CGCL 6180: Constitutional Interpretation

Dr. Savannah Eccles Johnston

Summer 2025

Term: Summer 2025
Class Time: July 7-11 (M-F) 9-1030; 11-1; 1:30-3pm
Instructor: Savannah Eccles Johnston
Classroom: MS Teams
Contact:
Office Hours: Email me to meet after class!
Office Location: MS Teams

Course Overview:

Engages students in an effort to understand the ideas and logic that animate constitutional interpretation in the American political system. Explores the major theories of jurisprudence in American law and their criticisms.

Note: like most graduate-level seminars, this course requires a lot of reading, which must be completed prior to class. I expect everyone to complete every reading, make notes, and come to class ready to discuss.

Course Objectives:

By the end of the semester, students should have accomplished the following:

1. Demonstrate they can extract and describe the core arguments of the authors from the assigned readings and analyze those arguments both sympathetically and critically.

2. Critically evaluate the roles of the Supreme Court, Congress, and the President in interpreting the Constitution, including debates about judicial review and constitutional authority.

3. Compare and contrast major theories of constitutional interpretation—including Originalism, Living Constitutionalism, Natural Law, and other alternative interpretive frameworks—and assess their strengths and criticisms.

4. Apply key theories of constitutional interpretation to landmark Supreme Court cases, demonstrating how different methodologies influence case outcomes and constitutional

meaning over time.

Required Texts:

Scalia, Antonin. A Matter of Interpretation. *I have the 2018 edition* (Amazon), *but you can get any edition as the main focus is Scalia's essay.*
Segall, Eric J. Originalism as Faith. 2018. (Amazon)
Breyer, Stephen. Reading the Constitution. 2025. (Amazon)
Sunstein, Cass. How to Interpret the Constitution. 2023. (Amazon)
Wurman, Ilman. A Debt Against the Living. 2017. (Amazon)

Assignments:

Attendance & Participation 35%
Journal 25%
Class Presentations 15%
Final Exam 25%

Attendance and Participation (35%)
Attendance at every session is essential for both your learning and the success of our course, so attendance at all sessions is mandatory. To be counted as present, you must a) always have your camera on and b) be in a professional and studious environment with the text and your notes in front of you and where you can unmute yourself to contribute (that said, baby noises are always welcome!). For example, it is unacceptable to be joining "on the go" from your phone. For participation, I expect everyone to contribute to the discussion in each session.

Journal (25%):
You are required to keep a journal (electronic or paper) of your readings for each session and course experience that you will submit at the end of the course (it will be returned to you). Your journal should contain two types of entries: short reading summaries of the assigned readings for each session, and a reflective entry at the end of each day. The short reading summaries identify the main claim of the reading and its supporting reasons; it may also include the historical roots of that claim, an assessment of the argument, and the likely implications of if the claim is accepted. Note: The final exam's essay will test how well you developed these skills.

The journal's reflective entries (350 words, minimum) describe what you learned in that day's sessions. The entries should summarize the main ideas, themes, and connections that were explored that day. I strongly encourage you to also write down the ideas you may want to explore later in a research paper.

Class Presentations (15%):
At the beginning of each class session, I will randomly call on 1-2 students to summarize a reading or readings for that class session. These presentations will be graded on their clarity and concision in identifying the readings' primary claim and supporting reasons, accurately assessing the argument's supporting reasons, and identifying likely implications if the argument is accepted. Presentations should last 3-5 minutes. If the student is called on to summarize a court case, the student will be graded on their clarity and concision in identifying the facts of the case, the constitutional questions addressed, the ruling, and any relevant dissents.

Final Exam (25%):
There will be a final exam to test your mastery of course material. Students will have two hours to complete two essay questions.

Class Schedule:

Monday, July 7
9-10:30: What is the Constitution?
Akhil Amar, "The Law of the Land: America's Written and Unwritten Constitution" (Youtube)
Akhil Amar, America's Unwritten Constitution (excerpt)
Letter from Thomas Jefferson to James Madison (Sept. 6, 1789)
Response Letter from James Madison to Thomas Jefferson (Feb. 4, 1790).
Elazar, Daniel. Covenant and the American Founding.

11-1: Who gets to interpret the Constitution?
Article III, U.S. Constitution
Rossum, Tarr, Munoz. "American Constitutional Law, Vol II." Ch 2: Constitutional Adjudication. (Canvas)
Federalist 78-81
Brutus XI
Jefferson to Spencer Roane, 1819
Brogdon, Matthew. The Supreme Court Is the Final Authority. Bill of Rights Institute.
Cooper, Cody. The Supreme Court is Not the Final Authority. Bill of Rights Institute.
Parker, Richard. 1993. "Here, the People Rule: A Constitutional Populist Manifesto"
Waldron, Jeremy. 2006. "The Core of the Case Against Judicial Review."
Whittington, Keith. 2002. "Extrajudicial Constitutional Interpretation"

1:30-3: Case Studies
Marbury v, Madison (1803)
McCulloch v. Maryland (1819)

Jackson's Veto Message (1832)
Daniel Webster's Response to Jackson's Veto
Dred Scott v Sanford (1857)
Lincoln Speech on Dred Scott
Ex Parte Merryman (1861)
Lincoln 4th of July Message to Congress
Lincoln's First Inaugural

Tuesday, July 8
9-10:30: How should the Constitution be interpreted?
Congressional Research Service, Modes of Constitutional Interpretation.
McConnell, Michael. "Time, Institutions, and Interpretation" (Canvas)
Dred Scott v. Sandford (1857)
McCulloch v. Maryland (1819)
Planned Parenthood v Casey (1992)
Brown v. Board of Education (1954)
Town of Greece v. Galloway (2014)
Youngstown Sheet & Tube Co. v. Sawyer (1952 - Justice Jackson concurring opinion)

11-1: History and Development of Judicial Review (Matthew Brogdon guest lecture)
Readings TBD

1:30-3: Kelsey Flores Guest Lecture: Religious Liberty and Constitutional Interpretation
Readings TBD

Wednesday, July 9
9-10:30: Development of Originalism
Scalia, Antonin. A Matter of Interpretation, pg 3-49.
Ilan Wurman. A Debt Against the Living, pg 9-96.
Bork, Robert. "Neutral Principles and Some First Amendment Problems." (Canvas)
Solum, Lawrence B. "What is Originalism? The Evolution of Contemporary Originalist Theory" (Canvas)

Recommended:
Barrett, Amy Coney and John Copeland Nagle. "Congressional Originalism" (Canvas)

11-1: Criticisms of Originalism
Berman, Mitchell N. "Originalism is Bunk" (Canvas)
Segall, Eric J. Originalism as Faith.
Sunstein, Cass. How to Interpret the Constitution. Chapter 5.

1:30-3pm: Case Studies
Marsh v. Chambers (1983)
District of Columbia v. Heller (2008)
Crawford v. Washington (2004)
Dobbs v. Jackson Women's Health Org (2022)
Bostock v. Clayton County (2020)

Thursday, July 10
9-10:30: Living Constitutionalism
Holmes, Oliver Wendell. The Path of the Law. (Canvas)
Stephen Breyer. Reading the Constitution. Part III & IV.
Sunstein, Cass. How to Interpret the Constitution, ch. 2-4 &6.

11-1: Criticisms of Living Constitutionalism
Edwin Meese III, Speech Before the American Bar Association, Washington, D.C. (July 9, 1985).
Justice William Brennan, Jr. 1985 speech at Georgetown University.
Edwin Meese III, Speech to the Federalist Society, 1985.
Scalia and Breyer Conversation on the Constitution (Youtube)

1:30-3pm: Case Studies
Brown v. Board of Education (1954)
Roe v. Wade (1973)
Griswold v. Connecticut (1965)
Lawrence v. Texas (2003)
Obergefell v. Hodges (2015)

Friday, July 11
9-10:30: Alternative Interpretations (Natural Law)
Vermeule, Adrian. "Beyond Originalism" *The Atlantic.*
Corwin, Edwin. "The Natural Law and Constitutional Law" (Canvas)

11-12:30: Criticisms of Natural Law & Wrap up
Leiter, Brian. "Politics by Other Means: The Jurisprudence of Common Good Constitutionalism" (Canvas)
Epps, Garrett. "Common Good Constitutionalism is an idea as dangerous as they come." *The Atlantic.*
Pryor, William H. Against Common Goodism.

1-3pm: Exam

Course Decorum:

We may engage sensitive topics during this course, and we will most certainly find points of disagreement and controversy in our discussions. I expect each student to treat others' opinions with respect. You do not have to agree with an expressed opinion – in fact, I will do my best to always play devil's advocate to make sure an echo chamber does not occur – but you do have to argue your point logically and respectfully. Also, I expect each student to pay attention during lectures and when fellow students are speaking.

AI & Plagiarism Policy:

AI is a very useful tool when used correctly. Please do not use AI to write your papers or to avoid doing the readings yourself. Any use of AI in submitted written works - or other forms of plagiarism - will result in an automatic F and will be reported to the university.

Online Classroom:

Please join class from a distraction free space. Joining from your cell phone while "on the go" is not acceptable. Keep your video on the entire class. Mute yourself when you're not talking. Turn off notifications from your laptop and phone to protect the learning environment. Please have your notes and books close to you.

Attendance:

This is a one-week summer intensive. Attendance is mandatory! Students who miss a session without an excuse will be docked a full letter grade.

Late Work:

All assignments are due on the date and at the time assigned. Excuses will be accepted only for an adequately documented illness or emergency. Nothing prevents the student with a known scheduling conflict from reading ahead and completing the assignment early. Unexcused assignments will be penalized at the rate of one full letter grade (for example from B+ to C+) for each 24-hours, with the first 24-hours beginning when the assignment was due.

Accommodations:

Reasonable accommodations will be provided for students with documented physical, sensory, systemic, cognitive, learning and psychiatric disabilities. If you believe you have a disability requiring accommodation in this class, please notify the Director of the Disability Resource Center. That office will provide the course instructor with verification of your disability, and will recommend appropriate accommodations.

Formatting Written Assignments:

All papers and other written assignments must be formatted in Times New Roman, 12 point, double spaced, with page numbers (top right) and one-inch margins.