

POLS 4331.001
Spring 2021

U.S. Constitutional Law: Government Power
Monday and Wednesday 1:00-2:20PM
Online Synchronous Course

Instructor: Dr. Brent Boyea

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Virtual Office Hours: Monday and Wednesday, 11:00-11:45AM, by email or appointment using Microsoft Teams

Microsoft Teams link:

<https://teams.microsoft.com/l/channel/19%3a4871171d6bbd49b58fc11e77dc9c95fb%40thread.tacv2/General?groupId=3cad9048-cf76-432e-81a0-ad1437790519&tenantId=5cdc5b43-d7be-4caa-8173-729e3b0a62d9>

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. Course Modality

The course is listed as "online synchronous" in MyMav since examinations and several class meetings will be synchronized. I, however, consider this a hybrid synchronous/asynchronous online course since half of the presentations are asynchronous. For a schedule of synchronous class meetings, see the schedule below.

Presentation modules will be stored in Canvas. Modules will open after the prior class at 2:20PM. With each module, video and audio (generally found at the upper right corner of a slide) are embedded in the files. To view and listen to the media content, students must download the file from Canvas and the separately open the file in Microsoft PowerPoint or Keynote. Where students attempt to review in Canvas, neither video nor audio will be accessible and important points from the presentation will be missed.

III. Required Textbooks:

There are two required textbooks. If purchasing online, please use expedited shipping as readings will begin immediately.

1. Lee Epstein and Thomas G. Walker. 2019. (10th Edition). *Constitutional Law for a Changing America: Institutional Powers and Constraints*. Washington, D.C.: CQ Press. (ISBN – 9781544317908) (an alternative ebook is available through online booksellers, e.g., RedShelf).
2. Biskupic, Joan. 2019. *The Chief: The Life and Turbulent Times of Chief Justice John Roberts*. New York: Basic Books. (ISBN – 9781541675438)
3. Prepared Articles on Canvas. To access Canvas, visit <https://www.uta.edu/provost/Canvas/uta-canvas-login.php> or contact the Office of Information Technology Help Desk at 817-272-2208.

Let me emphasize that it is extremely important that students do not fall behind in their readings. With the substantial amount of weekly material, students will find themselves overwhelmed if they do not keep up.

IV. Course Requirements:

1. Class Participation – Students are expected to attend each synchronous class through Canvas and log-on in time to discuss the day's readings. While I do not grade attendance, failure to attend virtual class will have a direct negative result on your participation grade (10% of the course grade). I expect thoughtful participation in each class with participation reflecting student engagement and careful thinking about the day's readings. Students will be called upon during synchronous classes. Answering questions requires preparation and readiness. 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 are not present to answer.
2. Quizzes – Students will take five quizzes, which will be run through Canvas outside of class. Each quiz will consist of 8-10 multiple choice questions based on the cases and textbook readings. Each quiz is each equal to 5% of the course grade with the lowest score dropped (4 x 5% = 20%). Quiz dates and times will be announced in Canvas about two days prior. Failure to take a quiz will result in a grade of zero. It is important that students use a wired or strong wireless connection to avoid having their quiz stopped prematurely. There will be *no* make-up opportunities for missed quizzes regardless of the reason, including where access stopped due to a poor wireless connection.
3. Examinations – There will be two midterm examinations and one final examination with each administered through Canvas. The course will not use a lockdown browser in Canvas. 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 March 1st and the second midterm exam is scheduled on April 14th. The final examination will take place on May 7th from 11AM-1:30PM. All students will take the examinations at the designated times with no make-up examinations allowed except for absences caused by a medical emergency or a death in one's family. In relation to examination absences due to a medical emergency, students are expected to contact me during the day of the exam and are required to present proof of a physician's examination. Otherwise, failure to take an examination will result in a grade of zero. As with the quizzes, a wired or strong wireless connection is necessary to complete the examinations.

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. Where students have not regularly attended online classes or failed to participate, they should expect to struggle on the exams. The more students know about the cases studied, the better they should expect to perform.

Make-up Examination Policy

Where make-up exams are permitted, those examinations will be scheduled at an agreed upon time and will be administered through Canvas. 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.

V. Grading:

Grades will be posted on Canvas. To access the quizzes, examinations, and other grades in Canvas, log in with your UTA email address and password at uta.instructure.com. If you have difficulty with Canvas, visit <https://www.uta.edu/provost//Canvas/uta-canvas-login.php> or contact the Office of Information Technology Help Desk at 817-272-2208. The grade components of the course are:

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

VI. Class Schedule:

January 20	Synchronous Class via MS Teams Introduction to the Course
January 25	Synchronous Class via MS Teams Judicial Selection and the U.S. Constitution Assignment: Prior to class, read pp. 1-22 in Epstein and Walker; Weekly assignment: Read pp. 1-32 in Biskupic (prologue and Chapter 1) Suggested reading: "Justice Barrett Joins the Court." In Prepared Articles on Canvas.
January 27	Asynchronous Class via Canvas Module The U.S. Constitution cont. Assignment: Prior to class, read pp. 23-45 and 716-727 in Epstein and Walker
February 1	Synchronous Class via MS Teams Judicial Review <i>Marbury v. Madison (1803)</i> <i>Eakin v. Raub (1825)</i> Assignment: Prior to class, read pp. 47-70 and 75-83 in Epstein and Walker;

Weekly assignment: Read pp. 33-88 in Biskupic (Chapters 2-3)

February 3 Asynchronous Class via Canvas Module

Constraints on Judicial Authority

Ex parte McCardle (1869)

Patchak v. Zinke (2018)

Baker v. Carr (1962)

Nixon v. United States (1993)

Flast v. Cohen (1968)

Assignment: Prior to class, read pp. 83-118 in Epstein and Walker

Suggested reading: "The Supreme Court is leaking. That's a good thing." In Prepared Articles on Canvas.

February 8 Synchronous Class via MS Teams

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. 119-154 in Epstein and Walker;

Weekly assignment: Read pp. 89-140 in Biskupic (Chapters 4-5)

February 10 Asynchronous Class via Canvas Module

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. 154-179 in Epstein and Walker

February 10-12 Quiz# 1 Completed

February 15 Class canceled – snow day

February 17 Class canceled – snow day

February 22 Synchronous Class via MS Teams

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. 181-213 in Epstein and Walker;

Weekly assignment: Read pp. 141-192 in Biskupic (Chapters 6-7)

Suggested reading: "Has the Court Learned Nothing From Bush v. Gore?" In Prepared Articles on Canvas.

- February 24 Asynchronous Class via Canvas Module
 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. 213-227 and 235-242 in Epstein and Walker
 Suggested reading: “What Is the 25th Amendment and Could It Be Used to Remove Trump From Office?” In Prepared Articles on Canvas.
- March 1 Synchronous Class via MS Teams /Midterm Examination #1 Review
 Executive Powers – Presidential Immunity and Review for Midterm Examination #1
Mississippi v. Johnson (1867)
Nixon v. Fitzgerald (1982)
Clinton v. Jones (1997)
- Assignment: Prior to class, read pp. 242-255 in Epstein and Walker;
 Weekly assignment: Read pp. 221-302 in Biskupic (Chapters 8-9)
- March 1-3 Quiz #2 Scheduled
- March 3 Asynchronous Class via Canvas Module
 The Pardon Power and the President in Foreign Policy
Ex parte Grossman (1925)
Murphy v. Ford (1975)
- Assignment: Prior to class, read pp. 255-263 in Epstein and Walker;
 Suggested reading: “For Ford, Pardon Decision Was Always Clear-Cut.” In Prepared Articles on Canvas.
- March 8 Midterm Examination #1 via Canvas
- March 10 Asynchronous Class via Canvas Module
 Separation of Powers – War Powers and Foreign Affairs
The Prize Cases (1863)
Ex parte Milligan (1866)
Korematsu v. United States (1944)
- Assignment: Prior to class, read pp. 284-303 in Epstein and Walker;
 Weekly assignment: Read pp. 193-220 in Biskupic (Chapter 10-11)
 Suggested reading: “Can Congress reclaim authority it has handed over to the president? It’s trying.” In Prepared Articles on Canvas.
- March 15-19 Spring Recess
- March 22 Synchronous Class via MS Teams
 Separation of Powers – War Powers and Foreign Affairs cont.
Youngstown Sheet & Tube Company v. Sawyer (1952)
Dames & Moore v. Regan (1981)
Zivotofsky v. Kerry (2015)

Hamdi v. Rumsfeld (2004)

Assignment: Prior to class, read pp. 304-333 in Epstein and Walker
Weekly assignment: Read pp. 303-349 in Biskupic (Chapters 12-Epilogue)
Suggested reading: "Opinion: Tom Cotton: Send In the Troops." In Prepared Articles on Canvas.

March 24 Asynchronous Class via Canvas Module
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)
Murphy v. NCAA (2018)

Assignment: Prior to class, read pp. 335-383 in Epstein and Walker
Suggested reading: "Trump says it's his call to reopen the country. The Constitution says otherwise." In Prepared Articles on Canvas.

March 29 Synchronous Class via MS Teams
The Commerce Power
Gibbons v. Ogden (1824)

Assignment: Prior to class, read pp. 405-412 in Epstein and Walker

March 31 Asynchronous Class via Canvas Module
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. 412-428 in Epstein and Walker

April 5 Synchronous Class via MS Teams
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. 428-449 in Epstein and Walker

April 7 Asynchronous Class via Canvas Module
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. 449-463 in Epstein and Walker
Suggested reading: "The Supreme Court's next major case starts the day after the election." In Prepared Articles on Canvas.

- April 12 Synchronous Class via MS Teams
 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. 463-494 in Epstein and Walker
 Suggested reading: “How Will Trump’s Supreme Court Remake America?” In Prepared Articles on Canvas.
- April 14 Synchronous Class via MS Teams /Midterm Examination #2 Review
- April 19 Midterm Examination #2 via Canvas
- April 21 Synchronous Class via MS Teams
 Taxing and Spending Authority – 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. 543-564 in Epstein and Walker
 Suggested reading: “Supreme Court appears ready to uphold Affordable Care Act over latest challenge from Trump, GOP.” In Prepared Articles on Canvas.
- April 26 Asynchronous Class via Canvas Module
 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. 617-634 in Epstein and Walker
- April 28 Synchronous Class via MS Teams
 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. 634-650 in Epstein and Walker
 Suggested reading: “A Chief Justice Without a Friend.” In Prepared Articles on Canvas.
- May 3 Synchronous Class via MS Teams/Final Examination Review
 Economic Substantive Due Process cont. & the Takings Clause
Nebbia v. New York (1934)
West Coast Hotel v. Parrish (1937)
Kelo v. City of New London (2005)

Assignment: Prior to class, read pg. 650-660 and 699-713 in Epstein and Walker

May 7 Final Examination via Canvas, 11:00AM-1:30PM

VII. 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 online class attendance, frequent class participation, and careful attention to the readings is required. Students that do not attend class regularly, do not take thorough notes, and do not carefully read the assigned material will have a more difficult time. Additionally, I encourage students to see me during my virtual office hours. Where questions arise about the contents of the course or a student's grade, office hours represent important opportunities for interaction between students and their instructor.

Communication

The University has provided students with an official email address. All communication will be directed to you through that address, as well as announcements through Canvas. Students are responsible for checking their e-mail and Canvas regularly. Per university policy, I will not respond to non-university email addresses. Also, remember to formalize your emails by addressing the e-mail, providing a subject, and always signing your email. Note that one-line comments or questions are not enough for me to know what you are trying to say - be sure to provide enough detail about the context to allow a sufficient answer on my part.

VII. Special Notes:

1. Test Conduct – Examinations are closed book. Cell phones, textbooks, and online material are prohibited during examinations.
2. 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 turned in to the university for academic sanction.
3. Inclement Weather – Though this course is online, if the university is closed due to inclement weather, online meetings 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.
4. 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/>.
5. Students with Disabilities - Any student with a documented disability needing academic accommodations is requested to speak with me via Microsoft Teams during the first two weeks of the course. All discussions will remain confidential.
6. 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.
7. 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 the Title IX Coordinator at (817) 272-7091.

8. 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.
9. Emergency Phone Numbers - In case of an on-campus emergency, call the UT Arlington Police Department at 817-272-3003 (non-campus phone), 2-3003 (campus phone). You may also dial 911. The non-emergency number is 817-272-3381.
10. 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