



CONSTITUTIONAL LAW I – GOVT-231-20 SYLLABUS Georgetown University – Summer 2016

Instructor: Joseph E. Hartman, J.D., Ph.D.
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Class times/location: July 11 – August 11, 2016
Monday - Thursday, 10:45 AM-12:45 AM
Room TBD

Office Hours: Tuesdays & Thursdays, 12:45-2:00 PM, by appointment

Class Description and Objectives:

This course explores the ways in which judicial interpretation of the U.S. Constitution has created and allocated power to government actors. Much of the popular debate about the U.S. Supreme Court centers on claims of civil rights and liberties. The Framers of the Constitution, however, believed that the greatest protection of liberty could be found in the way government was structured, and that the promise of civil rights and liberties was of little use without decentralized government and an effective system of checks and balances. Using a case law approach, we will build our understanding of judicial perspectives on the structure of American government by analyzing major decisions of the Supreme Court and examining basic Constitutional principles controlling the exercise of governmental power. Topics covered include the theory and practice of judicial review, approaches to Constitutional interpretation, federalism, separation of powers, executive prerogatives, the reserved powers of the states, and an introduction to the Fourteenth Amendment's equal protection and due process guarantees. We will also explore ways that other political and governmental actors create alternative or rival Constitutional interpretations and the societal construction of judicial and legal authority. Finally, we will learn about the process of judicial decision-making through simulations of Supreme Court oral argument.

Course Materials

The following text is required for this class, and is available at the University Book Store:

Fisher, Louis, and Katy J. Harriger (2016). *American Constitutional Law, Volume One -- Constitutional Structures: Separated Powers and Federalism* (11th edition).
Carolina Academic Press: Durham, NC. ISBN 978-1-61163-810-3.

Finally, students are required to read other selected materials as indicated in the class schedule, below. Readings marked with an asterisk will be posted to the course's Blackboard Homepage. Readings marked with two asterisks are available on the website "The Founders' Constitution," at <http://press-pubs.uchicago.edu/founders/>.

Course Grading and Requirements:

Your grade will be determined by your overall average, with each assignment graded on a 0-100 point scale. In addition to readings and attendance at lectures, you are required to complete four judicial opinion papers. You must also participate in moot court simulations, and regularly participate in class discussion. The point distribution is as follows:

Judicial Opinion Papers:	80 percent
Class Participation:	10 percent
In-Class Exercises and Moot Court Simulations:	10 percent

Judicial Opinion Papers: Students will write four five-page judicial opinions in which they will "rule" on hypothetical fact patterns that relate to cases discussed in class. A rubric is posted to the class Blackboard site that provides additional information about how these papers will be graded.

Class Participation: Class attendance and regular participation are an important part of this course. If you wish to do well in this class, attendance is necessary. The participation grade will be based on how well you prepare for and engage in class discussions.

- Class discussion should reflect a comprehensive understanding of the assigned readings. Good participation moves beyond discussion of current events to critical engagement of the readings and application of the theories to specific substantive issues. Students will be called upon regularly in class to discuss assigned materials and related topics.
- Students are expected to promptly attend all classes and to complete all of their assignments in a timely fashion. Missed classes, unless otherwise excused, will result in a zero for that day's participation grade. ***No more than three total absences during the semester will be permitted.***
- Additional information about class participation expectations is included in the grading rubric posted to the class Blackboard site.

In-Class Exercises and Moot Court Simulations: For each judicial opinion paper, we will conduct mock Supreme Court oral arguments, with students serving as counsel and Supreme Court Justices. Immediately after oral arguments, we will have a question and answer session with the remainder of the class that will further assist you with preparation for your judicial opinion papers.

The grade ranges are defined as follows:

A= unusual excellence (A- 90-92; A 93-100)

B= work distinctly above average (B- 80-82; B 83-86, B+ 87-89)

C= work of average quality (C- 70-72; C 73-76; C+ 77-79)
D= below average work, the lowest passing mark (D 60-69)
F= Failure, no course Credit (59 and below)

Please note that the University offers a number of valuable academic resources, including:

- Georgetown University Writing Center (Lauinger Library, 217A; 202-687-4246; <http://writingcenter.georgetown.edu/>)
- Academic Resource Center (Leavey Center, Suite 335; 202-687-8354; arc@georgetown.edu; <http://ldss.georgetown.edu/>)

Students with disabilities should contact the Academic Resource Center (ARC) (Leavey Center, Suite 335; 202-687-8354; arc@georgetown.edu; <http://ldss.georgetown.edu/index.cfm>) before the start of classes to allow their office time to review the documentation and make recommendations for appropriate accommodations. If accommodations are recommended, you will be given a letter from ARC to share with your professors. You are personally responsible for completing this process officially and in a timely manner. Neither accommodations nor exceptions to policies can be permitted to students who have not completed this process in advance.

Academic Integrity, Classroom Conduct, and Extensions Policy

Students must follow the University Honor Code, which states:

In the pursuit of the high ideals and rigorous standards of academic life, I commit myself to respect and uphold the Georgetown University Honor System: To be honest in any academic endeavor, and To conduct myself honorably, as a responsible member of the Georgetown community, as we live and work together.

Failure to comply with the Honor Code will result in a grade of F in the course. Additional information concerning Georgetown's honor system is available at:

https://www11.georgetown.edu/programs/gervase/hc/honor_system.html.

Students should turn off all cell phones, pagers, or other communication devices while in class. Unless you have a need documented by the Academic Resource Center, you may not use computers during class time. While classroom discussions will often be spirited and intense, students should be respectful and considerate of others' views and opinions. Student communications through email and social media (e.g., Facebook, Twitter) should remain respectful and professional as well.

Late Assignments

Three 24-hour extension "coupons" are included in this syllabus, which you may use to obtain extensions on an assignment due date. You may use the coupons all at once, individually, or in any combination you choose. Once you have used these coupons, additional extensions will not be granted absent exigent circumstances, such as a medical or personal emergency. Ordinarily, these emergency requests for extension must be supported by documentation and directed through your Academic Dean. Otherwise, late

assignments (that are not excused by coupons) will be penalized five points out of a total possible score of 100 for each calendar day they are late.

TENTATIVE SCHEDULE OF TOPICS AND ASSIGNMENTS

July 11 **Welcome and Introduction**
Legal Reasoning
Readings: *Carter and Burke, *Reason in Law*, Ch. 1

I. THE FOUNDING

July 12 **Structural Issues in American Politics**
Readings: **: Articles of Confederation; U.S. Constitution
**Republican Government: Brutus #1, Federalist #10
Fisher, pp. 173-174, “Madison’s Analysis of the Separation of Powers”

II. JUDICIAL POWER

July 13 **Judicial Power: Judicial Review**
Readings: Fisher, pp. 33-51
Marbury v. Madison (1803)

July 14 **Judicial Power: Judicial Review, *continued***
Readings: Fisher, pp. 52-61
Cohens v. Virginia (1821)
Martin v. Hunter's Lessee (1816)
Eakin v. Raub (1825): Gibson’s Dissent

Judicial Power: Politics of Interpretation
Readings: Fisher, pp. 62-74
First Judicial Opinion Paper - Assignment Handed Out

July 18 **Judicial Power: Threshold Questions**
Readings: Fisher, pp. 75-94
Ashwander v. TVA (1936)
Bellotti v. Baird (1979)
Frothingham v. Mellon (1923)
Flast v. Cohen (1968)
United States v. Richardson (1974)
Allen v. Wright (1984)
First Judicial Opinion Paper - Oral Arguments

July 19 **Judicial Power: Threshold Questions**
Readings: Fisher, pp. 95-112
DeFunis v. Odegaard (1974)
Poe v. Ullman (1961)

Baker v. Carr (1962)
Nixon v. United States (1973)

III. EXECUTIVE PREROGATIVES: FOREIGN POLICY, EMERGENCY AND WAR POWERS

- July 20 **Emergencies, War and Foreign Affairs**
Readings: Fisher, pp. 175-177, 251-275
United States v. Curtiss-Wright Export Corp. (1936)
Haig v. Agee (1981)
The Prize Cases (1863)
Ex parte Milligan (1866)
Korematsu v. United States (1944)
Youngstown Sheet & Tube Company v. Sawyer (1952)
New York Times Co. v. United States (1971)
- July 21 **Emergencies, War and Foreign Affairs, continued**
Readings: Fisher, pp. 276-282
Goldwater v. Carter (1979)
Dames & Moore v. Regan (1981)
First Judicial Opinion Paper Due
Second Judicial Opinion Paper - Assignment Handed Out
- July 25 **War Powers and Habeas Corpus**
Readings: Fisher, pp. 283-308
Hamdi v. Rumsfeld (2004)
Hamdan v. Rumsfeld (2006)
Boumediene v. Bush (2008)
Dellums v. Bush (1990)
Campbell v. Clinton (2000)
Second Judicial Opinion Paper - Oral Arguments

IV. PRESIDENTIAL POWER

- July 26 **Guest Lecture**
- July 27 **Presidential Power: Creating the Executive Departments**
Readings: Fisher, pp. 177-189
Bowsher v. Synar (1986)
Morrison v. Olson (1988)
- Presidential Power: Appointments and Removals**
Readings: Fisher, pp. 190-205
Buckley v. Valeo (1976)
Myers v. United States (1926)
Humphrey's Executor v. United States (1935)
Free Enterprise Fund v. Public Company Accounting Oversight Board (2010)

July 28 **Presidential Power: Delegation of Legislative Power**

Readings: Fisher, pp. 206-212
Hampton & Co. v. United States (1928)
Schechter Corp. v. United States (1935)

Presidential Power: Congressional Oversight

Readings: Fisher, pp. 213-224
Clinton v. City of New York (1998)
Immigration and Naturalization Service v. Chadha (1983)

Second Judicial Opinion Paper Due

Third Judicial Opinion Paper - Assignment Handed Out

Aug. 1 **Presidential Power: Investigations and Executive Privilege**

Readings: Fisher, pp. 225-243
United States v. Nixon (1974)
The AT&T Cases
Clinton v. Jones (1997)
Third Judicial Opinion Paper – Oral Arguments

V. FEDERALISM AND THE COMMERCE CLAUSE

Aug. 2 **Federalism (a Brief Introduction)**

Readings: Fisher, pp. 309-319
McCulloch v. Maryland (1819)

The Commerce Clause

Readings: Fisher, pp. 320-329
Gibbons v. Ogden (1824)
Cooley v. Board of Wardens (1852)

Aug. 3 **Federalism and National Elections**

**Bush v. Gore*

Nationalization of the Economy

Readings: Fisher, pp. 330-337
Champion v. Ames (1903)
Hammer v. Dagenhart (1918)
Bailey v. Drexel Furniture Co. (1922)
United States v. Darby Lumber (1941)

Aug. 4 **The New Deal Watershed**

Readings: Fisher, pp. 338-347
Carter v. Carter Coal Company (1936)
National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937)
Wickard v. Filburn (1942)

From *National League to Garcia*

Readings: Fisher, pp. 348-352

National League of Cities v. Usery (1976)

Garcia v. San Antonio Metropolitan Transit Authority (1985)

Third Judicial Opinion Paper Due

Fourth Judicial Opinion Paper - Assignment Handed Out

Aug. 8

State Powers Revived

Readings: Fisher, pp. 353-371

United States v. Lopez (1995)

United States v. Morrison (2000)

Granholt v. Heald (2005)

Gonzalez v. Raich (2005)

Gonzales v. Oregon (2006)

VI. TAXING AND SPENDING

Aug. 9

The Spending and Taxing Powers

Readings: Fisher, pp. 372-379

Steward Machine Co. v. Davis (1937)

South Dakota v. Dole (1987)

Preemption and Abstention

Readings: Fisher, pp. 380-384

Pennsylvania v. Nelson (1956)

VII. INTRODUCTION TO THE FOURTEENTH AMENDMENT

Aug. 10

Substantive Due Process

Readings: Fisher, pp. 425-435

Lochner v. New York (1905)

Adkins v. Children's Hospital (1923)

West Coast Hotel v. Parrish (1937)

Ferguson v. Skrupa (1963)

Aug. 11

Online Class Evaluations; TBD

Fourth Judicial Opinion Paper Due

Syllabus Modification: In some instances, the syllabus might need to be altered, and the Instructor retains the right to do so. In those instances, the Instructor will give notice of those changes to the class in a timely manner.

Extension Coupons



COUPON #1 – CONSTITUTIONAL LAW I (SUMMER 2013)

This coupon entitles you to an automatic, no questions asked, 24-hour (one calendar day) extension on any paper for Constitutional Law I, subject to limitations detailed in the syllabus.



COUPON #2 – CONSTITUTIONAL LAW I (SUMMER 2013)

This coupon entitles you to an automatic, no questions asked, 24-hour (one calendar day) extension on any paper for Constitutional Law I, subject to limitations detailed in the syllabus.



COUPON #3 – CONSTITUTIONAL LAW I (SUMMER 2013)

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