

Constitutional Law

Spring 2024

Syllabus

Meeting Time and Location: M,T,Th 10:30-12:00pm

Faculty Information: Professor Daniel I. Morales

dimoral2@houston.edu

Classroom: LAW 102B

Office Hours: RM 341 G; Monday 12:30-2, and by appointment

Course Materials: Richard D. Friedman & Julian Davis Mortenson,
Constitutional Law: An Integrated Approach (2021)

Assorted Handouts:

<https://www.dropbox.com/sh/u9yfapbc3huvwwq/AADPC1hVmTnCmEfVtG6lEfh9a?dl=0>

Course Description: The United States is the world's oldest democracy; it has the world's oldest Constitution too. While the former fact is clearly praiseworthy, the latter has a more ambiguous significance. While the Founders were at the cutting edge of political thought in the late 18th Century, much has transpired since. And while many insights from many founders have proved timeless, others have not aged as well. This is to be expected. The Founders were great men who did great things, but they were also just that--men--with all the foibles, biases, errors and flaws that we find in men and women (and those who identify as neither) in the twenty-first century.

It is not too much to say that today we find ourselves (our democracy, our Constitution) in crisis. It is not an unprecedented crisis, to be sure, but it is one that the Constitution and the Supreme Court have played leading roles in precipitating or exacerbating. You are thus learning Constitutional law in the midst of an unsettling, difficult and riven political moment. You should know this. As future members of the Bar of the second largest state in the country, it is not too much to say that you all will be guardians of the Constitution and our democracy. This class is as much about preparing you for that role--which you will fulfill over a lifetime--as it is preparing you to pass the bar and practice.

In this class you will not only learn the "black-letter law"--which is all gray, by the way--you will also come to understand the deeper principles and commitments of the Constitution and our Republic, only some of which have ever been realized in fact.

Course Requirements: Class attendance and participation are mandatory. If you are unprepared or will miss class, please send me an email an hour before class. Should an illness or an event in your personal life interfere with your ability to prepare over an extended period of time (i.e., more than three classes), see me privately, please.

Method of Instruction: I will teach this course using a combination of case analysis, statutory interpretation, lecture, and problem-solving.

Method of Evaluation: Your grade for this course will be based on a final scheduled exam at the end of the semester and the quality of your class participation. I will grade your exam essay answers based on the following criteria:

- knowledge of the material in the course
- analysis of the legal and factual issues presented
- clarity, cogency, and organization of argument
- accurate and appropriate use of legal terminology
- quality of expression

Learning Outcomes: By the end of this course you should be able to do the following

- Identify and critique leading rationales for judicial review in US democracy
- Identify and utilize all the major methods of constitutional analysis
- Demonstrate knowledge of key US historical periods and the implications of those periods on constitutional interpretation and development
- Demonstrate fluency in the analysis of constitutional issues presented by novel facts
- Identify and apply major constitutional precedents and their rules and holdings

How to Reach Me: My regular office hours are Thursday 10:30-11:45, but I am happy to make alternate arrangements. As exam time approaches, I will schedule additional hours. I will also typically be available immediately after each class.

Schedule of Assignments: Each class moves at its own pace. I will give the next class assignment at the end of each class. If you miss class, please get the assignment from a classmate. If you are out of town and need to read ahead, please contact me and I can give you an estimate of where I think we will be. Readings listed here are tentative and subject to change

Chosen names & preferred pronouns: I go by Professor Morales and use he/him/his as my pronouns. I will gladly honor requests to use nicknames, alternate names, or preferred gender pronouns—including non-binary ones such as they/them/theirs. Advise me how you would like to be addressed early in the semester so that I may make appropriate changes to my records. Please feel free to reach out to me if you have concerns about how I or your classmates address you.

COVID-19 Information: Students are encouraged to visit the University's COVID-19 website for important information including diagnosis and symptom protocols, testing, vaccine information, and post-exposure guidance. Please check the website throughout the semester for updates.

Reasonable Academic Adjustments/Auxiliary Aids: The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact the

Justin Dart Jr. Student Accessibility Center (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

Recording of Class: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Honor Code: The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

AI Generated Text: The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as "generative" large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human mimicking "intelligence" and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/others in applying the plagiarism policy to this course. The term "assessment" means any work product generated for this course that is submitted to the instructor or presented in a

class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non proctored environment, such as a “take home” final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course unless specified as an exception below.

Mental Health and Wellness Resources: The University of Houston has a number of resources to support students’ mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let’s Talk location in-person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct: Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids: The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcen@Central.UH.EDU.

Resources for Online Learning: The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email: Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

Webcams: Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

Security Escorts and Cougar Ride: UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called “Cougar Ride” that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Syllabus Changes: Please note that the instructor may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible through (specify how students will be notified of changes).

Class 1 – Background / Constitutional Inflection Points

- Controversies at adoption: pp. 24-41
- Handout i: Chap. 1, Joseph Fishkin & William E. Forbath, *The Anti-Oligarchy Constitution*
- Handout 1: FDR’s Fireside Chat
- Handout 2: Bowie Remarks to the Presidential Commission on the Supreme Court of the United States, June 30, 2021 pp. 1-11.

Class 2 – Fundamental Debate #1: Where Do We Look to Find Constitutional Meaning?

- Handout 3: Bartrum, *The Modalities of Constitutional Argument*
- Handout 4: Using (or Choosing?) History
 - Excerpts of *Dobbs v. Jackson Women’s Health Org.*
 - Baude, *Of Course the Supreme Court Needs to Use History*
 - Siegel, *The Trump Court limited Women’s Rights using 19th Century Standards*
- Handout ii: ProPublica: *Voters in at Least 10 States Are Trying to Protect Abortion Rights. GOP Officials Are Throwing Up Roadblocks.*
- Kate Cox’s case reveals how far Texas intends to go to enforce abortion laws
<https://www.texastribune.org/2023/12/13/texas-abortion-lawsuit/>

Class 3 – Fundamental Debate #2: Who Decides?

- *Marbury v. Madison*: pp. 254-264
 - Andrew Jackson's Veto Message: pp. 82-87
 - Abraham Lincoln's First Inaugural Address: pp. 133-39
- Departmentalism: pp. 281-85
- Handout 5:
- Moyn Remarks to the Presidential Commission on the Supreme Court of the United States, June 30, 2021 pp. 2-5, 10-22
- Bouie, *Down With Judicial Supremacy!*

Class 4 - Road to Civil War

- Slavery Before the Civil War: pg. 94-126
- Optional: More Perfect podcast, *American Pendulum II*,
<https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/american-pendulum-ii-dred-scott>

Class 5 – The Civil War

- CB 127-156

Class 6 – Post-Civil War and Reconstruction

- The Thirteenth Amendment and the Civil Rights Act of 1866: pg. 156-77
- Handout 8: *Giles v. Harris* (1903)
 - Choose one of the following to provide background for *United States v. Cruikshank*
 - Options:
 - Video: Black History, The Colfax Massacre (1:50):
<https://www.youtube.com/watch?v=LzR2XUmaFuw>
 - Blog Post: Danny Lewis, *The 1873 Colfax Massacre Crippled the Reconstruction Era*, Smithsonian Mag., Apr. 13, 2016,
<https://www.smithsonianmag.com/smart-news/1873-colfax-massacre-crippled-reconstruction-180958746/>
 - Podcast: Southern Hollows, *Fire & Bones* (17:45) (trigger warning: the background music is really annoying):
<http://www.southernhollows.com/episodes/fireandbones>
 - Podcast: This Day in History Class, *Colfax Massacre – April 13, 1873* (7:00 – start at 2:00):
<https://www.iheart.com/podcast/105-this-day-in-history-class-29520957/episode/colfax-massacre-april-13-1873-30820877/>

Class 7 – The 14th Amendment – Who are the “People”?

- Women: Handout 9: *Bradwell v. Illinois*
- Native Americans: Handout 10: Brest et al. re Cherokee Nation
- Asian Exclusion: Handout 11: *Chae Chan Ping*

Class 8 – The 14th Amendment – Race

- *Strauder v. West Virginia*: pg. 968-73
- *Plessy v. Ferguson*: pg. 973-82
- The Power to Enforce the Reconstruction Amendments
 - *The Civil Rights Cases*: pg. 608-612

Class 9: Congressional Power: The Enforcement Power

CB: 621-639

Handout 12: *Shelby County v. Holder*

Watch video at: <https://www.nytimes.com/video/opinion/100000004677716/supreme-court-v-the-american-voter.html>

Class 10: Congressional Power and the Necessary and Proper Clause

CB 349-375

Class 11: The Commerce Clause

CB 375-394

Class 12: Commerce Clause Framework & New Deal Commerce Clause

CB 401-433

Class 13: New Deal Commerce Clause Con.

CB 434-453

Class 14: The Rehnquist Court Commerce Clause

CB 453-475

Class 15: The Taxing Power and the Spending Power

CB 475-500

Class 16: The Tenth Amendment

CB 500-525

Class 17: Obamacare on Trial

CB 525-556

Class 18: Taxing Power

CB 556-588

Class 19: Presidential Power

CB 695-723

Class 20: Equal Protection

CB 953-967

Class 21 EP Con. Strict Scrutiny

CB 982-1008

Class 22 EP Con.

CB 1008-1025

Class 23 – EP Con.

CB 1025-1050

Class 24 EP Con.

CB 1051-72

Class 25 EP Con.

CB 1072-1110

Class 26 EP Con.

CB 1110-1159

Class 27 EP Con

CB 1159-1181

Class 28 EP Con

CB 1198-1237

Class 29 EP Con

CB 1237-1249

Class 30 EP Con

CB 1249-65

Class 31 Due Process

CB 1267-1297

Class 32

CB 1305-1331

Class 33 Substantive Due Process

CB 1333-46; 1362-78

Class 34 SDP

CB 1394-1407; 1428-1453

Class 35 SDP

CB 1477-1500

Class 36 LGBTQ+ SDP

CB 1501 -1536

Class 37 First Amendment TBD

Class 38 Second Amendment Current--Bruen TBD