

CONSTITUTIONAL INTERPRETATION

Fall 2024

The University of Texas at Austin
GOV 357C (37320)
CTI 326C (29175)
T Th 2:00-3:15 p.m.; **UTC 4.124**

Professor Gary A. Keith Ph.D. (he/him)
garykeith@utexas.edu
Office: 3.130 Mezes Hall
Office Hours: W 10:30-12; 1-2:30

Prerequisites

Set by the Government Department: 6 hours lower division government courses.

General Description of the Course

Politics is often defined as "the authoritative allocation of values." In the American political system, the Constitution is an important source of authority, and it gives preference to certain values. The Constitution is a document of law, politics, and political theory. Determining what the Constitution means, determining how to determine what it means, and determining who should determine what it means are fundamental tasks for participants in the American political process and for students of it. This course focuses on these questions as well as the Constitution's allocation of power and authority in our federal system and our national system of separation of powers. The course examines some of the rights and liberties protected in the Constitution, but there are other courses that are dedicated to a fuller array of civil liberties provisions in the Constitution. This course may be of interest to those thinking about attending law school, but it is equally valuable to those who have no such interest. Given the nature of our society, and the importance of democratic governance and the rule of law, understanding the Constitution and constitutional law is part of a liberal arts education.

One objective of the course is for the student to become a constitutional interpreter who contributes intelligently to this ongoing process. Constitutional interpretation is a prerogative of the judiciary, but it is not its preserve. Judges have never been, nor should be, the only ones engaging in constitutional interpretation. Presidents, members of Congress, bureaucrats, and many others also engage in constitutional interpretation. Their interpretations shape our lives and our understandings of the Constitution as well. A more complete course would examine more non-judicial statements and actions in greater detail. Nevertheless, judges have become the primary participants engaged in explicit constitutional interpretation, and as such, the course concentrates on what judges have said the Constitution means and how they came to such conclusions. This necessitates learning how to read and analyze judicial opinions. Students should develop a sufficient comfort level with legal analysis so that the student can evaluate intelligently important interpretations of the justices and ask the questions that a student of politics and law should ask. Prominent among such questions are those concerned with the proper role of courts and judges in the American political system. We read some scholarly commentary on interpretation and judicial behavior, but we concentrate on the primary material—the Constitution and cases—so that the student can begin to develop the student's own ideas about interpreting the Constitution.

Another key objective of this course is to improve reasoning and communication skills. Engaging in constitutional reasoning can assist in developing intellectual precision and political persuasiveness. As in most courses, good writing is demanded; but it is also important to develop the capacity to think and speak on one's feet. Mastering the use of language, orally and in writing, increases the ability to think and communicate clearly. Moving toward such mastery is a vital part of education.

The most important learning outcome is to improve one's ability to think critically. Critical thinking involves many things. Some important aspects of critical thinking that this course focuses on are closely related to good constitutional interpretation. One must work to understand various sides of complex issues and be able to argue different positions irrespective of one's own beliefs. Importantly, however, after serious study and contemplation, one must be willing to change one's mind. Critical thinking also means the ability to distinguish facts from fiction, to distinguish legitimate history from fake or manipulated histories, to reject falsehoods, propaganda, fake conspiracies, and false equivalencies, among other things. In short, developing critical thinking skills is at the core of being a well-educated person.

The course requires a substantial time commitment. Be aware that the time required varies greatly over the course of the semester and, for the reasons described below, it is hard for the student to plan ahead.

Warning

Some readings and discussions particularly regarding the Fourteenth Amendment will involve words or scenarios that are offensive or hurtful—because that is often what constitutional debates are about. It is important not to intellectualize or make our discussion so academic that we can avoid coming to terms intellectually and emotionally with language or situations that some argue the Constitution should protect. We will confront words or actions in all their ugliness so as not to allow us to dodge the implications of protecting or not protecting such speech. For example, students will see or read material where epithets are used to demean others based on their race, gender, sexual orientation, religion, and other factors. Discussions about topics such as abortion and other areas also may cause discomfort.

Format of the Course

Constitutional interpretation lends itself to dialog between professor and student and among students. I use a combination of the Socratic and case methods. This requires students to come to class prepared and to listen to one another. Too often, students do not benefit from this style of teaching because they ignore the comments of fellow students. The methods assume that, instead of exclusively lecturing, I am making points through discussion with students. When your colleagues are making important points, I do not have to. It is also an important skill to be able to learn to separate the wheat from the chaff.

Computers, cell phones, tablets, other electronic devices may not be used during the class. Such devices are not compatible with this teaching method. This also means not glancing at cell phones, smart watches, or other distractions. You will be called out for doing so and asked to leave the class for the day. **Students are required to attend class and participate—and you must bring your casebook to class.** Repeated lack of preparation or absences will hurt one's grade. The teaching method presumes that students heard prior discussions. When a student did not hear earlier discussions and then participates, it often wastes the time of others. ***I call on students every day*** and expect them to be well-prepared. Let me repeat: I call on students! ***Being prepared does not mean that one must fully understand the material or have the “right” answers; it means that one has read and thought carefully about the material.*** It is in one's long-term interest to prepare thoroughly for each class because the material is cumulative, and the workload in this course increases dramatically as the semester proceeds.

Exceptions to the policies stated in this syllabus are rare and must be approved by me in advance unless there is an emergency. This includes medical exceptions.

Readings

- *Constitutional Law, 21st ed.*, Noah Feldman and Kathleen Sullivan eds., Foundation Press, 2022. **You may not use an electronic version.** The book is also used in the “Civil Liberties” class (GOV 357D/CTI 326L) and by other professors. [The 20th and 19th editions are permitted but using them will require some extra effort to read material that is not included in the latest edition.] You must bring your casebook to class.
- *Deciding to Decide: Agenda Setting in the U.S. Supreme Court* (Perry, H.W., Harvard University Press, 1991) is required reading, but you may not want to buy it. You won't be bringing it to class, and you will have plenty of time to read it. There will be a copy on reserve, but it can only be checked out for short amounts of time, so sometimes students buy a copy and agree to share.
- Other Resources: Learn to avail yourself of online coverage of the Supreme Court and related law dynamics. You may already have your favorites. Here are a couple of to check in with:
 - SCOTUS Blog reports on every major merits case before the Court before argument, after argument, and after the decision. <https://www.scotusblog.com/>
 - One First, by Law Prof. Steve Vladeck. A weekly newsletter covering Supreme Court rulings, procedures, and history. Substack. <https://www.stevevladeck.com/>
- Additional readings will be required that will be on reserve or posted on Canvas.

Assignments will be given each class period from the detailed reading list posted on Canvas. The next day's assignment depends upon how far we get in any given day; therefore, it is impossible to know specific daily assignments in advance. If you have to miss class, it is your responsibility to find out what was covered and what has been assigned *from a classmate*. **Do not contact me or the TA for this purpose. Get to know your fellow students.** Study groups are encouraged.

Evaluation (Grading)

- Plus and minus grades will be used.
- Midterm examination (≈25%). **Week of Oct. 15-17.** Multiple Choice and Essay
- Case Briefs (≈25%). More details will be given in class.
- Final examination (≈50%). Multiple Choice and Essay. Check the official Final Exam Schedule for location and to confirm the time. Early or late exams are rarely allowed.
- Class attendance and participation are required and may affect a grade positively or negatively, hence the approximate percentages. (See attendance and participation statements above.)

Communications

I encourage students to come to my office hours for help or just to chat. I like getting to know you. You should also go to the TA's office hours. The TA may have different rules. Students should **not** use e-mail as a way of having a conversation with me about substantive issues—that is what office hours and class discussion are for. Email may be used for administrative reasons.

You are responsible for ensuring that the primary email address you have recorded with the university is the one you will check for course communications because that is the email address that Canvas uses.

I will sometimes contact you via Canvas, but you should always send emails directly to me using my email rather than via Canvas unless I direct otherwise. Always write on the subject line or at the top of the message: CON INT. (not CON LAW!) The TA may have a different policy.

Important Restrictions:

Academic Dishonesty

Academic dishonesty will lead to failure of the course and other University disciplinary action. See *General Information Catalog* for what constitutes academic dishonesty.

Artificial Intelligence. The use of artificial intelligence tools (such as ChatGPT) in this class is strictly prohibited. This includes using AI to generate ideas, outline an approach, write your case briefs, answer questions, solve problems, or create original language. All work in this course must be your own or created in group work where allowed.

Sharing of Course Materials with non-class members is Prohibited. No materials used in this class, including, but not limited to, assessments (quizzes, exams, papers, projects, homework assignments), lecture hand-outs, videos, in-class materials, review sheets, etc., may be shared online or with anyone **outside of the class** unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am well-aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

You may share materials with fellow members of the class unless I say otherwise.

Class Recordings: The class will not be routinely recorded. If there is a class recording, it is only for the student(s) who have been given permission to see it. If the entire class is allowed to see a recording, it is reserved only for students in this class for educational purposes and is protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.

UNIVERSITY POLICIES AND RESOURCES

See the [**General Information Catalog**](#), for University official policies. For a list of important university policies and helpful resources that you may need as you engage with and navigate your courses and the university, **see the University Policies and Resources Students Canvas page**. The page includes the language of the University Honor Code, Title IX legal requirements for Texas employees, and information about how to receive support through the office of Disability & Access.

Academic Integrity Expectations

Students who violate University rules on academic dishonesty are subject to disciplinary penalties, including the possibility of failure in the course and/or dismissal from the University. Since such dishonesty harms the individual, all students, and the integrity of the University, policies on academic dishonesty will be strictly enforced. For further information, please visit the

Student Conduct and Academic Integrity website at: <http://deanofstudents.utexas.edu/conduct>. Plagiarism is taken very seriously at UT and is subject to academic disciplinary action, including failure of the course. To learn more about what plagiarism is and how to avoid it, see the Avoiding Plagiarism tutorial developed by the UT Libraries in partnership with the Writing Flag program and Student Judicial Services.

Getting Help with Technology

Students needing help with technology in this course should contact the ITS Service Desk.

Basic Needs

Security Any student who faces challenges securing their food or housing and believes this may affect their performance in the course is urged to contact the Dean of Students for support. UT maintains the UT Outpost, which is a free on-campus food pantry and career closet. Furthermore, if you are comfortable notifying me, please do so, as I may have additional resources I can share.

Sharing of Course Materials is Prohibited

No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class without explicit, written permission of the instructor. Unauthorized sharing of materials promotes cheating. The University is well aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure of the course.

Religious Holy Days

By UT Austin policy, you must notify me of your pending absence as far in advance as possible of the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

Names and Pronouns

Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender identity & expression, and nationalities. Class rosters are provided to the instructor with the student's legal name, unless they have added a "chosen name" with the registrar's office. I will gladly honor your request to address you by a name that is different from what appears on the official roster, and by the pronouns you use (she/he/they/ze, etc). Please advise me of any changes early in the semester so that I may make appropriate updates to my records. For instructions on how to add your pronouns to Canvas, visit that site. More resources available on the Gender and Sexuality Center's website, <http://www.utgsc.org>.

Disability & Access

The university is committed to creating an accessible and inclusive learning environment consistent with university policy and federal and state law. Please let me know if you experience any barriers to learning so I can work with you to ensure you have equal opportunity to

participate fully in this course. If you are a student with a disability, or think you may have a disability, and need accommodations please contact Disability & Access (D&A). Please refer to the D&A website for more information: <http://diversity.utexas.edu/disability/>. If you are already registered with D&A, please deliver your Accommodation Letter to me as early as possible in the semester so we can discuss your approved accommodations and needs in this course.

Counseling and Mental Health Center (CMHC)

All of us benefit from support during times of struggle. Know you are not alone. If you or anyone you know is experiencing symptoms of stress, anxiety, depression, academic concerns, loneliness, difficulty sleeping, or any other concern impacting your wellbeing, you are strongly encouraged to connect with CMHC. The Counseling and Mental Health Center provides a wide variety of mental health services to all UT students including crisis services, counseling services with immediate support and well-being resources. Additionally, CARE Counselors are located within the academic schools and colleges. These counselors get to know the concerns that are unique to their college's students. For more information on CMHC, visit <https://cmhc.utexas.edu> or call 512-471-3515.

University Health Services (UHS)

Your physical health and wellness are a priority. University Health Services is an on-campus high-quality medical facility providing care to all UT students. Services offered by UHS include general medicine, urgent care, a 24/7 nurse advice line, gynecology, sports medicine, physical therapy, lab and radiology services, COVID-19 testing and vaccinations and much more. For additional information, visit <https://healthyhorns.utexas.edu> or call 512-471-4955.

Sanger Learning Center

Did you know that more than one-third of UT undergraduate students use the Sanger Learning Center each year to improve their academic performance? All students are welcome to take advantage of Sanger Center's classes and workshops, private learning specialist appointments, peer academic coaching, and tutoring for more than 70 courses in 15 different subject areas. For more information, please visit <https://ugs.utexas.edu/slc> or call 512-471-3614 (JES A332).

Student Emergency Services (SES)

Student Emergency Services in the Office of the Dean of Students helps students and their families during difficult or emergency situations. Assistance includes outreach, advocacy, intervention, support, and referrals to relevant campus and community resources. If you need to be absent from class due to a family emergency, medical or mental health concern, or academic difficulty due to crisis or an emergency situation, you can work with Student Emergency Services. SES will document your situation and notify your professors. Additional information is available at <https://deanofstudents.utexas.edu/emergency/> or by calling 512-471-5017.

BeVocal

BeVocal is a university-wide initiative to promote the idea that individual Longhorns have the power to prevent high-risk behavior and harm. At UT Austin all Longhorns have the power to intervene and reduce harm. To learn more about BeVocal and how you can help to build a culture of care on campus, go to: <https://wellnessnetwork.utexas.edu/BeVocal>.

WellBeing

You can find resources for self-care at Longhorn Wellness Center. See also Virtual Mindfulness and Stress Reduction Activities. See University Policies and Resources Students Canvas page for links to the following:

- Behavior Concerns Advice Line (BCAL): 512-232-5050
- Suicide and Crisis Lifeline 988

Other resources

- Undergraduate Writing Center: <http://uwc.utexas.edu/>
- UT Libraries: <http://www.lib.utexas.edu/>

Important Safety Information

If you have concerns about the safety or behavior of fellow students, TAs or professors, contact BCCAL (the Behavior Concerns and COVID-19 Advice Line) by calling 512-232-5050 or at <https://safety.utexas.edu/behaviorconcerns-advice-line>. Confidentiality will be maintained as much as possible, however the university may be required to release some information to appropriate parties.

Classroom safety and COVID-19

- For any illness, students should stay home if they are sick or contagious, not only to stop the spread, but also to promote their personal wellness.
- The university will continue to provide rapid antigen self-test kits at distribution sites throughout campus. Students can receive up to four tests at a time.
- The university will provide symptomatic COVID-19 testing on campus for all students, faculty and staff.
- UHS maintains up-to-date resources on COVID, which can be found here: – COVID-19 Information and Resources – COVID-19 Exposure Action Chart

Carrying of Handguns on Campus

Texas' Open Carry law expressly prohibits a licensed to carry (LTC) holder from carrying a handgun openly on the campus of an institution of higher education such as UT Austin. Students in this class should be aware of the following university policies:

- Students in this class who hold a license to carry are asked to review the university policy regarding campus carry.
- Individuals who hold a license to carry are eligible to carry a concealed handgun on campus, including in most outdoor areas, buildings and spaces that are accessible to the public, and in classrooms.
- It is the responsibility of concealed-carry license holders to carry their handguns on or about their person at all times while on campus. Open carry is NOT permitted, meaning that a license holder may not carry a partially or wholly visible handgun on campus premises or on any university driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.
- **Per my right, I prohibit carrying of handguns in my personal office.** Note that this information will also be conveyed to all students verbally during the first week of class. This written notice is intended to reinforce the verbal notification, and is not a "legally effective" means of notification in its own right.

Title IX Disclosure

Faculty members are a “Responsible Employee” and I must report any Title IX related incidents that are disclosed to me. Before talking with me, or with any faculty or staff member about a Title IX related incident, please remember that I will be required to report this information to the Title IX Coordinator. If you would like to speak with someone who can provide support or remedies without making an official report to the university, please email supportandresources@austin.utexas.edu. For more information about reporting options and resources, visit <http://www.titleix.utexas.edu/>, contact the Title IX Office via email at titleix@austin.utexas.edu, or call 512-471-0419. The Title IX office has developed supportive ways to respond to a survivor and compiled campus resources to support survivors. If you would like to speak with someone who can provide support or remedies without making an official report to the university, please email advocate@austin.utexas.edu.

Beginning January 1, 2020, Texas Education Code, Section 51.252 (formerly known as Senate Bill 212) requires all employees of Texas universities, including faculty, to report any information to the Title IX Office regarding sexual harassment, sexual assault, dating violence and stalking that is disclosed to them. Texas law requires that all employees who witness or receive any information of this type (including, but not limited to, writing assignments, class discussions, or one-on-one conversations, or third party reports) must be report it.

Although graduate teaching and research assistants are not subject to Texas Education Code, Section 51.252, they are still mandatory reporters under Federal Title IX laws and are required to report a wide range of behaviors we refer to as sexual misconduct, including the types of sexual misconduct covered under Texas Education Code, Section 51.252. The Title IX office has developed supportive ways to respond to a survivor and compiled campus resources to support all impacted by a Title IX incident.

Campus Safety; Campus Emergencies

The following are recommendations regarding emergency evacuation from the Office of Campus Safety and Security, 512-471-5767.

- Students should sign up for Campus Emergency Text Alerts at the page linked above.
- Occupants of buildings on The University of Texas at Austin campus must evacuate buildings when a fire alarm is activated. Alarm activation or announcement requires exiting and assembling outside.
- Familiarize yourself with all exit doors of each classroom and building you may occupy. Remember that the nearest exit door may not be the one you used when entering the building.
- Students requiring assistance in evacuation shall inform their instructor in writing during the first week of class.
- In the event of an evacuation, follow the instruction of faculty or class instructors. Do not re-enter a building unless given instructions by the following: Austin Fire Department, The University of Texas at Austin Police Department, or Fire Prevention Services office.
- For more information, please visit [emergency preparedness](#).

Emergency evacuation procedures

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