

# U25 Pol Sci 343: Constitutional Law

Washington University in St. Louis  
Department of Political Science

Spring 2020

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Office:	Seigle 276	Class Hours:	T 5:30 p.m.–8:00 p.m.
Office Hours:	W 10:00 a.m.–12:00 p.m., or by appointment		

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## Course Description

Welcome to Constitutional Law. Many of the most important political debates today involve the structure and powers of the federal government. This course provides an introduction to federal constitutional law, focusing on the institutional powers of the federal government. After an introduction to the American judicial system and methods of constitutional interpretation, we will discuss judicial review, the powers of the branches of the federal government, and the relationship between the states and the federal government.

## Course Goals

When you complete the course, you will be able to:

- Explain the role of each branch of the U.S. federal government in interpreting the U.S. Constitution
- Apply standard approaches to interpreting constitutional text, such as originalism
- Outline the powers of the branches of the U.S. federal government and the relationship between the states and the federal government
- Evaluate claims about the powers or characteristics of the branches of the U.S. federal government
- Analyze novel constitutional questions involving factual or hypothetical scenarios using the text of the U.S. Constitution and related previously decided U.S. Supreme Court cases.

## Materials

- Lee Epstein & Thomas G. Walker. 2019. *Constitutional Law for Changing America: Institutional Powers and Constraints*, 10th ed. Thousand Oaks, CA: CQ Press.

## Course Assignments and Grading

Your performance in the course will be evaluated based on exams, periodic homework assignments, and class participation. Expectations regarding assignments and exams, as well as a description of how letter grades are determined, are below.

### Exams

There will be two exams in the course. A midterm exam will be administered after we complete material regarding the basic institutional powers of each branch of the federal government. The final exam will be administered at the end of the course, after we have covered material regarding separation of powers, federalism, and the Commerce Clause (see the course outline below for more details).

Each exam will be comprised of three sections: multiple choice, short answer, and one essay question. The essay question will be based on a hypothetical scenario (which I will frequently call a “hypo”), somewhat akin to a law school exam question (though less intense).

### Homework Assignments

#### Take-Home Quizzes

There will be a quiz to complete outside of class for each major course section (e.g. the presidency). The quizzes are designed to prepare you for the exams; each quiz will have roughly five multiple choice questions and one (short) hypo. The quizzes will be made available the Friday before the end of the course section and must be submitted by the Friday after the end of the course section no later than 11:59 p.m. (these dates will be marked on the course outline below). Your lowest quiz grade will be dropped.

### Case Briefs

A substantial portion of the reading for this class will be (excerpted) Supreme Court opinions. A very useful way to study court opinions is to write case briefs. On the first day of class, I will explain how to use case briefs to study court opinions, and a case brief template and example will be available on Canvas. I strongly encourage you to write your own case brief for each case we study. I will require you to turn in three case briefs:

- A brief of *Marbury v. Madison*. This case brief will only be graded for completion, not for quality. I will return detailed comments on what you did well and what you can improve in your future case briefs.
- A brief of any case we study after *Marbury* and before the midterm. This brief (and the last one) will be graded on quality.

- A brief on any case we study after the midterm and before the final.

The case brief will be due before the beginning of the class session in which we discuss the case you have briefed. You may submit your brief via email or as a hard copy.

## Class Participation

Students are expected to attend class and be prepared to discuss the reading assignments. In addition to posing questions to the class at large, for which anyone can contribute, I will also call on students to participate in the discussion of specific cases. I understand that from time to time there will be imperfect preparation, in which case I will be happy to move on to another student. Students will not be penalized for occasional lack of preparation; however, if a student is unprepared too frequently, their class participation grade will suffer (see the grading section below). Due to the nature of the course, a substantial portion of our discussions may involve issues open to multiple valid interpretations. Evaluation of class participation will *not* be based on whether I agree with your conclusions, but rather whether you have studied the material and whether you appropriately justify any assertions you make using the course material.

## Grading

Course grades are determined using a weighted average of the following five components:

- Case briefs                    10%
- Class participation        15%
- Take-home quizzes        20%
- Midterm exam                25%
- Final exam                    30%

By default, letter grades will be awarded based on the following cutoffs:

- $90 \leq A- < 92 \leq A < 97 \leq A+$
- $80 \leq B- < 82 \leq B < 87 \leq B+ < 90$
- $70 \leq C- < 72 \leq C < 77 \leq C+ < 80$
- $60 \leq D- < 62 \leq D < 67 \leq D+ < 70$
- $0 \leq F < 60$

However, I reserve the right to improve some or all students' letter grades based on the overall grade distribution at the end of the course. That is, if justified by the distribution of raw scores, I may award final grades on a curve such that the grade of one or more students would be improved, but I will not institute a curve that lowers any student's grade. I may also choose (in addition to or instead of a curve of final scores) to curve the exam grades. If I institute a curve, the formula used to curve grades will be provided to the students when grades are returned, and the curve function  $f$  is guaranteed to satisfy the following properties:

- $f(a) \geq f(b)$  if  $a \geq b$ ; in other words, the rank ordering of individual grades will be preserved.
- $f(x) \geq x$  for all  $x$  observed in the raw grade distribution; in other words, no student will have a lower score after the curve than they had before the curve

- $f'(x) \leq 1$  for all  $x$  observed in the raw grade distribution; in other words, higher scoring students will not be helped more by the curve than lower scoring students.

## Feedback

When I return your graded exams, I will include written feedback on your answers (perhaps written in the margins). If any of my feedback is unclear, or you need or want additional explanation regarding the exam questions and their answers, I will be happy to meet with you during office hours or by appointment to discuss the exam. Please note that an in-person meeting for additional feedback or explanation is not sufficient to request changes to your exam grade; if you feel your exam grade should be adjusted, please carefully consult the regrading procedure outlined in the course policies section below.

## Course Policies

### Academic Integrity

Ethical behavior is an essential component of learning and scholarship. Students are expected to understand, and adhere to, the University's academic integrity policy: <https://wustl.edu/policies/undergraduate-academic-integrity.html>. Students who violate this policy will be referred to the Academic Integrity Policy Committee. Penalties for violating the policy will be determined by the Academic Integrity Policy committee, and can include failure of the assignment, failure of the course, suspension or expulsion from the University. If you have any doubts about what constitutes a violation of the Academic Integrity policy, or any other issue related to academic integrity, please ask me.

### Inclusive Learning Environment Statement

The best learning environment—whether in the classroom, studio, laboratory, or fieldwork site—is one in which all members feel respected while being productively challenged. At Washington University in St. Louis, we are dedicated to fostering an inclusive atmosphere, in which all participants can contribute, explore, and challenge their own ideas as well as those of others. Every participant has an active responsibility to foster a climate of intellectual stimulation, openness, and respect for diverse perspectives, questions, personal backgrounds, abilities, and experiences, although instructors bear primary responsibility for its maintenance.

A range of resources is available to those who perceive a learning environment as lacking inclusivity, as defined in the preceding paragraph. If possible, I encourage students to speak directly with me about any suggestions or concerns they have regarding a particular instructional space or situation. Alternatively, students may bring concerns to another trusted advisor or administrator (such as an academic advisor, mentor, department chair, or dean). All classroom participants—including faculty, staff, and students—who observe a bias incident affecting a student may also file a report (whether personally or anonymously) utilizing the online Bias Report and Support System.

## Attendance Policy

As class participation is an element of your grade (and an essential part of learning in this course), attendance is critical. There may be circumstances (for example, illness) that may preclude your attendance of a class session. If so, let me know by email where possible. Your class participation grade may be negatively affected by more than 4 absences. After your third absence, I will contact you via email to provide a warning.

## Makeup Exams

The exam dates are listed below in the course schedule. If you know of a compelling reason that you cannot be present during a scheduled exam, please contact me via email at least one week ahead of time to discuss scheduling a makeup exam.

If you miss an exam without previously scheduling a makeup exam, you will likely not be permitted to take the exam. Only in extreme circumstances will makeup exams be permitted when not scheduled ahead of time.

## Regrading Policy

If you believe I have committed an error in grading your exam, please submit a regrade request to me in writing via email outlining the specific errors you have discovered and explaining why you believe them to be grading errors. This request must be submitted within three days of receiving your graded exam.

## Student Resources

- **DISABILITY RESOURCES:** If you have a disability that requires an accommodation, please speak with me and consult Disability Resources; their website is <https://students.wustl.edu/disability-resources/>. Disability Resources staff will determine appropriate accommodations and will work with me to make sure these are available to you.
- **WRITING ASSISTANCE:** For additional help on your writing, consult the expert staff of The Writing Center (<https://writingcenter.wustl.edu>) in Olin Library (first floor). It can be enormously helpful to ask someone outside a course to read your essays and to provide feedback on strength of argument, clarity, organization, etc.
- **THE UNIVERSITY'S PREFERRED NAME POLICY FOR STUDENTS,** with additional resources and information, may be found here: <https://registrar.wustl.edu/student-records/ssn-name-changes/preferred-name-policy/preferred-name-policy-student/>.
- **ACCOMMODATIONS BASED UPON SEXUAL ASSAULT:** The University is committed to offering reasonable academic accommodations to students who are victims of sexual assault. Students are eligible for accommodation regardless of whether they seek criminal or disciplinary action. Depending on the specific nature of the allegation, such measures may include but are not limited to: implementation of a no-contact order, course/classroom assignment changes, and other academic support services and accommodations. If you need to request such accommodations, please direct your request to Kim Webb ([kim\\_webb@](mailto:kim_webb@)

[wustl.edu](http://wustl.edu) ), Director of the Relationship and Sexual Violence Prevention Center. Ms. Webb is a confidential resource; however, requests for accommodations will be shared with the appropriate University administration and faculty. The University will maintain as confidential any accommodations or protective measures provided to an individual student so long as it does not impair the ability to provide such measures.

If a student comes to me to discuss or disclose an instance of sexual assault, sex discrimination, sexual harassment, dating violence, domestic violence or stalking, or if I otherwise observe or become aware of such an allegation, I will keep the information as private as I can, but as a faculty member of Washington University, I am required to immediately report it to my Department Chair or Dean or directly to Ms. Jessica Kennedy, the University's Title IX Coordinator. If you would like to speak with the Title IX Coordinator directly, Ms. Kennedy can be reached at (314) 935-3118, [jwkennedy@wustl.edu](mailto:jwkennedy@wustl.edu) , or by visiting her office in the Women's Building. Additionally, you can report incidents or complaints to Tamara King, Associate Dean for Students and Director of Student Conduct, or by contacting WUPD at (314) 935-5555 or your local law enforcement agency.

You can also speak confidentially and learn more about available resources at the Relationship and Sexual Violence Prevention Center by calling (314) 935-8761 or visiting the 4th floor of Seigle Hall.

- **BIAS REPORTING:** The University has a process through which students, faculty, staff and community members who have experienced or witnessed incidents of bias, prejudice or discrimination against a student can report their experiences to the University's Bias Report and Support System (BRSS) team. See: <https://brss.wustl.edu>
- **MENTAL HEALTH:** Mental Health Services' professional staff members work with students to resolve personal and interpersonal difficulties, many of which can affect the academic experience. These include conflicts with or worry about friends or family, concerns about eating or drinking patterns, and feelings of anxiety and depression. See: <https://shs.wustl.edu/MentalHealth>

## Disclaimer

I reserve the right to make modifications to this information throughout the semester. If I do so, I will inform you via email, and an up-to-date version of the syllabus can always be found on my website at [www.jbduckmayr.com/teaching](http://www.jbduckmayr.com/teaching)

## Schedule

The schedule is tentative and subject to change. References to readings from the textbook listed above are given in the form EW, pages XX–ZZ. References to readings from the U.S. Constitution are given in the form U.S. Const. Art. Z, § A. For example U.S. Const. Art. I, §§ 2, 3, and 5 refers to reading sections 2, 3, and 5 of Article I (Legislative Branch). All readings from the U.S. Constitution can be found for free online, for example at <http://constitutionus.com/>.

### I. Introduction – Week One (January 14, 2020)

- Introduction to the class, the American legal system, and approaches to constitutional interpretation.
- Recommended reading:
  - EW pages 3–42.

### II. The Judiciary

#### (A) Judicial Review – Week Two (January 21, 2020)

- Required reading:
  - U.S. Const. Art. III §§ 1 and 2 and Art. VI § 2
  - EW pages 61–76
- Includes the cases:
  - *Marbury v. Madison* (1803) and
  - *Martin v. Hunter's Lessee* (1816)
- ***Marbury* brief due before class**

#### (B) Constraints on Judicial Power – Week Three (January 28, 2020)

1. Jurisdiction
  2. Justiciability
  3. Standing
- Required reading
    - U.S. Const. Art. III §§ 1 and 2
    - EW pages 86–94, 102–107, 112–118
  - Includes the cases:
    - *Ex parte McCardle* (1869)
    - *Nixon v. United States* (1993) and
    - *Hollingsworth v. Perry* (2013)
  - **Judiciary quiz available on 01/24 and due on 01/31**

### III. The Legislature

#### (A) The Sources and Scope of Congressional Power – Week Four (February 4, 2020)

1. Enumerated powers
2. Implied powers
3. The power to investigate

- Required reading
    - U.S. Const. Art. I §§ 1, 8, and 9
    - EW pages 144–154, 161–170
  - Includes the cases:
    - *McCulloch v. Maryland* (1819)
    - *Watkins v. United States* (1957)
    - *Barenbaltt v. United States* (1959)
- (B) Membership in Congress – Week Five (February 11, 2020)
- Required reading:
    - U.S. Const. Art. I §§ 2, 3, and 5
    - EW pages 121–138
  - Includes the cases:
    - *Powell v. McCormack* (1969)
    - *U.S. Term Limits v. Thornton* (1995)
  - **Legislature quiz available on 02/07 and due on 02/14**

#### IV. The Executive

- (A) Selection of the President – Week Five (February 11, 2020)
- Required reading:
    - U.S. Const. Art. II § 1 and Amend. XII
    - EW pages 184–194
  - Includes the case:
    - *Bush v. Gore* (2000)
- (B) The Executive Power – Week Six (February 18, 2020)
- Required reading:
    - U.S. Const. Art. II §1 cl. 1, §§ 2 and 3
    - EW pages 196–204
  - Includes the case:
    - *In re Neagle* (1890)
- (C) Domestic Powers of the President – Weeks Six and Seven
1. Veto – Week Six (February 18, 2020)
    - Required reading:
      - U.S. Const. Art. I § 7
      - EW pages 206–210
    - Includes the case:
      - *Clinton v. City of New York* (1998)
  2. Appointment/Removal – Week Six (February 18, 2020)
    - Required reading:
      - U.S. Const. Art. II § 2
      - EW pages 228–237



- Includes the cases:
  - *Myers v. United States* (1926)
  - *Humphrey's Executor v. United States* (1935)
- 3. Executive Privilege – Week Seven (February 25, 2020)
  - Required reading:
    - EW pages 238–243
  - Includes the case:
    - *United States v. Nixon* (1974)
- 4. Immunity – Week Seven (February 25, 2020)
  - Required reading:
    - EW pages 243–256
  - Includes the cases:
    - *Mississippi v. Johnson* (1867)
    - *Nixon v. Fitzgerald* (1982)
    - *Clinton v. Jones* (1997)
  - **Executive quiz available on 02/21 and due on 02/28**

(D) (Foreign policy powers discussed under Separation of Powers)

**\*\*\* Midterm Exam on March 3, 2020**

V. Separation of Powers

(A) Domestic – Week Nine (March 17, 2020)

1. Delegation
  2. Legislative Veto
- Required reading:
    - EW pages 269–284
  - Includes the cases:
    - *Mistretta v. United States* (1989)
    - *INS v. Chadha* (1983)

(B) Foreign policy – Week Ten (March 24, 2020)

- Required reading:
  - EW pages 263–265, 289–291, 301–310, 310–316, 319–328, 331
- Includes the cases:
  - *United States v. Curtiss-Wright Export Corp.* (1936)
  - *Korematsu v. United States* (1944)
  - *Youngstown Sheet & Tube Co. v. Sawyer* (1952)
  - *Zivotofsky v. Kerry* (2015)
- **Separation of Powers quiz available on 03/20 and due on 03/27**

VI. Federalism – Week Eleven (March 31, 2020)

(A) Introduction to “Our Federalism”

## (B) Preemption

- Required reading:
  - EW pages 349–355, 399–413
- Includes the cases:
  - *McCulloch v. Maryland* (1819)
  - *Missouri v. Holland* (1920)
  - *Crosby v. National Foreign Trade Council* (2000)
  - *Arizona v. United States* (2012)
- **Federalism quiz available on 03/27 and due on 04/03**

## VII. Commerce Clause

## (A) Introduction and Historical Commerce Clause – Week Twelve (April 7, 2020)

- Required reading:
  - EW pages 415–422, 435–438
- Includes the cases:
  - *Gibbons v. Ogden* (1824)
  - *Hammer v. Dagenhart* (1918)

## (B) Modern Commerce Clause – Week Thirteen (April 14, 2020)

- Required reading:
  - EW pages 463–466, 472–478, 486–500
- Includes the cases:
  - *Wickard v. Filburn* (1942)
  - *United States v. Lopez* (1995)
  - *Gonzales v. Raich* (2005)
  - *NFIB v. Sebelius* (2012)
- **Commerce Clause quiz available on 04/10 and due on 04/17**

**\*\*\* Final Exam on April 21, 2020**