

University of Southern California
Political Science 340 – Constitutional Law
Spring 2019
Tuesday/Thursday, 12.30-1.50
VKC 156

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Office Hours: TBA
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Course Description:

Constitutional law is not the sum of legal jargon used solely by lawyers. In fact, you encounter issues of federal constitutional law every day, from discussions about the powers of the Executive while you watch the news to matters of state rights while you browse your social media feeds. These discussions, however, often encompass partisan viewpoints, or personal opinions presented as legal facts.

The purpose of this course is to introduce you to the way federal constitutional law has been shaped by the United States Supreme Court. While we will read Supreme Court cases in depth, we will also analyze the legal and political factors that affected the theory and practice of judicial review, the powers of the branches of the federal government, and the relationship between the states and the federal government. By considering the role that the Supreme Court has played in this evolution, and by connecting that knowledge to contemporary issues, you will gain a better understanding of the Court both as a legal and as a political institution.

Primary Learning Objectives:

| Type | Description |
|--------------------------------------|--|
| #1 Explain ideas or concepts | You will be able to describe the power of judicial review, the powers of the branches of the federal government, and the relationship between the states and the federal government. |
| #2 Use information in new situations | You will be able to apply the information taught to contemporary constitutional law scenarios |
| #3 Draw connections | You will be able to analyze Supreme Court cases and to investigate the assumptions behind legal arguments. |
| #4 Justify a stand or decision | You will be able to evaluate and critique legal arguments and Supreme Court decisions. |

Required Readings:

Epstein and Walker. 2016. *Constitutional Law for a Changing America: Institutional Powers and Constraints*. 9th Edition. Washington, DC: CQ Press

DESCRIPTION AND ASSESSMENT OF ASSIGNMENTS:

The exercises and assignments are intended to highlight diverse student skills as well as provide a range of opportunities for assessment. Your course grade will be based upon your performance in the following assignments:

- 1) **Moot court and court opinion:** There will be four moot court dates. Students will be divided into groups and each group will be assigned one pending Supreme Court case. You will have to research the case as a group and develop arguments for each side of the case. You will present your legal arguments in class, and you should be ready, as a group to both support the affirmative side and offer rebuttals. After your participation in moot court, you will write a brief court opinion as a Justice deciding the case.
- 2) **Midterm exam:** In-class midterm examination: short answers and hypothetical. A study guide will be provided to you approximately two weeks before the exam.
- 3) **Final exam:** In-class final examination: short answers and hypothetical. A study guide will be provided to you approximately two weeks before the exam.
- 4) **In-class activities:** You will participate in various group and individual activities throughout the semester. These could include writing a case brief, responding to multiple choice questions, writing a reflection on a case, present and debate a legal issue in class etc. Your two lowest grades in these activities will be automatically dropped.

These assignments are intended to promote the learning objectives as follows:

| Assignment | Primary learning objective(s) |
|------------------------------|---|
| Moot court and court opinion | 2, 3, 4: you will apply information taught in class to new scenarios, you will analyze court opinions, and you will evaluate legal arguments and decisions. |
| Midterm | 1, 2, 3: you will describe information taught, apply the information to new scenarios, and analyze legal arguments. |
| Final | 1, 2, 3: you will describe information taught, apply the information to new scenarios, and analyze legal arguments. |
| In-class activities | 1, 2, 3, 4: you will describe and apply information taught, investigate and analyze legal arguments in court opinions, and evaluate and critique court decisions. |

Each assignment will be graded in a 100 scale. There will be no curve and the grading scale for each is:

A 100-93, A- 92-90, B+ 87-89, B 83-80, B- 82-80, C+ 77-79, C 76-73, C- 72-70, D 69-60, F 59-50.

The following represents a general grading rubric, which sets forth the basic expectations for different letter grades:

| Grade | General Expectations |
|--------------|--|
| A | In addressing the assignment, the student demonstrates mastery of the material and ability to apply concepts accurately and with sophistication, provides compelling examples in support of arguments, articulates the best counter-arguments and persuasive reasons why these arguments are not compelling, and recognizes the theoretical and data limitations of the underlying arguments and (where appropriate) how these limitations could be addressed in future work |
| B | In addressing the assignment, the student demonstrates a thorough understanding of the material and ability to apply concepts accurately, provides concrete examples in support of arguments, articulates plausible counter-arguments, and recognizes the theoretical and data limitations of the underlying arguments |
| C | In addressing the assignment, the student demonstrates a basic understanding of the material, offers examples in support of arguments, considers relevant counter-arguments, and avoids making unsupported claims |
| D | The student fails to demonstrate a basic understanding of the materials, makes unsupported claims, ignores relevant counter-arguments <i>and/or fails to address the assignment.</i> |

Grade Breakdown:

| | | |
|---------------------|------------|------------------------|
| Moot Court | 100 points | 10% of the total grade |
| Court Opinion | 100 points | 15% of the total grade |
| Midterm | 100 points | 25% of the total grade |
| Final | 100 points | 30% of the total grade |
| In-class activities | 100 points | 20% of the total grade |

Assignment Submission Policy

For each written assignment, bring a hard copy at the beginning of class. Grades and feedback on each assignment will be returned to you in writing within a week from the due date of the assignment. Late submissions will be marked down as described in the course policies below.

Deadlines: Moot Court: **April 11, 16, 18, 23**, depending on your team
 Court Opinion: due **two weeks** after your team presentation

Midterm: **February 19th, in class**

Final: **May 8th, 2-4 pm**

In-class activities: **in-class, throughout the semester**

COURSE POLICIES AND RESOURCES

Class Structure:

This is both a lecture and a discussion course. In each class, I will dedicate time to discuss issues and concepts, but, ultimately, the best way to understand this material is to talk about it together. You should take notes on what is discussed during lecture time and you should also be prepared to discuss the material yourself. I will not take attendance; however, your attention to both the lecture and class discussions will naturally be reflected in your grades.

Readings:

This is a reading-intensive course. You need to keep up with the assigned readings in order to do well. Even if you do not understand them at first glance, at least make an attempt to do so before coming to class. There is too much reading to wait until the last minute, so make sure to discipline yourself and keep up. Each week, I will upload to Blackboard terms and questions to help you with the readings of the following week and to know what to focus on; it is up to you to make use of those to prepare for our discussions.

Assignments:

You must spend a significant amount of time outside of the classroom working on assignments. I will give you as much feedback as I can, if you e-mail or come to see me during office hours. I will also give you detailed written instructions. However, it is your responsibility to gather, read, and understand the appropriate information, and to put that information together in an accurate and persuasive way.

E-mail and Office Hours:

I will make every reasonable effort to help you understand the material better outside of class. The best way to reach me is almost always through e-mail (address noted above). I enjoy discussing these issues with you via e-mail, and I encourage you to take advantage of that opportunity. I will make every effort to reply to class-related e-mails within 24 hours, EXCEPT on weekends and holidays. I generally have a huge number of e-mails to answer immediately before exam dates or assignment deadlines. Thus, I cannot guarantee a timely reply within 24 hours of these events. So, it is in your interest to start studying and working on your assignments early so that you can take maximum advantage of my advice and help. I am also available during scheduled office hours, or by appointment when necessary. I love when students come by and chat about course-related issues – it's one of the most significant things you can do to improve your college experience! Additionally, I will schedule a week of individual appointments with students before the end of the first month of the semester. This is an opportunity for me to get to know you better and discuss any feedback and suggestions you might have.

Grade-Related Communication –24-hour Cooling-off Period:

I am always happy to review your assignments with you in order to help you improve in the future. However, if you are unhappy or dissatisfied with your grade, I require you to wait for at least 24 hours before e-mailing or talking to me in person. The reason for this delay is to allow you time to re-read the assignment, read and understand my comments, and otherwise consider your performance in a deliberate, thoughtful way. After 24 hours have gone by, if you have questions or concerns, please don't hesitate to contact me.

Problems and Feedback:

Come and see me as soon as possible if you are having problems understanding, keeping up, or if there is any reason you cannot be effectively engaged in the course. I will not provide any accommodations for these issues at the last minute, but if you talk to me in advance, we can almost always work something out.

Additionally, you will have the opportunity to give me feedback regarding the course at any point in the semester, either via e-mail and during office hours, or, if you prefer, by submitting anonymous feedback forms.

Exceptions, Make-ups, and Late Assignments:

Exam dates and assignment deadlines are firm! It is your responsibility to arrange your schedule around your academic responsibilities. In general, exceptions will only be made for the following reasons, for which satisfactory documentation must be provided: (1) Illness or injury to the student; (2) Death, injury, or serious illness of an immediate family member or the like; (3) Religious reasons (listed in California Education Code section 89320); (4) Jury duty or government obligation; or (5) College sanctioned or approved activities, such as artistic performances, forensics competitions, participation in research conferences, intercollegiate athletic activities, student government, required class field trips, etc.. To be excused under #1 or 2, you must provide BOTH satisfactory documentation as soon as possible AND evidence of work completed on the assignment at the time of sickness or illness. To be excused under #s 3-5, however, you must provide me with satisfactory documentation at least 1 week prior to the exam or deadline. If you have a legitimate excuse for missing an exam, I will arrange for an appropriate make-up exam. If you have a legitimate excuse for missing a paper deadline, we will work out an appropriate alternative deadline AS LONG AS you can demonstrate that you have already completed an appropriate amount of work on the assignment.

Grade Reduction for Late Assignments:

Written assignments are due at the beginning of the class period on which the deadline falls. In the event of an unexcused late paper, I will immediately mark it down by a third of a grade for being late on the day it is due. I will then mark it down another third of a grade for every 24-hour period in which it is late. For example, a paper due on Monday but not turned in until Wednesday will be reduced by two-thirds of a grade -- a "B" paper would receive a "C+." Make the most of the time you have to complete written assignments; no allowances will be made for last-minute problems with computers, networks, etc.

Cheating and Plagiarism:

It is my policy to deal with any form of cheating and/or plagiarism by immediately giving a failing grade on the assignment and reporting you to the department and other administrative authorities for other possible sanctions. If you are having problems with the course material, please come and see me before doing something that could put your academic career in jeopardy. Please note that “plagiarism” includes any use of the ideas or work of others as if they were one’s own, without giving appropriate credit. That means that failing to cite your sources is more than just a technical glitch -- it is plagiarism and will be handled as such. See separate paper instructions for citation guidelines and please see me if you are having difficulty understanding what is required in this area.

Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” (<https://policy.usc.edu/scampus-part-b/>). Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Writing Center:

The Writing Center offers free services to all USC students in the form of individual consultations and small-group workshops. Their goal is to contribute to the development of better writers, and to assist with the skills and processes of critical thinking, drafting, and revising that lead to clearly expressed positions, coherent arguments, and persuasive reasoning. Information about the Writing Center and a link to the appointment system is on the WC website: <https://dornsife.usc.edu/writingcenter/>.

Students with disability:

I am completely committed to providing reasonable accommodations for any student with a verifiable physical or other disability. This may include alternative testing or note-taking arranged through the Office of Disability Services and Programs (<https://dsp.usc.edu>. Phone number: 213-740-0776). However, it is your responsibility to notify me in advance of the need for such an accommodation.

University Withdrawal Policy:

The deadline to drop a class without a W for this semester is February 22nd, 2019. The deadline to withdraw from a class for this semester is April 5th, 2019.

University Policies:

For more information regarding university policies, please visit the Student Handbook: <https://policy.usc.edu/student/scampus/>

Support Systems:

Student Counseling Services (SCS)-(213) 740-7711 – 24/7 on call.

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

<https://engemannshc.usc.edu/counseling/6>

National Suicide Prevention Lifeline -1-800-273-8255. Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

<http://www.suicidepreventionlifeline.org>

Relationship and Sexual Violence Prevention Services (RSVP) -(213) 740-4900 -24/7 on call
Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center. For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086 Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://equity.usc.edu/>

Bias Assessment Response and Support Incidents of bias, hate crimes and micro aggressions need to be reported allowing for appropriate investigation and response

<https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support and Advocacy – (213) 821-4710 Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC: Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. <https://diversity.usc.edu/>

USC Emergency Information Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible, <http://emergency.usc.edu>

USC Department of Public Safety –213-740-4321 (UPC) and 323-442-1000 (HSC) for 24-hour emergency assistance or to report a crime

Provides overall safety to USC community. <http://dps.usc.edu>

COURSE OUTLINE

PART I: INTRODUCTORY MATERIAL

Tuesday, January 8th – Introduction to the course

We will discuss the syllabus, logistics, expectations and assignments for the course. We will go over how to read and brief a court opinion.

No readings required.

Thursday, January 10th – The U.S. Constitution and the Supreme Court

The U.S. Constitution and its key features. Structure of the American Legal System.

Readings: Epstein & Walker, pp. 3-10 and pp. 49-54.

Tuesday, January 15th – The U.S. Constitution and the Supreme Court

Supreme Court Procedures. Approaches to Constitutional Interpretation. The Role of Politics.

Readings: Epstein & Walker, pp. 11-46

Thursday, January 17th: Class cancelled, professor presenting at the Southern Political Science Association Conference

PART II: THE DISTRIBUTION OF POWER AMONG THE BRANCHES OF THE GOVERNMENT

Tuesday, January 22nd – The Judiciary

Judicial Review.

Readings: Epstein & Walker, pp. 55-86

Thursday, January 24th – The Judiciary

Constraints on Judicial Power.

Readings: Epstein & Walker, pp. 86-108

Tuesday, January 29th – The Judiciary

Constraints on Judicial Power

Readings: Epstein & Walker, pp. 108-120

Thursday, January 31st – The Legislature

Membership in Congress. Congressional Authority over Internal Affairs.

Readings: Epstein & Walker, pp. 121-144

Tuesday, February 5th – The Legislature

Sources and Scope of Congressional Power.

Readings: Epstein & Walker, pp. 144-181

Thursday, February 7th – The Executive

Selection of the President. Debates over Executive Power.

Readings: Epstein & Walker, pp. 183-206.

Tuesday, February 12th – The Executive

Domestic Powers of the President. Veto power. Appointment and Removal.

Readings: Epstein & Walker, pp. 206-239

Thursday, February 14th – The Executive

Domestic Powers of the President. Executive privilege.

Readings: Epstein & Walker, pp. 239-267

Tuesday, February 19th – Midterm exam

Thursday, February 21st – The Separation of Powers System in Action

Domestic Disputes.

Readings: Epstein & Walker, pp. 269-289

Tuesday, February 26th – The Separation of Powers System in Action

War and National Emergencies.

Readings: Epstein & Walker, pp. 289-317

Thursday, February 28th – The Separation of Powers System in Action

War and National Emergencies

Readings: Epstein & Walker, pp. 317-340

PART III: AN INTRODUCTION TO NATION-STATE RELATIONS

Tuesday, March 5th – Federalism

Federalism: Introductory Notes

Readings: Epstein & Walker, pp. 343-387

Thursday, March 7th – Federalism

The Eleventh Amendment. New Judicial Federalism. National Preemption of State Laws.

Readings: Epstein & Walker, pp. 387- 414

Tuesday, March 12th – Spring Recess

Thursday, March 14th – Spring Recess

Tuesday, March 19th – The Commerce Power

Foundations and initial attempts to define the Commerce Power.

Readings: Epstein & Walker, pp. 415-439

Thursday, March 21st – The Commerce Power

The Supreme Court and the New Deal.

Readings: Epstein & Walker, pp. 439-466

Tuesday, March 26th – The Commerce Power

Expansions and limits.

Readings: Epstein & Walker, pp. 466-492.

Thursday, March 28th – The Commerce Power

National Federation of Independent Business v. Sebelius (The Health Care case)

Readings: Epstein & Walker, pp. 492-501

Tuesday, April 2nd – The Commerce Power

Commerce Power of the States

Readings: Epstein & Walker, pp. 501-520

Thursday, April 4th – Power to Tax and Spend

Direct Taxes and Taxation as Regulatory Power.

Readings: Epstein & Walker, pp. 521-533 and 540-548

Tuesday, April 9th – Power to Tax and Spend

Taxing and Spending for the General Welfare. Restrictions on the Revenue Powers of the States

Readings: Epstein & Walker, pp. 548-561 and 568-583

Thursday, April 11th – Moot Court

Teams to be added

Tuesday, April 16th – Moot Court

Teams to be added

Thursday, April 18th – Moot Court

Teams to be added

Tuesday, April 23rd – Moot Court

Teams to be added

Thursday, April 25th – Catching up and review

Final exam: Wednesday, May 8th 2-4 pm

The syllabus is subject to revision, if needed. Any such changes will be mentioned in class.