

POLS 4331.001
Spring 2019

U.S. Constitutional Law: Government Power
Monday and Wednesday 1:00-2:20PM
Room: University Hall, Room 02

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Office Hours: Monday 9:00-9:45AM and Wednesday 11:00-11:45AM

I. Introduction:

The purpose of this course is to increase the student's understanding of U.S. constitutional law, the U.S. Supreme Court, and American judicial politics in general. This course explores how the U.S. Supreme Court has defined and resolved relationships among the three branches of the national government and between the national government and the states. Focusing on decisions of the U.S. Supreme Court that grant power or place limitations on government entities, the goal of this course is to understand the U.S. Supreme Court as a policy-making branch of the federal government by understanding the political nature of constitutional interpretation.

The courts are a unique branch of government, using legal reasoning as the foundation for policy and decisions. While unique, the courts remain highly political, settling disputes related to law of high political consequence. To understand judicial decision-making and the political consequences of judicial policy, this course will introduce to and familiarize students with legal reasoning and constitutional interpretation. Throughout the semester we will examine the legal rationale that justifies many court decisions related to powers and constraints. Through this process, each student should learn to master this style of reasoning, learning to express themselves in a clear and concise manner, as well as learning how to analyze complex legal issues.

II. Required Text Books:

There is one required textbook. If purchasing on-line, please use expedited shipping as readings will begin immediately.

1. Lee Epstein and Thomas G. Walker. 2017. (9th Edition). *Constitutional Law for a Changing America: Institutional Powers and Constraints*. Washington, D.C.: CQ Press. (ISBN – 9781483384054) (or alternative ebook version available through online book sellers).
2. Prepared Readings on Blackboard. To access Blackboard, log in with your UTA NetID and password at <https://elearn.uta.edu/webapps/login/>.

Let me emphasize something very important about this course, it is extremely important that students do not fall behind in their readings. With the substantial amount of material covered each week, students will find themselves overwhelmed if they do not keep up.

III. Course Requirements:

1. Class Participation – Students are expected to attend each class and arrive on time prepared to discuss the day's readings. While I do not grade attendance, failure to attend class will have a direct negative result on your participation grade (10% of the course grade). I expect thoughtful participation in each class where participation reflects class engagement and careful thinking about that day's readings. Related, students will be called upon at random throughout the semester. The exercise of answering questions in class requires preparation and readiness to discuss the matters being discussed. One answer pass will be given during the semester; afterwards, deductions of twenty (20) percentage points will be made from the participation grade where students have not responded sufficiently or where students are not present.
2. Quizzes – Students will take five case/reading quizzes throughout the course, which will be run through Blackboard outside of class. Each quiz will consist of five multiple choice questions based on the cases and readings. Quizzes are each equal to 5% of the course grade with the lowest score dropped ($4 \times 5\% = 20\%$). Quiz dates and times will be announced in class and are intended to coincide with the conclusion of specific course topics.
3. Examinations – There will be two midterm examinations and one final examination. Both midterm exams are worth 20% of the course grade and the final exam is equal to 30% of the course grade. The examinations will be essay and short answer format. The first mid-term exam is scheduled on February 18th and the second midterm exam is scheduled on April 8th. The final examination is scheduled on May 6th from 11:00AM-1:30PM. All students will take the examinations at the designated times with no make-up examinations allowed except for situations such as medical emergencies or deaths in the family. In relation to examination absences caused by medical emergencies, students are expected to contact me during the day of the test and will be required to present proof of a physician's examination. Otherwise, failure to take an examination will result in a grade of zero. When tests are returned, they will be brought to only two consecutive classes. Tests thereafter must be picked up from my office (UH, room 446) during office hours. Grades will also be posted on Blackboard after examinations have been returned in class. To access grades on Blackboard, log in with your UTA NetID and password at <https://elearn.uta.edu/webapps/login/>. If you have difficulty accessing Blackboard, visit <http://www.uta.edu/blackboard/students/index.php> or contact the Office of Information Technology Help Desk at 817-272-2208.

Make-up Examination Policy

Where make-up exams are permitted, they will be scheduled by the professor based on the course schedule of the student and the exam proctoring times arranged by the Department of Political Science. Make-up exams are generally more difficult due to the time that has passed since the graded material was covered. An additional disadvantage relates to the extra points sometimes added to the regular exam, since they are never applied to a make-up exam.

Exam Tardiness Policy

Students entering late disturb other students taking an exam. Further, tardiness permits students to ask other exiting students about the content of an exam – that is obviously not fair for students that have arrived on time. Unless a prior arrangement has been made, students will receive a grade of zero when tardy for an examination. There will be no make-up exams where students were late to the scheduled exam.

Examinations for this course will be challenging exercises where prepared students should have an easier time. This is not designed to be an easy course and students should expect to struggle on the exams where they have not attended class on a regular basis or have failed to participate. The more students know about the cases studied, the better they should expect to perform on the exams

IV. Grading:

1. Participation – 10%
2. Readings Quizzes – 20%
3. Midterm Examination #1 – 20%
4. Midterm Examination #2 – 20%
5. Final Examination – 30%

The grading scale is as follows:

90-100	A
80-89	B
70-79	C
60-69	D
0-59	F

V. Class Schedule:

January 14 Introduction to the Course

January 16 The U.S. Constitution

Assignment: Prior to class, read pp. 1-22 in Epstein and Walker

January 21 The U.S. Constitution

Assignment: Prior to class, read pp. 23-45 and 722-732 in Epstein and Walker

January 23 Judicial Review

Marbury v. Madison (1803)
Eakin v. Raub (1825)

Assignment: Prior to class, read pp. 47-70 and 81-86 in Epstein and Walker

January 28 Constraints on Judicial Authority

Ex parte McCordle (1869)
Baker v. Carr (1962)
Nixon v. United States (1993)
Flast v. Cohen (1968)
Hollingsworth v. Perry (2013)

Assignment: Prior to class, read pp. 86-120 in Epstein and Walker

- January 30 Legislative Authority – Membership and Institutional Independence, Sources and Scope
 Powell v. McCormack (1969)
 U.S. Term Limits, Inc v. Thornton (1995)
 Gravel v. United States (1972)
 McCulloch v. Maryland (1819)
- Assignment: Prior to class, read pp. 121-157 in Epstein and Walker
- February 4 Legislative Authority – Enumerated, Implied, & Inherent Powers
 McGrain v. Daugherty (1927)
 Watkins v. United States (1957)
 Barenblatt v. United States (1959)
 South Carolina v. Katzenbach (1966)
- Assignment: Prior to class, read pp. 157-180 in Epstein and Walker
- February 6 Presidential Selection and Contours of Presidential Power
 Bush v. Gore (2000)
 In Re Neagle (1890)
 Clinton v. City of New York (1998)
- Assignment: Prior to class, read pp. 183-214 in Epstein and Walker
- February 11 Executive Powers – Power of Appointment and Removal and Executive Privilege
 Morrison v. Olson (1988)
 NLRB v. Canning (2014)
 United States v. Nixon (1974)
- Assignment: Prior to class, read pp. 214-229 and 239-244 in Epstein and Walker
- February 13 Executive Powers – Presidential Immunity and Pardons and Review for Midterm Examination #1
 Mississippi v. Johnson (1867)
 Nixon v. Fitzgerald (1982)
 Clinton v. Jones (1997)
- Assignment: Prior to class, read pp. 244-258 in Epstein and Walker
- February 18 Midterm Examination #1
- February 20 The President in Foreign Policy
 Murphy v. Ford (1975)
 United States v. Curtiss-Wright Export Corp. (1936)
- Assignment: Prior to class, read pp. 261-267 in Epstein and Walker
- February 25 Separation of Powers – Domestic Powers

Mistretta v. United States (1989)
Immigration and Naturalization Service v. Chadha (1983)
Bowsher v. Synar (1986)

Assignment: Prior to class, read pp. 269-289 in Epstein and Walker

February 27 Separation of Powers – War Power and Foreign Affairs
 The Prize Cases (1863)
 Ex parte Milligan (1866)
 Korematsu v. United States (1944)

Assignment: Prior to class, read pp. 289-310 in Epstein and Walker

March 4 Separation of Powers – War Power and Foreign Affairs cont.
 Youngstown Sheet & Tube Company v. Sawyer (1952)
 Dames & Moore v. Regan (1981)
 Zivotofsky v. Kerry (2015)
 Hamdi v. Rumsfeld (2004)
 Hamdan v. Rumsfeld (2006)

Assignment: Prior to class, read pp. 310-340 in Epstein and Walker

March 6 Federalism - Federal Power, State Sovereignty and the Reemergence of Dual Federalism
 McCulloch v. Maryland (1819)
 Scott v. Sandford (1857)
 Coyle v. Smith (1911)
 Garcia v. San Antonio Metropolitan Transit Authority (1985)
 New York v. United States (1992)
 Printz v. United States (1997)

Assignment: Prior to class, read pp. 349-387 in Epstein and Walker

March 11-15 Spring Vacation

March 18 The Commerce Power
 Gibbons v. Ogden (1824)

Assignment: Prior to class, read pp. 415-422 in Epstein and Walker

March 20 The Commerce Power – Defining Commerce during the Industrial Revolution
 United States v. E.C. Knight (1895)
 Stafford v. Wallace (1922)
 Hammer v. Dagenhart (1918)

Assignment: Prior to class, read pp. 422-439 in Epstein and Walker

March 25 The Commerce Power – The Supreme Court and the New Deal
 A.L.A. Schechter Poultry Corp. v. United States (1935)

NLRB v. Jones & Laughlin Steel Corp. (1937)

Assignment: Prior to class, read pp. 439-458 in Epstein and Walker

March 27 The Commerce Power – The New Deal Era and the Expansive Jurisprudence
 United States v. Darby (1941)
 Wickard v. Filburn (1942)
 Heart of Atlanta Motel, Inc. v. United States (1964)

Assignment: Prior to class, read pp. 458-472 in Epstein and Walker

April 1 The Commerce Power – The Republican Court Era
 United States v. Lopez (1995)
 United States v. Morrison (2000)
 Gonzales v. Raich (2005)
 National Federation of Independent Business v. Sebelius (2012)

Assignment: Prior to class, read pp. 472-500 in Epstein and Walker

April 3 Review for Midterm Examination #2

April 8 Midterm Examination #2

April 10 Taxing and Spending Authority
 Pollack v. Farmers' Loan & Trust Co. (1895)
 McCray v. United States (1904)
 Bailey v. Drexel Furniture (1922)

Assignment: Prior to class, read pg. 521-531 and 540-548 in Epstein and Walker

April 15 Taxing and Spending Authority cont. – The General Welfare Clause
 United States v. Butler (1936)
 Steward Machine Co. v. Davis (1937)
 South Dakota v. Dole (1987)
 National Federation of Independent Business v. Sebelius (2012)

Assignment: Prior to class, read pg. 548-568 in Epstein and Walker

April 17 Economic Substantive Due Process – Development of Substantive Due Process
 The Slaughterhouse Cases (1873)
 Munn v. Illinois (1877)
 Allgeyer v. Louisiana (1897)

Assignment: Prior to class, read pg. 625-642 in Epstein and Walker

April 22 Economic Substantive Due Process cont. – Economic Liberty
 Lochner v. New York (1905)
 Muller v. Oregon (1908)

Adkins v. Children's Hospital (1923)

Assignment: Prior to class, read pg. 642-658 in Epstein and Walker

April 24 Economic Substantive Due Process cont. – The New Deal Interpretation and Contemporary Relevance

Nebbia v. New York (1934)

West Coast Hotel v. Parrish (1937)

Williamson v. Lee Optical Company (1955)

BMW of North America v. Gore (1996)

Caperton v. A.T. Massey Coal Co. (2009)

Assignment: Prior to class, read pg. 658-681 in Epstein and Walker

April 29 The Takings Clause

Berman v. Parker (1954)

Hawaii Housing Authority v. Midkiff (1984)

Kelo v. City of New London (2005)

Assignment: Prior to class, read pg. 683-686, 705-719 in Epstein and Walker

May 1 Review for Final Examination

May 6 Final Examination, 11:00AM-1:30PM

VI. Core Expectations and Citizenship

Expectations of Students

I have strong yet reasonable expectations for students. To perform well, students are expected to work - meaning a combination of recurrent attendance, frequent class participation, and careful attention to the readings is required. Students that do not attend class regularly, do not take careful class notes, and do not carefully read the assigned material will have a more difficult time with the exams. Additionally, I encourage students to see me during my office hours. Where questions arise about the content of the course or a student's grade, office hours represent important opportunities for interaction between students and their instructor.

Citizenship

While each student pays a significant cost to attend this course, sometimes an individual is less interested in learning, and disturbs others during class (i.e., talking, receiving or making phone calls, or text messaging). As a result of student complaints, use of cell phones during class will result in a two-point deduction from a student's final semester grade for each offense (one offense equals 2 points, two offenses equals 4 points, etc.). The instructor also reserves the right to ask the students to leave class when cell phone use is observed. Otherwise, do not walk in late, leave early, or push around others to find a seat once class has begun - it disturbs others! Be careful with laptop computers. Unfortunately, a majority of students use their laptops to access the web for non-related material, play games or read email rather than paying attention to the lecture. Where I see a laptop being used, I assume (rather accurately) that it is being used for something other than class purposes.

VII. Special Notes:

1. Cell Phones and Electronic Devices – Students are instructed to turn off their cell phones prior to class. See the comments about cell phone usage in the Citizenship section. Usage of a cell phone or other non-permitted electronic device during an examination or quiz will result in a grade of zero on that examination or quiz.
2. Test Conduct – All materials must be removed from one's desk during an examination or quiz. Additionally, headwear (e.g., hats), sunglasses, and earphones are not permitted during an examination.
3. Academic Integrity - All students are expected to obey the civil and penal statutes of the State of Texas and the United States, the Regents' Rules and Regulations of The University of Texas System, the rules and regulations of the University, and the orders or instructions issued by an administrative official of the University or U.T. System in the course of his/her duties, and to observe standards of conduct that are compatible with the University's function as an educational institution. Any student found to engage in cheating, plagiarism, or collusion will be sanctioned.
4. Inclement Weather – If a class is canceled due to inclement weather, its subject will be delayed until the following class. Similarly, all tests canceled because of inclement weather will be delivered during the following class. For information related to weather related class cancellations please call (972) 601-2049.
5. Emergency Exit Procedures - Should we experience an emergency event that requires us to vacate the building, students should exit the room and move toward the nearest exit, which can be found to the left and right behind the lecture podium. When exiting the building during an emergency, one should never take an elevator, but should use the stairwells. Faculty members and instructional staff will assist students in selecting the safest route for evacuation and will make arrangements to assist individuals with disabilities.
6. Campus Carry - Effective August 1, 2016, the Campus Carry law (Senate Bill 11) allows licensed individuals to carry a concealed handgun in buildings on public university campuses, except in locations the University establishes as prohibited. Under the new law, openly carrying handguns is not allowed on college campuses. For more information, visit <http://www.uta.edu/news/info/campus-carry/>.
7. Students with Disabilities - Any student with a documented disability needing academic accommodations is requested to speak with the instructor during the first two weeks of class. All discussions will remain confidential.
8. Discrimination Policy – The University of Texas at Arlington does not discriminate on the basis of race, color, national origin, religion, age, gender, sexual orientation, disabilities, genetic information, and/or veteran status in its educational programs or activities it operates. For more information, visit uta.edu/eos.
9. Title IX Policy - The University of Texas at Arlington is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct is a form of sex discrimination and will not be tolerated. For information regarding Title IX, visit www.uta.edu/titleIX or contact Ms. Jean Hood, Vice President and Title IX Coordinator at (817) 272-7091 or jmhood@uta.edu.
10. Student Support Services - The University of Texas at Arlington provides a variety of resources and programs designed to help students develop academic skills, deal with personal situations, and better understand concepts and information related to their courses. These resources include

tutoring, major-based learning centers, developmental education, advising and mentoring, personal counseling, and federally funded programs. Among the support services on campus, the IDEAS Center (2nd Floor of Central Library) offers free tutoring to all students with a focus on transfer students, sophomores, veterans and others undergoing a transition to UT Arlington. To schedule an appointment with a peer tutor or mentor email IDEAS@uta.edu or call (817) 272-6593. For more information, students may contact the Maverick Resource Hotline at 817-272-6107 or visit www.uta.edu/resources.

11. Syllabus Changes – The instructor reserves the right to change the syllabus at any time during the semester.

Case Briefing Guideline

A. Format

Use the court's terminology if it will help you understand the case or use your own language as if you were trying to explain it to a friend. Both will enhance your understanding of the court's decision.

Facts: *A synopsis of the essential facts of the case, i.e., those facts bearing upon or leading up to the issue, in a logical sequence.*

While some cases conveniently state the facts at the beginning of the decision, in other instances the salient facts will have to be culled from their hiding places throughout the text. The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. Do not judge which facts are relevant until you have read over the entire case.

Issue: *A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer.*

In reality, the issue is simply the rule of law put in the form of a question. A concise, single-sentence question will sum up the issue. If a case presents more than one issue, you should express each issue separately.

Reasoning: *This is the most important section of your brief. You should note which Justice is the author. Think about the policy and legal issues at stake in the court's decision.*

What are the policy ramifications of the Court's decision to favor one party over another? What rules of law is the Court clarifying? Why is the Court adopting one particular interpretation over other potential interpretations? How does the Court reconcile the present decision with prior case law that has been established? How does the Court distinguish cases that contradict the present decision? Create the links between the Court's interpretation and the decision to favor one party over another. Ultimately, what interpretation of the law does the Court favor and why?

Holding and decision: *A succinct explanation of the court's rationale in arriving at its decision. In distilling the reasoning of the court, always include an application of the general rule or rules of law to the specific facts of the case.*

Bring to light in this entry the court's implicit justifications, i.e., the reasons for the state of the law, the Justice's prejudices and biases, the public policies, the things which influence the Justices.

Source: Kimi King, University of North Texas