The Courts and Political Controversy

POLI 104I

Course Overview

▶ *"This course will examine **the role of the courts in dealing with issues of great political controversy,** with attention to the rights of speech and assembly during wartime, questions of internal security, and the expression of controversial views on race and religion. The conflict between opposing Supreme Court doctrines on these issues will be explored in the context of the case studies drawn from different historical periods."*

▶ This course has **no prerequisites**. We'll spend some time in the first session talking about **theories of law** and explore how scholars have understood the relationship between law and politics. After that, we're going to read cases. The syllabus is structured by subject.

Course Overview

▶ We'll mostly be reading Supreme Court and circuit court opinions, which are publicly available. However, the O'Brien casebooks do a good job of abridging the often-lengthy cases to focus on the relevant points of law. You can buy the books from the UCSD bookstore, and they're also available for purchase or rental on Amazon. As of 6/25, it's possible to rent both books for about $40.

▶ **Attendance** at lecture is not required, but it is recommended because you'll have the opportunity to ask questions.

▶ I'll be holding **office hours** on Wednesdays from 9-11am. You can sign up hereLinks to an external site.. If that time's inconvenient or if all the slots are full, we can set something up by appointment. Message me on Canvas or email me at mdraper@ucsd.edu.

Texts

- *O'Brien and Silverstein - Constitutional Law and Politics Volume One [UCSD Bookstore (Links to an external site.)] [Amazon (Links to an external site.)]*

- *O'Brien and Silverstein - Constitutional Law and Politics Volume Two [UCSD Bookstore (Links to an external site.)] [Amazon (Links to an external site.)]*

Course Objectives

- Learn how the courts handle issues of great political controversy.

- Learn about the relationship between politics and law.

- Understand the competing interests that the courts are trying to balance.

- Learn how to read cases from Federal and State courts.

- Acquire the skill of anticipating arguments with which you disagree.

Where are we going?

- 6/27 [today] the relationship between law and politics.
  - After today's session, I'll post several asynchronous videos on basic concepts.
- 6/29 - incorporation (OB2 – 4a)
- 7/4 - incitement (OB2 – 5a)
- 7/6 - obscenity (OB2 – 5b (first half))
- 7/11 - executive power (OB1 – 4a, d)
- 7/13 - election law (OB1 - 8c)
- 7/18 - threats (OB2 – 5b (second half))
- 7/20 - guns (OB2 365-387 + Bruen)
- 7/25 - privacy (OB2 – 11 + Dobbs)
- 7/27 - review

How to Succeed

▶ Attend the lectures or watch asynchronously

▶ Do the assigned reading

▶ Plan ahead for the response memos

    ▶ These will be take-home essay format

    ▶ Responses uploaded to Canvas

    ▶ Prompts distributed in advance

Here's how your final grade will be calculated:

- Response Memo #1 - 25%
- Response Memo #2 - 35%
- Response Memo #3 - 40%

▶ This is a **writing-intensive course**. The assignments are all take-home essay format, and I'll circulate the prompts several days prior to the due date.
The UCSD Writing HubLinks to an external site. is an excellent resource for help with academic writing.

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► The **response memos** will ask you to make a legal recommendation to a client who is not familiar with the cases we will be studying.

► In the course of making this recommendation, you'll need to consider the points of law favorable to your client, as well as anticipate the argument that opposing counsel will be making.

► If this sounds difficult at the moment, don't worry. Once we've started reading cases, everything will be more clear.

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Academic Integrity

▶ *Academic Integrity.* We will abide strictly by standards of academic honesty. That means you must compose your own answers to the writing assignments, and must provide proper citations for written work that you submit. You are expected to review USCD academic integrity requirements here:

▶ https://academicintegrity.ucsd.edu/faq/index.htmlLinks to an external site.

▶ All student writing submitted in this course will be automatically scanned for plagiarism. If you didn't compose it yourself, don't submit it. If you used sources to help you develop your ideas, cite them.

Law and Politics

▶ We can think of law as a system of social ordering.

  ▶ It's distinct from other systems of social ordering (e.g. custom, religion).

  ▶ But all of them are types of social norms

    ▶ Public

    ▶ Impartial

    ▶ Common knowledge

▶ We can think of politics as the activity that occurs in the absence of a higher authority.

  ▶ Compare a pickup game of basketball to one with referees.

Law and Politics

- We can imagine a group of players deciding to institute rules, referees and enforcement mechanisms to improve the quality of their game.
  - Why would they do this?
  - Would the addition of rules and officials eliminate the "political" aspects of the game?
- And we can imagine the players giving justifications for their decision:
  - Legal naturalism: we chose these rules because they're the right ones.
    - Self-evident (revelation, nature, reason).
    - A challenge to existing power structures?
  - Legal positivism: we chose these rules because they seem best to us.
    - Law depends on social facts.
    - Its strengths and weaknesses don't matter as much as its existence.