (Class 23)

The Push for More Liberty (continued)

Liberty in Religion (continued)

Readings:

- Note on “The Compatibility and Tension Between the Provisions”
- Note on “Competing Theories of the Establishment Clause”
- *County of Allegheny v. ACLU* (1989)
- *Carson v. Makin* (2022)

November 8 (Class 24)

The Push for More Liberty (continued)

Liberty in Religion (continued)

Readings:

- Note on “The Compatibility and Tension Between the Provisions”
- Note on “Competing Theories of the Establishment Clause”
- *County of Allegheny v. ACLU* (1989)

Carson v. Makin (2022)


Our Lady of Guadalupe School v. Morrissey-Berru (2020)

November 10 (Class 25)

The Judiciary and Judicial Decision-making in a Broader Context

Having to Account for/Accommodate Political Realities

Readings:

Schenck v. United States (1919)

Korematsu v. United States (1944)


Dames & Moore v. Regan (1981)


Having to Account for/Accommodate Cultural Realities

Readings:


Dickerson v. United States (2000)

Limited Power of Courts to “Enforce” a Politically Unpopular Decision

Readings:

Jackson, “Veto Message” 1832

Brown v. Board of Education of Topeka (Brown II) (1955)

Week 10

November 13 (Class 26)

The Judiciary and Judicial Decision-making in a Broader Context (continued)
Having to Account for/Accommodate Political Realities (continued)

Readings:

Schenck v. United States (1919)
Korematsu v. United States (1944)
Dames & Moore v. Regan (1981)

Having to Account for/Accommodate Cultural Realities (continued)

Readings:

Dickerson v. United States (2000)

Limited Power of Courts to “Enforce” a Politically Unpopular Decision (continued)

Readings:

Jackson, “Veto Message” 1832
Brown v. Board of Education of Topeka (Brown II) (1955)

November 15 (Class 27)

Catch-up, Review and Conclusion

Relative Rise/Fall of Different Constitutional Provisions

Constitutional Futures

Readings:

Note on “Cooperative (and Uncooperative) Federalism”

Preparation for Class, Attendance, and Class Participation

We will be meeting face-to-face, although there will be a couple of occasions when (due to prior commitments I have) we will need to meet by Zoom or I will record a lecture in advance for you to watch.
The readings for the course are several hundred pages per week, and of course I expect you to have done the relevant reading before each session. Many of the readings are judicial opinions that illustrate how judges apply the law to specific disputes—and sometimes create new law. Reading such opinions is something of an acquired skill, because of the formal language and structure used by judges and the reliance upon precedent in crafting a decision, but you will get the hang of it quickly (really!) To that end, I will introduce you to (1) basic legal terminology and concepts; (2) the mechanics and impact of legal reasoning; and (3) the case method approach to studying law and divining legal principles.

I believe that lasting learning is best attained through joint discussion and deliberation, with teachers and students as active partners in intellectual dialogue. Our class sessions are designed to help build upon and confirm your understanding not just of the assigned material but of the underlying issues and themes. Therefore, your attendance and participation are important. I will assume from your presence that you are benefiting and learning from the course. Conversely, I will infer from your absence that you are not. Of course, I understand that sometimes emergencies or other unexpected circumstances (including medical circumstances) arise that make attendance that day impossible. If this is the case, please talk with me as soon as possible so we can make arrangements to get you caught up. However, if you accumulate more than two unexcused absences, I will deduct from your course average.

While I will periodically offer a brief mini-lecture to explicate a particularly complicated or unfamiliar topic, much of our class will be a free-wheeling Socratic debate and discussion, led and facilitated by me. While I will expect people to participate voluntarily, I will also call upon students by name. Be ready to participate. Your comments, questions, observations and critique of the readings (and of my and others’ arguments) will make this a richer learning experience for us all.

To that end, during the first week of the class I will break us into three sub-groups, each of which will be charged with helping us reflect upon the discussions. Starting with week 1 of the term, at the end of each week each of the members of a designated sub-group will be asked, on three occasions:

To post on the course’s Moodle site, at least 24 hours before the next session, a short reflection/analysis piece (e.g., one page or 300-400 words) of the idea(s) discussed in our class sessions that week that you find most compelling, provocative, or worthy of further examination—and why you feel that way.

Because these post-class reflections will be of value to all participants, everyone should read them.

**Further Background and Ground Rules for Discourse**

As you’ll quickly discover from our discussions and the readings, while many people perceive “the law” as providing (or wish for it to provide) clarity and certainty in the rules that govern society and in the adjudication of the disputes that inevitably arise, there is often more “gray” than black/white in constitutional law. This means that there is lots of room for debate and disagreement on what the current law is, and that, instead of me simply giving you “answers,” we shall be exploring together both what the law means and what it should be.
A most valuable skill required in legal analysis is seeing how the sides of an argument (and often there are more than two sides!) can be laid out in the cleanest and most powerful of terms. This is also something we’ll work on together.

Let me also lay out a few “ground rules” for our discourse in class:

- Our class must be marked by mutual respect for and civility towards each other. Everyone should feel included and able to express their views thoughtfully.

- We’ll be reading about and debating intense and divisive issues that go to the heart of American democracy and how it is functioning. Accordingly, academic freedom and First Amendment freedom of expression (which are not the same thing!) will be linchpins of our work together. I support both of those values in their proper context, and expect you to do the same. This means we must be willing to consider the substantive merits of seriously-offered ideas with which we disagree (or even which offend our sensibilities).

- Substantive arguments about the law are to be expected, but they must never turn into personal attacks. If someone (and this includes me!) says something in class that offends you personally, I would ask that you take it up politely and honestly with that individual later.

- Because I want our classroom to be both an intellectually challenging and a supportive place, I will endeavor to alert students to topics or readings that I know may be wrenching to address. In turn, you should feel free to advise me privately if you cannot engage as you ordinarily would with regard to any particular topic.

- I will always endeavor to address everyone by their preferred name and pronouns (though it may take me a bit of time to memorize them all!) Because I do not want to subject anyone to public scrutiny on this matter, please let me know privately (email is fine) if you have a particular way you would like to be addressed.

- Some legal terminology (and how it is used by judges and commentators) shifts over time. The case law you’ll read may use terms in ways we would not do so today. For example, what we might regard as clear differences between discrimination on the basis of sex, of gender, or of sexual orientation have not always been recognized and described as distinct from each other. However, I will ordinarily refer to “gender-based” discrimination in the law as opposed to “sex-based” distinctions.

We will also have an opportunity during the first week of class to discuss collectively whether there are further ground rules for discourse that we’ll want to observe.

**Grading**

I will compute your grade from a course average with the following weights:

- Midterm Exam 25%
- Final Exam 40%
- Moot Court exercise (group grade, based ½ on
argument outline and ½ on oral presentation) 20%

The “Winning Team’s” collective grade will be raised by one grade level as a consequence of prevailing in the litigation (e.g., a collective A-grade would be raised to an A).¹

- General Class Participation (including Moodle posts and especially in class-contributions) 15%

All written assignments are due on the due date, as confirmed in class by the instructor.

- Late assignments will be penalized.
- Missed assignments will receive a grade of zero (0).

However, I do understand that sometimes emergencies or other unexpected circumstances arise that make meeting a deadline impossible. If this is the case, please talk with me as soon as possible so we can make appropriate arrangements.

**Academic Integrity**

In an academic community, cheating and plagiarism are “capital offenses” that are the most serious violations of our shared standards and expectations. Academe relies upon the ethical conduct of scholars, who are expected always to give proper credit to the ideas of others that they rely upon/build upon. Students are held to the same standards in their own work. Any act of academic dishonesty or misconduct will be referred to the Academic Standing Committee. For further information, see: https://apps.carleton.edu/handbook/academics/?policy_id=21359

**Accessibility**

I want everyone in the class to be able to learn effectively. To that end, Carleton is committed to providing reasonable accommodations to students with disabilities. Students seeking accommodations should contact the Coordinator of Disability Services at 222-4464 to begin the process. Carleton faculty are strongly encouraged to wait for official notification of accommodations before modifying course requirements for students.

Other resources that may be of value and aid to students include the College’s Academic Support center (https://www.carleton.edu/asc/) and Writing Center (https://www.carleton.edu/writing-center/).

**Artificial Intelligence**

The use of ChatGPT or other AI tools to prepare written assignments for this class is prohibited.

**Observance of Religious Holidays**

I will seek to accommodate or make alternative arrangements for students who need to come late to class, who need to be absent from class, or who need to submit an assignment late in

---

¹ Because the Moot Court “Justices” will not be eligible for this grading “bump,” I will offer each of them the opportunity to submit an additional reflection piece about the moot court experience that will count for extra credit.
order to observe a religious holiday. I would ask that you let me know in advance if you are experiencing such a conflict, so that I can work with you to find an appropriate and fair accommodation. You can find further information about the College’s policy on religious holidays at: https://www.carleton.edu/chaplain/religious-observances/.

Contacting the Instructor:

I can be reached at:

Office: 303 Hasenstab Hall
Office hours: Tuesdays and Thursdays 1:00-2:00 pm, and by appointment, as needed
Phone: (507) 222-4563
Fax: (507) 222-5615
Email: sposkanzer@carleton.edu (This is probably the fastest way to reach me)

I would ask each of you to come to office hours at least once, so I can get to learn more about you, your motivations for taking the course, and your longer-term aspirations.