

POLS 3351: The Constitution & Federalism Spring 2020

Section 1

Department of Social Sciences
Texas A&M University- Corpus Christi

1 Instructor Information

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Office Hours: Mondays: 1:00pm-3:00pm

Tuesdays: 2:15pm-4:15pm

Thursdays: 2:15-4:15

and by appointment

Class Location: Bay Hall 206

Course Time: 12:30 to 1:45 TR

2 Course Description and Purpose

American politics plays by certain basic rules. For instance, we cannot censor unpopular political speech. The police cannot question a suspect without advising him/her of his/her rights. But what about when someone shouts “Bomb!” in an airport and induces a panic? What is someone utters hate speech? Can speech be punished then? What if a suspect refuses to acknowledge the police advising him/her of the right to an attorney? May the police then proceed with questioning? Through addressing these difficult questions over the past 230 years the U.S. Supreme Court has developed the contours of civil rights & liberties. These rights & liberties form the bedrock groundrules of American political life on what the government may not do and what it must do. We will spend a majority of the semester on the First and Fourteenth Amendments, though we will also discuss other amendments, such as the Second, Fourth and Eighth Amendments. Special emphasis will be placed on evaluating how the United States Supreme Court defines, establishes, and protects these liberties through its interpretation of the Constitution.

I expect that when you have completed this course you will have a strong understanding of the role the Bill of Rights plays in American political and social consciousness. You will emerge with a clearer picture of how Supreme Court interpretations of key provisions of the Constitution affect our political structure and social relationships.

Another primary purpose of this course is to improve your critical reading, writing, and organizational skills. Toward that end, this course will emphasize writing succinctly in the form of legal briefs. You will learn to brief Supreme Court cases, and exams will evaluate your ability to extrapolate from the cases themselves and construct arguments that demonstrate a knowledge of the concepts behind the cases. If you are planning on law school, this skill will be very valuable. Otherwise, you will still benefit from learning how to succinctly communicate the often dry and complex content of court decisions. In addition, emphasis is placed on classroom participation and critical discussion of the readings.

Student Learning Outcomes

On completion of this course students will be able to:

1. Recall basic facts related to civil rights & liberties case law
2. Describe the evolution of civil rights & liberties case law at the U.S. Supreme Court.
3. Describe the major doctrinal ideas in civil rights & liberties case law
4. Be able to read & brief appellate court decisions

Core Objectives

The Three Core Objectives related to this course are: Critical Thinking Skills, Communication Skills, Personal Responsibility, and Social Responsibility. By the end of the semester the course will have met these objectives:

1. By having the students engage in critical thinking activities related to the Constitution, case law, and the role of political preferences in the evolution of case law.
2. By having students write legal briefs for the cases on the syllabus.
3. By having students consider the dissenting opinions and multiple view points on the proper course of civil rights & liberties case law.

3 Course Format

This course is largely centered on decisions of the U.S. Supreme Court. We will read summaries of issue areas, along with a handful of landmark cases from each issue area. Class will consist of a combination of lecture and discussion of the readings and the legal reasoning of the Court. In order for this format to work, it is imperative that you read the material in advance.

4 Requirements

Text

There is one required book, which the majority of our readings will come from. Other readings are posted on Blackboard and are noted on the course schedule.

The book is available at the campus bookstore, although it is available at a *substantially* lower rate online. To this end, I provide the ISBN for the book below and have placed all of the first week's readings on Blackboard to allow for shipping time. After the first week I expect you to have the book and bring it with you to class. Unfortunately, I will not be able to place the book on course reserve at the library.

1. Epstein, Lee and Thomas Walker. 2019. *Constitutional Law for a Changing America: Civil Rights and Liberties*. 10th edition. Congressional Quarterly Press: Washington.
ISBN-13: 9781506380308

Assessment

This course is worth 100 points which are broken up over several different items

- Exams: 40 points
- Mock Supreme Court: 20 points
- Case Briefs: 20 points
- Participation & Attendance: 10 points
- Quizzes: 10 points

1. **Participation and Attendance (10 points)**— As a 3000 level class, participation is vital for you to grasp the material. You are expected to come to class, actively participate in the discussion, comment on the readings, and engage the comments other students make. However, coming to class is only half the battle. You also have to participate in class. Of course, asking informed questions or joining the classroom discussion is a part of participation, but so too is actively listening (ie: Are you taking notes and paying attention or are you sleeping and texting?).
2. **Case Briefs (20 points)**— This course does not have a research paper; instead you will brief, which is to say write a legal summary, of select cases throughout the semester. Additionally, briefing will help you better understand the cases, and make studying for the exams easier. Early in the semester I will go over the proper format for briefs as well as provide examples. All briefs must be typed and turned in as a hard copy *and* be uploaded to Blackboard. **I do not accept briefs via e-mail. Late briefs will not be accepted.** On most weeks, there is a brief specified for completion on Thursday. I will not collect every brief, but I will randomly choose six briefs over the course of the semester which I will grade. Each brief is worth 4% of your final grade, meaning you can safely skip one brief- or do all six briefs for extra credit. Please see the separate “Brief How-to” guide for more information.
3. **Quizzes (10 points)**— Periodically throughout the semester I will administer unannounced quizzes. These quizzes will be given at the start of class and will consist of multiple choice, true or false, fill in the blank, and/or short answer items. They can cover anything previously discussed in class or anything from that day’s readings. If you do the readings and pay attention in class, it should be easy to obtain full credit on all the quizzes. Quizzes will be passed out at the start of class and no quizzes will be passed out after that time, so it is important to arrive to class on time. I will administer seven quizzes and take your top five quizzes over the course of the semester to compile your total quiz score (with each worth 2% of your final grade). Quizzes cannot be made up, therefore it is imperative you attend class regularly, read for class, and are on time for class.
4. **Exams (40 points)**—There are two exams, none of which are cumulative, though some concepts will stay with us the entire semester. The two exams will only cover material from the last exam until the current exam. Each exam is worth 20 points, which is to say two letter grades. All exams will be greenbook based and can consist of short identification terms,

hypothetical cases which you will be asked to decide based on the case law we have discussed in class, or essays. **You must bring a greenbook to the exam.** I suggest you go to the bookstore and buy a few greenbooks at the start of the semester so you are not in any danger of not having one on exam day (They cost about 50 cents each). You should note that if you are unable to take the exam at the scheduled time, the make-up exam will be a separate research paper.

5. **Mock Supreme Court (20 points)**—Toward the end of the semester, we will conduct a moot court. Each person will be assigned a different role, ranging from attorney to member of the Court. What precisely you do will vary. For instance, if you are one of the attorneys, you and your team must prepare a brief for the Court and present oral arguments. If you are a justice, you must ask questions of the attorneys during oral arguments and help your fellow justices write the opinion or dissent. If you are a reporter, you must report on the legal proceedings in a way accessible to the lay person, while still retaining all of the legal nuance. Please see the separate “Mock Supreme Court” handout.

Assessment Scale

A: 90-100	B: 80-89.9	C: 70-79.9	D: 60-69.9	F: <59.9
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Disclaimer

Since politics is a reflection of the society in which we live, we will cover several topics which touch on topics which might be sensitive. Some examples include same-sex marriage, gun control, protest movements, and transgender rights. These topics are included because we cannot adequately study civil rights & liberties without covering them. My personal policy is to remain neutral (I’m a political scientist, emphasis on the second word). I encourage disagreement, but it must be done in a respectful way. You have my assurance that I will do everything reasonably related to keeping these discussions civil and academic.

5 Course Policies

Contacting the Instructor

I am happy to help you either via e-mail, office telephone, or in-person during office hours. Of course, if office hours do not fit your schedule let me know and we can schedule a meeting at a time that is more convenient. If you come to office hours you should come prepared; bring your book, notes, and read the material in advance. If you contact me via e-mail, I will respond within 48 hours, though in most cases it will be less than six hours. Should you not hear from me after 48 hours, feel free to send a follow-up. However, in any e-mail you must identify yourself and use proper format which consists of an opening (As simple as the recipient’s name), a closing (as simple as your name), and a descriptive subject line. If you do not follow that convention or if you use Internet shorthand (ie: “u” instead of “you,”) I will not reply to the message. Telephone calls will be returned as soon as possible, though e-mail is usually quicker. Please note, the phone number listed is my office phone; it cannot receive text messages.

Make-up Exams and Assignments

To qualify for a make-up test a student must notify me of the absence in advance via e-mail and provide documentation. Make-up exams will be a written research paper. The onus is on the student for a make-up exam. I will not seek you out to let you know you missed an exam.

Papers are due in hard copy at the beginning of the class on the date indicated in the schedule. I will not accept e-mail copies or papers placed under my door. Please do not be afraid to print multiple rough drafts and revise them before turning them in. I am happy to look at drafts and help you with crafting your final paper. I do not accept excuses about dogs, computers, or traffic. Be responsible.

Academic Honor Code

Students are expected to uphold the Academic Honor Code published in the University Student Handbook. The Academic Honor Code is based on the premise that each student has the responsibility (1) to uphold the highest standards of academic integrity in the student's own work, (2) to refuse to tolerate violations of academic integrity in the university community, and (3) to foster a high sense of integrity and social responsibility on the part of the university community. Violations of the Academic Honor Code will not be tolerated.

Academic dishonesty, cheating, and plagiarism of any kind are unacceptable. There are no exceptions. Consequences for academic dishonesty, cheating, and plagiarism include, but are not limited to, a failing grade for an assignment or exam, a failing grade for the course, noncredit for an assignment or exam, additional work, and/or direct referral to university officials.

If academic dishonesty, cheating, or plagiarism is suspected on any assessment, the instructor reserves the right to impose restrictions and make changes on future assessments for an individual and/or the entire class as needed.

Please also note that the university requires that faculty members formally report all instances of academic misconduct. Here are the official procedures: http://judicialaffairs.tamucc.edu/assets/procedure_academicmisconductcases.pdf

Academic dishonesty includes, but is not limited to, the use of unauthorized information during a quiz or exam, plagiarism, submitting the same paper for multiple courses without permission, or depriving another student of the ability to perform his or her work. The term cheating includes, but is not limited to: (1) use of any unauthorized assistance in taking quizzes, tests, or examinations; (2) dependence upon the aid of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments, plagiarism; or (3) the acquisition, without permission, of tests or other academic material belonging to a member of the university faculty or staff. The term plagiarism includes, but is not limited to, the use by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. Plagiarism also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling or distribution of term papers or other academic materials. If you have questions about the university's policy on academic dishonesty, please see the Student Code of Conduct at <http://judicialaffairs.tamucc.edu/StudentCofC.html>.

Please note “plagiarism” includes intentionally, knowingly, or carelessly presenting the work of another as one’s own. Additionally, the procedure has been updated to reflect the Academic Integrity Committee as the body to consider grade appeals and academic misconduct cases, as well as identifies the selection process of committee members. Detailed information can be found on the University Handbook of Rules and Procedures website. Contact for interpretation or clarification is the Associate Vice President for Academic Affairs.

Students with Disabilities

The Americans with Disabilities Act (ADA) is a federal anti-discrimination statute that provides comprehensive civil rights protection for persons with disabilities. Among other things, this legislation requires that all students with disabilities be guaranteed a learning environment that provides for reasonable accommodation of their disabilities. If you believe you have a disability requiring an accommodation, please call or visit Disability Services at (361) 825-5816 in Corpus Christi Hall 116.

If you are a returning veteran and are experiencing cognitive and/or physical access issues in the classroom or on campus, please contact the Disability Services office for assistance at (361) 825-5816.

Student Caregivers: If you have caregiving responsibilities (e.g., parent of a child or care for elderly parents) and you anticipate scheduling difficulties, please discuss this with me the beginning of the semester to work out an appropriate strategy in advance.

Academic Advising (for students with a majors in the College of Liberal Arts)

The College of Liberal Arts requires that students meet with an Academic Advisor as soon as they are ready to declare a major. Degree plans are prepared in the CLA Academic Advising Center. The University uses an online Degree Audit system. Any amendment must be approved by the Department Chair and the Office of the Dean. All courses and requirements specified in the final degree plan audit must be completed before a degree will be granted. The CLA Academic Advising Office is located in Driftwood #203. For more information please call 361-825-3466.

Dropping a Class

I hope that you never find it necessary to drop this or any other class. However, events can sometimes occur that make dropping a course necessary or wise. Please consult with your academic advisor, the Financial Aid Office, and me, before you decide to drop this course. Should dropping the course be the best course of action, you must initiate the process to drop the course by going to the Student Services Center and filling out a course drop form. Just stopping attendance and participation **WILL NOT** automatically result in your being dropped from the class. **April 10, 2020** is the last day to drop a class with an automatic grade of “W” this term.

Grade Appeals

As stated in University Procedure 13.02.99.C0.03, Student Grade Appeal Procedures, a student who believes that he or she has not been held to appropriate academic standards as outlined in the class syllabus, equitable evaluation procedures, or appropriate grading, may appeal the final grade given in the course. The burden of proof is upon the student to demonstrate the appropriateness

of the appeal. A student with a complaint about a grade is encouraged to first discuss the matter with the instructor. For complete details, including the responsibilities of the parties involved in the process and the number of days allowed for completing the steps in the process, see University Procedure 13.02.99.C0.03, Student Grade Appeal Procedures. For assistance and/or guidance in the grade appeal process, students may contact the Deans office in the college in which the course is taught or the Office of the Provost. These documents are accessible through the University Rules Web site at: http://academicaffairs.tamucc.edu/rules_procedures/assets/13.02.99.c0.03_student_grade_appeals.pdf.

Statement of Academic Continuity

In the event of an unforeseen adverse event, such as a major hurricane and classes could not be held on the campus of Texas A&M University Corpus Christi; this course would continue through the use of Blackboard and/or email. In addition, the syllabus and class activities may be modified to allow continuation of the course. Ideally, University facilities (i.e., emails, web sites, and Blackboard) will be operational within two days of the closing of the physical campus. However, students need to make certain that the course instructor has a primary and a secondary means of contacting each student.

Classroom Courtesy

Classroom courtesy is an essential component of creating an effective learning environment. All students have the right to learn without unnecessary distractions. These distractions include: cell phones, talking during lectures (unless recognized by the instructor), reading newspapers, falling asleep, etc. If you need a cell phone for emergency purposes, leave it on vibrate. Entering and leaving are also significant sources of distraction. It is your responsibility to be on time and to stay for the entire period. In circumstances where you need to leave early, tell the instructor beforehand. Repeated disruptions of class will lead to a reduction in your final grade.

Most importantly, the syllabus includes many sensitive topics which can lead to strong feelings and heated debate. Because this is a college classroom, all discussion must be respectful and scholarly. This is to say you must be respectful, in both content and tone, of diverse opinions and not make personal or partisan attacks.

Acceptable Comments

- are respectful of diverse opinions and open to follow up questions and/or disagreement
- are related to class and/or the course material
- focus on advancing the discussion about issues related to the course and/or course material rather than personal beliefs, and
- are delivered in normal tones and a non-aggressive manner.

Unacceptable Comments

- are personal in nature. This includes attacks on a person's appearance, demeanor, or political beliefs.

- include interrupting the instructor or other students. Raise your hand and wait to be recognized.
- often use the discussion to argue for political positions and/or beliefs. If political discussions arise, they must be discussed in a scholarly way (see above).
- may include using raised tones, yelling, engaging in arguments with other students and being threatening in any manner.
- include ignoring the instructor's authority to maintain the integrity of the classroom environment.

Timeline for Assignment Return

Generally, I will return assignments to you at the next class period (e.g. if the assignment is due on a Thursday, you will get it back the following Tuesday). Should I not be able to return the assignment by the next class period I will advise the class via e-mail about the timeline (it should never exceed one week).

Syllabus Change Policy

This syllabus is a guide for the course and is subject to change with advanced notice. These changes may come via e-mail. Make sure to check your university supplied email regularly. You are accountable for all such communications.

6 *Tentative* Course Schedule

A few notes about reading the course schedule:

- “*Epstein*” refers to the required Epstein & Walker book
- “(B)” means that reading can be found on Blackboard

Course Introduction & Supreme Court Basics

Tuesday, January 21– Introduction to the Course

- *No readings*

Thursday, January 23– Supreme Court Basics

- Epstein: 2-42

Tuesday, January 28– Judicial Review

- Epstein: 43-64. **Cases:** *Marbury v. Madison* (1803), *Ex Parte McCordle* (1869)
- *How to brief a case*

The First Amendment: The Religion Clauses

Thursday, January 30– Free Exercise

- Epstein: 87-111. **Cases:** *Cantwell v. Connecticut* (1940), *Sherbert v. Verner* (1963), *Wisconsin v. Yoder* (1972)

Tuesday, February 4– Recent Developments in Free Exercise

- Epstein: 111-126. **Cases:** *Employment Division v. Smith* (1990), *City of Boerne v. Flores* (1997), *Holt v. Hobbs* (2015) (B)

Thursday, February 6– The Establishment Clause

- Epstein 127-145 **Cases:** *Everson v. Board of Education* (1947), *Abington v. Schempp* (1963), *Lemon v. Kurtzman* (1971)

Tuesday, February 11– Recent Developments in Establishment

- Epstein 145-159, 164-170 **Cases:** *Zelman v. Simmons-Harris* (2002), *Lee v. Weisman* (1992) (B), *Trinity Lutheran Church v. Comer* (2017), *Town of Greene v. Galloway* (2014)

Thursday February 13– State Religious Displays & Endorsements

- Epstein 170-182 **Cases:** *Santa Fe v. Doe* (2000) (B), *Van Orden v. Perry* (2005), *Hosanna-Tabor Evangelical Lutheran Church v. EEOC* (2012)

The First Amendment: The Speech Clause

Tuesday, February 18– Speech in Times of Crisis

- Epstein 183-197 **Cases:** *Schenck v. United States* (1919), *Gitlow v. New York* (1925), *Brandenburg v. Ohio* (1969) (B)

Thursday, February 20– Offensive Speech

- Epstein 197-213 **Cases:** *United States v. O'Brien* (1968), *Texas v. Johnson* (1989), *Chaplinsky v. New Hampshire* (1942)

Tuesday February 25– Symbolic Speech & The Limits of Free Speech

- Epstein 213-230 **Cases:** *Cohen v. California* (1971), *McCullen v. Coakley* (2014), *Snyder v. Phelps* (2011)

Thursday February 27– Speech in Schools

- Epstein 235-243, 264-272 **Cases:** *Tinker v. Des Moines* (1969), *Morse v. Fredrick* (2007), *West Virginia v. Barnette* (1943), *Rumsfeld v. Forum for Academic and Institutional Rights* (2006)

The First Amendment: The Press Clause

Tuesday March 3– Prior Restraint & Libel

- Epstein: 280-285, 291-300, 307-321 **Cases:** *Near v. Minnesota* (1931), *New York Times v. Sullivan* (1971), *Hazelwood School District v. Kuhlmeier* (1988), *Hustler Magazine v. Falwell* (1988)

Thursday March 5– Obscenity

- Epstein 321-338 **Cases:** *Roth v. U.S.* (1957), *Miller v. California* (1973), *New York v. Ferber* (1982)

Tuesday March 10– **SPRING BREAK: NO CLASS**

Thursday March 12– **SPRING BREAK: NO CLASS**

Tuesday March 17 – **MIDTERM EXAM**

- *Be sure to bring a greenbook to class.*

Thursday March 19– The Second Amendment

- Epstein 354-364 **Cases:** *U.S. v. Miller* (1939) (**B**), *D.C. v. Heller* (2008)

Civil Rights

Tuesday March 24– From *Plessy* to *Brown*

- Epstein 555-580, 591-595 **Cases:** , *Plessy v. Ferguson* (1896), *Sweatt v. Painter* (1950), *Brown v. Board I* (1954), *Brown v. Board II* (1955), *Shelley v. Kraemer* (1948) (**p. 591-595**)

Thursday March 26– Claims of Racial Discrimination After *Brown*

- Epstein 601-604, 607-630 **Cases:** *Loving v. Virginia* (1967), *Regents of the University of California v. Bakke* (1978) *Fisher v. University of Texas* (2016)

Tuesday March 31– Women & Intermediate Scrutiny

- Epstein 631-650 **Cases:** *Reed v. Reed* (1971), *Craig v. Boren* (1976), *U.S. v. Virginia* (1996)

Thursday April 2– Discrimination Based on Sexual Orientation, Class, & Citizenship

- Epstein 650-668 **Cases:** *Romer v. Evans* (1996), *San Antonio Independent School District v. Rodriguez* (1973), *Plyer v. Doe* (1982)

Tuesday April 7– **MOCK SUPREME COURT ORAL ARGUMENTS**

- *No readings*

The Right to Privacy

Thursday April 9– From Private Sexual Conduct to Abortion

- Epstein 365-377, 383-397 **Cases:** *Griswold v. Connecticut* (1965), *Planned Parenthood v. Casey* (1992), *Whole Women's Health v. Hellerstedt* (2016)

Tuesday April 14– Same Sex Relationships

- Epstein 397-416 **Cases:** *Lawrence v. Texas* (2003), *Obergefell v. Hodges* (2015)

The Rights of the Criminally Accused

Thursday April 16– Search and Seizure

- Epstein 427-435, 444-462 **Cases:** *Illinois v. Gates* (1983), *Florida v. Jardines* (2013), *Safford v. Redding* (2009), *Terry v. Ohio* (1968)

Tuesday April 21– The Exclusionary Rule

- Epstein 462-478 **Cases:** *Mapp v. Ohio* (1961), *U.S. v. Leon* (1984), *Hudson v. Michigan* (2006)

Thursday April 23– Self Incrimination & The Right to Counsel

- Epstein 478-495, 497-507 **Cases:** *Escobedo v. Illinois* (1964), *Miranda v. Arizona* (1964), *Powell v. Alabama* (1932), *Gideon v. Wainwright* (1963)

Tuesday April 28– The Sixth Amendment: A Fair & Impartial Jury

- Epstein 508-527 **Cases:** *Batson v. Kentucky* (1986), *Sheppard v. Maxwell* (1966), *Richmond Newspapers v. Virginia* (1980)

Thursday April 30– Cruel & Unusual Punishment

- Epstein 527-552 **Cases:** *Gregg v. Georgia* (1976), *McClesky v. Kemp* (1987) (B), *Atkins v. Virginia* (2002)

Voting Rights

Tuesday May 5– Voting Rights

- Epstein 669-670, 675-693 **Cases:** *South Carolina v. Katzenbach* (1966), *Shelby County v. Holder* (2013), *Crawford v. Marion County* (2008)

Thursday May 7– Reading Day

- *Good luck studying!*

Final Exam: Thursday May 14 from 11:00am-1:30pm in our normal classroom