



## CONSTITUTIONAL LAW I – GOVT-231-20 SYLLABUS Georgetown University – Summer 2020

Instructor: Prof. Joseph E. Hartman  
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Class times/location: June 1 – July 2, 2020  
Monday - Thursday, 10:45 AM-12:45 PM  
ICC 118

Office Hours: Mondays & Wednesdays, 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 (2019). *American Constitutional Law, Volume One -- Constitutional Structures: Separated Powers and Federalism* (12<sup>th</sup> edition). Carolina Academic Press: Durham, NC. ISBN 978-1-5310-0950-2.

In addition, 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/>. From time to time there may be recommended, but not required, supplemental readings relevant to the subject matter of the course.

#### Preparation for and Participation in Class

There will be roughly 30 pages of reading per class, but the reading is at times dense. You will be expected to complete the reading prior to each class meeting. Although this course is presented largely in lecture format, ***your participation through questions and discussion will determine the quality of the course.*** Accordingly, please come prepared; it not only facilitates class discussion, but it is very difficult to absorb a lot of cases at once. Your papers will be much better if you keep up on the readings.

#### 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 three judicial opinion papers and a take-home final exam. You must also participate in moot court simulations, and regularly participate in class discussion. The point distribution is as follows:

Judicial Opinion Papers:	60 percent
Class Participation:	5 percent
In-Class Exercises and Moot Court Simulations:	10 percent
Final Exam:	25 percent

**Judicial Opinion Papers:** Students will write three 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.***

**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](mailto: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](mailto: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](https://www11.georgetown.edu/programs/gervase/hc/honor_system.html).

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. No student may use more than three coupons over the course of the semester. I will keep track of student coupon use. Other than death in one’s immediate family or a Dean’s excuse attesting to a medical emergency, I will not permit extensions beyond those available through the coupons. A coupon allows a paper to be turned in by 5pm the next **calendar** day after the original due date. Thus a paper due on a Wednesday may be turned in at 5pm on Thursday without penalty, if a coupon is stapled to it. Note that a paper due on a Wednesday must be turned in on Saturday by 5pm with three coupons in order to be considered on time. For papers that exceed the coupon extension, I will deduct **five points** for every day a paper is late.

### Electronic Media Policy

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 laptop computers, phones, tablets or other electronic devices during class time.*** Recent studies have confirmed not only that laptops and tablets have a tendency to be distracting, but also that taking handwritten notes rather than typing results in superior information retention and conceptual grasp of the material studied, as it requires students to process the material rather than simply take dictation. Moreover, this course seeks to develop your capacity to think with agility and analytical rigor, and not just to absorb information.

## TENTATIVE SCHEDULE OF TOPICS AND ASSIGNMENTS

June 1           **Welcome and Introduction**  
**Legal Reasoning**

### I. THE FOUNDING

June 2           **Structural Issues in American Politics**  
Readings:  
\*\*: Articles of Confederation;  
U.S. Constitution 481-494  
\*\*Republican Government: Brutus #1, Federalist #10  
Fisher, pp. 173-74, “Madison’s Analysis of the Separation of Powers”

### II. JUDICIAL POWER

June 3           **Judicial Review**  
Readings: Fisher, pp. 35-50  
Federalist No. 78  
*Marbury v. Madison* (1803)

June 4           **Judicial Review, *continued***  
Readings: Fisher, pp. 50-61  
*Cohens v. Virginia* (1821)  
*Martin v. Hunter's Lessee* (1816)  
*Eakin v. Raub* (1825): Gibson’s Dissent

**Politics of Interpretation**  
Readings: Fisher, pp. 61-73  
***First Judicial Opinion Paper - Assignment Handed Out***

June 8           **Threshold Questions: Cases and Controversies, Standing**  
Readings: Fisher, pp. 75-93  
*Ashwander v. TVA* (1936) – The Brandeis Rules  
*Bellotti v. Baird* (1979)  
*Lujan v. Defenders of Wildlife* (1992)  
*Frothingham v. Mellon* (1923)  
*Flast v. Cohen* (1968)  
*United States v. Richardson* (1974)  
*Allen v. Wright* (1984)

June 9           **Threshold Questions *continued*: Mootness, Ripeness, Political Questions**  
Readings: Fisher, pp. 93-110  
*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

June 10      **Emergencies, War and Foreign Affairs: External and Internal Affairs**

Readings: Fisher, pp. 175-77, 257-287

*United States v. Curtiss-Wright Export Corp.* (1936)

*Zivotovsky v. Kerry* (2015)

*Haig v. Agee* (1981)

*Trump v. Hawaii* (2018)

**Video: The Iran-Contra Affair**

**Emergencies and Foreign Affairs, *continued*: An Executive Prerogative?**

*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)

June 11      **Emergencies, War and Foreign Affairs, *continued***

**Treaties and Executive Agreements**

Readings: Fisher, pp. 287-295

*Goldwater v. Carter* (1979)

*Dames & Moore v. Regan* (1981)

**First Judicial Opinion Paper Due**

**Second Judicial Opinion Paper - Assignment Handed Out**

June 15      **War Powers and Habeas Corpus**

Readings: Fisher, pp. 296-321

*Hamdi v. Rumsfeld* (2004)

*Hamdan v. Rumsfeld* (2006)

*Boumediene v. Bush* (2008)

The War Powers Resolution

*Dellums v. Bush* (1990)

*Campbell v. Clinton* (2000)

“Military Operations in Libya” – OLC Opinion

**Second Judicial Opinion Paper – Oral Arguments**

### IV. PRESIDENTIAL POWER

June 16      **Creating the Executive Departments**

Readings: Fisher, pp. 177-201

*Bowsher v. Synar* (1986)

Attorney General Opinion on Ministerial Duties (1823)

*Morrison v. Olson* (1988)

**In-Class Video: Watergate**

### **Appointments and Removals**

Readings: Fisher, pp. 189-207

*Buckley v. Valeo* (1976)

OLC Memo on President Obama's Recess Appointments (2012)

*NLRB v. Noel Canning* (2014)

### **In-Class Video – Judicial Confirmations: Robert Bork and Clarence Thomas**

*Myers v. United States* (1926)

*Humphrey's Executor v. United States* (1935)

*Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010)

### June 17 **Delegation of Legislative Power**

Readings: Fisher, pp. 207-214

*Hampton & Co. v. United States* (1928)

*Schechter Corp. v. United States* (1935)

### **Congressional Oversight**

Readings: Fisher, pp. 214-226

*Clinton v. City of New York* (1998)

*Immigration and Naturalization Service v. Chadha* (1983)

### June 18 **Investigations and Executive Privilege**

Readings: Fisher, pp. 226-244

*Watkins v. United States* (1957)

*Barenblatt v. United States* (1959)

*United States v. Nixon* (1974)

*The AT&T Cases* (1976-77)

*Clinton v. Jones* (1997)

### **In-Class Video – the McCarthy Era**

***Second Judicial Opinion Paper Due***

***Third Judicial Opinion Paper - Assignment Handed Out***

## **V. FEDERALISM AND THE COMMERCE CLAUSE**

### June 22 **Federalism (a Brief Introduction)**

Readings: Fisher, pp. 325-336

*McCulloch v. Maryland* (1819)

*Missouri v. Holland* (1920)

### **The Commerce Clause**

Readings: Fisher, pp. 337-343

*Gibbons v. Ogden* (1824)

*Cooley v. Board of Wardens* (1852)

***Third Judicial Opinion Paper – Oral Arguments***

June 23      **Federalism and National Elections**

Readings: Fisher, pp. 415-425  
*Bush v. Gore* (2000)

**In-Class Video – Bush v. Gore**

**Nationalization of the Economy**

Readings: Fisher, pp. 343-348  
*Champion v. Ames* (1903)  
*Hammer v. Dagenhart* (1918)

June 24      **The New Deal Watershed**

Readings: Fisher, pp. 349-359  
*Carter v. Carter Coal Company* (1936)  
*National Labor Relations Board v. Jones & Laughlin Steel Corporation* (1937)  
*United States v. Darby* (1941)  
*Wickard v. Filburn* (1942)

**From National League to Garcia**

Readings: Fisher, pp. 360-365  
*National League of Cities v. Usery* (1976)  
*Garcia v. San Antonio Metropolitan Transit Authority* (1985)

June 25      **State Powers Revived**

Readings: Fisher, pp. 365-377  
*United States v. Lopez* (1995)  
*United States v. Morrison* (2000)  
*Gonzalez v. Raich* (2005)  
***Third Judicial Opinion Paper Due***  
***Final Exam/Fourth Paper Assignment Handed Out***

**VI. TAXING AND SPENDING**

June 29      **The Spending and Taxing Powers**

Readings: Fisher, pp. 378- 397  
*Bailey v. Drexel Furniture Co.* (1922)  
*Steward Machine Co. v. Davis* (1937)  
*South Dakota v. Dole* (1987)  
*National Federation of Independent Business v. Sibelius* (2012)  
*King v. Burwell* (2015)  
*South Dakota v. Wayfair, Inc.* (2018)

**Preemption and Abstention**

Readings: Fisher, pp. 397-405  
*Pennsylvania v. Nelson* (1956)  
*Arizona v. United States* (2012)



## VII. INTRODUCTION TO THE FOURTEENTH AMENDMENT

June 30      **Nationalization of the Bill of Rights: Incorporation**  
Readings: Fisher, pp. 405-411

**Substantive Due Process**

Readings: Fisher, pp. 529-543

*Lochner v. New York* (1905)

*Adkins v. Children's Hospital* (1923)

*West Coast Hotel v. Parrish* (1937)

*Ferguson v. Skrupa* (1963)

*Obergefell v. Hodges* (2015)

July 1      **TBD**

July 2      **LAST DAY OF CLASS**  
**Concluding Remarks**  
**Online Class Evaluations; TBD**  
***Final Exam 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 2020)

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 2020)

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