

BOWIE STATE UNIVERSITY
School of Arts and Sciences
Department of History and Government

GOVT 317-001: U. S. CONSTITUTIONAL LAW History I
Fall 2020

Instructor: Weldon Jackson

Building Location: MLK 0209

Office Hours: Hours designated for student consultation include Tuesday / Thursday from 2:15 p.m. – 4:15 p.m., and Friday from 1p.m. -- 3p.m. [Virtual Availability]

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Course Description

Welcome to Constitutional Law. The focus of this course is one of the most vital aspects of politics: interpreting and applying the nation's fundamental rules. In this course, we examine the structures of power in a constitutional democracy, exploring contests over authority from John Marshall and Thomas Jefferson to Bill Clinton, Barack Obama, and Donald Trump. Some of the topics to be considered include: the powers of the federal and state governments, the executive's emergency powers, and the Supreme Court's authority to nullify the acts of other branches. Under these general headings are to be found such issues as the power to protect individual rights, and the power to overturn a judicial decision through congressional. We also consider the constitutional foundations for a variety of individual rights.

This course explores the role of the U.S. Supreme Court in political struggles over the distribution and uses of power in the American constitutional system. Issues include the division of powers between state and national governments, and the branches of the federal government; economic powers of private actors and governmental regulators; the authority of governments to enforce or transform racial and gender hierarchies; and the powers of individuals to make basic choices, such as a woman's power to have an abortion. We will pay special attention to how the tasks of justifying the Supreme Court's own power, and constitutionalism more broadly, contribute to logically debatable, but politically powerful constitutional arguments. Readings include Supreme Court decisions and background materials on their historical and political context.

While Supreme Court decisions are our core materials, this is very much a political science class. We are more concerned with the political, institutional and policy implications of cases than about legal doctrine for its own sake. Our purpose is to understand what the Court has said about the Constitution's meaning, to identify and assess the underlying theories that inform the opinions of the Supreme Court, and examine the effects of Supreme Court decisions on our society. But because the Court is also a political institution, we will consider how and to what degree constitutional decision-making resembles ordinary politics. To what extent, for example, are the Justices political actors seeking to maximize their policy objectives in the same way that legislators

do? Does public opinion influence the Court? Finally, how do other political branches, such as Congress and the President, interact with the Supreme Court?

Course Goals

There are five goals for this course. The first goal is that students refine their understanding of the U.S. Supreme Court as a political institution and gain an appreciation for the Supreme Court's history, significance, and role in shaping the scope and limitations of government powers. In order to fully understand the legal and political dynamics surrounding the Supreme Court, the second goal of this course is for students to become more comfortable with constitutional law, particularly governmental powers and constitutional interpretation. Taken collectively, the knowledge acquired in this course is related to the third goal which is that students will gain the ability to fully comprehend political news related to judicial politics, specifically Supreme Court decisions. In addition to being politically knowledgeable, active and engaged citizens must be able to formulate, communicate, and defend opinions. As a result, the fourth goal of this course is to hone these skills by improving each student's critical thinking and writing abilities. A defining characteristic of judicial politics and constitutional interpretation is that there are two sides to every issue, so the fifth goal is that students will learn to identify, appreciate, and respond to opposing viewpoints.

Course Learning Outcomes

A combination of lecture, discussion, and experiential instructional techniques will be used throughout the semester to produce specific learning outcomes that are targeted at meeting course goals. Below are the learning outcomes associated with each course goal:

1. Understand the legal and political dynamics surrounding the U.S. Supreme Court.
 - Recognize and explain the terminology, concepts, and processes associated with the structures and functions of the U.S. Supreme Court
2. Become comfortable with constitutional law
 - Identify and discuss terminology, concepts, and methods associated with government power and constitutional interpretation.
3. Process the skills to be a politically engaged and active citizen
 - Connect course concepts to current events.
 - Demonstrate knowledge of how to interpret Supreme Court decisions from multiple angles and perspectives.
4. Formulate, communicate, and defend opinions.
 - Examine and evaluate competing political viewpoints presented in course materials.
 - Develop and succinctly articulate opinions based on fact.
 - Determine and express the strengths and weaknesses of an argument.
5. Identify, appreciate, and respond to opposing viewpoints.
 - Consider and relate to other viewpoints.
 - Convey disagreement respectfully and engage in meaningful conversations

Course Prerequisites: None

Required Text

Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: A Short Course*, 7th edition, CQ Press, 2018.

Requirements

There will be four (4) examinations administered throughout the semester.

Noteworthy classroom participation can affect grades positively or negatively. I expect informed classroom participation. Inasmuch as participation is impossible if you are not present, attendance matters. During most classes students will be called upon to discuss the assigned materials. These will be occasions for dialogue between student and professor, but in each instance where this occurs students, other than the student called upon will be invited into the discussion. In other words, I do not view this as a purely lecture course. While there will be times when I will be lecturing, much of the class time will involve discussion among students and between student and professor.

Ethical and Professional Standards

According to the Code of Student Conduct, students are to achieve high standards of ethical and professional academic standards. This includes behavior and appearance in the classroom. For written and non-written scholarship. Students are encouraged to be creatively responsible for making a contribution to the body of knowledge. This is accomplished through individual and group effort according to assigned activities. Students who commit acts of plagiarism or copying from other scholarship and/or violating academic standards in the classroom will be penalized according to the Code of Student Conduct for students as outlined by Bowie State University. In cases involving academic dishonesty, a failing grade or a grade of F for either an assignment and/or course may be administered. Students who are expelled or suspended for academic dishonesty are not admissible to other institutions within the University System of Maryland. Students engaging in academic dishonesty will fail this course.

Classroom Decorum

Please arrive on time and be settled in your seat before the beginning of class. Bowie State University prohibits disorderly or disruptive conduct on University premises or at University-sponsored activities, which interfere with the activities of others, including studying, teaching, and administrative operations. Students must not disrupt class for any reason such as excessive talking or continuously entering/exiting the classroom. Students should be dressed appropriately for an academic setting. Offensive or revealing clothing is not acceptable in a learning environment. All cell phones and other electronic devices must be put on silent. Students cell phones during class will be marked as absent. If there is an emergency situation that requires you to have access to your cell phone during class, please contact the Course Instructor before the beginning of class. Laptops and tablets are permitted for taking notes and viewing websites related to the course material. Students using laptops or tablets to view non-class related websites or for any other purpose (e.g., social media, playing games, and/or watching videos) will be marked absent. During class discussion, students are encouraged to participate and be respectful of others at all times.

Assistance with the Course

I want you to excel in this course. If at any point you have questions or concerns, please do not hesitate to contact me. You are always welcome to stop by my office ours. In most instances, questions about assessments, assignments, and grades are easier to address in person rather than over email. If your schedule conflicts with the posted office hours, send me an email to schedule an appointment.

Americans with Disabilities (ADA) Statement

Any student who feels he or she may need accommodations based on the impact of a disability should contact Dr. Michael S. Hughes, DSS Coordinator (301-860-4067) to privately discuss your specific needs. The Office of Disability Support Services is located in Room 079 on the lower floor of the Thurgood Marshall Library.

Grading Scale

A total of 100 possible points can be earned for all coursework. Letter grades are as follows: A (90-100 points); B (80-89 points); C (70-79 points); D (60-69 points); F (0-59 points).

Grading Weights

Students must complete all requirements to receive course credit.

- Examination #1 (20%)
- Examination #2 (20%)
- Examination #3 (20%)
- Examination #4 (20%)
- Attendance (5%)
 - Your attendance grade will be determined based on how often you come to class. Documented excused absences will not count against your final attendance grade. Students leaving the classroom before the end of class without a valid excuse will be marked absent. If you need to leave class early, you must notify the professor prior to the beginning of the class period.
- Class Participation (15%)

COURSE SCHEDULE

Date	Topic	Reading Assignment
September 1	General Overview	No readings
September 3	The Role of Courts in our Federal System <i>Legal Terminology</i> <i>Case Briefing</i>	[Epstein and Walker], Pp. 3-31. Pp. 729-733.
September 8	The Art of Judicial Interpretation & Jurisprudence	[Epstein and Walker] "Supreme Court Decision Making: The Role of Law and Legal Methods," pp. 31-52. Constitutional Interpretation Activity: Youtube – Bryer and Scalia Souter, David H. "Text of Justice David Souter's Speech," <i>Harvard Gazette</i> , May 27, 2010.
September 10	Judicial Review I: Origins of Judicial Review	[Epstein and Walker] pp. 55-72 and 691-702; Cases: <i>Marbury v. Madison</i>
September 10	Judicial Review II: Limits on Judicial Review	[Epstein and Walker] "," pp. 73-85. Cases: <i>Ex Parte McCordle</i> ; <i>Martin v. Hunter's Lessee</i> ; <i>Cohens v. Virginia</i>
September 15-17	What types of Disputes are Suitable for Courts? <i>Standing</i> <i>Mootness</i> <i>Political Questions</i> <i>Justiciability</i>	Cases: <i>Luther v. Borden</i> ; <i>Baker v. Carr</i> ; <i>Colegrove v. Green</i> ; <i>Frothingham v. Mellon</i> ; <i>Ashwander v. Tennessee Valley Authority</i> ; <i>Flast v. Cohen</i> ; <i>Hein v. Freedom from Religion Foundation, Inc.</i> ; <i>Nixon v. United States</i> (1993); <i>DeFunis v. Odegaard</i>
September 22	Principles <i>National Supremacy</i> <i>State's Rights</i> <i>Dual Federalism</i>	[Epstein and Walker] Part III: "Nation-State Relations." Pp. 187-216. Cases: <i>McCulloch v. Maryland</i> ; <i>Dred Scott v. Sandford</i> ; <i>Printz v. United States</i> ; <i>New York v. United States</i> ; <i>United States v. Darby</i> ; <i>Garcia v. San Antonio Metropolitan Transit Authority</i>
September 24	Examination #1	
September 29	Commerce Clause I: Historical Evolution of Commerce Clause <i>Shreveport Doctrine</i>	[Epstein and Walker] Article I, Section 8, Clause 3, Appendix 1: "Constitution of the United States." Page 693

		[Epstein and Walker] Part III: “Nation-State Relations.” Pp. 211-277. Cases: <i>Gibbons v. Ogden</i> ; <i>National Labor Relations Board v. Jones & Laughlin Steel Corporation</i> ; <i>Wickard v. Filburn</i> ; <i>Cooley v. Board of Wardens</i> ; <i>Heart of Atlanta v. United States</i> ;
October 1	Commerce Clause II: Limits on Commerce Clause Power	Cases: <i>United States v. Lopez</i> ; <i>Gonzales v. Raich</i>
October 6	Taxing and Spending Power	[Epstein and Walker] Part III: “Nation-State Relations.” Pp. 278-309. Cases: <i>Pollock v. Farmers’ Loan & Trust Co</i> ; <i>South Dakota v. Dole</i> ; <i>Hylton v. United States</i>
October 8	Introduction: Balance of Power/The Executive	Epstein and Walker] Part II: “Institutional Authority.” Pp. 57-62. Madison, James. " The Federalist, No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments. " constitution.org.
October 13	Examination #2	
October 15	The President as Commander in Chief and in Foreign Affairs	[Epstein and Walker] Part II: “Institutional Authority.” Pp. 154-183. Cases: <i>United States v. Curtiss-Wright Corporation</i> ; <i>Zivotofsky v. Kerry</i> ; <i>Dames & Moore v. Regan</i>
October 20	War-Making and Emergency Powers	Cases: <i>Korematsu v. United States</i> ; <i>Dames & Moore v. Regan</i> ; <i>Hamdi v. Rumsfeld</i> ; <i>Prize Cases</i> ; <i>Youngstown Sheet & Tube Co. v. Sawyer</i> ; <i>Ex Parte Milligan</i> ; <i>Rasul v. Bush</i> ; <i>Boumediene v. Bush</i> ; <i>United States v. Pink</i> ; <i>New York Times Co. v. United States</i>
October 22	Executive II: Appointments and Removal Power <i>The Pardon Power</i>	[Epstein and Walker] Part II: “Institutional Authority.” Pp. 133-154. Cases: <i>Humphrey’s v. Executor v. United States</i> ; <i>Myers v. United States</i> ; <i>Bowsher v. Synar</i> ; <i>Morrison v. Olson</i> ; <i>Murphy v. Ford</i> ; <i>Ex Parte Garland</i>
October 27	Executive III: Judicial Authority Over Executive	Cases: <i>United States v. Nixon</i> ; <i>Clinton v. Jones</i>
October 29	The Classical View: Congress/Legislative Power	[Epstein and Walker] Part II: “Institutional Authority.” Pp. 86-127. Case: <i>McCulloch v. Maryland</i> ; <i>Gibbons v. Ogden</i> ;

		<i>Hammer v. Dagenhart; United States v. E. C. Knight; Houston; Schechter Poultry Corp. v. United States; United States v. Darby</i>
November 3	Legislature II: Separation of Powers	Cases: <i>Mistretta v. United States; Immigration and Naturalization Service v. Chadha; <u>Clinton v. City of New York</u></i>
November 5	Appointment, Removal, and Legislative Powers	Cases: <i>Humphrey's Executor v. United States; National Labor Relations Board v. Noel Canning; Chevron v. National Resources Defense Council</i>
November 10	Congress: Membership, Immunities, and Investigatory Powers	Cases: <i>Powell v. McCormack; Hutchinson v. Proxmire; Walter L. Nixon v. United States; U.S. Term Limits, Inc. v. Thornton</i>
November 12-17	Freedom of Speech and Freedom of Press	[Epstein and Walker], Pp. 432-517. Cases: <i>Schenck v. United States; Texas v. Johnson; Chaplinsky v. New Hampshire; Morse v. Fredrick; Snyder v. Phelps; West Virginia Board of Education v. Barnette</i> <i>Near v. Minnesota; Miller v. California; New York Times v. Sullivan</i> <i>South Carolina v. Katzenbach; Oregon v. Mitchell; Shaw v. Reno; Shelby County, Alabama v. Holder; Hunt v. Cromartie</i>
November 19	Examination #3	
November 24-26	No Class	Thanksgiving Break
December 1	Economic Liberty	[Epstein and Walker] Part IV: "Economic Liberties." Pp. 327-369 Cases: <i>Lochner v. New York; Nebbia v. New York; Adkins v. Children's Hospital; West Coast Hotel v. Parrish.</i>
December 3	The Right to Privacy	[Epstein and Walker] Part V: "Civil Liberties." Pp. 528-577. Cases: <i>Griswold v. Connecticut; Roe v. Wade; Lawrence v. Texas; Craig v. Borden; Cruzan v. Director, Missouri Department of Health</i>
December 8	The Criminal Justice System and Constitutional Rights	[Epstein and Walker], Pp. 531-591. "Amendment XIV, Section 1." Pp. 699.

		[Epstein and Walker] Part VII: "Civil Rights." Pp. 581-645. Cases: <i>Mapp v. Ohio</i> ; <i>Miranda v. Arizona</i> ; <i>Powell v. Alabama</i> ; <i>Gideon v. Wainwright</i> ; <i>Argersinger v. Hamlin</i> ; <i>Gregg v. Georgia</i> ; <i>District of Columbia v. Heller</i>
December 10	Discrimination: Race, Gender, Economics	[Epstein and Walker], Pp. 649-706 Cases: <i>Plessy v. Ferguson</i> ; <i>Brown v. Board of Education of Topeka</i> ; <i>Reed v. Reed</i> ; <i>Craig v. Boren</i> ; <i>San Antonio Independent School District v. Rodriguez</i> ; <i>Romer v. Evans</i> ; <i>Grutter v. Bollinger</i> ; <i>Regents of the University of California v. Bakke</i> Additional readings: Brown v. Board of Education: Virginia Responds Executive enforcement: Little Rock Central High School National Historic Site , nps.gov. "Dwight D. Eisenhower Talks to the Nation about Desegregation in Arkansas," whitehouse.c-span.org. Judicial enforcement: * Cooper v. Aaron . Legislative enforcement: Title VI of the Civil Rights Act of 1964 , justice.gov. Washington v. Davis * United States v. Virginia . Equal Rights Amendment , now.org Sutton, Jeffrey S. " San Antonio Independent School District v. Rodriguez and its Aftermath ." <i>Virginia Law Review</i> 94, no. 8 (2008): 1963–86. Epstein, Diana. " Measuring Inequity in School Funding ," americanprogress.org, August 3, 2011.
December 17 (Tentative)	Examination #4	