University of Central Florida
Department of Political Science

American Constitutional Law II (POS 4604)

Spring 2018

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Office Hours: TR 1:00-2:30 or by appointment
Semester Credit Hours: three (3)
Class Place and Time: HPA1 116, 10:30-11:50 am TR

Required Texts

Epstein, Lee, and Thomas G. Walker. 2016. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. Vol II. 9th ed. Washington: Sage/Congressional Quarterly (978-1-4833-8401-6).

Lewis, Anthony. 1964. *Gideon's Trumpet*. New York: Vintage (ISBN 0-679-72312-9).

Strunk, William, Jr., and E.B. White. 2000. *The Elements of Style*. 4th Ed. New York: Longman (ISBN 0-205-30902-X).

Optional Text

McCloskey, Robert G. 2016. *The American Supreme Court*. 6th ed. (rev. by Sanford Levinson). Chicago: University of Chicago Press (ISBN 978-0-226-29689-0).

Course Digitial Reserves (available on Canvas)

Committee on Publications, American Political Science Association. 2006. *Style Manual for Political Science*. Rev. ed. Washington, DC: APSA (ISBN 1-87814-733-1).
Sample Brief (under course name)

Course Objectives

This is an intensive course is designed to examine the text and substance of the United States' Constitution. Specifically, we examine issues involving civil rights, civil liberties, and criminal procedures guaranteed by the document and interpreted by the courts. Our theoretical framework for evaluating constitutional jurisprudence considers the context of the framers' theory of law and order and the present policy questions facing our social system.

The first section of the course is devoted to understanding the structure of the courts and an overview of judicial decision-making. We evaluate the court's role in facilitating or limiting civil rights and liberties. You are introduced to legal terms and the process of conducting legal research. The section concludes with a discussion of the right to privacy and the right to an abortion, two issues that have generated a tremendous amount of public controversy.

The second section continues the discussion of the "freedoms," focusing specifically on the rights guaranteed through the First Amendment. This section focuses on the freedoms of speech and of the press and examines the principle of "symbolic speech," hate speech, and the difficult issues faced by the Court in deciding obscenity and pornography cases. This section also includes an extended discussion of the freedom of religion, including the distinction between Free Exercise and Establishment Clause cases.

The third section shifts gears to evaluate briefly the criminal rights and procedures that are guaranteed under the Fourth, Fifth, Sixth, and Eighth Amendments. This section addresses criminal rights of the accused and the limitations on police powers. Specifically, we address all rights that attach to the accused from police suspicion through post-conviction. There is also a discussion of the death penalty.

Course Goals

By the end of this course, you should be able to understand and discuss:

- the past and current socio-political climate of the Supreme Court's decision-making process.
- legal concepts utilized by the Supreme Court and important to U.S. Constitutional jurisprudence.
- recent trends in Constitutional decision-making.
- the legal underpinnings and parameters of Constitutional jurisprudence.
- current standards and legal tests utilized by the federal courts in deciding Constitutional conflicts.
- cases involving: equal protection, freedom of religion; freedom of speech; freedom of the press; the right to privacy; abortion; criminal rights; and, criminal procedure.

Additionally, you should be able to:

- understand court decisions.
- conduct appellate court research.
- argue principles involved in Constitutional cases.
- articulate policy arguments for or against governmental infringement of individual rights.

Course Evaluation

Grading Scale (as a Percentage of Total Points)

GRADE	PERCENTAGE
A	90-100
B+	89-87
B	86-80
C+	79-77
C	74-70
D+	69-67
D	66-60
F	59 or less

Weighting Scheme

COMPONENT	WEIGHT
First Short Paper	15%
Second Short Paper	15%
Third Short Paper	15%
Final Research Paper	25%
Class Participation	15%
Surveys	15%

In calculating averages, the *only* rounding will be up from 0.5 below the grade required in the *professor's sole professional discretion*. For example, 89.5 *may* earn an "A-," 79.5 *may* earn a "B-," and so on. ***I give you opportunities to earn extra credit all semester long. Do not expect that I will give you any more points at the end of the term. I interpret this clause very stringently.***

Sbort and Long Papers

As this is a small class, we will write three short papers (about 5-7 pages in length) addressing a key concept in the course. These are used in the place of traditional exams. More details on this in class.

At the end of this course, we will write a long research paper (10-15 pages), exploring the development of an important concept or idea within the area of American Constitutional Law in the past century. More on this later.

Class Participation

Since most of you would like to go to law school someday, class topics are discussed using the Socratic Method typical of most law schools. **You are expected to read and prepare for discussions EVERY DAY—just as you will**

be required to be prepared every day in whatever job you take after graduation. Many times, the class discussion does not keep pace with the syllabus. Accordingly, you should allow enough time in your daily schedule to read, and then re-read the relevant portions of the texts. You should make notes in the margins to refresh your recollection during class so that you do not have re-read the entire passage to remember the key aspects of the material. You, thus, must ***earn the component*** of the total points assigned to participation, rather than merely obtaining them as a sole result of attending class regularly. To earn the full number of points for this component, you must inject yourself into the class conversation. If you simply sit on your hands and speak only when called on, you will receive only partial credit for that component of the final grade. Quality as well as quantity is considered in allocating this component of the course grade. These are NOT "gimme points," as they apparently are in other instructors' courses.

Daily Surveys

Daily Surveys are due following each class day. They ask two questions for each day: what is the most important topic discussed that day and what topic needs further elaboration. They constitute 15 percent (15%) of your final grade. They are accessed through the course Canvas site. They are due by 5:00 pm on the day immediately preceding the next class day.

Course Policies

There are several points you should note. Those students who have taken courses with me previously will find very few surprises.

No Excuses

First, this class operates under a "No-Excuse" policy. It is incumbent upon you to be responsible for the notes given in the unlikely event that you miss class. If you miss class, you NEED NOT inform me about it or warn me about an impending absence. If you are absent, the policies of the course and the syllabus still apply even if you tell me of your absence. Because this course is an upper division class, you will quickly learn that if you intend to pass, you should plan on regularly attending class, keeping up with the lecture, and completing the assignments as they are given. There are ABSOLUTELY NO EXCUSES FOR MISSING AN EXAM and not contacting me in advance. Unexcused exams will receive a failing grade (0 points). In the event you are unable to attend class, you will not be able to make-up assignments, extra credit opportunities, or exams. Persons with extenuating circumstances should, of course, see me if they are having problems.

Accommodations for Physically Challenged Students

Second, if you are physically challenged, every attempt is made to accommodate your learning needs. See me by the end of the first week of class so that we can make appropriate arrangements. This class operates in accordance with the Office of Student Accessibility Services here at the University and federal guidelines governing the *Americans with Disabilities Act* (1990).

Plagiarism and Cheating: Don't Let it Happen to You!

Third, please consult the policy regarding plagiarism and cheating which is attached. Each of you must review the University policy on the penalties for plagiarism. Almost every semester, one or more students appropriate the published work of someone else, and I have had the unfortunate responsibility of failing those students and seeking disciplinary action against them. You are on notice that I have failed students because they decided to risk their academic careers by choosing the easy way out. If you are unsure what constitutes plagiarism, then see me immediately.
Caveat Emptor

Fourth, this is an upper division course with correspondent responsibilities for you. It is intensive in many respects. I expect that you will devote between **at least *20-25 hours per week outside of class*** studying, preparing briefs, reading, and meeting with other students to prepare your oral argument. Make no mistake: this is not an easy course. If you are interested in the legal profession, this course is only a very small taste of what it is like.

Socratic Method as a Pedagogical Modality

Fifth, class topics are discussed using the Socratic Method. This means that you are expected to answer questions about the text and material that we have covered in class AND TO HAVE THOUGHT ABOUT ITS IMPLICATIONS. You will quickly learn that one of my favorite questions is, "why?". You are expected to read and prepare for discussions. I assume that the reading for the day will be done for the day that it is assigned. LEARN TO PACE YOURSELF ACCORDINGLY! I grade not only the quantity of your participation, but its quality too. Be forewarned.

Respect for Colleagues and Their Comments

Additionally, you are on notice that this course engages in difficult discussions about our political leaders. Hopefully we will have intelligent arguments regarding the concepts involved in the course. Above all, everyone will have the right to express their opinions freely and openly without fear of reprisal from other students or myself.

Attendance

Seventh, I do not have a mandatory attendance policy. However, students who regularly miss class will find that their course grades are adversely affected. However, I send around attendance sheets at the beginning of each class so I know who has attended class. This information is solely for the purpose of knowing whether you regularly attended class, even if you are not frequently called on to answer questions. Persons who are "borderline" in their grades ***may*** receive the "benefit of the doubt" in the final computation of grades if they have frequently attended class. It is YOUR responsibility to sign the attendance sheet. If you do not sign in, you are NOT PRESENT. You are responsible for all material discussed and announcements made during class even if you are not present. Being absent, even with my knowledge, does not immunize you from the provisions and requirements of the syllabus.

Signing someone else's name to the attendance sheet constitutes academic dishonesty and will earn you an "F" in the course. The sheet is sent around at the beginning of each class. If you are late, you must see me after class to sign it; otherwise, I will not give you the "benefit of the doubt"!

Furthermore, as late arriving students are disruptive to the learning environment, please arrive on time and stay the full period. You may not leave the class for any reason until dismissed, unless you are physically ill. Repeated violation of this rule will result in a personal discussion with you and, eventually, a diminution of your final course grade. If someone does arrive late or leave early, despite this rule, I will temporarily stop class until the person has seated themselves so as to allow all class members the uninterrupted opportunity to hear all class discussion. *Consider how you would act if you were an attorney and had to appear in court at a specified time: would you be late or leave early?* Now is the time to start acting like real attorneys, and leave behind the bad habits of a college student.

Cell Phones and Other Electronic Devices

Eighth, as a courtesy to your fellow students (and me), please SILENCE YOUR CELL PHONES AND BEEPERS at the beginning of each class. If a cell phone/beeper rings during class, I will simply stop until the person has silenced it. Repeated violation of this rule will result in a personal discussion with you and, eventually, a diminution of your final course grade.

Laptops and Audio Taping Allowed

Ninth, I do not mind if students use lap top computers or audiotapes during class. Please note, however, that because I allow you to use such devices, I may request that students who have missed class be allowed access to your notes. Students who miss class should see me before requesting your notes, and the student who has missed must

make all reasonable accommodations to meet your scheduling limitations for conducting the exchange. The student providing the notes is not responsible for providing any materials and should not incur any expenses associated with the exchange. Students providing the notes are not required to provide notes for more than three (3) lecture periods that have been missed. If you feel that you are being coerced about providing your notes to someone who is not attending class, please see me immediately. I reserve the right to revoke the privilege of using the above devices.

Word Processing Required

Tenth, all assignments (with the exceptions of exams and quizzes done in class) MUST be typewritten or word processed. If you do not know how to use a computer or word processor, it is strongly recommended that you learn to do so. If you are concerned about this, please see me. Numerous tutorials are available on campus to assist you. You should allocate enough time for printer cartridges to run dry and pets to eat papers and computer disks! You laugh, but trust me: I have heard every excuse in the book! Late assignments will receive reduced grades at a rate of a letter grade per day late. This is to ensure that everyone is treated fairly. Printout should be on clean paper, not marred by printer ink or other artifacts. I will deduct points from your assignments if they are not professionally prepared, including the absence of your name on them.

Duplicates of Assignments

While I have never lost an assignment, I require that you make copies of all work submitted to me in the unlikely event that something should happen. In the event that I should need a copy of the assignment, and you are not able to provide it, you cannot receive credit. Even after I have returned materials to you, please hold on to the work until after you have received your grade from the Registrar. This protects you from any possibility that you might receive an erroneous grade.

Technological Tools

Twelfth, I require that everyone learn how to use e-mail and navigate the Canvas site.. Its use can facilitate your comprehension of the course material. I have found that this encourages students to communicate with me about questions you may have regarding the material discussed in class. You are responsible for any assignments or other information that I distribute on e-mail. If you already have an e-mail account (either through the University or a commercial server), please do not sign-up for an additional account, but give me your address. You should check your mail at least once a day as I post any changes about class assignments to your account. If your email address changes during the course of the semester, you MUST inform me of that change. Failure to do so will mean that you will not receive the email broadcasts announcing important matters for the class. You will nevertheless be held responsible for their content.

Syllabus NOT a Contract

Finally, this syllabus is not deemed to be a contract. I reserve the right to change any of the exam times or assignments by providing you with a forty-eight (48) hour notice of such changes. Such changes are either announced in class or sent on e-mail or both. Therefore, you are responsible for any changes that may occur during the course of the session. If you are late, you should check to be sure you did not miss anything. As such, your absence in class is not deemed a sufficient excuse as to why work is incomplete. In the event that the University administration closes school for any reason (e.g., hurricane), any assignments or examinations that were scheduled on the cancelled class day will be due at the next regularly scheduled class meeting.

Topics and Assignments

All assignments are due *at the beginning of class* (that is, 10:30 am, Eastern Time) for the date assigned.

I. Decision-Making, Judicial Review, the Right to Privacy and Equal Protection

JAN. 8 - JAN. 12
Overview of Course, Constitutional law and legal terms

Readings:

Syllabus and attachments
U.S. Constitution and Amendments-**EPSTEIN AND WALKER**, pp. 773-784
Skim **EPSTEIN AND WALKER**, "Understanding the U.S. Supreme Court," pp. 10-42

-self-introduction due on Canvas by Friday, Jan. 12 by 17:00

JAN. 15 – JAN. 19
Judicial decision-making
Conducting legal research

Readings:

- **-EPSTEIN AND WALKER**, "The Judiciary: Institutional Powers and Constraints," pp. 45-63

Assignments:

-Review *Marbury v. Madison*, p. 46
-Review *Ex parte McCardle*, p. 57

NOTE: Monday, January 15 is a University holiday to celebrate Dr. Martin Luther King, Jr.'s birthday.

JAN. 22 – JAN. 26
Selective Incorporation

Readings:

-EPSTEIN AND WALKER, "Incorporation of the Bill of Rights," pp. 66-86

Assignment:

-review *Barron v. The Mayor and City of Baltimore*, p. 67
-review *Palko v. Connecticut*, p. 376
-review *Duncan v. Louisiana*, p. 80

JAN. 29 – FEB. 2
"Privacy" and the Constitution: What hath little Norma wrought?

Readings:

-**EPSTEIN AND WALKER**, "The Right to Privacy," pp. 390-458

Assignment:

-review *Griswold v. Connecticut*, p. 394

-review *Roe v. Wade*, p. 402
-review *Planned Parenthood of Southeastern Pennsylvania v. Casey*, p. 415
-review *Lawrence v. Texas*, p. 430
-review *Obergefell v. Hodges*, p. 438
-review *Cruzan by Cruzan v. Director, Missouri Department of Health*, p. 450

FEB. 5 – FEB. 16
Equal Protection of the Laws: Whose rights are these anyway? Does the Majority Have Rights, or Only the Minority?

Readings:

-**EPSTEIN AND WALKER**, "Discrimination," pp. 609-715

Assignment:

-review *Plessy v. Ferguson*, p. 611
-review *Brown v. Board of Education (Brown I)*, p. 619
-review *Swann v. Charlotte-Mecklenburg Board of Education*, p. 626
-review *Craig v. Boren*, p. 675
-review *U.S. v. Virginia*, p. 681
-review *Loving v. Virginia*, p. 644
-review *Regents of California v. Bakke*, p. 649
-review *Grutter v. Bollinger*, p. 660

***** FIRST SHORT PAPER DUE, THURS., FEB. 8 *****

II. Freedom of Speech, Press, and Religion

FEB. 19 – MAR. 9
Exhuming McCarthy and offending Falwell

Readings:

-EPSTEIN AND WALKER, "Freedom of Speech, Assembly, and Association," pp. 191-289

Assignments:

-review *Schenck v. United States*, p. 194
-review *Gitlow v. New York*, p. 196
-review *Dennis v. United States*, p. 211
-review *Brandenburg v. Ohio*, p. 217
-review *Cohen v. California,* p. 236
-review *The New York Times Company v. Sullivan*, p. 322
-review *Boy Scouts of America v. Dale*, p. 286

***** SECOND SHORT PAPER DUE, THURS., MAR. 8 *****

MAR. 12 – MAR. 16

***** SPRING BREAK *****

MAR. 19 – MAR. 30
*Speech for me, but not for thee: Does the Constitution Protect Even **Hateful** Speech?*

Readings:

-EPSTEIN AND WALKER, "Freedom of the Press," pp. 293-318

Assignments:

-review *Near v. State of Minnesota ex rel. Olson*, 295
-review *New York Times v. United States*, 298
-review *Branzburg v. Hayes*, p. 314
-review *Snyder v. Phelps*, p. 248
-review *Hustler Magazine v. Falwell*, p. 331
-review *Texas v. Johnson*, p. 228

APR. 2 – APR. 6
The Godless U.S. society: In Secular Humanists We Trust?

Readings:

-**EPSTEIN AND WALKER**, "Religion: Exercise and Establishment," pp. 91-182

Assignments:

-review *Everson v. Board of Education*, p.132
-review *Lemon v. Kurtzman*, p. 146
-review *School District of Abington Township v. Schempp,* p. 139
-review *Town of Greece v. Galloway*, p. 171
-review *Sherbert v. Verner*, p. 106
-review *Wisconsin v. Yoder*, p. 110
-review *Employment Division, Department of Human Resources of Oregon v. Smith*, p. 116
-review *Church of the Lukumi Babalu Aye v. City of Hialeah* (course reserves)
-review *City of Boerne v. Flores*, p. 124

***** THRD SHORT PAPER DUE, THURS., APR. 5 *****

APR. 9 – APR. 20

III. Criminal Rights: Protecting the Innocent and the Guilty ("Just the Facts, Ma'am")

Readings:

-EPSTEIN AND WALKER, "The Criminal Justice System and Constitutional Rights," pp. 461-466
-EPSTEIN AND WALKER, "Investigations and Evidence," pp. 468-532
-**EPSTEIN AND WALKER**, "Attorneys, Trials, and Punishments," pp. 536-595

Assignments:

-review *Terry v. Ohio*, p. 494
-review *Katz v. United States*, p. 470
-review *Mapp v. Ohio*, p.500
-review *Miranda v. Arizona*, p. 520
-review *Powell v. Alabama*, p. 537

-review *Gideon v. Wainwright*, p. 541
-review *Batson v. Kentucky*, p. 551
-review *Atkins v. Virginia*, p. 583

APR. 23 – APR. 27

***** FINAL RESEARCH PAPER DUE *****
Friday, April 27, 2018 by 12:00 pm

Free at Last! Free at Last! Thank God Almighty, Free At Last!

Policy on Cheating and Plagiarism

The Golden Rule: A Handbook for Students (University of Central Florida) defines academic dishonesty as including cheating and plagiarism. Cheating is defined as "unauthorized assistance; communication to another through written, visual or oral means. The presentation of material which has not been studied/learned, but obtained through someone else's efforts and used as part of an examination, course assignment or project constitutes a violation. The unauthorized possession or use of examination or course related material may also constitute cheating" (p. 6). Plagiarism is defined as the deliberate use of another's work "without any indication of source, thereby attempting to convey the impression that such work is the student's own. Any student failing to properly credit ideas or materials taken from another is plagiarizing. Any student who knowingly helps another violate academic behavior standards is also in violation of the standards (p.6-7)".

Normally, the penalty for a violation of this policy is an "F" in the course.

Statement of ADA Compliance

I cooperate with the Office of Student Accessibility Services to make reasonable accommodations for qualified students with disabilities. Please present your written accommodation request on or before the sixth class day (beginning of the second week of classes).

[Portions of this policy were adapted from the University of North Texas Department of Political Science Policy on Cheating and Plagiarism]