

Constitutional Law: Institutional Powers

POLS 4610 (2020 Spring Term)
Auburn University at Montgomery
College of Liberal Arts and Social Sciences
Department of Political Science and Public Administration

Professor: David A. Hughes, Ph.D.
Meeting Times: M/W, 9:25 to 10:40 am (Goodwyn 208)
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Office Hours: M/W, 1:00 to 3:00 pm (Goodwyn 209G)
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Course Description: Using a traditional case-law approach, this course explores the role of the United States Supreme Court as a referee in the separation of powers. The purpose of this course is to introduce students to the philosophical bases and historical development of American constitutional powers and constraints. We will place a substantial emphasis on the first three articles of the U.S. Constitution and the powers they afford the three branches of government. We will also discuss state powers vis-à-vis the federal government. In the end, students should not only gain a deeper understanding of constitutional doctrine, but also of the crucial role politics plays in the legal process. Quite simply, the United States Supreme Court is an institution at the center of political struggles for power and authority, and, as a result, Supreme Court justices are political actors. POLS 2020 is a prerequisite for enrolling in this course.

Student Learning Objectives: A major goal of this course is for you to be able to analyze the U.S. Supreme Court's modern and historical treatments of American institutional powers through a detailed analysis of their written opinions and the United States Constitution. To do so fully, you should be able to explain the role of the federal judiciary in affecting public policy in the United States and how the Supreme Court, in particular, does so through its legal and political interactions with its coequal branches. You should have a thorough understanding of the origins, strengths, and weaknesses of the norm of judicial review in American constitutional law and how that norm operates as the primary vehicle through which the courts move their agenda.

Required Text: The following text is required for this course.

- Epstein, Lee and Thomas G. Walker. 2020. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 10th ed. Los Angeles: Sage. ISBN: 978-1-5443-1790-8.

Assignments: Your performance in this course will be assessed primarily on three components. Further details on these three components follow.

Exams: There will be four total exams throughout the course of the semester. Each exam is worth 15 percent of your final grade. Therefore, the exams total 60 percent of your grade in this class.

Students are responsible for all background and related materials offered in the readings, lectures, and classroom discussions. Please bring a blue book with you for each exam. The final exam is cumulative.

Discussion Leadership: Twenty percent of your grade derives from your role as a “discussion leader.” Beginning with the third week of class, one student will be responsible for serving as a “discussion leader” for each day on which we analyze court cases. The discussion leader should prepare thoughtful comments about the cases assigned for that day that cut to the key constitutional issues at stake and how the Court addressed them. They should also be prepared to answer questions from the rest of the class. Finally, discussion leaders should carefully brief the cases assigned for their meeting and turn those briefs in to me after class. You should expect to serve as discussion leader twice during the course of the semester. Your effectiveness as a discussion leader and the quality of your brief determines your grade on this portion. Each discussion leadership assignment is worth 10 percent of your final grade.

- A. “Briefing” requires that you note key facts and legal nuances to court cases. This includes (but isn’t limited to): (1) noting the parties in the case (court cases are inherently adversarial); (2) the conflict that precipitated the case (what do the parties disagree over); (3) the legal postures the parties have assumed (what outcomes would the parties prefer, and what legal rationales have they advanced for that outcome); (4) the conclusion the court has reached along with the legal rationale supporting that outcome; (5) and the disagreements among the justices (majority, concurring, and dissenting opinions) if there are any at all. For more on case briefing, LexisNexis provides a valuable guide: <http://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page>. We’ll practice briefing in class together to get you accustomed to it, and we’ll continue to practice this skill throughout the term. If you are interested in attending law school, learning to brief cases will pay dividends.

Moot Court: Students will be assigned a case to simulate the process of oral argument and decision-making at the U.S. Supreme Court. As such, each student will act as either an attorney or a justice in one of these cases. Students will have an opportunity to sign up for their preferred case and role at the beginning of the term. Anyone who misses the deadline for sign-ups will be assigned a case and role by the professor.

- A. Students who participate as justices will act as a justice during oral arguments, conference, and the decision on the merits. I will randomly assign each student to embody one of the current members of the U.S. Supreme Court. Each justice will participate in oral arguments, conference, and the decision on the merits as if he or she were that assigned individual. You will want to delve into this person’s judicial idiosyncrasies and constitutional philosophy. To help you do so, you will prepare a short (about 4 pages) analysis of your justice’s constitutional philosophy in the area of the assigned case, which will give me an opportunity to give you feedback before moot court begins. This assignment is due on March 13th (11:59:59 pm) and will contribute 5 of the total 20 percentage points of your grade on this component. Oral arguments and the conference of the Court will occur in-class on April 27th. Regardless of the Court’s final vote on the merits, every justice will write his or her own separate opinion. These written opinions—and your performance

during moot court—will contribute the remaining 15 percentage points of this component. Justices will be evaluated based upon their embodiment of their assigned individual during every phase of the case, upon the effectiveness of their questions during oral arguments, and the persuasiveness of their written opinions. Written opinions are due April 28th by 11:59:59 pm. I will provide a handout at a later date with more details on the roles and responsibilities of the justices in moot court.

- B. Students who participate as attorneys will research the relevant case law, develop written briefs to assist presentation, and participate in oral arguments before the Court. I will randomly assign each attorney to represent one of the parties to the case. You will be responsible for writing briefs that attempt to sway the justices toward your party's preferred outcome and for defending those positions during oral arguments. To help you do so, you will turn in a paper (about 4 pages) that synthesizes the legal arguments of the attorneys who have filed briefs in support of your position. This is due on March 13th by 11:59:59 pm. This assignment will count for 5 of the total 20 percentage points of this component. On the day of moot court (April 27th), attorneys will give their oral arguments. Written briefs are due by April 28th no later than 11:59:59 pm. Each attorney will be evaluated upon the quality of their written and oral performances. I will provide a handout at a later date with more details on the roles and responsibilities of the attorneys in moot court.

Grading: Your final grade is assessed according to the following weights:

- Exams: 60%
- Discussion Leadership: 20%
- Moot Court: 20%
 - Justice Biographies/Attorney Briefs: (5%)
 - Moot Court: (15%)

Final Grade: Your final grade in this course is assessed according to the following rubric:

- A: 90 to 100
- B: 80 to 89
- C: 70 to 79
- D: 60 to 69
- F: Below 60.

Late Assignments: Any materials turned in late will be penalized by 10 percentage points for every business day they are late. Exceptions may be granted for verifiable illnesses, emergencies, etc.

Academic Dishonesty: Academic dishonesty is broadly defined as submitting work that is not your own without attribution, and is not acceptable in this or any other academic course. This includes plagiarism and academic misconduct on any assignment. Any academic dishonesty found on an assignment will be dealt with on a case-by-case basis and may be prosecuted to the fullest extent permissible under University guidelines. You may review these guidelines at the following

web address: [http:// www.aum.edu/campus-life/student-affairs/for-students- and-parents/student-code-of-conduct](http://www.aum.edu/campus-life/student-affairs/for-students-and-parents/student-code-of-conduct).

Disability Accommodations: Students who need accommodations are asked to arrange a meeting during office hours to discuss your accommodations. If you have a conflict with my office hours, an alternate time can be arranged. To set up this meeting, please contact me by e-mail. If you have not registered for accommodation services through the Center for Disability Services (CDS), but need accommodations, make an appointment with CDS, 147 Taylor Center, or call 334-244-3631 or e-mail CDS at [cgs@aum.edu](mailto:cds@aum.edu). Disability accommodations cannot be made retroactively.

Free Academic Support: All students have the opportunity to receive free academic support at AUM. Visit the Learning Center (LC) in the WASC on second floor Library or the Instructional Support Lab (ISL) in 203 Goodwyn Hall. The LC/ISL offers writing consulting as well as tutoring in almost every class through graduate school. The LC may be reached at 244-3470 (call or walk-in for a session), and the ISL may be reached at 244-3265. ISL tutoring is first-come-first served. Current operating hours can be found at www.aum.edu/learningcenter.

Technology Assistance: Students may seek technology assistance from the ITS Help Desk located in the computer lab on the first floor of the Taylor Center. You may also call 334-244-3500 or email helpdesk@aum.edu.

Important Dates: The following are important dates of which you should be aware:

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| January 13, 2020: | Classes begin |
| January 16, 2020: | Last day to add classes |
| January 17, 2020: | Last day to cancel registration |
| January 22, 2020: | Last day for 100% refund |
| January 20-21, 2020: | Classes canceled for MLK day |
| January 24, 2020: | Last day to apply for spring graduation |
| February 5, 2020: | Last day for 50% refund |
| March 4, 2020: | Midterm grades due |
| March 16-20, 2020: | Classes canceled for Spring Break |
| March 27, 2020: | Last day to drop classes |
| April 27, 2020: | Please complete course evaluations |
| April 28, 2020: | Classes end |
| April 29, 2020: | Study/weather day |
| May 4, 2020: | Final exam (8:00 to 10:30 am) |

Readings: Readings and case briefings must be completed *before* the class date to which they are assigned. In general, we'll cover around 5 cases per meeting (sometimes more, sometimes fewer, depending on time), but I'll let you know which cases you're responsible for before our next gathering.

A tentative schedule appears on the following page.

Course Outline: Note that this course outline is a tentative schedule and is subject to change. I will inform you ahead of time should a scheduling change occur.

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| January 13-15 | Course overview Introduction to the American legal system Read pp. 1-45 |
| January 20 | No class for MLK holiday |
| January 22 | Establishment of the federal judiciary and judicial review Read pp. 47-83 |
| January 27 | Constraints on judicial power Read pp. 83-118 |
| January 29 | The legislative branch: Authority over internal affairs Read pp. 119-141 |
| February 3 | The legislative branch: Powers Read pp. 141-179 |
| February 5 | The executive branch Read pp. 181-263 |
| February 10-12 | Interbranch interactions Read pp. 265-333 |
| February 17 | Exam 1 |
| February 19 | Federalism Read pp. 335-404 |
| February 24-March 2 | The Commerce Power Read pp. 405-514 |
| March 4-11 | Taxing and Spending Read pp. 515-581 Draft 1 Moot Court assignments due March 13th (11:59:59 pm) |
| March 16-20 | No class for Spring Break |
| March 25 | Exam 2 |
| March 30 | The contract clause Read pp. 583-616 |

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| April 6-8 | Economic substantive due process Read pp. 617-675 |
| April 13-20 | Takings Read pp. 676-713 |
| April 22 | Exam 3 |
| April 27 | Moot Court oral assignments due in-class |
| April 28 | Moot Court written assignments due (11:59:59 pm) |
| May 4 | Final Exam (8:00 to 10:30 am) |