

CORE COURSE IN PUBLIC LAW

Government 384N-2 (39170) / Law 379M (29465)
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The University of Texas at Austin

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General Description of the Course

This course provides an overview of the field of public law in political science. Because the focus is political science, most readings are by political scientists even though public law is an interdisciplinary field. A one semester course cannot include all topics in the field, nor can it assign all the "classics" or important works on the topics that are covered.¹ Nevertheless, this course attempts to do some of both. The reasons for selecting particular readings vary. Some of the reasons include: 1) the reading is a classic, or it is familiar to most students of public law, or it is part of the intellectual history of the field; 2) the reading is seen as important by the profession; e.g., it has recently been published in a major journal, or it has won the American Political Science Association's award for the best book or article in public law; 3) the reading is an example of an area or method of research. Given these criteria, all readings are not equally good or interesting; indeed, you may consider some dreadful, but it is important to be aware of them. Topics are selected because they are (or have been) considered important in the public law field or because they might be important in the future. The course should provide students with a good sense of this very broad field and highlight opportunities in research and teaching.²

The course has two basic organizational rubrics. The first part of the course is a brief examination of the evolution of the field, which has frequently been driven by methodological approaches. The second part of the course is a more question or topic driven approach.

Reading assignments are in a separate document.

Requirements³

Class participation (≈25%) You are expected to read all assigned materials and to participate actively in class discussions. Each week, a pre-selected group of students (usually two) will initiate the discussion. Each student in the group will prepare a discussion guide that must be distributed to the entire class via Blackboard no later than 5 pm the day before the discussion so as to give everyone time to reflect on it. It should under no circumstances exceed 5 pages (and will usually be much shorter than that). These guides will not be graded per se, but they will serve as part of our evaluation of your class discussion. Your discussion guide should very briefly summarize the main argument(s) in the readings (note that there is a difference between summarizing the argument and summarizing the entire reading) then turn to their

¹ Short shrift is given to works on jurisprudence, legal theory, and Constitutional interpretation and history. These topics are considered more fully in other courses.

² Familiarity with the literature and topics assigned in this course is a necessary though not a sufficient condition for preparation for the preliminary examination in public law. For example, public law concentrators are required to have a basic knowledge of Constitutional law among other things that are not covered in the course.

³ The requirements and readings are subject to change depending upon class size, composition, or pedagogical considerations.

critical examination. It should include a list of no fewer than 5 and no more than 10 questions that will provoke a comprehensive discussion of the readings. The questions should include ones related to theoretical frameworks, the strength of arguments, substantive importance, and overall quality. By the end of each discussion we should all know at least the following: what question(s) does this set of readings purport to answer? What explicit and implicit assumptions regarding the nature of courts and law does each author embrace? How good are the arguments and the evidence? What can we learn from these readings? What have the authors failed to teach us?

Essay (~25%) The essay is a thoughtful reflection of 5-7 pages on at least one of the broad theoretical questions addressed in the course. Your reflection should demonstrate knowledge that you have gained from our readings and discussion, and discuss competing approaches to the question. Examples of such questions are: Where does judicial power/autonomy come from? Can there be a rule of law in a non-democratic setting? Can we reasonably expect courts to uphold minority rights? What is the basic function of courts (including but not limited to the Supreme Court) in a political system? Does judicial independence exist or is it merely a myth used to legitimize an oppressive instrument of social control and capitalist manipulation? Are constitutions (especially in countries with judicial review) inherently conservative instruments meant solely to insulate the preferences of dominant elites from democratic politics? Do we like courts and constitutions because we are liberal elites who distrust the masses or because we believe in individual freedom and dignity? More details about these papers will be given in class.

Research project (~50%) You will submit either a research prospectus or a research paper of approximately 18-30 pp on a topic of your choice, though it must be related to the issues raised in the course. A prospectus should be a proposed plan of study for either a dissertation or a major article. A successful prospectus will address the existing literature, lay out a problem and a theory, and propose a feasible plan to answer the problem in light of the theory. A research paper should be one that would be of the quality that might be published if expanded. Publications are supposed to make an original contribution (though one may question how close we come to that ideal). Thus, you will need to make some original claim in your paper, not just repeat in re-processed form what is already in the literature. The research paper is intended to be empirical, though we can discuss exactly what this means during the course of the semester. You will be required to discuss your project with at least one of the professors before beginning work on the paper. More details on both these options will be given in class.