

POLI 321: American Constitutional Law

Fall 2022

TR 10:50 AM – 12:05 PM
BKH 233

Contact Information

Instructor: Dr. Joseph Cozza (*He/Him*)
Office: 115 Herzstein Hall
Email: Joseph.Cozza@rice.edu
Office Hours: Tuesday 2:30 – 4:00 and Wednesday 1:00 – 2:30

Course Objectives and Learning Outcomes

The focus of the course is one of the most vital aspects of politics: interpreting and applying the nation's fundamental rules. This interpretive activity is critical in regard to the Constitution for the simple reason that the document defines us as a people. Constitutional law is thus best viewed as an extended commentary on the meaning of America.

In this class we examine the structures of power in a constitutional democracy, exploring contests over authority from John Marshall and Thomas Jefferson to Donald Trump, the disputed election of 2000, the challenge of terrorism in the 21st century, and the Affordable Care Act (“Obamacare”). Among the topics to be considered: the powers of the federal and state governments, the executive’s emergency powers, and the Supreme Court’s authority to nullify the acts of other branches. Under these general headings are to be found such issues as the power to regulate firearms, recognize foreign governments, overturn a judicial decision through congressional action, deprive citizens of rights during wartime, regulate immigration, and protect voting rights. By the end of the course, students should have an informed judgement on these questions.

Constitutional interpretation has largely become the prerogative of the judiciary. As we shall see early in the course, there are sound, perhaps compelling, reasons for other public officials to immerse themselves deeply into constitutional interpretation. But the plain fact is that they often do not, and, even when they do, they frequently defer to past and anticipated judicial rulings. Whether right or wrong, good or bad, a judicial quasi-monopoly in constitutional interpretation means that to give a realistic picture of what happens in the United States, a course on constitutional authority must concentrate on the judiciary. Thus, one of our objectives is to explore how courts and judges function within the American political process. A recurring question is the role of judicial review in a constitutional democracy, how one justifies the possession of this extraordinary power by an essentially undemocratic institution in a regime committed to accountability in policymaking.

In this course, students will:

- Engage and interpret primary sources, especially decisions of the Supreme Court
- Consider and evaluate competing modes of constitutional interpretation
- Consider and evaluate the role of courts and judicial review in a constitutional democracy
- Developed and strengthen critical thinking, written, and oral communication skills
- Use logical and analytical reasoning skills on exams and papers that require one to think like a lawyer or judge
- Become informed citizens able to participate effectively and meaningfully in the political process

Required Texts and Materials

The reading assignments are crucial for a complete understanding of the course material, and students are expected to keep pace with the syllabus. Required readings for this course include:

Donald P. Kommers, John E. Finn, Gary J. Jacobsohn, George Thomas, and Justin Dyer, *American Constitutional Law: Governmental Powers and Democracy* (Vol. 1, 4th ed.). West Academic Publishing. ISBN: 9781683289036

Robert G. McCloskey, *The American Supreme Court* (6th ed.). University of Chicago Press. ISBN: 9780226296890

Both of these required texts are available at the Rice Campus Store and can also be purchased online. All other required readings will be posted on Canvas. All readings on the course calendar are required unless otherwise indicated.

Exams and Papers

This course has two exams: a midterm and a final. The midterm exam will be held on Thursday, October 6 and the final exam will be held during the final exam period. Both exams will be open book and will consist of essays and identification questions. In addition to this, students will write a 4-6 page paper responding to a hypothetical legal case as part of our moot court exercise. The paper will be due at 5:00 on Monday, November 28, and we will hold the moot court the next day. More instruction for the moot court will be posted on Canvas during the semester. Participation and case briefs will also serve as a component of your grade. Students are expected to come to class prepared every day having read and briefed the cases. The class will often be conducted using the Socratic method, meaning I will call on students to explain the cases and their significance. At times, I will randomly collect case briefs to grade.

The grading breakdown for the class is as follows:

- Midterm 25%
- Final 30%
- Paper 25%
- Briefs and participation 20%

Grade Policies

Overall course grades are assigned according to the following scale:

93.0% - 100%	A	77.0% - 79.9%	C+
90.0% - 92.9%	A-	73.0% - 76.9%	C
87.0% - 89.9%	B+	70.0% - 72.9%	C-
83.0% - 86.9%	B	60.0% - 69.9%	D
80.0% - 82.9%	B-	0% - 59.9%	F

Final course grades are calculated based on a percentage rounded to the nearest tenth of a percent. For example, a final score of 92.95 is rounded to 93.0 and is an A, while an 82.91 is rounded to 82.9 and is a B-. This grading policy is not subject to appeal.

Grade Appeals

Following the return of graded work, a student must wait **three (3)** days before contacting me about an appeal. After the three-day waiting period, a student has **eleven (11)** business days after the return of graded work (MTWHF) to appeal a grade. Appeals must be made in writing (via email is fine) and provide evidence for the change. In total, the appeal time frame is **fourteen (14)** days from the day the graded work is returned. For example, if an exam is returned on Wednesday, appeals may not be submitted until Tuesday of the following week. Between Tuesday after the exam is returned and the following Tuesday, appeals are accepted. On Wednesday, two weeks after the exam is returned, appeals are no longer accepted. Do not contact me about your grade if fourteen business days have passed. Do not appeal a grade unless evidence presented is compelling and thoughtfully reasoned.

Makeup Policy

All assignments are due as indicated on the syllabus or on assignment handouts. Makeup exams will only be offered when extreme circumstances keep a student from being able to take the exam on the scheduled date, and such exceptions are made at my discretion. If at all possible, such circumstances should be communicated to me before scheduled exams. Late papers are accepted, but they will be penalized a full letter grade for every day late. Exceptions to this policy can be made at my discretion, but only if circumstances are communicated in advance of the due date.

Attendance and Absence Policies

While attendance is not mandatory, students are expected to attend all class sessions and will be graded on their participation throughout the course. It is important to note that class participation is different from attendance. During class sessions students are encouraged to raise questions and relevant topics in class and are expected to contribute to class discussions. Students are expected to do the assigned readings *before* we discuss the topic in class and arrive at class ready to discuss the readings. I reserve the right to make attendance mandatory if attendance at the discussions sessions is unsatisfactory.

Accommodations for Religious Holidays

If you must miss an exam or assignment in order to observe a religious holiday, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

Course Communication

Course materials, including all readings outside of the core text, will be posted on the course Canvas page. All important course communication outside of class time will be posted as an announcement on the class Canvas page. I do not anticipate using this feature frequently, but I would encourage you to check the Canvas page daily or change your Canvas settings to email you when an announcement is posted. You will also use Canvas to submit the course paper.

Office Hours: Office hours are your time and will be held Tuesday, 2:30 – 4:00 PM and Wednesday, 1:00 – 2:30 PM. You are welcome to stop by to discuss course material, current events, or simply talk politics. If you need to arrange a meeting outside my office hours, please email me with suggested times. I will do my best to accommodate these requests, but they should only be used in circumstances where attendance to my normal office hours is impossible.

Email: The easiest way to contact me outside of office hours is via email. I will respond to emails during normal business hours (8-6pm, M-F) and will be sure to respond within 24 hours.

Rice Honor Code

In this course, all students will be held to the standards of the Rice Honor Code, a code that you pledged to honor when you matriculated at this institution. If you are unfamiliar with the details of this code and how it is administered, you should consult the Honor System Handbook at <http://honor.rice.edu/honor-system-handbook/>. This handbook outlines the University's expectations for the integrity of your academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process.

Disability Resource Center

If you have a documented disability or other condition that may affect academic performance you should: 1) make sure this documentation is on file with the Disability Resource Center (Allen Center, Room 111 / adarice@rice.edu / x5841) to determine the accommodations you need; and 2) talk with me to discuss your accommodation needs.

Syllabus Change Policy

This syllabus is only a guide for the course and is subject to change with advanced notice.

Title IX Responsible Employee Notification

Rice University cares about your wellbeing and safety. Rice encourages any student who has experienced an incident of harassment, pregnancy discrimination or gender discrimination or relationship, sexual, or other forms interpersonal violence to seek support through The SAFE Office. Students should be aware when seeking support on campus that most employees, including myself, as the instructor, are required by Title IX to disclose all incidents of non-consensual interpersonal behaviors to Title IX professionals on campus who can act to support that student and meet their needs. For more information, please visit safe.rice.edu or email titleixsupport@rice.edu.

Course Schedule

I. Judicial Review: The What, Who, and How of Constitutional Interpretation

Tuesday, August 23

Course Introduction

Thursday, August 25

Textbook: 3-67, 913-918

Cornyn/Kagan Confirmation Hearing Exchange*

Tuesday, August 30

Calder v. Bull*

Kelo v. City of New London, Connecticut*

Deshaney v. Winnebago County*

Thursday, September 1

Textbook: 79-106

McCloskey: 1-34

Marbury v. Madison (110)

Federalist #78 (895)

Tuesday, September 6

Abraham Lincoln, First Inaugural Address (903)

Andrew Jackson, Veto of the Bank Bill*

Cooper v. Aaron (133)

United States v. Nixon (248)

Thursday, September 8

Luther v. Borden (140)

Baker v. Carr (145)

Reynolds v. Sims (783)

Rucho v. Common Cause*

Tuesday, September 13

William Renquest, “The Notion of a Living Constitution”*

David Souter, Harvard Commencement Address*

Thurgood Marshall on the Bicentennial*

Dred Scott v. Sandford (213)

Brown v. Board of Education*

Thursday, September 15

Textbook, 725-765

Bush v. Gore (858)

Cass Sunstein, “Order Without Law”*

John Yoo, “In Defense of the Court’s Legitimacy”*

Crawford v. Marion County Election Board (768)

II. Separation of Powers

Tuesday, September 20

Textbook, 163-200

Schechter Poultry Corporation v. United States (203)

Powell v. McCormack (219)

Thursday, September 22

Immigration and Naturalization Service v. Chadha (141)

Morrison v. Olson (237)

Trump v. Mazars*

Trump v. Vance*

Tuesday, September 27

Textbook, 277-318

United States v. Curtiss-Wright Export Corp. (344)

Youngstown Sheet & Tube v. Sawyer (330, 210)

Thursday, September 29

Korematsu v. United States (350)

Ex Parte Milligan (360)

Zivotovsky v. Kerry (419)

Tuesday, October 4

Hamdan v. Rumsfeld (370)

Samuel Issacharoff and Richard Pildes, “Between Civil Libertarianism and Executive Unilateralism”*

Thursday, October 6

Midterm Exam

Tuesday, October 11 - NO CLASS

III. Federalism

Thursday, October 13

McCloskey, 46-66

Textbook, 439-471

McColloch v. Maryland (474)

Prigg v. Pennsylvania (487)

Tuesday, October 18

New York v. United States (501)

Printz v. United States (513)

U.S. Term Limits, Inc. v. Thornton (524)

Thursday, October 20

Textbook, 585-593

Gibbons v. Ogden (619)

United States v. E.E. Knight Co. (628)

Champion v. Ames (634)

Hammer v. Dagenhart (639)

Tuesday, October 25

Colley v. Board of Wardens (556)

Southern Pacific Company v. State of Arizona (560)

Granholm v. Heald (565)

Thursday, October 27

McCloskey, 67-120 (*SKIM*)

Wickard v. Filburn (651)

Heart of Atlanta Motel Inc. v. United States (654)

Tuesday, November 1

Textbook, 593 - 605

United States v. Lopez (659)

U.S. v. Morrison (667)

Gonzales v. Raich (675)

Thursday, November 3

NFIB v. Sebelius (684)

Tuesday, November 8

Alden v. Maine (548)

Arizona v. United States (572)

Thursday, November 10

Textbook, 606 - 611

South Dakota v. Dole*

NFIB v. Sebelius Part II (536)

IV. Reconsidering the Role of the Supreme Court

Tuesday, November 15

Shelby County v. Holder (775)

Brnovich v. Democratic National Committee*

Chiafalo v. Washington

Thursday, November 17

McCloskey 224-296 (Read pages 249 – 252, 255- 261, and 283 – 296 closely, skim rest)

Tuesday, November 22

Catch-up/Moot Court Prep

Thursday, November 24 - NO CLASS

Tuesday, November 29

Moot Court

Thursday, December 1

Catch-up/Final Exam Prep