POLS 5211: CONSTITUTIONAL LAW

Fall 2025
Mo/We 3:00 PM-4:20 PM
GC 1570
3 Credit Hours

INSTRUCTOR INFORMATION

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TEACHING ASSISTANT

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OFFICE HOURS

Tuesdays 1:00 PM-2:00 PM
Wednesdays 11:00 AM-12:30 PM
(and by appointment)
Email is the best way to get in touch.

COURSE DESCRIPTION

This class will survey the development of the American constitutional order, from the Founding to the present. Courses in "constitutional law" typically focus almost exclusively on the main lines and subtleties of legal/constitutional doctrine as expounded by the U.S. Supreme Court. We will take a broader, historical developmental, perspective in order to interrogate how constitutional powers have expanded, retracted, and changed in response to political conflict and struggle over the course of American history. While we will study many of the same themes that the Supreme Court addresses in its major constitutional decisions (which we will read)—the powers of the national government, the relationship between the national government to the states and individuals, the separation of powers– the Supreme Court is just one of many political actors and institutions that address these questions. Sometimes it is not the most influential or profound authority on these matters.

As we will see, the meaning and scope of these constitutional powers has changed considerably even as the formal text of the Constitution has remained largely unchanged. Efforts to shape the constitutional order have often been contentious and hard-fought. We will approach the subject chronologically, surveying the Founding, the Marshall and Taney eras, the Civil War, the rise of corporate capitalism, the emergence of the modern state, the New Deal crisis, the Reagan Era and into the current state of polarized and gridlocked politics.

The goal of this course is to track how these powers have interacted in their development throughout American history. This varied study will empower us to evaluate the successes and failures of the U.S. Constitution throughout history and as we confront new political crises today.

REQUIRED TEXT

- Howard Gillman, Mark A. Graber, and Keith E. Whittington, *American Constitutionalism: Volume 1: Structures of Government*, Third Edition (Oxford). Denoted as **"GGW"** in the course schedule below.
- Other readings on **Canvas,** denoted as "**C"** below.

LEARNING GOALS

1. Identify key issues concerning constitutionalism and government as exemplified in the U.S. Constitution and addressed by various actors historically from founding to present-day.
2. Understand how the political contexts and ideas surround and influence the U.S. Constitution and its interpretation by the Supreme Court and other political actors.
3. Develop a basic understanding of how to read, analyze, and write on court cases, as well as to discuss and deliberate over these issues with others.
4. Analyze perspectives that are controversial, uncomfortable, and that may challenge you to reassess your own outlook.

HELPFUL RESOURCES

As you read, you will come across Supreme Court cases. If you want to read accessible and short summaries of Supreme Court cases visit Oyez.org.

- US Supreme Court website
- Legal Information Institute (for full Supreme Court opinions and state and federal statutes) Supreme Court Blog (for discussion of upcoming cases and analysis)
- Audio and transcripts of Supreme Court arguments Supreme Court Historical Society
- C-Span's Supreme Court

ASSIGNMENTS

1. Reader responses (5), 15%. Due September 10, 17, 22, 29, and October 15
2. Midterm analytical paper, 30%. Due October 13
3. Group presentation outline, 5%. Due November 10
4. Final hypothetical case analysis, 30%. Due December. 8
5. Group presentation (groups of 3), 20%. Due on **either** November 24, December 1, or 3.

Grading Policy. Student work in University courses shall generally be reported in terms of the following grades: "A," "A-," excellent performance, superior achievement; "B+," "B," "B-," good performance, substantial achievement; "C+," "C," "C-," standard performance and achievement; "D+," "D," "D-," substandard performance, marginal achievement; "E," unsatisfactory performance and achievement.

94-100: A	83-86: B	73-76: C	63-68: D
90-93: A-	80-82: B-	70-72: C-	60-62: D-

87-89: B+ 77-79: C+ 67-69: D+ 59 and below: F

CLASS STRUCTURE & TEACHING METHODS

My courses are deeply discussion-based, collaborative, and participatory. I mix lecture, discussion (class-wide and group), and various hypothetical exercises to engage you with the material. Throughout the semester, I will call on students and encourage student participation; I frequently pause for you to ask questions or for me to ask you questions. While I present material on slides, I never spend an entire class session lecturing. That means please come to every class ready to discuss the material and to present questions or problems you have with it.

COURSE POLICIES & EXPECTATIONS

1. **Be Open-Minded, Thinking Critically about Everything, and Have Fun!** Law and politics are complex, multi-faceted, and present many questions that do not have clear answers. Therefore, I expect you to use this course to think about ideas and arguments from a 360-degree view. Do not fall into the terrible habit of automatic thinking; do not quickly revert to your emotions, feelings, and instinctual reactions. Instead, reserve your judgement, evaluation, and conclusions until you have examined the breadth of the scholarship and arguments on a given topic. While this will be difficult work, but it should also be fun, invigorating, collaborative, and an exercise that we rarely have opportunity to conduct outside of the college classroom. So let's enjoy this together.
2. **Attendance:** Put simply, I expect you to attend every class. Attendance is defined to be: in class on time, in class for the duration of the class period, prepared for the day's topic, participation in class**.** You are responsible for coming to class every day prepared to discuss the material, to answer my questions, to raise questions of your own, and to listen to each other and to me.
3. **Submitting Work/Late Assignments:** I expect you to submit work on time via Canvas. Late assignments will be penalized a third of a grade each day they are late. If you need an extension on an assignment or need to take an exam on a different day, please talk to me **before** the due date. Any assignment that is turned in after the due date will be subject to a 20% grade reduction for 24-hour period beyond the due date.
4. **Decorum:** I expect each of you (and me) to conduct ourselves appropriately, civilly, and respectfully—both in our own comments and in our responses (verbal or otherwise) to the comments of your peers. Respectful, intellectual discourse is the norm in my classroom, and, as such, we will reserve criticism for ideas, arguments, and opinions rather than for people; ad hominem comments will not be tolerated.

UNIVERSITY POLICIES

1. **Academic Honesty:** I expect students adhere to University of Utah policies regarding academic honesty, including but not limited to refraining from cheating, plagiarizing, misrepresenting one's work, and/or inappropriately collaborating. Do not use generative artificial intelligence (AI) tools to conduct your any of your assignments. No cheating, plagiarism, or other serious offenses will be tolerated. This includes the use of proper citations in all papers completed for the class. Violation will result in disciplinary action. Any student who engages in academic dishonesty or who violates the professional and ethical standards for their profession/discipline may be subject to academic sanctions as

per the University of Utah's Student Code: https://regulations.utah.edu/academics/6-410.php

2. **The Americans with Disabilities Act**. The University of Utah seeks to provide equal access to its programs, services, and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to the Center for Disability Services, 162 Olpin Union Building, (801) 581-5020. CDS will work with you and the instructor to make arrangements for accommodations. All written information in this course can be made available in an alternative format with prior notification to the Center for Disability Services.
3. **University Safety Statement.** The University of Utah values the safety of all campus community members. To report suspicious activity or to request a courtesy escort, call campus police at 801-585-COPS (801-585-2677). You will receive important emergency alerts and safety messages regarding campus safety via text message. For more information regarding safety and to view available training resources, including helpful videos, visit safeu.utah.edU.
4. **Addressing Sexual Misconduct.** Title IX makes it clear that violence and harassment based on sex and gender (which includes sexual orientation and gender identity/expression) is a civil rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, color, religion, age, status as a person with a disability, veteran's status or genetic information. If you or someone you know has been harassed or assaulted, you are encouraged to report it to the Title IX Coordinator in the Office of Equal Opportunity and Affirmative Action, 135 Park Building, 801-581-8365, or the Office of the Dean of Students, 270 Union Building, 801-581-7066. For support and confidential consultation, contact the Center for Student Wellness, 426 SSB, 801-581-7776. To report to the police, contact the Department of Public Safety, 801-585-2677(COPS).
5. **Wellness Statement.** Personal concerns such as stress, anxiety, relationship difficulties, depression, cross-cultural difficulties, and the like can interfere with a student's ability to success and thrive at the University of Utah. For helpful resources contact the Center for Student Wellness: www.wellness.utah.edu; 801-581-7776
6. **Undocumented Student Support Statement.** Immigration is a complex phenomenon with broad impact—those who are directly affected by it, as well as those who are indirectly affected by their relationships with family members, friends, and loved ones. If your immigration status presents obstacles to engaging in specific activities or fulfilling specific course criteria, confidential arrangements may be requested from the Dream Center. Arrangements with the Dream Center will not jeopardize your student status, your financial aid, or any other part of your residence. The Dream Center offers a wide range of resources to support undocumented students (with and without DACA) as well as students from mixed-status families. To learn more, please contact the Dream Center at 801.213.3697 or visit dream.utah.edu.
7. **Diversity & Inclusivity.** I stand in support of compassion, dignity, value-of-life, equity, inclusion and justice for all individuals regardless of color, race/ethnicity, sexual orientation, religion, language, socioeconomic status, ability, gender, gender identity or expression, immigration status, or any type of marginalization. I stand in support of making our society more inclusive, just, and equitable for all individuals. I stand against individual

and systemic racism in all its various forms. Your suggestions are encouraged and appreciated. Please let me know ways to improve the effectiveness of the course for you personally or for other students or student groups. In addition, if any of our class meetings conflict with your religious events, please let me know so that we can make arrangements for you.

COURSE SCHEDULE

Please Note:

1. In any given week, you should completed the assigned readings before the class session for which I have assigned them. To participate in effectively, you will need to read – and frequently re-read – the following assignments with some care. It is a good idea to take notes from the readings and bring all of the assigned (required) reading materials with you to class.
2. This syllabus serves as an outline and guide for our course. However, I may modify it with reasonable notice to you. I will announce any changes ahead of time in class and post on Canvas under Announcements.

WEEK 1: Intro to Constitutionalism

We will be getting started somewhat slowly here, but you should use this first week to begin thinking about the fundamental purposes of the U.S. Constitution. Why do we have a constitution? What is it supposed to do? How should a constitution be interpreted? How are constitutions enforced? How do they change? What are the best frameworks for understanding and answering these questions?

Indeed, constitutionalism has fascinated people from Aristotle to our contemporary moment: but what *is* a constitution? Why does the United States and other modern nations have constitutions? Thomas Paine provides us a radical defense of the U.S. Constitution shortly after its ratification. How does he define this document and its relationship to popular authority and government? Why does he call the Pennsylvania constitution the "political bible of the state"? What kind of overarching questions about the U.S. Constitution does Paine's defense raise?

- **8/18:**
  - Michael Pence, "Letter on Counting Electoral Votes" (GGW 752-53)
  - Ch. 1, "Introduction to American Constitutionalism" (GGW 3-10)
- **8/20:** Thomas Paine, "Of Constitutions" in *Rights of Man* (C)
- Optional: Thomas Jefferson to James Madison, September 6, 1789 (C)

WEEKS 2-3: Creating the U.S. Constitution

Our pace will now begin to pick up, as we turn our attention to the drafting, adoption, and immediate amendment of the U.S. Constitution. We will be referring with some regularity to the constitutional text, so make sure you are familiar with it. (It's also available here.)

The U.S. Constitution was created in response to a variety of political experiments, problems, and ideas – and its ratification inaugurated a history of contention over the document. Try to put yourselves in the framers' shoes. What problems were they trying to address? How were they trying to do so? Why did they think this would work? Were they right?

Moreover, existing and previous experiences shaped their perspectives on the Constitution. What state and federal experiments with constitutionalism informed the design of the U.S. Constitution? What problems do the authors of the *Federalist* argue the Constitution will solve? How did those for and against the Constitution debate ideas of judicial authority, national power, federalism, and the separation of powers? What's the legacy of these controversies today?

- **8/25:** Ch. 2, "The Colonial Era," GGW 31-47
- **8/27:**
    - Constitution of the United States of America (GGW 755-67)
    - Ch. 3, "The Founding Era: 1776-1788" (GGW 49-56, 65-73, 75-79, 88-91)
    - Optional "The Declaration of Independence" (GGW 45-47)

- **9/1: No Class**
- **9/3:**
    - *Essays of Brutus* Nos. 1 and 2 (C)
    - Ch. 3, "The Founding Era: 1776-1788" (GGW 56-65, 74-75, 90-92)

WEEKS 4-5: Constitutionalism in the Early Republic

As we turn our attention now to the Constitution's actual operation, once it was up and running, our reading volume will start to increase. When you read the assigned pages, note the frequency of conflict over the Constitution's meaning, even in its first years of existence.

Despite consensus around the Constitution's importance, the nation's first decades were defined by disagreement over what the document really meant. What is judicial review, and how did John Marshall justify it in *Marbury v. Madison*? Does its expansion in *Martin v. Hunter's Lessee* suggest it as a source of stability or supremacy? What is the difference between a strict and loose construction of the Constitution? Which is upheld and applied to the necessary and proper clause in *McCulloch v. Maryland?* What about the commerce clause in *Gibbons v. Ogden*? How did *Chisholm v. Georgia* inspire a different approach: not to interpret but to change the Constitution? Moreover, why do we have a president? In other words, when the framers created this office in Article II of the Constitution, what goals were they trying to accomplish?

- **9/8: No class**
- **9/10:** Ch. 4, "The Early National Era: 1789-1828" (83-91, 167-179)
- **9/15:**
    - Ch. 4, "The Early National Era: 1789-1828" (GGW 93-116, 155-58)
    - "Researching and Reading Government Documents" (GGW 769-75)
- **9/17:** Ch. 4, "The Early National Era: 1789-1828" (GGW 116-33, 136-40, 142-55)

WEEK 6: Jackson's America: States, Sovereignty, Slavery

We turn now to the Jacksonian era--named for President Andrew Jackson--a period during which many of our governmental institutions became significantly more democratic, but the institution of Southern slavery became ever more entrenched. The federalism debates of the Marshall era--in cases like *McCulloch v. Maryland* (1819) and *Gibbons v. Ogden* (1824)--continued during the Jacksonian era, but they were now conducted in the shadow of the escalating

slavery conflict. We'll focus on the shifting power and authority of state and federal legislative institutions and the sharpening of the longstanding constitutional conflict over slavery.

Andrew Jackson's presidency ushered in a new age of populist and partisan constitutional politics while entrenching America's imperial and slaveholding status. How did *Luther v. Borden* and *Barron v. Baltimore* limit judicial authority? How does Jackson himself interpret the Constitution? Other cases upheld the dispossession of American Indians and slavery. How does the Supreme Court interpret tribal sovereignty in *Cherokee Nation v. Georgia* and *Worcester v. Georgia*? What about the status of enslaved people and states in *Prigg v. Pennsylvania* and the infamous *Dred Scott v. Sandford* case? How do abolitionists propose we read the Constitution? Given all this debate and darkness, was the original Constitution "a Covenant with Death, an Agreement with Hell," as abolitionist William Lloyd Garrison described it in 1844?

- **9/22:** Ch. 5, "The Jacksonian Era: 1829-1860" (GGW 173-79, 185-94, 211-15); *Cherokee Nation v. Georgia* (1831) (C)
- **9/24:**
  - Ch. 5, "The Jacksonian Era: 1829-1860" (GGW 194-208)
  - Wendell Phillips, *The Constitution, a Pro-Slavery Compact* (C)
  - Frederick Douglass, "The Constitution of the United States" (C)
  - Podcast: More Perfect, American Pendulum II
  - Optional: "House Debate on the Missouri Compromise" (GGW 140-42)

WEEK 7: The Civil War as Constitutional Crisis

The U.S. Constitution has faced many crises--many historical moments at which it might have fallen apart--but the Civil War of 1860-65 was by far the greatest. In what ways did the Constitution change as a result of this crisis? Who should we credit as the "framers" of these changes?

The Civil War pitched the country into a severe constitutional crisis. What constitutional theories were at stake in the debate over secession? With war underway, how did President Abraham Lincoln exercise his executive authority, and how did other constitutional actors respond? These debates evolved during the brief period of Reconstruction. How did Congress and the Supreme Court interpret the 13th, 14th, and 15th Amendments after their ratification? What was the legal status of Southern states and federal intervention therein after the Confederacy's defeat? What different theories were offered to explain their relation to the nation? Overall, should we see the Constitution restored or irrevocably changed after the Civil War?

- **9/29:**
  - Ch. 6, "Secession, Civil War, and Reconstruction: 1861-1876" (GGW 231-42, 256-81, 286-93)
  - Optional: "The Constitution of the Confederate States" (C)
- **10/1:** Ch. 6, "Secession, Civil War, and Reconstruction: 1861-1876" (GGW 252-56, 265-75)

Fall Break: October 4-12

WEEKS 8-9: Reconstruction & Rights in the Republican Era

What happened to the promises of liberty and equality that emerged from Reconstruction? Why did the reality fall short of these promises? Emancipation and industrialization led to new constitutional questions over rights between the Civil War and the New Deal, restricting many efforts to provide racial equality or regulate labor conditions. How did the *Slaughter-House Cases* and *Civil Rights Cases* narrow the interpretation and enforcement of the Civil War amendments?

After Reconstruction, we turn our attention now to constitutional development in the late-19th and early-20th centuries. Our text refers to this period as "the Republican era," since the Republican Party dominated the federal government for most of this time. Historians often refer to this period as "the Gilded Age" to emphasize the extravagant wealth of the newly emerging capitalist elite. And Supreme Court scholars often call it "the *Lochner* era" to emphasize the Court's protection of economic liberties in cases like *Lochner v. New York* (1905). How did the Supreme Court approach economic developments through the commerce clause and police powers at the national and state level? In *Lochner v. New York,* the Supreme Court took a different approach to the 14th Amendment and economic regulation: why did they elevate a new kind of right in their ruling?

Recall our earlier discussions of the president's power to remove executive officials from office. In what ways had this power evolved by 1926? Pay particular attention to the majority and dissenting arguments in *Myers v. U.S.* (1926), which the justices of the Roberts Court had a sharp debate about in June 2020. What do these 1920s arguments tell us about the development of presidential power more generally? And how were they connected to the politics of race and Reconstruction?

As you work through the reading, focus in particular on *Hammer v. Dagenhart* (1918), in which the Court held that Congress was not constitutionally permitted to outlaw child labor. Note that the readings for October 15 include a graphic description of a lynching (p. 327-29).

- **10/13:** Ch. 6, "Secession, Civil War, and Reconstruction: 1861-1876" (GGW 293-96)
- **10/15:** Ch. 7, "The Republican Era: 1877-1932" (GGW 298-318, 321-29)
- **10/20:** Ch. 7, "The Republican Era: 1877-1932" (329-42, 349-55, 360-63), *Lochner v. New York* (1905) (C)
- **10/22:** Ch. 7, "The Republican Era: 1877-1932" (365-79)

WEEKS 10-11: Liberal Constitutionalism: The New Deal and Great Society

In the wake of the Great Depression, the original Constitution was again significantly altered. Some scholars argue that these changes were the most significant since Reconstruction. Unlike that earlier period of constitutional change, however, no formal amendments were enacted this time. How then did these constitutional changes come about? And what exactly were they?

The "New Deal Revolution" of 1937 ushered in a new era of liberal constitutionalism empowering the government to address social problems and expand certain freedoms. What political events and ideas led to the Supreme Court's evolution in this era? What role did the commerce clause play in the expansion of national government? How did administrative law and foreign conflict expand executive authority and shift its relationship to the legislature? How did constitutional actors address racial discrimination using both commerce power and the Civil War amendments? Should we see this era as a temporary response to immediate crises or a needed solution to underlying issues in the constitutional order? As you work through the reading, focus on FDR's vision of the Constitution, as expressed in his speeches excerpted in GGW. What was

the source of the intense conflict between FDR and the Court? Once FDR finally had a chance to appoint some justices, the Court's understanding of the Constitution started to shift dramatically. In what ways did the Court alter its interpretation of the Constitution?

- **10/27:** Ch. 8, "The New Deal and Great Society Era: 1933-1968" (GGW 387-93, 396-405, 424-37, 446-50, 470-73)
- Podcast: We the People, "FDR and the Transformation of the Supreme Court"
- **10/29:** Ch. 8, "The New Deal and Great Society Era: 1933-1968" (GGW 457-68, 473-75)
- **11/3:** Ch. 8, "The New Deal and Great Society Era: 1933-1968" (GGW 406-410, 416-22, 430-46)
- **11/5:** Catch up

WEEKS 12-13: Conservative Constitutionalism: Reagan to Trump

Since the decline of liberal constitutionalism in the 1970s, the courts have gradually grown more conservative and the nation more polarized. Why did Ronald Reagan's presidency signal the beginning of this shift? What of his era's debates over federalism, executive authority, and constitutional interpretation indicate a rejection or revision of New Deal ideas? Why has the Supreme Court returned to the commerce clause in the last few decades? What new issues did the presidencies of George W. Bush and Donald Trump pose for the separation of powers? Do *Trump v. United States* and the 2024 election mark a new constitutional crisis or its resolution?

- **11/10:** Ch. 9, "Liberalism Divided: 1969-1980" (GGW 483-87)
- **11/12:** Ch. 10, "The Reagan Era: 1981-1993" (GGW 521-25, 528-35, 537-46, 554-62)
- **11/17:** Ch. 11, "The Polarized Era: 1994-2008" (GGW 564-69, 585-599, 623-47)
- **11/19:**
    - Ch. 12, "The Contemporary Era: 2009-Present" (GGW 658-67)
    - Ch. 12, "The Contemporary Era: 2009-Present" (GGW 649-53, 746-48)
    - *Trump v. United States* (2024) (C)
    - Podcast--We the People, Presidential Immunity

WEEKS 14-15: Conclusion & Group Presentations

- **11/24: presentations**
- **11/26: No class**
- **12/1: presentations**
- **12/3: presentations**