

CONSTITUTIONAL INTERPRETATION

Spring 2024

The University of Texas at Austin
Government 357C (37430)
CTI 326C (29290)
T Th 2:00-3:15 p.m.; UTC 4.124

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Office Hours: Wed. 3:30-6:30
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TA: Mr. Clinton Willbanks
Office hours : Mon. 1:30-4:00 p.m. (Zoom)

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, 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 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 videos such as "Eyes on the Prize" 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. 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 methods assume 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 note on the lectern before class begins with the words "Con Interp," the date, and your name. *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, and other electronic devices may not be used during the class. Such devices are not compatible with the teaching method. This also means not glancing at cell phones, smart watches, or other distractions. You will be called out for doing so.

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. We will discuss this more on the first day of class.

Readings

- *Constitutional Law, 21st ed.*, Noah Feldman and Kathleen Sullivan eds., Foundation Press. **You may not use an electronic version.** The book is also used in my “Civil Liberties” class 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* (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 (≈25%). **February 29.** Multiple Choice and Essay
- Group Project (≈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 April 10th and 11th in the evenings from 7-10p.m. Attendance is mandatory at all courts. Exceptions are rarely granted.** More details will be given in class.
- Final examination (≈50%). Multiple Choice and Essay. The exam is scheduled for **Friday May 3, 10:30 a.m.-12:30 p.m.** 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. (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.

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!) I have 2 email addresses, but they go to the same account. Therefore you may always reply or initiate an email to either address: hwperry@mail.utexas.edu or hperry@law.utexas.edu 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, 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 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.

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.

Emergencies

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

Emergency evacuation procedures

- 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.
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Title IX Reporting and Texas Education Code Section 51.252

See the University Policies and Resources Students Canvas page.

Faculty members are a “Responsible Employee” and I must report any Title IX related incidents that are disclosed to me.

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.