

CONSTITUTIONAL INTERPRETATION

The University of Texas at Austin
Government 357C (Unique 38490)
CTI 326C (Unique 29845)

T.A.: Mr. Guillermo Perez
Office Hours: TBA

Professor H.W. Perry, Jr. (he/him)
hwperry@mail.utexas.edu
Fall, 2022 Office Hours: Tues. 5-6:30 p.m.
Mezes 3.130

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. The 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 protected in the Constitution, but there are other courses that are dedicated to other "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, 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. The student should develop a sufficient comfort level with legal analysis so that she or he 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 his or her own ideas about interpreting the Constitution.

Another 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. The other objectives aid in this pursuit.

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.

Format of the Course

Constitutional interpretation lends itself to dialog between professor and student and among students. There are few lectures. 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 method assumes that, instead of 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.

Students are required to attend class and participate. 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 and expect them to be well-prepared. If one is not prepared, one must place a dated and signed note on the lectern before class begins. ***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.

You must bring your casebook to class. Computers, cell phones, tablets, may not be used during the class. Electronic devices are not compatible with the teaching method. This also means not glancing at cell phones, smart watches, or other distractions.

Exceptions to the policies stated in this syllabus are rare and must be approved by me in advance unless there is an emergency. We will discuss this more on the first day of class.

Readings

- *Constitutional Law, 20th ed.*, Noah Feldman and Kathleen Sullivan eds., Foundation Press. **You may not use electronic versions.** The book is also used in my “Civil Liberties” class and by other professors. [The 19th edition is permitted but using it will require some extra effort to read material that is not included in the latest edition.]
- *Deciding to Decide: Agenda Setting in the U.S. Supreme Court* (Harvard University Press) 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.
- Additional readings will be required that will be on reserve or posted on Canvas.

Assignments will be given each class period from the reading list. 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

- Midterm examination ($\approx 25\%$). **Sept. 29.** Multiple Choice and Essay
- Group Project ($\approx 25\%$). Students will participate in moot courts. A hypothetical situation will be given and each group will prepare a brief and participate in an oral argument. **The courts will be held Nov. 2-3, 7:00-10 p.m. Attendance is mandatory both evenings.** **Exceptions are rarely granted.** More details will be given in class.
- Final examination ($\approx 50\%$). Multiple Choice and Essay. Check official exam schedule for date and time. Early or late exams are rarely allowed.
- Class attendance and participation are required and may affect a grade positively or negatively. (See attendance and participation statements above)
- Plus and minus grades will be used.

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. **I will sometimes contact you via Canvas, but 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 INTERP (not CON LAW!) I have 2 email addresses but they go to the same account. Therefore you may always reply or initiate an email to either address: hperry@mail.utexas.edu or hperry@law.utexas.edu The TA may have a different policy.

Important Restrictions:

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 members of the class unless I say otherwise.

Class Recordings: Class recordings are reserved only for students in this class for educational purposes and are 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.

Official University Policy (excerpts)

Academic Dishonesty

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

Scholastic or academic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, falsifying academic records, and misrepresenting facts. More information about [academic dishonesty](#) is given in Appendix C.: Sec 11. Note particularly: (d) “Plagiarism” includes, but is not limited to, the appropriation of, buying, receiving as a gift, or obtaining by any means material that is attributable in whole or in part to another source, including words, ideas, illustrations, structure, computer code, and other expression or media, and presenting that material as one’s own academic work being offered for credit.

The U.T. Honor code is as follows: The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

Accommodation for Religious Holidays

By UT Austin policy, you must notify me of your pending absence at least fourteen days prior to 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

Behavior Concerns Advice Line (BCAL): 512-232-5050

COVID

To help preserve our in person learning environment, please consult protect.utexas.edu for more information.

Disabilities

The University of Texas at Austin provides upon request appropriate academic accommodations for qualified students with disabilities. For more information, contact the Division of Diversity and Community Engagement, Services for Students with Disabilities, 512-471-6259; <http://www.utexas.edu/diversity/ddce/ssd/>.

Emergencies

Links to information regarding emergency evacuation routes and emergency procedures can be found at: <http://www.utexas.edu/emergency> .

The following recommendations regarding emergency evacuation from the Office of Campus Safety and Security, 512-471-5767, <http://www.utexas.edu/safety/>:

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.

Title IX Reporting

Beginning January 1, 2020, Texas 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) must be reported. **I am a “Responsible Employee” and must report any Title IX related incidents that are disclosed to me.**

Although graduate teaching and research assistants are not subject to Texas Senate Bill 212, 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 Senate Bill 212. 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. 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.