

CONSTITUTIONAL INTERPRETATION

The University of Texas at Austin
Government 357C (Unique 38980)
CTI 326C (Unique 29710)
Fall, 2021

Tues./Thurs. 3:30-5:00 p.m.
UTC 3.124

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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 fully 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. I call on students and expect them to be well-prepared. Repeated lack of preparation or absences will hurt one's grade. If a student is not prepared, the student must send me a note by email before class and cc: the TA. *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. I encourage study groups. You must bring your casebook to class. If you are absent, you must send the TA an email within 24 hours of your absence noting the date that you did not attend. Failure to do so will constitute academic dishonesty. 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.

Computers, cellphones, and other electronic devices may not be used during class unless asked to do so. Their use is not compatible with the teaching method. This includes not taking notes on the computer or using a computer for other purposes during the class. **It also means not glancing at cell phones.** Exceptions to these policies are rare and must be approved by me in advance. We will discuss this more on the first day of class.

If anyone has ongoing health or other issues that justify an exemption from the class rules, please discuss them with me as soon as possible.

Prerequisites

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

Readings

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 must miss class, it is your responsibility to find out what was covered and what has been assigned from the class recording. Unless otherwise noted, readings will be in the casebook

- *Constitutional Law, 20th ed.*, Noah Feldman and Kathleen Sullivan eds., Foundation Press. Do not purchase a digital edition or other materials offered by the publisher.
- *Deciding to Decide*, by H. W. Perry, Jr., Harvard University Press (some copies will be on reserve if you do not wish to purchase.)
- Additional readings will be required that will be on reserve or posted on Canvas.

Evaluation

- Midterm examination (~25%). Oct. 14. 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 on Nov. 17th and 18th. Attendance is mandatory for attending all courts. Exceptions are rarely granted.** More details will be given in class.
- Final examination (~50%). Multiple Choice and Essay. Check the official exam schedule for date and time. Early or late exams are not given except for university approved absences.
- Class attendance and participation are required and may affect a grade positively or negatively. (See attendance and participation requirements above)
- Plus and minus grades will be used.

Communications

I encourage students to come to my virtual office hours for help or just to chat. I like getting to know you. 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. E-mail may be used for administrative reasons. **Though I will sometimes contact you via Canvas, always send emails directly to me 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: hwpererry@mail.utexas.edu or hpererry@law.utexas.edu The TA may have a different policy.

COVID

To help keep everyone at UT and in our community safe, and to continue to operate in person, it is critical that students report COVID-19 symptoms and testing, regardless of test results, to **University Health Services**, as soon as possible. Please see this [link](#) to understand what needs to be reported. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this [University Health Services link](#).

To help preserve our in person learning environment, the university recommends the following.

- Adhere to [university mask guidance](#).
- [Vaccinations are widely available](#), free and not billed to health insurance. The vaccine will help protect against the transmission of the virus to others and reduce serious symptoms in those who are vaccinated.
- [Proactive Community Testing](#) remains an important part of the university's efforts to protect our community. Tests are fast and free.
- Visit protect.utexas.edu for more information.

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

Important Restrictions:

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 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.

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

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](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

Title IX is a federal law that protects against sex and gender based discrimination, sexual harassment, sexual assault, sexual misconduct, dating/domestic violence and stalking at federally funded educational institutions. UT Austin is committed to fostering a learning and working environment free from discrimination in all its forms. When sexual misconduct occurs in our community, the university can:

1. Intervene to prevent harmful behavior from continuing or escalating.
2. Provide support and remedies to students and employees who have experienced harm or have become involved in a Title IX investigation.
3. Investigate and discipline violations of the university's [relevant policies](#).

Faculty members and certain staff members are considered "Responsible Employees" or "Mandatory Reporters," which means that they are required to report violations of Title IX to the Title IX Coordinator. **I am a Responsible Employee and must report any Title IX related incidents** that are disclosed in writing, discussion, or one-on-one. Before talking with me, or with any faculty or staff member about a Title IX related incident, be sure to ask whether they are a responsible employee. If you want to speak with someone for support or remedies without making an official report, see more information about reporting options and resources, at titleix.utexas.edu or contact the Title IX Office at titleix@austin.utexas.edu.