

American Constitutional Law (GOV 1510)
Professor Richard Fallon
Fall 2008

Assigned Books

The assigned readings for this course are all taken from a law school casebook edited by Jesse H. Choper et al., *Constitutional Law* (2008) (hereinafter “CB”), leading cases in Richard H. Fallon, Jr., *The Dynamic Constitution* (2004) (hereinafter “Fallon”), or from a set of photocopied materials available to students in the course (“Materials”).

Sections

Section meetings will be arranged. Attendance at sections is mandatory. Unexcused absences will be taken into account in assigning grades for section performance (as further explained below).

Written Work Requirements and Grading

Grades will be based on performance in sections, including weekly written questions to be submitted to the Teaching Fellows in advance of section meetings; two papers of 15,00 to 2,000 words each; and a final exam.

(1) For each weekly section meeting, students will be required to prepare two or three short written questions that they think merit discussion in the section meeting, with a brief statement of why they think the questions important, and to submit those questions by email to the Teaching Fellow responsible for their section not later than 5 p.m. on the day before the section meeting. Each student may opt not to submit written questions for any three weeks of his or her choosing. Twenty percent (20%) of your grade for the course will be based on performance in sections, including the weekly questions.

(2) Students in the course will also need to write two papers of 1,500 to 2,000 words in length, each of which will count for 25% of your course grade. Topics for papers will be assigned, but students may instead elect to write on other topics, provided that those topics are approved in advance by the Teaching Fellow for your section. The two required papers may be submitted on any of three dates: October 21, November 20, and December 16. Because you need write only two papers, you choose in which of two of these three weeks to submit them.

(3) There will be a final exam that will count for 30% of your grade for the course.

Schedule of Assignments

There are 25 scheduled meetings of the class and, accordingly, 25 listed assignments. Please prepare the assignment for each class before coming to class.

I. A General Introduction to Constitutional Law

Assignment #1: Foundations

U.S. Constitution, CB App. B 13-27; Fallon xv-xxi, 189-204

II. Substantive Introduction and Methodological Prelude: Race and the Constitution

Assignment #2: Historical and Doctrinal Background

Fallon 1-10; CB 657-60; Fallon 109-11; 660-62; Note on Plessy, Materials 1-2; CB 663-66; Note on Korematsu, Materials 3-4

Assignment #3: The Modern Era

Fallon, 114-23; CB 666-69; Note on Brown, Materials 5-8; CB 669-73

III. Historical Foundations of Judicial and Congressional Power

Assignment #4: The Constitution in the Era of John Marshall

Fallon 10-25; CB 1-8, 27-31; McCulloch, Part 2, Materials 9; CB 154-58

Assignment #5: Introduction to Congress's Commerce Power

Fallon 157-68; CB 32-45

Assignment #6: Contemporary Doctrine and Issues

CB 46-66
Fallon 168-72

IV. The Freedom of Speech

Assignment #7: Foundational Cases: The Advocacy of Illegal Action

Fallon 31-42; CB 299-311

Assignment #8: The Emergence of the Modern Law

CB 311-24; Note on Brandenburg, Materials 10-12; CB 1328-33; 341-42

Assignment #9: Unprotected Categories, Including Obscenity

Fallon 45-48; CB 368-69 (Chaplinsky), 352-68, 390-93

Assignment #10: Expressive Conduct and Related Issues

Fallon 42-45; CB 395-414, 371-75

Assignment #11: Regulation of the Broadcast Media

Fallon 51-53; CB 514-18 &fn.e, 526-34, 525-26 (cable television).

Note on Cable Television, Materials 13-14; Note on the Internet, Materials 15-18

Assignment #12: Government Support of Speech and The Government's Role as Educator

CB 502-10; Note on Employee Speech Rights, Materials, 19-22;
Note on Student Speech Rights, Materials 23-32; CB 514 (Notes)

V. The Religion Clauses

Assignment #13: Free Exercise and Governmental Subsidies

Fallon 57-74; CB 623-34 (Church of Lukumi Babalu Aye), 579-84 (Lemon),
634-36 (Locke)

Assignment #14: Acknowledgment of (or Symbolic Support for) Religion

CB 583-84 (Lemon redux), 603-21 (Santa Fe)

VI. The Equal Protection of the Laws

Assignment #15: Historical Background

Fallon 75-90, 106-14; CB 158-72, 670-73 (redux)

Assignment #16: "Rational Basis" Review

Fallon 111-14, 122-23; CB 646-57, 673-78

Assignment #17: Affirmative Action

Fallon 123-29; CB 681-710

Assignment #18: Gender

Fallon 129-33; CB 710-25

Assignment #19: Gender II and Related Issues

CB 725-29, 741-46; Fallon 136-37

VII. The Second Amendment

Assignment #20: A New Beginning CB 291-98

VIII. Fundamental Rights

Assignment #21: Foundational Cases on Rights of Privacy (or Sexual Autonomy?)

Fallon 138-47; CB 195-216

Assignment #22: Post-Roe Developments

CB 216-49

Assignment #23: Gay Rights

CB 275-89, 733-41; Fallon 147-54

Assignment #24: Rights to Travel and the Interests of the Poor

CB 746-51, 777-90; Fallon 257-62

IX. Enforcing Civil Rights

Assignment #25: The Scope of Congressional Power

Fallon 254-57, 262-68; CB 820-29; Fallon 269-77