

# POLS 341: American Constitutional Law

Cal Poly, Dept. of Political Science  
Winter 2019

Meeting place: Bldg 186 (Const. Innov.), Room C201  
Meeting times: T/TR 12:10-2:00

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T/TH, 2:10-3:30  
And by appointment

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## Course Description

The Constitution of the United States outlined the US system of government; it divided political authority between the branches and between state governments and the federal government. Of course, interpretations of the Constitution and the application of constitutional principles to policy problems has changed over time. In this course, we will study case law to assess how the Supreme Court has defined the boundaries and powers of the different components of the US government.

## Course Goals and Learning Objectives

In this course, we will practice the following Political Science Department learning objectives:

- Department Learning Objective 1: To increase knowledge of the political science discipline.
- Department Learning Objective 2: To increase understanding of basic facts and concepts about the American political system.
- Department Learning Objective 5: To increase recognition of the major problems, the leading policies, and the legal issues confronting contemporary political systems.
- Department Learning Objective 6: To increase acquisition of citizenship skills.
- Department Learning Objective 7: To increase understanding of political science research and analytical skills.
- Department Learning Objective 8: To increase development of writing skills.

## Grading

Your final grade is a weighted average of the assignments listed in the table below.

Assignment	Percent	Due
Attendance	5%	
Participation	5%	
Class Preparedness	10%	
Short Paper	15%	1/31
Short Paper	15%	2/28
In Class Group Project	10%	2/28
Mid Term Exam	20%	2/12
Final Exam (1:10-4:00pm)	20%	3/19

## Short Papers

Learning how to communicate complex ideas in clear and concise written language is both very difficult and the hallmark of a liberal arts education. Through the two short paper assignments, students will have two opportunities to practice their writing skills and receive feedback on the quality of their writing. Writing *well* requires substantial time for conducting background research, organizing ideas, generating an argument, and revising. Students are strongly encouraged to begin papers *at least* one week before they are due. Prudent students will begin brainstorming and researching potential topics the first week of the course.

Students are encouraged to discuss their papers with their classmates, roommates, and me. Students are welcome and encouraged to use the resources of the rhetoric and writing center. I expect high-quality work that demonstrates sophisticated reasoning and clear writing.

**One short paper is due at the beginning of class on 1/31, and the other is due on 2/28.** Papers should be 3-4 pages long, double spaced, with 12-point font and one-inch margins. Both papers are worth 15% of the final course grade. You can choose the order in which you submit the two topics. Students are welcome to turn in papers early.

### Short Paper, Topic A: The SC Got it “Right”

Find a recent US Supreme Court Case (decided within the last ten years) and summarize the facts of the case and the majority opinion. Then, describe why the USSC got this decision either completely or partially “right,” *both* legally AND ethically.

In your paper, you should address both the LEGAL and ETHICAL “correctness” of the case. That is, your paper should include:

1. An interpretation of the constitution that is in line with the outcome of the case. You can use the same reasoning of the majority (or any) opinion, but you must describe why you are persuaded by this reasoning.
2. An explanation of why the outcome of the case is ethically or morally appealing. Make your normative assumptions explicit and justify any normative claims.

### Short Paper, Topic B: The SC Got it “Wrong”

Find a recent US Supreme Court Case (decided within the last ten years) and summarize the facts of the case and the majority opinion. Then, describe why the USSC got this decision either completely or partially “wrong,” *both* legally AND ethically.

In your paper, you should address both the LEGAL and ETHICAL “wrongness” of the case. That is, your paper should include:

1. An interpretation of the constitution that is at odds with the outcome of the case. You can use the same reasoning of a dissenting (or any) opinion, but you must describe why you are persuaded by this reasoning.

2. An explanation of why the outcome of the case is ethically or morally lacking. Make your normative assumptions explicit and justify any normative claims.

## **In Class Project**

Ten percent of your grade is allocated to your participation and the outcome of an in-class, group decision making activity on 2/28.

Each student will be assigned to a mock Supreme Court. I will name a Chief Justice who will guide the discussion and delegate tasks. Each mock court will be given a legal problem to “solve” using doctrine covered in class. The court will decide how to rule on the case and why. A majority opinion that outlines the outcome of the case and legal reasoning will be due at the end of class.

Each student’s grade on the assignment will be a weighted average of the following components:

- (1) The overall quality of the final opinion (75%);
- (2) My evaluation of your contribution/participation (5%);
- (3) Your peers’ evaluations of your contribution to the court (20%).

## **Attendance**

Learning how to think critically – making acute observations, synthesizing knowledge across contexts, asking compelling questions, developing persuasive arguments, and communicating complex ideas – is best done by *doing*. Your presence in class provides several distraction-free (or distraction-reduced) hours a week for you to practice engaging in critical thought with your classmates (and with me!). So, come to class.

As an extra incentive, 5% of your final grade is allocated to attendance. Everyone gets two freebie absences. Things happen. Beyond two absences, only documented illness, family emergency, participation in official university-sponsored events or competitions, and religious holidays will be excused.

\*\*Note, your attendance is functionally worth 20% of your grade because participation and class preparedness points require your attendance.

## **Participation and Class Preparedness**

Five percent of your grade is for in-class participation. These points will be earned by students who consistently demonstrate quality engagement both with the material and with their classmates during discussion.

Ten percent of your total course grade is allocated to class preparedness. Class preparedness will be assessed in three ways: (1) announced and unannounced quizzes on the assigned readings, (2) accurate or insightful responses to cold-called questions, and (3) in-class assignments.

## **Cold-Calling**

Students are expected to come to class prepared to answer questions about the cases and content covered in the day’s readings. I will call names from the roster to ensure all students are called on

an equal number of times. Each student can “pass” once per quarter with no questions asked and no adverse consequences. There are several tactics students can use to promote preparedness (for example, taking written notes as you read, using highlighters that correspond to different pieces of information, etc). I advise students to write case briefs for each case and take notes on the concepts covered in each chapter.

## Case Briefs

I will not collect case briefs; these are for your own use. Case briefs should include the following information:

- Case Name
- Year of Decision
- Circumstances that triggered the dispute
- The statute involved in the case
- The constitutional provision at issue
- The legal question the Court is answering
- The outcome of the case
- The legal rule that the court announces
- The reasoning behind the decision
- Other interpretations (concurring or dissenting opinions)

## Exams

There will be two exams: a midterm and a final. Exams will consist of various types of questions. Students need to bring a scantron form to both exams. A basic study guide will be made available before the exam. **The Midterm will be in class on 2/12, and the final will be during our university-scheduled final exam period, on 3/19 from 1:10-4:00PM in our regular meeting room.**

## Textbook

There is one textbook for this course:

Epstein, Lee and Thomas G. Walker. 2017. Constitutional Law for a Changing America: Institutional Powers and Constraints, 9th Edition. Washington DC: CQ Press.

The book is available at the campus bookstore and can also be bought or rented through online bookstores. Because law changes over time, I *strongly* recommend acquiring the 9th edition.

## Course Policies

### Course Grade Expectations

- **A (93.0-100%) Exceptional Performance** Consistently outstanding work on all course-related tasks at a level that distinguishes the student from other members of the class. A comprehensive and incisive command of the issues, literature, and substantive information

relevant to the course. A frequently demonstrated exceptional capacity for original, creative, and critical thinking and ability to communicate those thoughts both verbally and in writing.

- **A- (90-92.99%) Excellent Performance** Consistently strong work on all course-related tasks. A comprehensive command of the issues, literature, and substantive information relevant to the course.
- **B+ (87-89.99%) Very Good Performance** Consistently acceptable work on all course-related tasks. A very good grasp of the issues, literature, and substantive information relevant to the course.
- **B (83-86.99%) Good Performance** Good and generally consistent work on all course-related tasks. A general understanding of the issues, literature, and substantive information relevant to the course.
- **B- (80-82.99%) Satisfactory Performance** Satisfactory work on course-related tasks. A reasonable understanding of the issues, literature, and substantive information relevant to the course.
- **C+ (77-79.99%) / C (73-76.99%) / C-(70-72.99%) Adequate Performance** Adequate performance on course-related tasks. An understanding of the basic elements of the issues, literature, and substantive information relevant to the course (C+). An inability to go beyond a recitation of basic factual material related to the class (C). Demonstrated weaknesses in the ability to discuss effectively course subject matter using both written and oral communication skills (C-).
- **D+ (67-69.99) /D(65.0-66.99%) Minimal Passing Performance** Barely acceptable work on course-related tasks. A generally superficial and often inconsistent familiarity with the issues, literature, and substantive information relevant to the course.
- **F (Below 65.0%) Unacceptable Performance** Fails to meet minimum course expectations. Fails to demonstrate competency with basic elements of the concepts in the course. Demonstrates an inability to engage in coherent written or oral discussion of course material. Does not satisfy specific course expectations with respect to attendance, deadlines, participation, etc.

## Incomplete Grades

Sometimes classes need to take a backseat to other things going on in your life. Let me know as soon as possible if you will not be able to complete the course in the the time allotted this quarter. I will give incomplete grades, but only if there was an agreement **prior** to the end of the course.

## Late Assignments

You will be penalized for late assignments or missed exams unless the absence/delay is due to documented illness, serious family emergency, participation in official university-sponsored events or competitions, or religious holidays. The penalty for unexcused late assignments is ten percentage points per day. For example, if the quality of your work earned you a 95 on an assignment but you turned the assignment in two days late, you would receive a 75 for the assignment. Extensions will be made on a case-by-case basis to accommodate unexpected difficulties.

## Extra-Credit Work

Extra credit assignments will not be assigned. Do your work, participate, come to office hours. You'll do great without extra credit.

## Communication

In addition to announcements made in class, I will communicate with you through email. You are expected to check email regularly (daily, M-F). Likewise, I will check my email regularly during the work week and respond as promptly as possible, Monday through Friday, 9:00am-5:00pm. While I try to respond to student inquiries promptly, I make no promises about the timeliness of email responses in the evenings and on weekends.

## Integrity of Scholarship

I take the integrity of scholarship very seriously. By taking this course, you affirm that it is against course standards to cheat on exams, to plagiarize, to deviate from my instructions about collaboration on work submitted for grades, to give false information to a faculty member, and to undertake any other form of academic misconduct. You agree that I am entitled to move you to another seat during examinations without explanation. For more information about Cal Poly's expectations for academic integrity see <https://academicprograms.calpoly.edu/content/academicpolicies/Cheating>

**The Department's Definition of Plagiarism** "Plagiarism is defined as the act of using the ideas or work of another person or persons as if they were one's own without giving proper credit to the source. Such an act is not plagiarism if it is ascertained that the ideas were arrived through independent reasoning or logic or where the thought or idea is common knowledge. Acknowledgement of an original author or source must be made through appropriate references; i.e., quotation marks, footnotes, or commentary. Examples of plagiarism include, but are not limited to the following: the submission of a work, either in part or in whole completed by another; failure to give credit for ideas, statements, facts or conclusions which rightfully belong to another; failure to use quotation marks (or other means of setting apart, such as the use of indentation or a different font size) when quoting directly from another, whether it be a paragraph, a sentence, or even a part thereof; close and lengthy paraphrasing of another's writing without credit or originality; use of another's project or programs or part thereof without giving credit." <https://politicalscience.calpoly.edu/students/advising/policy>

**The Department's Definition of Cheating** "Cheating is defined as obtaining or attempting to obtain, or aiding another to obtain credit for work, or any improvement in evaluation of performance, by any dishonest or deceptive means. Cheating includes, but is not limited to: lying; copying from another's test or examination; discussion at any time of answers or questions on an examination or test, unless such discussion is specifically authorized by the instructor; taking or receiving copies of an exam without the permission of the instructor; using or displaying notes, 'cheat sheets,' or other information devices inappropriate to the prescribed test conditions; allowing someone other than the officially enrolled student to represent same." <https://politicalscience.calpoly.edu/students/advising/policy>

## Access, Disability Services, and Resources

I am committed to providing appropriate accommodations. If you have a disability-related need please contact the Disability Resource Center at Cal Poly immediately: <http://drc.calpoly.edu/content/drc-services>, (805) 756-1395. If you need immediate accommodations or physical access, please let me know. You can email me, come to office hours, or schedule a one-on-one meeting. I want everyone to learn and will do what I can to facilitate that process.

## Diversity and Inclusion

My goal is to create a learning environment that enables all students to succeed and know that their experiences are valid. I expect students to treat each other with kindness and civility. For more information on resources related to diversity and inclusion, please visit the Office of University Diversity & Inclusivity website at <http://diversity.calpoly.edu>. If you notice behaviors or institutions in our class that you feel undermine or obscure diversity and inclusion, please share those concerns with me (if you are comfortable doing so). If you are uncomfortable sharing concerns with me, please feel free to contact Dr. Elizabeth Lowham at [elowham@calpoly.edu](mailto:elowham@calpoly.edu)

## Needs Support

If you face challenges securing food, housing, or other human needs know that you are not alone and Cal Poly can help. You can find resources available to support you through Cal Poly's Basic Needs Initiative at <https://www2.calstate.edu/impact-of-the-csu/student-success/basic-needs-initiative> and information about the Food Pantry and Meal Vouchers at <https://studentaffairs.calpoly.edu/hunger>

## Class and Reading Schedule

Any changes to the schedule below will be announced in class as soon as possible and an updated syllabus will be emailed. Readings for each class date should be completed *prior* to the start of class. There are three class days dedicated to Constitutional Law in Current (or historical?) Affairs. We will brainstorm and vote on topics the first week of class.



Date	Topic	Readings	Things Due
T 1/8	Intro, the US Constitution		
Th 1/10	The US Constitution in Context	CLCA, p1-46	
T 1/15	The Judiciary: Judicial Review.  <i>Cases: Marbury v. Madison; Martin v. Hunter's Lessee; Eakin v. Raub</i>	CLCA p47-86	Quiz: the US Const.
Th 1/17	The Judiciary: Constraints of Article III.  <i>Cases: Ex Parte McCradle; Baker v. Carr; Nixon v. US; Flast v. Cohen; Hollingsworth v. Perry</i>	CLCA p86-120	
T 1/22	Class Pick: Con Law in Current Affairs	TBD	
Th 1/24	The Legislature: Intst. Independence and Integrity  <i>Cases: Powell v. McCormack; U.S. Term Limits v. Thornton; Gravel v. US</i>	CLCA p121-144	
T 1/29	The Legislature: Sources and Scope of Power  <i>Cases: McCulloch v. Maryland; McGrain v. Daugherty; Watkins v. US; Barenblatt v. US; South Carolina v. Katzenbach</i>	CLCA p144-181	
Th 1/31	Class Pick: Con Law in Current Affairs	TBD	Short Paper due

Date	Topic	Readings	Things Due
T 2/5	The Executive: Article II  <i>Cases: Bush v. Gore; In re Neagle</i>	CLCA p183-206	
Th 2/7	The Executive: Domestic Powers of the President  <i>Cases: Clinton v. New York; Morrison v. Olson; NLRB v. Canning; Myers v. US; Humphrey's Executor v. US; US v. Nixon</i>	CLCA p206-243	
T 2/12	Mid Term	–	Mid Term
Th 2/14	The Executive: Domestic Powers of the President II  <i>Cases: US v. Nixon; Mississippi v. Johnson; Nixon v. Fitzgerald; Clinton v. Jones; Ex parte Grossman; Murphy v. Ford; United States v. Curtiss-Wright Export Co</i>	CLCA p243-267	
Th 2/21	Diversity Teach In (bld 10, room 222 OR any teach in session, including CLA speaks at 6pm in Miossi Hall)	–	
T 2/26	Separation of Powers, Domestic  <i>Cases: Mistretta v. US; Immigration and Naturalization Service v. Chadha; Bowsher v. Synar</i>	CLCA p269-289	
Th 2/28	Class Pick: Con Law in Current Affairs	–	Short Paper due

Date	Topic	Readings	Things Due
T 3/5	Separation of Powers, Foreign Affairs  <i>Cases: The Prize Cases; Ex parte Milligan; Korematsu v. US</i>	CLCA p289-310	
Th 3/7	Separation of Powers, Foreign Affairs II  <i>Cases: Youngstown v. Sawyer; Dames and Morre v. Regan; Zivotofsky v. Kerry; Hamdi v. Rumsfeld</i>	CLCA p310-340	
T 3/12	In Class Activity: Group Opinion Assignment		
Th 3/14	Wrapping up and Review	–	
T 3/19	Final Exam	–	Final Exam