

THE POLITICS OF CIVIL RIGHTS AND LIBERTIES			
POSC 4251			
MARQUETTE UNIVERSITY, SPRING 2014			
<u>Instructor Information:</u>	Professor Paul Nolette, J.D., Ph.D. paul.nolette@marquette.edu (414) 288-5821	<u>Class Time:</u>	Tuesdays & Thursdays 12:30pm – 1:45pm
<u>Office:</u>	William Wehr Physics Room 454		
<u>Office Hours:</u>	Tuesdays: 2:00pm-4:15pm Thursdays: 10:30am-12:15pm and by appointment	<u>Class Location:</u>	Olin Engineering Room 128

COURSE DESCRIPTION:

This course is the second of a two-part series introducing the basic concepts in American constitutional law. The focus of this course is on civil rights and liberties, and we will cover a variety of topics including discrimination on the basis of race, sex, and other classifications, the right to privacy, voting rights, freedom of speech and of the press, the rights of the criminally accused, and religious freedom. Consistent with the rise of the "rights revolution" in the United States following the New Deal, our main focus will be on the contemporary status of these civil rights and liberties. Of particular importance is the critical role played by the U.S. Supreme Court during the Chief Justiceship of Earl Warren (1953-1969), which transformed the landscape of individual rights and liberties and expanded the role of the Court in these matters.

However, while we will be examining a number of key court cases throughout the semester, this course emphasizes not just the *law* of civil rights and liberties but the *politics* as well. To that end, we will consider the role of other political institutions besides the courts in the development of contemporary civil rights and liberties. We will also consider the decision-making processes in which justices of the Supreme Court engage.

REQUIRED READINGS: There is one required text for this course (available at Bookmarq):

(1) Lee Epstein & Thomas G. Walker, Rights, Liberties, and Justice: Constitutional Law for a Changing America, 8th ed. (Washington, D.C.: CQ Press, 2013) ("E&W") [ISBN: 978-1-45227-040-1]

- In addition to this text, additional required reading material will be available on D2L.
- You also want to make it a daily habit to read a newspaper with extensive coverage of issues pertaining to civil rights and liberties. An excellent option is the *New York Times*, whose Supreme Court correspondent, Adam Liptak, regularly writes about crucial developments in constitutional law. I also encourage you to read *SCOTUSblog* (www.scotusblog.com), which provides up-to-the-minute updates on happenings at the Supreme Court. I very much appreciate when students send me news articles and analysis relevant to what we have been discussing in class, and I take such initiative into mind when calculating final course grades.

COURSE EXPECTATIONS AND REQUIREMENTS:

- (1) **Attendance and Class Participation (15%).** Active participation will be an important component of your grade in this class. I expect everyone to come on time and prepared for class and ready to actively discuss the readings and topics for the day. Quality participation includes engaging with the readings, expressing one's own opinions of relevant issues on the topic (while respecting other students' opinions and experiences), and asking questions when you need additional clarification. Because I would like to hear from everyone over the course of the semester, I may call on students from whom I have not yet heard in order to broaden class participation.

In addition to your participation during class, it will be to your benefit to frequently check the online class discussion area I will set up on D2L. This area will contain reading and discussion questions prior to each class to help focus your reading and the subsequent class discussion. You will have an opportunity to comment on my posts, as well as other students' comments, as a way to help your participation grade. You might also post links to relevant news articles or other materials in this section. This will give everyone an additional chance to actively participate in the discussion and show engagement with the readings.

- (2) **Supreme Court Simulation and Judicial Opinions/Briefs (25%).** Every student will participate in one of four Supreme Court simulations (moot courts) as either a justice or a legal counsel. Each simulation will be held during the 75 minutes of regularly scheduled class time on **February 25 & 27 and April 8 & 10** in the Beaumier Conference Suites B&C in the Raynor Library. For this project you will write a 5-7 page paper, the format of which will depend upon the particular role that you play in the simulation. Students playing the role of a justice will submit an opinion deciding a case. Legal counsel will submit a legal brief defending his or her client's position in the case. A sign-up sheet will be available during the first two weeks of class in which you may elect to be a justice or legal counsel for the simulation. (Note, however, that there must be exactly eight legal counsels for the four simulations, so students will be randomly assigned to be a legal counsel if too few students sign up for this role.) Papers must be typed, double-spaced with one-inch margins. The simulation assignment will be discussed in more detail in class. A separate handout describing the cases for the simulation will be made available at a later date.

To familiarize yourself with the dynamics of a Supreme Court oral argument, you will be required to write a short (maximum one page) response to an actual oral argument for a recent case. You may choose any recently decided case that you would like, though I am happy to give suggestions for cases as well. Full audio recordings of Supreme Court arguments (and much more!) are available at www.oyez.com (note that video is unavailable because the Court prohibits cameras in the courtroom). In this short response, say a bit about what the case was about and how you thought the lawyers for both sides presented themselves. Did you find any aspects of the arguments to be particularly interesting? Surprising? Confusing? This short response will be graded pass/fail and will be due on **Tuesday, January 28.**

- (3) **Justice Analysis Paper (20%)**. Each student will write a 8-10 page paper analyzing the judicial philosophy and method of interpretation of a Supreme Court justice. You will be assigned one of the current justices at the end of the second week of classes for the purposes of this paper. Using primary sources (judicial opinions) and secondary sources (journal articles, biographies), each student will summarize and critique the judicial philosophy of a particular justice in several areas: judicial review, church-state issues, free speech, criminal procedure, and discrimination. I will provide more information about this assignment early in the semester. These analysis papers are due on **Friday, March 28**.
- (4) **Midterm Exam (15%)**. There will be one midterm exam for this course, which will be held in class on **Thursday, March 6**. The exam will be closed book and will contain a variety of question types (including multiple choice, fill in the blank, short answer identifications, and essay questions). While the exam will be closed book, I will provide everyone with a case list to use during the exam. The exam will take approximately 60 to 75 minutes to complete.
- (5) **Final Exam (25%)**. The final exam will be a closed book, in-class exam consisting of question types similar to the midterm exam (multiple choice, fill in the blank, short answer identifications, and a longer essay question or questions). As with the midterm exam, I will provide a case list to use during the exam. The final exam will be cumulative and will take about two hours to complete. This exam is scheduled for **Friday, May 9 at 10:30am**.

Late assignments: I expect all students to complete required assignments when they are due. Punctuality is particularly important in this course because a successful Supreme Court simulation requires it. If you are unable to complete an assignment or take an exam for a compelling reason you must contact me **before** the assignment is due. Otherwise, the assignment or exam will be marked down a full letter grade for each day past the deadline.

SUMMARY OF GRADING COMPONENTS:

<u>Class Participation:</u>	15%
<u>Simulation and Opinions/Briefs:</u>	25%
<u>Justice Analysis Paper:</u>	20%
<u>Mid-Term Examination:</u>	15%
<u>Final Examination:</u>	25%

LIST OF IMPORTANT DATES:

- 1/28 (Tu).....Oral Argument Reaction Due
- 2/20 (Th).....Legal Briefs of Counsel in Simulations #1 and #2 Due
- 2/25 (Tu) and 2/27 (Th).....Supreme Court Simulations #1 and #2
- 3/6 (Th).....Midterm Exam
- 3/20 (Th).....Judicial Opinions Due for Simulations #1 and #2
- 3/28 (F).....Justice Analysis Paper Due
- 4/3 (Th).....Legal Briefs of Counsel in Simulations #3 and #4 Due
- 4/8 (Tu) and 4/10 (Th).....Supreme Court Simulations #3 and #4
- 5/1 (Th).....Judicial Opinions Due for Simulations #3 and #4
- 5/9 (F).....Final Exam

GRADING SCALE:

<u>Grade</u>	<u>Achievement</u>	<u>Grade Points</u>	<u>Cut-off</u>
A	Superior	4.0	93+
AB		3.5	87-92.9
B	Good	3.0	82-86.9
BC		2.5	77-81.9
C	Satisfactory	2.0	72-76.9
CD		1.5	67-71.9
D	Minimum Passing	1.0	60-66.9
F	Failing	0.0	Below 60

ELECTRONIC DEVICES: All cell phones and similar devices must be turned off before class.

STUDENTS WITH DISABILITIES: If you have a disability for which you are requesting an accommodation, you are encouraged to contact the University's Office of Disability Services within the first week of classes. For more information, contact the Office of Disability Services in Marquette Hall, Suite 005 or at (414) 288-1645. If you require any accommodations for exams or other assignments, you must notify me (along with all required documentation) at least two weeks in advance of the assignment due date.

RESCHEDULED EXAMS: Exams may be rescheduled only for authorized and documented reasons, such as a major medical emergency. I cannot reschedule an exam for any other reasons, so make sure that you will be present for the exam on the scheduled date.

ACADEMIC HONESTY: As noted in the Undergraduate Bulletin, Marquette University demands the strictest honesty and integrity of students in their various academic tasks. **Academic dishonesty of any type, including plagiarism, is completely unacceptable and will result in a failing grade for both the assignment and the course.**

- What is Plagiarism? The Undergraduate Bulletin defines plagiarism in the following manner: "Plagiarism is intellectual theft. It means use of the intellectual creations of another without proper attribution. Plagiarism may take two main forms, which are clearly related: 1. To steal or pass off as one's own the ideas or words, images, or other creative works of another and 2. To use a creative production without crediting the source, even if only minimal information is available to identify it for citation."
- If you use another person's writings or ideas in your own writing, you must provide a citation to the original material. If you have any doubt about the need to provide a citation to a source, it is better to be on the safe side and provide a citation. If you have any questions about this policy, please discuss it with me.

CLASS AND READING ASSIGNMENT SCHEDULE:

Disclaimer: There may be times when minor amendments to this reading schedule are necessary. I expect that any such changes will be rare, but I will notify the class of all changes well in advance.

NOTE:

In this schedule, "E&W" refers to the main textbook for the course. An asterisk ("*") next to a reading indicates material I will post on D2L prior to class.

PART I. RIGHTS, LIBERTIES, AND THE SUPREME COURT

INTRODUCTION

1/14 (Tu): Course Introduction

No reading assignment

1/16 (Th): Constitutional Rights and Constitutional Moments

- (1) E&W, pp. 3-9
- (2) U.S. Constitution, Amendments 1-10 (E&W, pp. 779-780)
- (3) *Declaration of Independence
- (4) *Gettysburg Address
- (5) *FDR, Four Freedoms Speech

DECISION-MAKING ON THE COURT

1/21 (Tu): Supreme Court Process and Decision-Making

- (1) E&W, pp. 10-31
- (2) *Recommended:* E&W, pp. 45-65 (if you have not taken POSC 4241: American Constitutional Law and Development, reading this section will provide helpful background for concepts we will discuss in this course)

1/23 (Th): Justices, Politics, and the Appointment Process

- (1) E&W, pp. 31-44
- (2) *Barbara Perry and Henry Abraham, "A Representative Supreme Court?" *Judicature* 81 (1998)

PART II. CIVIL LIBERTIES

INCORPORATION OF THE BILL OF RIGHTS

1/28 (Tu): ORAL ARGUMENT REACTION DUE

The Incorporation Debate

- (1) E&W, pp. 66-86
 - **Cases:** *Barron v. Baltimore* (pp. 67-69); *Hurtado v. California* (pp. 70-73); *Palko v. Connecticut* (pp. 76-77); *Duncan v. Louisiana* (pp. 80-86)

FREEDOM OF RELIGION

1/30 (Th): Free Exercise of Religion

(1) E&W, pp. 89-128

- **Cases:** *Cantwell v. Connecticut* (pp. 99-100); *Sherbert v. Verner* (pp. 104-107); *Wisconsin v. Yoder* (pp. 108-112); *Employment Division v. Smith* (pp. 114-120); *City of Boerne v. Flores* (pp. 122-127)

2/4 (Tu): Establishment Clause

(1) E&W, pp. 128-146

- **Cases:** *Everson v. Board of Education* (pp. 130-134); *Lemon v. Kurtzman* (pp. 138-142)

(2) E&W, pp. 169-191

- **Cases:** *School District of Abington Township v. Schempp* (pp. 170-175); *Lee v. Weisman* (pp. 177-182); *Van Orden v. Perry* (pp. 186-190)

FREEDOM OF SPEECH

2/6 (Th): Free Speech, National Security, and the Development of Legal Standards

(1) E&W, pp. 197-229

- **Cases:** *Schenck v. U.S.* (pp. 200-201); *Abrams v. U.S.* (pp. 202-205); *Gitlow v. New York* (pp. 205-209); *Dennis v. U.S.* (pp. 217-220); *Brandenburg v. Ohio* (pp. 222-224)

(2) **Carlene Products*, Footnote Four

2/11 (Tu): Regulating Forms of Speech

(1) E&W, pp. 230-244

- **Cases:** *U.S. v. O'Brien* (pp. 230-233); *Texas v. Johnson* (pp. 234-238); *Chaplinsky v. New Hampshire* (pp. 239-240); *Cohen v. California* (pp. 241-244)

(2) E&W, pp. 253-263

- **Cases:** *R.A.V. v. St. Paul* (pp. 255-258); *Snyder v. Phelps* (pp. 258-263)

(3) E&W, pp. 343-356

- **Cases:** *Roth v. United States* (pp. 344-347); *Miller v. California* (pp. 350-353)

2/13 (Th): Regulating Forums for Speech

(1) E&W, pp. 244-253

- **Cases:** *Hill v. Colorado* (pp. 247-253)

(2) E&W, pp. 264-272

- **Cases:** *Tinker v. Des Moines* (pp. 264-267); *Morse v. Frederick* (pp. 267-272)

2/18 (Tu): Commercial and Corporate Speech

(1) E&W, pp. 281-291

- **Cases:** *Bates v. State Bar of Arizona* (pp. 283-287); *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York* (pp. 289-291)

(2) E&W, pp. 742-750

- **Cases:** *Citizens United v. Federal Election Commission* (pp. 744-750)

FREEDOM OF THE PRESS

2/20 (Th): LEGAL BRIEFS OF COUNSEL IN SIMULATIONS #1 AND #2 DUE

Regulating the Press

- (1) E&W, pp. 299-311
 - **Cases:** *Near v. Minnesota* (pp. 301-303); *NY Times v. United States* (pp. 304-310)
- (2) E&W, pp. 316-320
- (3) E&W, pp. 327-343
 - **Cases:** *NY Times v. Sullivan* (pp. 328-334); *Hustler Magazine v. Falwell* (pp. 338-341)

SUPREME COURT SIMULATIONS

2/25 (Tu): SIMULATION #1

No reading assignment

2/27 (Th): SIMULATION #2

No reading assignment

PRIVACY RIGHTS

3/4 (Tu): The Right to Privacy

- (1) E&W, pp. 397-444
 - **Cases:** *Griswold v. Connecticut* (pp. 400-405); *Roe v. Wade* (pp. 409-416); *Planned Parenthood v. Casey* (pp. 422-431); *Lawrence v. Texas* (pp. 437-444)

3/6 (Th): MIDTERM EXAM

3/8 to 3/16: SPRING BREAK

PART III. RIGHTS OF THE CRIMINALLY ACCUSED

CRIMINAL PROCESS RIGHTS

3/18 (Tu): Expectations of Privacy and the Warrant Requirement

- (1) E&W, pp. 459-479
 - **Cases:** *Katz v. United States* (pp. 466-471); *United States v. Jones* (pp. 471-475); *Illinois v. Gates* (pp. 476-479)

3/20 (Th): JUDICIAL OPINIONS FOR SIMULATIONS #1 AND #2 DUE

Exceptions to the Warrant Requirement

- (1) E&W, pp. 480-497
 - **Cases:** *Arizona v. Gant* (pp. 484-487); *Safford Unified School District #1 v. Redding* (pp. 488-492); *Terry v. Ohio* (pp. 493-496)

3/25 (Tu): The Exclusionary Rule and Miranda Rights

(1) E&W, pp. 497-534

- **Cases:** *Mapp v. Ohio* (pp. 498-504); *United States v. Leon* (pp. 505-509); *Hudson v. Michigan* (pp. 510-513); *Herring v. United States* (pp. 514-517); *Escobedo v. Illinois* (pp. 519-522); *Miranda v. Arizona* (pp. 523-529)

ATTORNEYS AND TRIALS

3/27 (Th): The Right to Counsel and a Fair Trial

(1) E&W, pp. 540-550

- **Cases:** *Powell v. Alabama* (pp. 541-544); *Gideon v. Wainwright* (pp. 545-548)

(2) E&W, pp. 552-569

- **Cases:** *Batson v. Kentucky* (pp. 555-559); *Sheppard v. Maxwell* (pp. 561-564); *Richmond Newspapers v. Virginia* (pp. 566-569)

3/28 (F): JUSTICE ANALYSIS PAPERS DUE

PART IV. CIVIL RIGHTS

FOUNDATIONS OF MODERN CIVIL RIGHTS LAW

4/1 (Tu): The Civil War Amendments and "Tiers of Scrutiny"

(3) U.S. Constitution, Amendments 13-15 (E&W, p. 781)

(4) E&W, pp. 603-616

- **Cases:** *Plessy v. Ferguson* (pp. 612-616)

(5) **Carolene Products*, Footnote Four

4/3 (Th): LEGAL BRIEFS OF COUNSEL IN SIMULATIONS #3 AND #4 DUE

Brown v. Board and the Rise of Public Law Litigation

(1) E&W, pp. 616-624

- **Cases:** *Sweatt v. Painter* (pp. 617-619); *Brown v. Board of Education* (pp. 620-624)

(2) *Nathan Margold, "Preliminary Report to the Joint Committee Supervising the Expenditure of the 1930 Appropriation by the American Fund for Public Service to the N.A.A.C.P." (1930)

(3) *The Declaration of Constitutional Principles [The "Southern Manifesto"] (1956)

SUPREME COURT SIMULATIONS

4/8 (Tu): SIMULATION #3

No reading assignment

4/10 (Th): SIMULATION #4

No reading assignment

THE EXPANSION OF EQUAL PROTECTION

4/15 (Tu): Implementing Civil Rights After *Brown v. Board*

(1) E&W, pp. 624-638

- **Cases:** *Brown v. Board of Education II* (pp. 624-625); *Swann v. Charlotte-Mecklenburg Board of Education* (pp. 627-631); *Parents Involved in Community Schools v. Seattle School District No. 1* (pp. 632-638)

4/17 (Th): EASTER BREAK

4/22 (Tu): Race and Equal Protection in Other Contexts

(1) E&W, pp. 638-651

- **Cases:** *Loving v. Virginia* (pp. 639-642); *Shelley v. Kraemer* (pp. 644-646); *Burton v. Wilmington Parking Authority* (pp. 647-649); *Moose Lodge No. 107 v. Irvis* (pp. 649-651)

(2) E&W, pp. 689-699

- **Cases:** *Regents of U. of California v. Bakke* (pp. 691-698)

(3) E&W, pp. 707-718

- **Cases:** *Grutter v. Bollinger* (pp. 707-716)

4/24 (Th): Sex Discrimination

(1) E&W, pp. 652-671

- **Cases:** *Reed v. Reed* (pp. 654-656); *Craig v. Boren* (pp. 657-661); *United States v. Virginia* (pp. 663-669)

4/29 (Tu): Discrimination Based On Sexual Orientation and Economic Status

(1) E&W, pp. 671-684

- **Cases:** *Romer v. Evans* (pp. 671-676); *San Antonio Independent School District v. Rodriguez* (pp. 679-684)

5/1 (Th): JUDICIAL OPINIONS FOR SIMULATIONS #3 AND #4 DUE

Voting Rights

(1) E&W, pp. 729-742

- **Cases:** *South Carolina v. Katzenbach* (pp. 732-735); *Crawford v. Marion County Election Board* (pp. 738-742)

(2) **Shelby County v. Holder*

5/9 (F): FINAL EXAM (10:30AM-12:30 PM)