

Princeton University
Department of Politics

Reading List for Ph.D. General Examination in
Public Law

This list is to provide an initial guide in preparing for the general examination in Public Law. This list is not intended to be canonical or exhaustive, but rather is introductory to the debates and issues in the field.

General

C. Herman Pritchett "Public Law and Judicial Behavior," *Journal of Politics* 30 (1968): 480
Walter F. Murphy and Joseph Tanenhaus, *The Study of Public Law*, chap. 1
Martin Shapiro, "Public Law and Judicial Politics," in *Political Science: The State of the Discipline II*
Nancy Maveety, ed., *The Pioneers of Judicial Behavior*

Constitutional Law

Students taking the exam are expected to be familiar with the major cases in constitutional law decided by the U.S. Supreme Court. Cases are selected and collected in a variety of casebooks, including:

Walter Murphy, William Fleming and Sotirios Barber *American Constitutional Interpretation*
Gerald Gunther and Kathleen Sullivan *Constitutional Law*
David O'Brien *Constitutional Law and Politics*

We would advise students that the next two sections should be regarded as essential for the public law exam at Princeton. In addition, students should be thoroughly familiar with at least two of the subsequent sections. Some particularly important works, with which all students should be familiar, are marked with an asterisk. In preparing for the exam, student should also be guided by recently offered courses.

Philosophy of Law and Jurisprudence

Thomas Aquinas *Summa Theologiae*, I-II Questions 90-97
Thomas Hobbes *Leviathan* ch. 14, 17-18, 21, 26
John Locke *The Second Treatise of Government* ch. 8-13
*John Austin *The Province of Jurisprudence Determined*
*Oliver Wendell Holmes "The Path of Law" *Harvard Law Review* (1897)
Benjamin Cardozo *The Nature of the Judicial Process*
*Karl Llewellyn "A Realistic Jurisprudence—The Next Step" *Columbia Law Review* (1930)
*H.L.A. Hart *The Concept of Law*
*Lon Fuller *The Morality of Law*
*John Finnis *Natural Law and Natural Rights*
*Ronald Dworkin *Taking Rights Seriously*
*Ronald Dworkin *Law's Empire*
*Roberto Unger *The Critical Legal Studies Movement*
*Joseph Raz *Practical Reason and Norms*
Joseph Raz *The Authority of Law*
Friedrich A. Hayek, *The Constitution of Liberty* ch. 10
Neil MacCormick *Legal Reasoning and Legal Theory*
Richard Posner *The Problematics of Moral and Legal Theory*
Robert George, ed. *Natural Law Theory*
Frederick Schauer *Playing by the Rules*

Constitutional Theory

- *James Bradley Thayer "Origin & Scope of the American Doctrine of Constitutional Law," *Harvard L. Rev.* 7 (1893)
- *Herbert Weschler, "Toward Neutral Principles of Constitutional Law," *Harvard Law Review* 73 (1959)
- *Alexander Bickel *The Least Dangerous Branch*
- *John Hart Ely *Democracy and Distrust*
- *Ronald Dworkin *A Matter of Principle* ch. 1-3, 5-7
- *Ronald Dworkin *Freedom's Law* ch. 1
- *Bruce Ackerman *We the People: Foundations*
- Cass Sunstein *The Partial Constitution*, ch. 1-6
- Cass Sunstein, *One Case at a Time* ch. 1-3
- Christopher Eisgruber, *Constitutional Self-Government*
- Larry Kramer, *The People Themselves*
- Mark Tushnet, *Taking the Constitution Away from the Courts*
- Sanford Levinson *Constitutional Faith*
- Sotirios Barber *On What the Constitution Means*
- *Keith E. Whittington *Constitutional Interpretation*
- Randy Barnett *Restoring the Lost Constitution*
- Jeremy Waldron *Law and Disagreement* ch. 10-13
- William Harris *The Interpretable Constitution*
- Stephen Griffin *American Constitutionalism*
- *Karl Llewellyn "The Constitution as an Institution," *Columbia Law Review* (1934)
- *Edward Corwin "The Constitution as an Instrument and as Symbol," *APSR* (1936)
- Edward Corwin "The Constitution versus Constitutional Theory," *APSR* (1925)
- Woodrow Wilson *Constitutional Government in the United States*
- *Charles Howard McIlwain *Constitutionalism: Ancient and Modern*
- Philip Bobbitt *Constitutional Fate*, ch. 1-7
- Giovanni Sartori "Constitutionalism: A Preliminary Discussion," *APSR* (1962)
- Barry Weingast, "The Political Foundations of Democracy and the Rule of Law," *APSR* (1997)
- Stephen Holmes *Passions and Constraints* ch. 5

Judicial Politics

- *Walter Murphy *Elements of Judicial Strategy*
- *Robert Dahl "Decision-Making in a Democracy: The Supreme Court as National Policy-Maker," *Journal of Public Law* (1957)
- *Gerald Rosenberg *The Hollow Hope*
- *Jeffrey Segal and Harold Spaeth *The Supreme Court and the Attitudinal Model Revisited*
- *Mark A. Graber, "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7 (1993)
- *Keith E. Whittington, *Political Foundations of Judicial Supremacy*
- *Charles Cameron, Jeffrey Segal, and Donald Songer, "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," *APSR* 94 (2000)
- *Jeffrey R. Lax and Charles M. Cameron, "Bargaining and Opinion Assignment on the U.S. Supreme Court," *Journal of Law, Economics and Organization* 23 (2007)
- Jeffrey A. Segal, "Separation-of-Powers Games in the Positive Theory of Congress and Courts," *APSR* 91 (1997) (w/ erratum)
- Lee Epstein and Jack Knight, *Choices Justices Make*
- J. Mitchell Pickerill, *Constitutional Deliberation in Congress*
- William Eskridge, "Overriding Supreme Court Statutory Interpretation Decisions," *Yale Law Journal* (1991)
- Jeffrey J. Mondak and Shanon I. Smithey, "The Dynamics of Public Support for the Supreme Court," *JOP* 59 (1997)
- Gregory A. Caldeira, "The Transmission of Legal Precedent: A Study of State Supreme Courts," *APSR* 79 (1985)
- Gregory A. Caldeira and John R. Wright, "Organized Interests and Agenda Setting in the U.S. Supreme Court," *APSR* 82 (1988)
- H.W. Perry *Deciding to Decide*
- Jack Peltason *58 Lonely Men*
- David Yalof *Pursuit of Justices*

American Constitutional Thought and History

- *Robert McCloskey and Sanford Levinson *The American Supreme Court*
Alfred Kelly, Wilfred Harbison and Herman Belz *The American Constitution*
Willi Paul Adams *The First American Constitutions*
*Edward Corwin *The Higher Law Background of American Constitutional Law*
Donald Lutz *Popular Control and Popular Consent*
*Alexander Hamilton, James Madison and John Jay, *The Federalist Papers*
Herbert Storing *What the Anti-Federalists Were For*
David J. Siemers, *Ratifying the Republic*
Saul Cornell, *The Other Founders*
*Gordon Wood *The Creation of the American Republic*
Jack Rakove *Original Meanings*
Bruce Ackerman, *The Failure of the Founding Fathers*
Mark A. Graber, "Federalist or Friends of Adams: The Marshall Court and Party Politics," *Studies in American Political Development* (1998)
Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil*
Barry Friedman, "The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy," *NYU Law Review* (1998)
Morton Horwitz *The Transformation of American Law*
William Novak, *The People's Welfare*
Harold Hyman *A More Perfect Union*
Mark A. Graber, "The Jacksonian Origins of Chase Court Activism," *Journal of Supreme Court History* (2000)
William Nelson *The Fourteenth Amendment*
Akhil Amar, *The Bill of Rights*
Michael J. Klarman *From Jim Crow to Civil Rights*
Howard Gillman, "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *APSR* 96 (2002)
William G. Ross, *A Muted Fury*
Stephen Wood *Constitutional Politics in the Progressive Era*
Ken I. Kersch, *Constructing Civil Liberties*
*Howard Gillman *The Constitution Besieged*
Howard Gillman "The Collapse of Constitutional Originalism and the Rise of the Notion of the 'Living Constitution' in the Course of American State-Building," *Studies in American Political Development* (1997)
William Leuchtenburg *The Supreme Court Reborn*
Barry Cushman *Rethinking the New Deal Court*
Risa Goluboff, *The Lost Promise of Civil Rights*
Mark Tushnet *Making Civil Rights Law*
Michael J. Klarman "Rethinking the Civil Rights and Civil Liberties Revolution," *Virginia Law Review* (1996)
John B. Gates, *The Supreme Court and Partisan Realignment*
*Keith E. Whittington *Constitutional Construction*
Ronald Kahn and Ken Kersch, eds., *The Supreme Court and American Political Development*

Law and Society

- *Michael McCann *Rights at Work*
*William Felstiner, Richard Abel and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . ." *Law and Society Review* 15 (1980-1981)
*Stewart Macaulay "Non-Contractual Relations in Business: A Preliminary Study," *Am. Sociological Rev.* 55 (1963)
*Marc Galanter "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9 (1974)
*Robert Ellickson *Order Without Law*
Michael McCann and William Haltom, *Distorting the Law*
Paul Frymer, *Black and Blue*
Marc Galanter "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society," *UCLA Law Review* 31 (1983)
Patricia Ewick and Susan Silbey *The Common Place of the Law*
Sally Engle Merry, "Rights Talk and the Experience of Law," *Human Rights Quarterly* (2003)
David Garland, *The Culture of Control*

John Skrentny, *Minority Rights Revolution*
 Ronald H. Coase, "The Problem of Social Cost," *Journal of Law and Economics* (1960)
 Richard L. Abel "A Comparative Theory of Dispute Institutions in Society," *Law and Society Review* 8 (1973)
 Lauren Edelman, "Legal Environments and Organizational Governance: The Expansion of Due Process in the Workplace," *American Journal of Sociology* (1990)
 Lynn Mather, Craig A. McEwen, and Richard J. Maiman *Divorce Lawyers at Work*
 Robert A. Kagan, *Adversarial Legalism* ch. 1, 5, 7, 9
 Robert A. Kagan, "The Routinization of Debt Collection: An Essay on Social Change and Conflict in the Courts," *Law and Society Review* 18 (1984)
 Malcolm Feeley and Edward Rubin, *Judicial Policy Making and the Modern State*
 Steven Teles, *The Rise of the Conservative Legal Movement*
 James Willard Hurst *Law and the Conditions of Freedom in the Nineteenth-Century United States*
 William E. Forbath *Law and the Shaping of the American Labor Movement*
 Tom Tyler *Why People Obey the Law*
 Max Weber *Law in Economy and Society* (ed. Max Rheinstein)
 E.P. Thompson *Whigs and Hunters*

Comparative Law and Constitutionalism

*Martin Shapiro *Courts*
 *Douglass North and Barry Weingast "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England," *Journal of Economic History* 49 (1989)
 *Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (2000): 217
 *Georg Vanberg, "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review," *AJPS* 25 (2001)
 Clifford J. Carrubba, "Courts and Compliance with International Regulatory Regimes," *JOP* 67 (2005)
 Charles Epp *The Rights Revolution*
 Gary Jacobsohn *The Wheel of Law*
 Alec Stone Sweet *Governing with Judges*
 A.V. Dicey *Introduction to the Study of the Law of the Constitution*
 Alec Stone Sweet and Thomas L. Brunell, "Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community," *APSR* 92 (1998)
 Anne-Marie Slaughter and Walter Mattli, "Revisiting the European Court of Justice," *Inter. Org.* 52 (1998): 177
 Geoffrey Garrett, R.D. Kelemen, and H. Schulz, "The European Court of Justice, National Governments, and the Legal Integration of the European Union," *International Organization* 52 (1998): 149
 Karen Alter, *Establishing the Supremacy of European Law*, ch. 2, 5-6
 *Tom Ginsburg, *Judicial Review in New Democracies*, ch. 1-5
 Jennifer A. Widner, *Building the Rule of Law*, ch. 4-10, 15
 Gretchen Helmke, "The Logic of Strategic Defection: Judicial Decision-Making in Argentina under Dictatorship and Democracy," *APSR* 96 (2002)
 Tamir Moustafa, "Law versus the State: The Judicialization of Politics in Egypt," *Law and Social Inquiry* 28 (2003)
 Herron and Kirk Randazzo, "The Relationship between Independence and Judicial Review in Post-Communist Courts," *JOP* 65 (2003)
 *Mark Ramseyer, "The Puzzling (In)dependence of Courts: A Comparative Approach," *J. of Legal Studies* 23 (1994)
 James Gibson, Gregory Caldeira, & Virginia Baird, "On the Legitimacy of National High Courts," *APSR* 92 (1998): 343
 Ran Hirschl, "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions," *Law and Social Inquiry* 25 (2000): 91
 J.H.H. Weiler "The Transformation of Europe," *Yale Law Journal* 100 (1991)
 Avner Greif, Paul Milgrom, and Barry Weingast "Coordination, Commitment and Enforcement: The Case of the Merchant Guild," *Journal of Political Economy* 102 (1994)
 Yves Dezalay and Bryant Garth *Dealing in Virtue*
 Matthew Shugart and John Carey *Presidents and Assemblies*
 Bruce Ackerman, "The Rise of World Constitutionalism," *Virginia Law Review* (1997)
 Heinz Klug, *Constituting Democracy*

Administrative Law and Statutory Interpretation

*Cass R. Sunstein, *After the Rights Revolution* ch. 4-6

*William N. Eskridge, Jr. *Dynamic Statutory Interpretation* ch. 1-3

*Kenneth A. Shepsle, "Congress is a 'They,' Not an 'It': Legislative Intent as an Oxymoron," *International Review of Law and Economics* 12 (1992)

*Mathew McCubbins, Roger Noll, and Barry Weingast, "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies," *Virginia Law Review* 75 (1989)

Richard Stewart, "The Reformation of American Administrative Law," *Harvard Law Review* 88 (1975)

Jerry Mashaw *Bureaucratic Justice*

Martin Shapiro *Who Guards the Guardians?*

Linda R. Cohen and Matthew L. Spitzer, "Solving the *Chevron* Puzzle," *Law and Contemporary Problems* 57 (1994)

John Ferejohn & Barry Weingast, "A Positive Theory of Statutory Interpretation," *Inter. Rev. of Law & Econ.* 12 (1992)

Shep Melnick, *Between the Lines*

James Q. Wilson *Bureaucracy* ch. 15

Matthew C. Stephenson, "Legislative Allocation of Delegated Power: Uncertainty, Risk, and the Choice Between Agencies and Courts," *Harvard Law Review* 119 (2006)

Jerry L. Mashaw, "Prodelegation: Why Administrators Should Make Political Decisions," *Journal of Law, Economics and Organization* 81 (1985)

Adrian Vermeule, *Judging Under Uncertainty*, ch. 1-4, 7

Emerson Tiller and Pablo Spiller, "Strategic Instruments: Legal Structure and Political Games in Administrative Law," *Journal of Law, Economics and Organization* 15 (1999)

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