

GOV 357M
TTh 9:30 - 11
Welch 2.256

Prof. Gretchen Ritter
ritterg@mail.utexas.edu
O. H.: Th. 11 – 12:30
Office – Main 201

Constitutional Politics and Citizenship
Syllabus
Fall 2010

COURSE DESCRIPTION

The Constitution of the United States begins with the phrase “We, the People.” It is a phrase that simultaneously invokes and creates a political community. The Constitution contains both an institutional design for the government, and a political design for the community being governed. Who are “the People” for whom the Constitution was written? This relationship between the government and the people is present throughout the Constitution, but is particularly apparent in the Preamble, the Bill of Rights, the Reconstruction Amendments, and the other suffrage amendments. This course will seek to uncover the nature of the American constitutional order by examining some of the historical debates over who belongs to “We, the People.” We will focus on key moments in the development of the American constitutional order, and the debates over citizenship and civic membership that have accompanied those moments, particularly for groups that were originally excluded from that order, such as African-Americans, Latinos, women, Native Americans, Asian Americans, and so on. Materials for the class will include judicial opinions, and other commentaries that consider the ways that debates over citizenship illuminate our political values and who we are as a nation.

COURSE LEARNING OBJECTIVES

The main learning goal for this course is for students to develop their critical thinking skills so that they can assess and make intelligent judgments about contemporary debates on constitutional issues. In terms of approach, this class relies on a student-centered model of learning. As the professor, my role is to serve as your guide on the journey to learning and to help you acquire the tools you need to make that journey productive. I am not here to impart my wisdom about these issues. Rather, I am here to help you acquire the knowledge and develop the skills you need to be independent learners in this area. During class, I will be asking critical questions designed to engage students in mastering the material, grasping key concepts, and making judgments about the relevance of what we learn in this course for life beyond the classrooms. Students will also be asked to engage with your peers – to articulate and defend your own analysis and judgments, and to understand and assess the judgments of others.

More specifically, by the end of the course students should have a good grasp of core constitutional doctrines as they relate to debates over democracy and inclusion such as equal protection, substantive due process, and the general welfare. They should be able to identify key trends in constitutional development over time and to explain how those trends have impacted constitutional politics and debates over citizenship. Students will also learn how to intelligently read and analyze Supreme Court cases. By the end of the course, students reading a case should be able to identify relevant facts and key issues, understand the legal analysis, thoughtfully discuss the arguments being made by each side, and explain the holding that was reached. Finally, students will learn about the most significant Supreme Court cases that address

citizenship and rights issues, and they should be able to explain to their peers what makes these cases significant.

More broadly, over the course of the semester, students are expected to understand competing views about what are our nation's core constitutional values and how these have changed over time; how our constitutional framework has shaped debates about democratic inclusion for various groups (e.g., immigrants, racial and religious minorities, women, and gays and lesbians); and what role various political actors (social movements, legislators, presidents, etc.) can and should play in shaping constitutional politics today. My hope is that by the end of the course each student will feel equipped to participate as citizens in contemporary constitutional debates, and will be able to thoughtfully articulate and defend their own views on constitutional issues that arise in years to come.

REQUIREMENTS & RESPONSIBILITIES (Please read carefully)

Students are responsible for anything that occurs in class, including, for instance, announcements that are made, assignments that are given out, and schedule changes that occur. We will be using Blackboard for this course. A discussion board will be set up there, to encourage further dialogue and exploration of the material covered in the course. I will periodically post questions, offer clarifications, and make comments on the discussion. I will also send emails and post announcements this way. *You should be sure that you have a correct & functioning email address listed with the registrar so that you will receive course emails.* Finally, as a courtesy to the students, I will try to post the lecture outlines for the class on the web, through Blackboard. But since I may deviate from the lectures in class, please do not rely on these materials too heavily.

Grading will be based upon attendance, participation, two in-class exams, and a take-home final.

Attendance and Participation: Attendance is worth 10% of the grade. Correct participation in response to in-class questions is worth 10% of the grade. Both your attendance and participation scores will be based on your i>clicker use during class. If you respond to any question, you will be given credit for having attended the class. If you respond to at least 75% of the questions correctly (for questions that have a correct answer), you will be given credit for participation for the class. Every student is automatically excused for missing three class sessions. For every class you miss beyond three, you will lose a point off your participation score. Likewise, after your three excused classes, anytime your participation score falls below 75% you will lose a point off your participation grade. Note: For August 31, every student is also expected to turn in a one paragraph statement of *your* learning goals and expectations for this course. In your statement, tell me what you want to gain from this course?

Readings & Clickers: You are also expected to do the assigned reading for each unit *before* the start of the first lecture in that unit. If you have done the reading, then I will not have to cover as much basic information in class and we will have an opportunity to move to a deeper level of analysis and understanding. To check on whether students have done the reading, I will sometimes make my first clicker question a basic comprehension question framed around the reading. I will also ask i>clicker questions to survey the class's opinions on controversial topics; to check your comprehension of points made in the lectures; and to determine whether you have grasped and can apply some of the core concepts covered in the course.

Students are expected to purchase an i>clicker and bring it to every class. Please check your batteries before you come to class. You will also need to register your i>clicker for this class on

Blackboard in order to receive credit for attendance and participation. If you have a technical problem with your i>clicker, please consult with the ITS help desk in FAC.

Exams: The in-class exams are worth 25% of the grade each, and the final is worth 30% of the grade. For the two in-class exams, you will be asked to answer eight short answer or matching questions and write one essay. For the final take home assignment, you will be given two comprehensive essay questions the last week of class and asked to bring back two 4 -5 page essays (1200 - 1500 words each).

Regarding the in-class exams, you may have with you during the exam with only two pens (no pencils, please) and a water bottle. Once you enter the exam room, you will need to put to the side of the room all backpacks and bags with your notes, readings, cell phones, iPods, etc. Any student who misses an exam for any reason without prior approval of the professor, will not receive credit for the exam (unless you were unconscious or stranded on a desert island). If you are very sick and cannot attend, you must get the professor's approval (before the exam) to take a make-up exam. Make-ups will be approved only in cases of severe illness (colds, hangovers, and sleep deprivation do not qualify) or a death in the immediate family (great uncles and former in-laws do not qualify). You will need to provide verification of the cause of your absence if you are approved for a make-up. One comprehensive make-up exam will be given near the end of the course for students who miss an in-class exam and are approved to take a make-up.

Grading Scale: Students who receive an overall numerical grade of 94 – 100 will be given a letter grade of “A”; those who receive an overall grade of 90 – 93.9 will receive an those who receive letter grade of “A-”; those who receive an overall grade of 87-89.9 will receive an those who receive letter grade of “B+”; those who receive an overall grade of 84 – 86.9 will receive a “B”; those who receive those who receive an overall grade of 80 – 83.9 will receive a letter grade of “B-“; those who receive an overall grade of 77 – 79.9 will receive a “C+”; those who receive an overall grade of 74 – 76.9 will receive a “C”; those who receive an overall grade of 70 – 73.9 will receive a “C“; those who receive an overall grade of 67 – 69.9 will be given a “D+”; those who receive an overall grade of 64 – 66.9 will be given a “D”; those who receive an overall grade of 60 – 63.9 will be given a “D-“; and anything below a 60 will be given a letter grade of “F”. Students who take the class pass/fail must receive an overall grade of at least 65 in order to pass. Grades of 64.9 and below will receive a fail.

There will be no grading curve in the class, so if all of the students earn “A”s, then that is what they will receive. Students concerned about their grades should come and see the professor during the semester, so that I may advise you on strategies for improving your grade. (If you wait until the end of the course to raise these concerns, then it is generally too late to do anything to help you.)

Finally, this is designed as a challenging (and, I hope, rewarding) course, and it is expected that the students who take the course understand that and are motivated to meet that challenge. My commitment to those who do is that by the end of this course you will emerge as more informed and thoughtful citizens and observers of American constitutional politics.

UNIVERSITY POLICIES

Students with disabilities may contact the Division of Diversity and Community Engagement (471-6259) to request appropriate academic accommodations. For more information, go to: http://www.utexas.edu/diversity/ddce/ssd/accomod_services.php#exam_accom

Every student in this course is expected to abide by the UT honor code and to refrain from cheating, plagiarism, or other forms of academic dishonesty. The honor code states that: “The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.”

By university policy, students must provide fourteen days notice (to the instructor) of any pending absence due to observations of religious holidays. If you must miss a class, exam, or assignment in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

READING and COURSE MATERIALS

The following required materials are available for purchase at the Co-op and other bookstores on the drag:

Richard Randall, *American Constitutional Development: The Rights of Persons*, vol. II.
(Referred to in the reading assignments as ACD)

i>clickers (hand held consoles for classroom participation)

There will also be course materials and readings posted on Blackboard that students may download on their own. Those readings will be indicated in the schedule by the symbol BB.

In addition, please make note of the following useful websites:

<http://www.law.cornell.edu/supct/index.html>

<http://thomas.loc.gov/>

<http://www.landmarkcases.org/>

<http://www.findlaw.com/>

<http://www.oyez.org/>

SCHEDULE, TOPICS, AND ASSIGNMENTS

For each item below you have the topic, the dates the topic will be covered, the readings assigned for those days (which you should do before coming to class), and some guiding questions. Pay particular attention to the guiding questions – these are closely tied to the learning objectives for the course and are intended to help you think more deeply about the topics and concepts here. Note: you are required to bring your clicker to every class (except for exam days), including the first class on August 26.

1. Introduction (August 26)

Overview of the course, review of instructional approach and learning objectives, explanation and demonstration of i>clicker use.

Questions: What is a student-centered approach to learning? What is critical thinking and why is it valuable?

Reading:

Plan for Effective Listening and Note-Taking (handout on BB)

2. Founding Documents (Aug. 31 – September 7)

Assignment: On August 31, every student should bring in a one-paragraph statement of their learning goals for this course. Be sure to put your name and eid on the statement, which should be turned in to the professor in class.

Discussion of the principles and design expressed in the Declaration of Independence and the Constitution.

Questions: What are the core principles or beliefs that underlie the Declaration and the Constitution? Are these beliefs still relevant to us today? What is the vision of democracy expressed in the Federalist Papers?

Reading:

Critical Reading (handout on BB)

Constitution of the United States (esp. the Preamble, Article IV, and Amendments 1-10) (ACD 1-11)

The Declaration of Independence

(Available on the web at:

http://www.archives.gov/exhibits/charters/declaration_transcript.html)

Federalist Papers, # 2, 10, 14-16, 49 & 51

(Fed. Papers available on the web at:

<http://thomas.loc.gov/home/histdox/fedpapers.html>)

3. Founding Period (Sep. 9 & 14)

We will discuss the origins and significance of judicial review, as well as the way that Native Americans were included in Constitutional governance.

Questions: What is judicial review? Why is judicial review hailed by some as fundamental to constitutional democracy and attacked by others as undermining democratic governance? Were Native Americans regarded as citizens? If not, how were they seen? What does the inclusion of a subordinate people say about the values underlying the constitutional order in this period? Are there any groups that we regard as subordinate who are governed under our constitution today?

Reading:

How to Read a Case, by Julie Novkov (BB)

Cherokee Nation v. Georgia

(Available on the web at:

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0030_0001_ZO.html)

For further background information on this case and the Trail of Tears, see the resources available at -

<http://georgiainfo.galileo.usg.edu/trailtea.htm>

Marbury v. Madison

(Excerpt available at:

http://www.streetlaw.org/en/Page.Landmark.Marbury_decision.majority.aspx)

(For further information also see:

<http://www.landmarkcases.org/marbury/home.html>)

4. Coming of the Civil War (Sept. 16 - 18)

Discussion of the constitutional conflict over slavery that led to the Civil War along with an exploration of the competing constitutional visions expressed in the pro-slavery and abolitionist positions.

Questions: Was the original constitution a pro-slavery or anti-slavery document? Was the Dred Scott case decided correctly?

Reading:

Dred Scott v. Sandford

(For background materials and an excerpted version of the majority opinion [“key excerpts”] and the dissents, go to:

<http://www.landmarkcases.org/dredscott/home.html>)

Excerpt from Mark Graber, *The Problem of Constitutional Evil* (BB)

5. Reconstruction (Sept. 23 & 28)

We will discuss the way that the Constitution changed as a result of the Civil War, focusing especially on the Fourteenth Amendment, and the key doctrinal development that resulted from the *Slaughterhouse Cases*.

Questions: How is citizenship defined by the fourteenth amendment? What is the relationship between state and national citizenship there? How did the reconstruction amendments change the terms of the original constitution?

Reading:

The US Constitution, Amendments 13 - 15

Slaughterhouse Cases

(http://www.law.cornell.edu/supct/html/historics/USSC_CR_0083_0036_ZS.html)

6. Review & Exam (Sept. 30 & Oct. 5)

I will distribute the essay questions via Blackboard before class on September 30. We will practice some matching/multiple choice questions in class before discussing the essay questions.

Reading:

Writing Essays for Liberal Arts Exams (BB)

First Exam – October 5

7. Freedom of Religion (Oct. 7 & 12)

We will revisit the distinction between free expression and the establishment clause. We will also discuss the relationship between civic identity and religious belief or membership.

Questions: Why is “free expression” regarding religion important in a constitutional democracy? When is religious membership seen as positively aligned with our constitutional values and the exercise of citizenship and when is it not?

Reynolds v US (1879) (ACD 109)

Wisconsin v Yoder (1972) (ACD 122)

Van Orden v. Perry (2005) (go to - <http://www.law.cornell.edu/supct/html/03-1500.ZO.html>)

8. The Commerce Clause (Oct. 14 & 19)

We will trace the evolution in constitutional understanding of the commerce clause, from the pre-New Deal era, when it was seen as giving limited powers to the federal government, to the post-New Deal period when the court endorsed a more expansive view of federal powers under the commerce clause, to recent cases in which the commerce clause is again being interpreted more restrictively by the Supreme Court. We will discuss the first four cases on October 14. We will discuss the last two cases on October 19.

Questions: What do changing views about the commerce clause tell us about changing views on the relationship between federalism and democracy? What do these cases tell us about the appropriate role of the Supreme Court in processes of political and constitutional change? How is the commerce clause relevant to debates over who is part of “We, the People”?

Gibbons v Ogden, 1824

To access the main opinion, go to -
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0022_0001_ZO.html

Hammer v Dagenhart, 1918

To access the main opinion, go to –
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0247_0251_ZO.html

NLRB v Jones & Laughlin, 1937

(Just read the syllabus of the case -
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0301_0001_ZS.html)

US v Darby, 1941

To access the main opinion, go to –
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0312_0100_ZO.html

US v Lopez, 1994

Links to the main opinion (Rehnquist) and the main dissent (Breyer) may be found on the page that provides an overview (the syllabus) for the case –
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0514_0549_ZS.html

US v Morrison, 2000

Skim the syllabus, then read section II of the main opinion, and the dissent by Souter. The syllabus, along with links to the main opinion and Souter’s dissent, may be found at –

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0529_0598_ZS.html

9. Segregation and Civil Rights (Oct. 21 – Nov. 2)

Beginning in the post-Civil War period will cover the constitutional history of segregation and equal protection. We will consider how best to promote equal opportunity in a constitutional democracy.

a. Pre-Brown (10/21)

Questions: How was segregation constitutionally permitted under the Fourteenth Amendment? What was the logic and meaning behind “separate but equal”?

Civil Rights Cases, 1883

Read the syllabus, available at -

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0109_0003_ZS.html

Plessy v. Ferguson (ACD 467-70)

Yick Wo v. Hopkins (ACD 523-4)

b. *Brown v. Board* (10/26)

Questions: How did the approach to equal protection taken in *Sweatt* differ from the approach that was eventually taken in *Brown*? On what grounds did the Court overturn *Plessy v Ferguson*? Why is education so important for equality under the constitution?

Sweatt v Painter, 1950

The main opinion may be accessed at -

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0339_0629_ZO.html

Brown v. Board of Education, 1954 (ACD 473-6)

c. Post-Brown (10/28)

Questions: Why does the right to marry matter for equal rights? When are hiring practices discriminatory? When is discrimination regarded as intentional and why does that matter?

Loving v. Virginia, 1967 (ACD 498-502)

Griggs v. Duke Power Co. (1971)

May be accessed at -

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0401_0424_ZO.html

Village of Arlington Heights v Metropolitan, 1977

Read the syllabus, and sections III & IV of the main opinion (by Powell).

The case may be accessed at -

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0429_0252_ZS.html

d. Affirmative Action (11/2)

Questions: When do laws and policies that recognize race promote equality and when do they hinder equality? What are the different reasons that states or institutions may use to justify policies that rely upon affirmative action? What is equal opportunity and how is it best supported constitutionally?

UC Regents v. Bakke (ACD 492-8)

Adarand Constructors v. Pena, (ACD 498-502)

Grutter v Bollinger (excerpt available on Blackboard)

Also read ACD 437-464

10. Review and Exam (Nov. 4 & 9)

I will distribute the essay questions via Blackboard before class on November 4. We will practice some matching/multiple choice questions in class before discussing the essay questions.

Second Exam – November 9

11. Women's Rights (Nov. 11 & 16)

We will consider the history of women's rights in the modern period, looking both at the application of the equal protection clause to sex discrimination cases, and the emergence of reproductive rights under the doctrine of privacy.

a. Equal Protection/Sex Discrimination

Questions: Why is the Supreme Court more reluctant to take a "colorblind constitutional" approach to laws that recognize gender differences? Since men and women are physically different, are there other approaches (besides nondiscrimination) to constitutional equality that might be more helpful to women?

For background on sex discrimination, read ACD, 535-544.

Frontiero v. Richardson, 1973 (ACD 550-3)

Craig v. Boren, 1976 (ACD 553-6)

US v. Virginia (ACD 559-64)

b. Reproductive Rights/Privacy

Questions: Many believe that liberty (under the due process clauses of the fifth and fourteenth amendments) is a fundamental constitutional right, and is the source of the reproductive rights protected under the privacy doctrine. Do you agree? How might constitutional protections for equality be used to support reproductive rights?

For background on privacy, read ACD 287-294.

Griswold v. CT, ACD 301-4

Roe v. Wade, ACD 304-9

Gonzales v Carhart, 2007

Read the case syllabus, available at –

<http://www.law.cornell.edu/supct/html/05-380.ZS.html>

Recommended reading:

Ritter, "Women's Citizenship and the Problem of Legal Personhood in the United States in the 1960s and 1970s" *Texas Journal of Women and the Law*

(Available on Blackboard, in the "Supplemental Materials" folder under Course Documents.)

12. Gay Rights (Nov. 18 & 23)

We will consider the recent debate over gay rights, beginning with the 1980s case in which the Supreme Court refused to protect homosexual conduct under the privacy doctrine up through the current effort to have the Supreme Court declare that same sex couples have a constitutionally protected right to marry.

Questions: Is sexual orientation a suspect classification, like race or sex? Why or why not? What is the difference between conduct and status and why does it matter? Why has the constitutional movement for gay rights focused so much attention on the right to marry?

For background, read ACD 295, 544-545.

Bowers v Hardwick, 1986 (ACD 316-21)

Romer v Evans, 1996 (ACD 567-71)

Lawrence v. Texas. Available at –

<http://www.law.cornell.edu/supct/html/02-102.ZS.html>

Also read three NYT article on current cases and debates on gay marriage. These articles (“Closing Arguments in Marriage Trial,” “Looking for Time Bombs and Tea Leaves on Gay Marriage,” and “Basis of Union on Gay Unions Stirs Debate”) are all available on BB.

13. Immigration (Nov. 30)

The class will consider the current debate – exemplified in Arizona’s new immigration enforcement law over the role of the states and the federal government in enforcing immigration law.

Questions: What protections does the constitution provide for noncitizens? What is the role that state and local governments can and should play in enforcing federal immigration law?

Read “Immigration Outside the Law,” by Hiroshi Motomura (BB)

14. Conclusion (Dec. 6)

Final Take-home Essays due on Dec. 13 by 10 am in MAI 201.