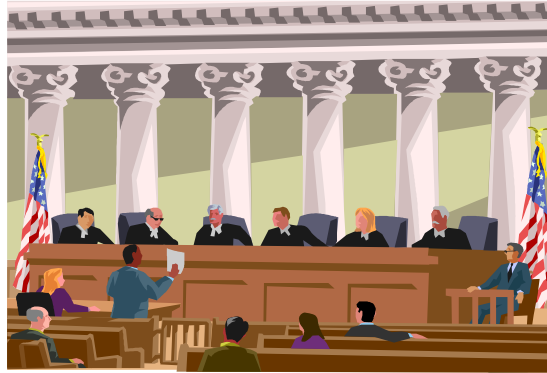


POL 463: Constitutional Politics (3 credits)

Eastern Kentucky University

Department of Government

Fall 2011



Instructor: Paul D. Foote, Ph.D. **Office:** McCreary Bldg #224

Office Hours: MWF 2:30-4:30pm

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Course Description: An examination of constitutional problems in American government. Emphasis is given to cases in their legal and political context.

Course Goals: This course introduces students to the role of the federal judiciary in American government and provides a survey of the principal decisions of constitutional law that have influenced the development of the American institutional system. Students will learn methods of analyzing and evaluating judicial opinions and will learn some of the legal concepts and doctrines relating to the allocation of powers among the three branches of the federal government and between the federal and state governments. Thus, while understanding the law is an essential part of the course, equally important is an understanding of the political background of a particular decision. I will endeavor to discuss both the law and the political context of the law throughout this course.

Learning Outcomes: Constitutional Politics meets the following learning objectives adopted by the Department of Government pursuant to the strategic plans of the College of Arts and Sciences and Eastern Kentucky University in the following programs:

Undergraduate Paralegal Program (B.A.)

1. Diversity: Students will develop a greater awareness of the importance of diverse citizenry and the role of law in preventing discrimination based upon race, ethnicity, religion, socioeconomic status, gender, sexual orientation, disabilities, age, and cultural or national background. Students will read and examine pertinent cases and/or current events to gain an introduction to diversity issues and the relevant role of law.
2. Theory and Content of Law: Students will gain knowledge about the foundations, functions, terminology, sources of law (legal authority), and court structure and procedure. Students will read case law and legally-related materials, including the course text, to gain understanding of the development of law and the means by which law is made and studied.

Undergraduate Political Science (B.A.)

3. Critical Thinking, Methodology, and Communications: Students will become more discerning consumers of political events, messages and processes by applying theories and methodologies of political science and through effective oral and written communication. Students will read and discuss case law and legally-related materials and be assigned papers and oral presentations which require students to think critically about the law and politics and communicate these thoughts.
4. Substantive Knowledge of Political Science: Students will understand the institutions, processes and values that underpin political behavior and events. Students will read and discuss case law to gain an understanding of how politics shapes the decisions of courts, especially the United States Supreme Court.
5. Career Preparation: Students will be prepared for careers in the public, private, and non-profit sectors or admission to further graduate and professional study. Students will read and discuss case law and legally-related material to gain an understanding and appreciation of the role of courts in both the public and private sector. Students will also gain skills useful in law school and other legally-related fields.

Political Science Student Learning Outcome Substantive Knowledge: Students will understand the institutions, processes and values that underpin political behavior and events.

Paralegal Student Learning Outcome Theory and Content: Students will gain knowledge about the foundations, functions, terminology, sources of law (legal authority), and court structure and procedure.

Course-Specific Outcomes: Students who complete this course will be able to:

1. Compose brief synopses (“case briefs”) of court opinions that identify the issues, holdings, and rationales in the opinions.
2. Identify these judicial rules: jurisdiction, ripeness, mootness, standing to sue, and political questions.

3. Trace the development of these judicial rules and principles in Supreme Court decisions throughout U.S. history.
4. Identify the constitutional doctrines relating to the President of the United States, such as the President's appointment and removal power, the President's constitutional power in foreign affairs and in times of war, and the protections afforded Presidents and their aides by the judicially created doctrines of executive immunity and executive privilege and trace the development of these doctrines in Supreme Court decisions.
5. Trace the changing constitutional relationship between the national and the states' governments throughout American history through the differing interpretations in Supreme Court decisions of constitutional doctrines and provisions such as the doctrine of dual federalism, the federal regulatory power under the Commerce Clause, the state regulatory power under the police power and the negative or dormant Commerce Clause, and the Reconstruction Amendments.
6. Identify the principal limitations of governmental power over private property as reflected in the court's interpretations of the Contract Clause, the doctrine of liberty of contract, and the concept of the governmental taking of property.

Grading Policy: You must complete all assignments to pass the course. The materials in this class are complex, and classroom discussion is a must. **1) Briefing Cases (30% of final grade)** In order to study for the tests, you must "brief" (see pp. 711-712 of the text) the cases assignment in the reading. **2) Three Exams (45% of final grade)** each exam will be worth 15% of your total grade. **3) Participation (10% of final grade).** Students will be required to participate in class discussions of the cases and political concepts that the professor and classmates present. Such discussion should be both well thought-out and respectful. The instructor reserves the right to request that students refrain from class discussion should they become discourteous or disrespectful to the professor or other students. **4) Paper (15% of final grade).** Each student will write a paper analyzing the judicial philosophy and constitutional method of interpretation of a Supreme Court justice. Using primary (opinions) and secondary (law-related articles, biographic) sources, each student will analyze the judicial philosophy of a particular justice in two constitutional issue areas.

Grading Scale: A=90+; B=80-89; C=70-79; D=60-69; F=59 or lower

Plagiarism Policy: Plagiarism is the failure to give credit for another author's ideas, thoughts, or language through proper documentation or citation. It also encompasses the failure to place quotation marks around any language taken from another source. Students should realize that any form of plagiarism (or other academic dishonesty) is considered a very serious violation of student ethical responsibility. Plagiarism may be penalized with failure in this course and referral to the University for Disciplinary Action.

Attendance Policy: Class attendance and participation is required. If you miss *more than two weeks* of classes, the instructor reserves the right to fail any student that does not possess a documented university-recognized excuse.

University Disability Statement: If you are registered with the Office of Services for Individuals with Disabilities, please obtain your accommodation letters from the OSID and present them to the course instructor to discuss any academic accommodations you need. If you believe you need accommodation and are not registered with the OSID, please contact the Office in the Student Services Building Room 361 by email at disserv@eku.edu or by telephone at (859) 622-2933 V/TDD. Upon individual request, this syllabus can be made available in an alternative format.

Department Disability Statement: The Department of Government is located in McCreary Hall, a historic building on campus that is not handicapped accessible. Alternative meeting locations are available for those students who are unable to access the building. Please notify me of your need and I will arrange an alternative meeting location.

Academic Integrity Statement: Students are advised that EKU's Academic Integrity policy will be strictly enforced in this course. The Academic Integrity policy is available at www.academicintegrity.eku.edu. Questions regarding the policy may be directed to the Office of Academic Integrity.

Missed Exams and Late Assignments: As a general rule, no makeup tests will be given except in extreme, unavoidable and documented instances. Please note, returning late from a vacation or break is NEVER a valid excuse, regardless of whether it was your fault or the airline's fault. I will make reasonable accommodations for religious holidays and university related events, provided these are cleared ahead of time. If you know you are going to miss an exam or turn something in late, its best to contact me ahead of time. Make-up exams must be taken no later than the **next week** following the scheduled test date.

Text Books: Epstein, Lee and Thomas G. Walker. 2011. *Institutional Powers and Constraints*, 7th Edition.

Student Progress: Midterm grades will be available for viewing Sunday, October 16th on EKU Direct. Your mid-term grade will be based upon exam #1, class participation and briefs graded and returned prior to October 16th.

Blackboard: Students will be responsible for material posted on the course Blackboard website and sent via e-mail to students' EKU e-mail addresses. Students are required to check both the course Blackboard website and their EKU e-mail several times each week for course updates and other course-related information. Once on your Blackboard homepage click on the link for POLS 463. This takes you to the Blackboard homepage for this course. You will be required to provide a username and password to login. Your username and password for Blackboard match the same information for your student email. Students who do not know their username and password should visit the EKU Web site at <http://www.eku.edu/students/> and select the link to

“EKU Email: Activate Student Email,” or if you have problems you may call (859)622-8400 for assistance.

Important Dates:

Exam #1: September 28th

Exam #2: November 11th

Exam #3: December 14th

Withdraw without fee: September 18th

Midterm Grades* Available: October 16th

Last Day to Withdraw: October 28th

Paper Due Date: December 2nd

Final Exam: December 14th

Reading Schedule: (Subject to the needs of the class)

| Date | Topics, materials from casebook | Readings |
|---|--|---|
| Aug. 22 nd -29 th | Review of Syllabus & Course Requirements Understanding the Supreme Court - The Court in the Judicial System -The Justices-selection process | Syllabus Epstein- Preface, Introduction to the US Constitution pp 3-11 Chapter 1-pp 12-47 |
| Aug. 31 st - Sept. 7 th | - Institutional Authority - Power of Judicial Review -Constraints on Judicial Power: Article III | Chapter 2 Epstein- pp.51-117 |
| Sept. 9 th - 14 th | The Legislature - Qualifications - Sources and Scope of Legislative Powers - Separation of Powers | Chapter 3 Epstein- pp. 119-178 |
| Sept. 16 th -21 st | The Executive - Selection and Formal Powers - Domestic Powers-veto, signing statements, appointment and removal, executive privilege. | Chapter 4 Epstein-pp. 180-227 |
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| Sept. 23 rd -26 th | The Executive (cont.) - immunity - Presidential pardons & clemency - President & Foreign Policy | Chapter 4 Epstein-pp. 228-250 |
| Sept.28th | Exam #1 | Epstein- Chapters 1-4 |
| Sept. 30 th -Oct. 7 th | The Separation of Powers System in Action | Chapter 5 Epstein- pp. 252-320 |
| Oct. 12 th - 17 th | Federalism | Chapter 6 Epstein-pp. 323-399 |
| Oct. 19 th - 31 st | The Commerce Power | Chapter 7 Epstein-pp. 400-491 |
| Nov. 2 nd - 9 th | The Power to Tax & Spend | Chapter 8 Epstein 492-544 |
| Nov. 11th | Exam #2 | Epstein- Chapters 5-8 |
| Nov. 14 th - 18 th | The Contract Clause | Chapter 9 Epstein-pp.547-584 |
| Nov. 21 st -30 th | Economic Substantive Due Process | Chapter 10 Epstein-pp. 585-640 |
| Dec. 2nd | Paper is due | Due no later than 11:59pm. If it is submitted late, there will be a <u>10 point late penalty</u> . |
| Dec. 2 nd - 9 th | The Takings Clause | Chapter 11 Epstein-pp. 641-672 |
| Dec. 14th | Final Exam | Chapters 9-11 |

Additional Resources: Complete copies of Supreme Court and other court opinions are available on the Internet via several free sites. Some of the sites have useful search capabilities. A list of some of the most useful for students of constitutional law follows:

www.findlaw.com -A broad legal resource site sponsored by Thomson and West publishing group. This is especially useful for Supreme Court opinions through the 1980s. Use the tab “For Legal Professionals” on the main webpage.

www.lexisone.com -A narrower site sponsored by Thomson/West’s chief rival in legal publishing, LexisNexis. This site is more useful than Findlaw.com for the most recent Supreme Court decisions.

www.supremecourtus.gov -The official public website of United States Supreme Court. No registration required. This site is particularly useful for up to the minute publication of new Supreme Court opinions (though the site only makes them available for about a year) and for information about the litigation process at the Supreme Court.

<http://supct.law.cornell.edu/supct> -The site sponsored by the Legal Information Institute of Cornell University Law School. The site is particularly useful for locating recent Supreme Court opinions, for identifying the legal issues and arguments in Supreme Court cases before and after the cases are argued, and for a wide range of legal and legal procedure information.

www.oyez.org -A flashy site titled “U.S. Supreme Court Media” and featuring audio recordings of the arguments in many cases since 1955.

If you click on the “Brief Research Links” menu tab on Blackboard, you can access these aforementioned sites and more.