

American Constitutional Theory

Fall Semester 2020

Professors Balkin, Graber, Griffin, and Levinson
Wednesdays, 1:10pm to 3:00pm (Zoom only)

The books for the course are:

1. Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws that Affect Us Today* (revised edition, 2019)
2. Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (2006)
3. Jack M. Balkin, *Living Originalism* (2011)
4. Jack M. Balkin, *The Cycles of Constitutional Time* (2020)

Additional readings will be available on Canvas

1. Popular Sovereignty (08/26/2020)

Levinson, *The Continuing Specter of Popular Sovereignty and National Self-Determination in an Age of Political Uncertainty*, in Mark A. Graber, Sanford Levinson, and Mark Tushnet, eds., *Constitutional Democracy In Crisis?*, pp. 651-663 (Oxford 2018) (on Canvas)
Griffin, *Constituent Power and Constitutional Change in American Constitutionalism*, in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* 49 (Oxford, 2007) (on Canvas)

2. Constitutional Design I (09/02/2020)

Levinson, *Afterword* to *Constitutional Faith* (2d ed., 2011) (on Canvas)
Balkin and Levinson, *Constitutional Dictatorship: Its Dangers and Its Design*, 94 *Minnesota Law Review* 1789-1866 (2010) (on Canvas)

3. Constitutional Design II (09/09/2020)

Levinson and Levinson, *Fault Lines in the Constitution*.

4. Constitutional Interpretation I (09/16/2020)

Balkin, *Living Originalism*, pp. 3-182.

5. Constitutional Interpretation II (09/23/2020)

Balkin, *Living Originalism*, pp. 183-339.

6. Constitutional Interpretation III (09/30/2020)

Graber, *Dred Scott and the Problem of Constitutional Evil*, Part One, pp.1 -89.
Graber, *The Forgotten Fourteenth Amendment*, Chapter Six (on Canvas)

7. Constitutional Interpretation IV (10/14/2020)

Griffin, *Optimistic Originalism and the Reconstruction Amendments* (on Canvas)

8. Constitutional Development and Regime Theory I (10/21/2020)

Graber, "Separation of Powers," in Karen Orren and John W. Compton, ed, *The Cambridge Companion To The United States Constitution*, pp. 224-260 (on Canvas)

Graber, *Dred Scott and the Problem of Constitutional Evil*, Part Two, pp. 91-171.

9. Constitutional Development and Regime Theory II (10/28/2020)

Graber, *Constructing Constitutional Politics*, Abstract and Essay (on Canvas)

Levinson, *The Ten Year War: What If Lincoln Had Not Exited After Four Years?*, 51 *Tulsa Law Review* 313-338 (2016) (on Canvas)

10. Formal and Informal Constitutional Change I (11/04/2020)

Griffin, *Presidential Impeachment and the Historical Logic of Constitutional Change* (on Canvas)

Griffin, *Against Historical Practice* (on Canvas)

11. Formal and Informal Constitutional Change II (11/06/2020 at 4:00pm)

Griffin, *Race and Federalism* (on Canvas)

Griffin, *Broken Trust: Dysfunctional Government and Constitutional Reform*, pp. 41-75 (on Canvas)

12. The Next Regime and Our Constitutional Future (11/11/2020)

Balkin, *The Cycles of Constitutional Time*, Parts One and Three, pp. 3-65, 157-174.

Graber and Levinson, *The Constitutional Powers of Anti-Publican Presidents: Constitutional Interpretation in a Broken Constitutional Order*, 21 *Chapman Law Review* 133-175 (2018) (on Canvas)

13. The Next Regime and Judicial Review (11/18/2020)

Balkin, *The Cycles of Constitutional Time*, Part Two, pp. 67-156.

Graber, *The Collapse of the New Deal Conceptual Universe - The Schmooze Project* (on Canvas)

Levinson, "Coda," in Robert G. McCloskey, *The American Supreme Court* (6th Edition, 2016) (on Canvas)