Master Course Syllabus

For additional course information, including prerequisites, corequisites, and course fees, please refer to the Catalog: https://catalog.uvu.edu/

Semester: Spring
Year: 2025
Course Prefix: CGCL
Course and Section #: 6120 Section 601
Course Title: Civil Liberties and Civil Rights in American Constitutional Law
Credits: 3

Course Description

The focus of this course will be the content and enforcement of constitutionally protected civil rights and civil liberties in the United States. We begin with the foundational ideas that formed the content of the American tradition of civil liberties in the early republic and the debate and passage of the Bill of Rights. We will then turn to examine the constitutional disputes over equal protection, property rights, criminal due process, freedoms of speech, press, and association, religious liberty and other judicially created rights concerning privacy, marriage, and parental rights. In all these phases, we will be exploring primary sources, both in the form of judicial opinions and non-judicial documents.

Though the course is heavily concerned with the substance of the constitutional rights the judiciary has sought to protect, it is perhaps more fundamentally concerned with evaluating the institutional fitness of courts to enforce these rights and the role that political processes and cultural forces beyond the judiciary can play in protecting or advancing constitutional protections. Students should leave the course with an appreciation of the reality that constitutional law is not simply driven by doctrine (that is, what judges say), but is shaped and constrained in important ways by the institutional and political context of judicial action.

Course Attributes

This course has the following attributes:
☐ General Education Requirements
☐ Global/Intercultural Graduation Requirements
☐ Writing Enriched Graduation Requirements
☒ Discipline Core Requirements in Program
☐ Elective Core Requirements in Program
☐ Open Elective
Other: *Click here to enter text.*

Instructor Information

Instructor Name: Dr. Troy E. Smith

Student Learning Outcomes

Upon successful completion, students should be able to…

1. Discuss the rationale, structure, and content of the United States Constitution.

2. Interpret key texts in the history of American constitutional interpretation.
3. Explain how important judicial decisions have shaped American constitutional law.
4. Describe how the Bill of Rights and Civil War Amendments have been interpreted over time and influenced American political development.
5. Explain the protections and limits of fundamental civil liberties and civil rights.

Course Materials and Texts

- Course reading packet. These should be printed out and compiled in a folder.
- Robert A. Goldwin, *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution* (1997)
- Michael Stokes Paulsen and Luke Paulsen, *The Constitution: An Introduction* (Basic Books, 2015)

Course Requirements

You must complete all assignments to have a passing grade for this class.

- Attendance & Participation 15%
- Two short papers (5-6 pages) 20% each (40% total)
- Moot Court (legal brief or judicial opinion 7-9 pages) 25%
- Final Exam 20%

Attendance & Participation (15%): Attendance in class and on time is expected. Your camera should be on for a majority of the time (failure to keep your camera on will result losing points for attendance). Class participation is evaluated by quantity rather than quality. This means reading the material before class and developing questions and comments about the readings. UVU expects students to spend two hours preparing for class for every one hour in class – more time may be required for students who lack a background in the subjects or who wish to do excellent work. Please consult this syllabus for required and recommended readings, and preparation questions to guide your reading. I may randomly call on a student to summarize a reading or readings for that class session. These brief summaries should identify the reading or cases' primary claim and supporting reasons. Extra credit is given for accurately assessing the argument's strength or validity as well as the likely implications if the argument is accepted. I reserve the right to institute quizzes to ensure participation.

The classes will be recorded and a transcription made available. This has the potential to create a learning obstacle and ethical dilemma. I want people to feel free to ask questions and make comments that may later seem irrelevant or embarrassing – that is OK, it is part of the learning process. To overcome this problem, this class will follow the Chatham House rule, which is "**participants are free to use the information received in class, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed outside of class**." In other words, no question or comment stated by a person in class shall be attributed to them outside of class. This allows students the freedom to explore questions and ideas. The one exception to this rule is anything I (Professor Smith) say may be attributed to me outside of class, though I ask that you grant me charity in understanding that some of my comments and questions may be to help in exploring difficult and controversial subjects.

In addition, I encourage students to use the "Discussions" feature on Canvas, where one may raise questions about the readings and lectures that are confusing and where conversations begun in class can

continue out outside of class. These are not graded, but I encourage their use because I think they facilitate learning.

Short Papers (two required, 20% each = 40%)*:* These are due *at the start of* class since they are meant to provoke you to reflect on the material ahead of time. Two are required over the course of the semester. One of the 5-6 page papers must be submitted before February 20. Both required short papers may be submitted before February 20. In other words, credit will only be given to one paper submitted after February 20.

These short papers do not need to answer a prompt, but they should take up an issue raised by the reading(s) for that class. Because I give you that flexibility to choose both the times and topics of most interest to you, I will not grant extensions or allow late work. This is not designed to be punitive, but because the papers are designed to press you to first grapple with these issues independently before bringing your ideas to the class as a whole.

Papers should be submitted in 12 font, Times New Roman, double-spaced with 1-inch margins. Double-sided printing is fine as long as it is clear on both sides. "A" range papers are those which are especially creative, perceptive, and persuasive in presenting original, clear arguments backed up by both textual evidence and fluid writing. Consistent with the learning outcomes for the class, they should also anticipate and seriously grapple with counterarguments. "B" range papers are for solid, clear arguments with textual support and serviceable writing. Papers that contain one or more of the following errors--primarily summarizing, failing to meaningfully engage the prompt or texts, or lacking basic proofreading--will warrant grades C or below.

These are neither collaborative nor research papers. Please do not undertake outside research for these papers; thoughtful, *individual* reflection on course materials is more than enough.

Citations should be either as parentheticals or endnotes; as no outside research is expected, simple citations (page numbers only) are sufficient. Parenthetical citations or simple endnotes are fine (e.g. Tocqueville 1.2.4; *McCulloch*; Frymer 20).

Plagiarism will result in failure of the assignment and referral to the appropriate disciplinary boards. Ask me if you have any specific questions.

I will keep the quality of writing in mind in assigning paper grades. Writing well is an essential skill of college graduates and one which employers increasingly prize, so it is to your benefit to spend time developing your writing. I am happy to work one-on-one with you on your writing. For those interested in improving their writing, I recommend Strunk and White, *Elements of Style* (4th edition or earlier).

I am more than happy to have you run *ideas and thoughts* for papers by me in advance, but I will not review drafts themselves.

Moot Court - (25%): We will do a simulation exercise playing out a constitutional controversy in practice—a moot court. Students will be divided into sections and different institutional roles (e.g. justices, lawyers, and reporters.) More information about this will be distributed later in the semester. Late submissions will result in a deduction by 10% each day late—including late submission on the due date.

Final Exam (20%)

***Grading scale*:** A: 93-100 (4.0); A-: 90-92 (3.67); B+: 87-89 (3.33); B: 83-86 (3.0); B-: 80-82 (2.67); C+: 77-79 (2.33); C: 73-76 (2.0); C-: 70-72 (1.67); D+: 67-69 (1.33), D: 63-66 (1.0); D-: 60-62 (0.67); E: 0-59 (0.0).

Required or Recommended Reading Assignments
Required texts:

- Course reading packet. These should be printed out and compiled in a folder.
- Robert A. Goldwin, *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution* (1997)
- Michael Stokes Paulsen and Luke Paulsen, *The Constitution: An Introduction* (Basic Books, 2015)

Suggested reading on the art of writing:

- Stanley Fish, *How to Write a Sentence: And How to Read One* (Harper Collins, 2011)
- Jacques Barzun, *Simple and Direct: A Rhetoric for Writers* (Harper Collins, 2001)
- Bryan A. Garner and Antonin Scalia, *Making Your Case: The Art of Persuading Judges* (West, 2008)

General Description of the Subject Matter of Each Lecture or Discussion

January 9

The Constitution and the Bill of Rights

Alexander Hamilton, *The Federalist*, No. 84 (1788)
Melancton Smith, from *The Anti-Federalist Writings of the Melancton Smith Circle,* ed. by
Michael P. Zuckert and Derek A. Web, (pp. 136-145).
Madison and Jefferson's exchange on a Bill of Rights (1788-89)
Kurland & Lerner, "Rights, Introduction," *The Founders' Constitution,* Vol. 1, Chapter 14,
(1986)
Ellis Sandoz, *A Government of Laws: Political Theory, Religion, and the American Founding*
(pp. 203-208).
*Goldwyn, "Part I: How to Ratify a Constitution," *From Parchment to Power* (pp. 15-54). This
is the book you are required to buy.

January 16

Madison as Father of the Bill of Rights

*Goldwyn, "Part II," *From Parchment to Power* (pp. 57-105).

The Marshall Court Enforces the Contracts Clause (Reading Packet)

U.S. Const., Art. I, sec. 10
Fletcher v. Peck (1810)
Dartmouth College v. Woodward (1819)

January 23

The Debate in Congress over the Bill of Rights

Goldwyn, Chapters 6, 7, 8 *From Parchment to Power* (pp. 105-153).

The Right to Keep and Bear Arms (Reading Packet)

Selected English and Early American Sources on the Right to Bear Arms
District of Columbia v. Heller (2008)
McDonald v. Chicago (2010)
January 30
Closing the Parenthesis
Goldwyn, Chapter 9 and "Reflections on Part Three," *From Parchment to Power* (pp. 154-184).

The Takings Clause and the Resurgence of Property Rights (Reading Packet)
Hawaii Housing Authority v. Midkiff (1984)
Kelo v. City of New London (2005)
Nollan v. California Coastal Commission (1987)
Lucas v. South Carolina Coastal Council (1992)

February 6

RIGHTS OF THE ACCUSED

Self-Incrimination and the Right to Counsel
Powell v. Alabama (1932)
Gideon v. Wainwright (1963)
Miranda v. Arizona (1966)
Nix v. Williams (1984)

Unreasonable Search and Seizure and the Warrant Requirement
Mapp v. Ohio (1961)
Katz v. United States (1969)
Arizona v. Gant (2009)
Board of Education of Pottawatomie County v. Lindsay Earls (2002)
Carpenter v. United States (2018)

February 13

FREEDOMS OF SPEECH, PRESS, & ASSOCIATION

Political Speech and Dissent
Schenk v. United States (1919)
Brandenburg v. Ohio (1969)

Freedom of Association and Coerced Speech
West Virginia Board of Ed. v. Barnette (1943)
Berea College v. Kentucky (1908)
NAACP v. Alabama (1958)
Janus v. American Federation of State, County, and Municipal Employees (2018)

Symbolic Speech
United States v. O'Brien (1968)
Texas v. Johnson (1989)

Freedom of the Press
Grosjean v. American Press Company (1936)
Lovell v. Griffin (1938)
New York Times v. U.S. (1971)
Citizens United v. FEC (2010)

Public Spaces and Viewpoint Discrimination
Adderley v. Florida (1966)
Rosenberger v. University of Virginia (1995)

February 20

Libel and Slander

New York Times v. Sullivan (1964)
Carson Halloway, "President Trump Should Seek the Reversal of *New York Times v. Sullivan*,"
The American Mind (10/23/2024) - https://americanmind.org/features/what-trump-shoulddo-
if-he-wins/constitutionalist-in-chief/

Guest Lecturer: Carson Halloway and slander

February 27

DISESTABLISHMENT & FREE EXERCISE OF RELIGION

Religious Education and Government Resources

Patrick Henry, *A Bill for Establishing Support for Teachers of the Christian Religion* (1785)
James Madison, *Memorial and Remonstrance against Religious Assessments* (1785)
George Washington, *Letter to the Hebrew Congregation at Newport* (1790) and *Farewell Address* (1796)
Jefferson's Letter to the Danbury Baptist, 1802

Civic Religion and Government Neutrality

Engel v. Vitali (1962)
Lee v. Weisman (1992)
Kennedy v. Bremerton School District (2023)

Free Exercise and the Religious Freedom Restoration Act

Sherbert v. Verner (1963)
Employment Division of Oregon v. Smith (1990)
City of Boerne v. Flores, Archbishop of San Antonio (1997)

Free Exercise of Religion and Nondiscrimination Laws

Hosanna-Tabor Evangelical Lutheran Church v. EEOC (2012)
Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018)

March 6

FUNDAMENTAL RIGHTS & INCORPORATION OF THE BILL OF RIGHTS

The Emergence and Demise of Substantive Due Process

Lochner v. New York (1905)
Meyer v. Nebraska (1923)
West Coast Hotel v. Parrish (1937)
United States v. Carolene Products, "Footnote Four" (1938)

Privacy, Reproduction, and the Family

Pierce v. Society of Sisters (1925)
Griswold v. Connecticut (1965)
Roe v. Wade (1973)
Moore v. City of East Cleveland (1977)
Planned Parenthood of Southeastern Penn. v. Casey (1992)
Dobbs v. Jackson Women's Health Organization (2022)

March 13

NO CLASS – SPRING BREAK

March 20

Public Morality and Personal Autonomy

Lawrence v. Texas (2003)
Obergefell v. Hodges (2015)

Selective Incorporation of the Bill of Rights

Barron v. Baltimore (1833)
Duncan v. Louisiana (1968)
Guest Lecturer: Shane Munton – effective oral arguments

March 27

MOOT COURT SIMULATIONS (TBA)

April 3

EQUAL PROTECTION AND RACIAL DISCRIMINATION

Slavery and Natural Rights Constitutionalism

Somerset v. Stewart (1772)
The Declaration of Independence (1776)
Dred Scott v. Sandford (1857)
Abraham Lincoln, Speech on the *Dred Scott* Decision (1857)

The State Action Requirement and the Reconstruction Amendments

U.S. Constitution, 13th, 14th, and 15th Amendments
Civil Rights Act of 1866
Civil Rights Act of 1875
The Civil Rights Cases (1883)
Dyer Anti-Lynching Bill of 1922
Jones v. Alfred H. Mayer Co. (1968)

Race, Redistricting, and Partisan Advantage

Reynolds v. Sims (1964)
Shaw v. Reno (1993)

April 10

Desegregation and *de jure* Discrimination

Plessy v. Ferguson (1896)
Brown v. Board of Education of Topeka (1954) *[Brown I]*
Bolling v. Sharpe (1954)
Brown v. Board of Education of Topeka (1955) *[Brown II]*

Affirmative Action and *de facto* Inequality

Swann v. Charlotte-Mecklenburg (1971)
Milliken v. Bradley (1974)
Regents of the University of California v. Bakke (1978)
Grutter v. Bollinger (2003)
Students for Fair Admissions v. Harvard, and *Students for Fair Admissions v. University of North*
Carolina (2023)

April 17

Review

Herbert Storing, "Chapter 8: Bill of Rights," *What the Anti-Federalists Were For.*
Akhil Reed Amar, "Chapter 9: Making Amends," *America's Constitution: A Biography* (pp. 313-
330).
Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic 1776-1790* (pp.
316-369).
Matthew Spalding, *We Still Hold These Truths: Rediscovering Our Principles, Reclaiming Our*
Future, (Delaware: ISI Books), (pp. 111-114).

Required Course Syllabus Statements

Generative AI
The true value of graduate school is not learning the subject content but learning how to think and communicate clearly about the topics you are studying. Some of the best learning comes from wrestling with the material to make sense of it and summarize it *in your own words.* This may be a challenge at the beginning, but, as you apply yourself to the task, it will become easier. Moreover, any work submitted by you presumes that you are the author in whole and in all its parts. The use of Large Language Models (LLMs), like ChatGPT and other AI, to write your discussions, responses, summaries or papers, consequently, is a violation of this policy and a likely significant impairment to your learning.

LLMs, like ChatGPT, can be wonderful learning aids but they have some severe weaknesses. So far, they are OK for reviewing material (though I find they are wrong about 15% of the time, which 15% is difficult to determine if you are not already familiar with the material), and they work well for generating ideas, proofreading, improving the clarity and concision of your writing, writing bibliographies, and writing formulaic things like resumes. In other words, they function like an OK tutor who can make some egregious errors.

Please do NOT use an LLM to write your notes, summaries, discussion comments, discussion responses, or papers. You can use it to generate ideas (though I would do this sparingly and with caution for what it produces), improve your writing (examine what it changes to see how you can improve your writing on your own), or test your knowledge.

Using Remote Testing Software
☒ This course does not use remote testing software.

☐ This course uses remote testing software. Remote test-takers may choose their remote testing locations. Please note, however, that the testing software used for this may conduct a brief scan of remote test-takers' immediate surroundings, may require use of a webcam while taking an exam, may require the microphone be on while taking an exam, or may require other practices to confirm academic honesty. Test-takers therefore shall have no expectation of privacy in their test-taking location during, or immediately preceding, remote testing. If a student strongly objects to using test-taking software, the student should contact the instructor at the beginning of the semester to determine whether alternative testing arrangements are feasible. Alternatives are not guaranteed.

Required University Syllabus Statements

Accommodations/Students with Disabilities
Students needing accommodations due to a permanent or temporary disability, pregnancy or pregnancy-related conditions may contact UVU Accessibility Services at accessibilityservices@uvu.edu or 801-863-8747.

Accessibility Services is located on the Orem Campus in BA 110.

Deaf/Hard of Hearing students requesting ASL interpreters or transcribers can contact Accessibility Services to set up accommodations. Deaf/Hard of Hearing services can be contacted at DHHservices@uvu.edu

DHH is located on the Orem Campus in BA 112.

Academic Integrity

At Utah Valley University, faculty and students operate in an atmosphere of mutual trust. Maintaining an atmosphere of academic integrity allows for free exchange of ideas and enables all members of the community to achieve their highest potential. Our goal is to foster an intellectual atmosphere that produces scholars of integrity and imaginative thought. In all academic work, the ideas and contributions of others must be appropriately acknowledged and UVU students are expected to produce their own original academic work.

Faculty and students share the responsibility of ensuring the honesty and fairness of the intellectual environment at UVU. Students have a responsibility to promote academic integrity at the university by not participating in or facilitating others' participation in any act of academic dishonesty. As members of the academic community, students must become familiar with their rights and responsibilities. In each course, they are responsible for knowing the requirements and restrictions regarding research and writing, assessments, collaborative work, the use of study aids, the appropriateness of assistance, and other issues. Likewise, instructors are responsible to clearly state expectations and model best practices.

Further information on what constitutes academic dishonesty is detailed in UVU Policy 541: *Student Code of Conduct*.

Equity and Title IX

Utah Valley University does not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, age (40 and over), disability, veteran status, pregnancy, childbirth, or pregnancy-related conditions, citizenship, genetic information, or other basis protected by applicable law, including Title IX and 34 C.F.R. Part 106, in employment, treatment, admission, access to educational programs and activities, or other University benefits or services. Inquiries about nondiscrimination at UVU may be directed to the U.S. Department of Education's Office for Civil Rights or UVU's Title IX Coordinator at 801-863-7999 – TitleIX@uvu.edu – 800 W University Pkwy, Orem, 84058, Suite BA 203.

Religious Accommodation

UVU values and acknowledges the array of worldviews, faiths, and religions represented in our student body, and as such provides supportive accommodations for students. Religious belief or conscience broadly includes religious, non-religious, theistic, or non-theistic moral or ethical beliefs as well as participation in religious holidays, observances, or activities. Accommodations may include scheduling or due-date modifications or make-up assignments for missed class work.
To seek a religious accommodation, a student must provide written notice to the instructor and the Director of Accessibility Services at accessibilityservices@uvu.edu. If the accommodation relates to a scheduling conflict, the notice should include the date, time, and brief description of the difficulty posed by the conflict. Such requests should be made as soon as the student is aware of the prospective scheduling conflict.

While religious expression is welcome throughout campus, UVU also has a specially dedicated space for meditation, prayer, reflection, or other forms of religious expression.