The course begins and ends with the U.S. Constitution. What does it mean? Can the founders—former British subjects—help us? Maybe so, maybe not. One thing, however, is abundantly clear: the idea that the founding fathers had a unified vision of America is wholesale fiction. We know better. Many of the founders had no desire to establish a centralized nation, instead campaigning for something more like the current European Union, a confederation of regional nation-states. Others, like the ambitious immigrant Alexander Hamilton, pressed for a strong national government. James Madison, originally aligned with Hamilton, brokered a brilliant, if slippery, compromise that enshrined this conflict at the center of our political system: the perennial battle for supremacy between national and state authority. The propaganda they spread to lobby for its adoption—collectively know as The Federalist Papers—was so successful that not only was the document agreed to by the American people, it is the oldest written constitution in the world. But what does it mean? What Hamilton and Madison said it meant? Hamilton went on to invent the national economy before being gunned down in cold blood by the evil, duplicitous, political
opportunist Aaron Burr. Madison ultimately betrayed his original nationalist position and went on to align himself with the political master of evasion, reversal, and misrepresentation—Thomas Jefferson. Given these facts, should we be bound by the dead hand of the past?

This course covers the foundations of American constitutional law. We examine the concept of judicial review and the relationship between the Supreme Court and the elected branches of government: Congress and Presidency. We explore the issues of war and emergency power, the Commerce Clause, the power to tax and spend, and most importantly, the concept of federalism. Through a discussion of a number of Supreme Court cases on these topics, we will explore the idea that American political and constitutional development is best understood as a series of battles and resultant regime changes from more nationalist-oriented cooperative federalists to more states-rights oriented dual federalists. As the current states-rights oriented, dual federalist regime decays, is America due for the next iteration of nationalist-oriented cooperative federalists? If so, how will a Supreme Court composed of holdovers from the previous, repudiated regime respond?

Fall 2015

T TH 11:00 - 12:15 Campus Life Building 110

Instructor: Artemus Ward
Office: 405 Zulauf Hall
Office Hours: T TH 12:30pm-2pm & by appointment

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**Required Text**


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**Course Requirements**

**Participation**

All students are required to participate when called on in class. Therefore, you must come to each class and be prepared to discuss the next few cases listed on the syllabus. We will generally cover 2-3 cases per day, on rare occasion 1 case but never 4 cases. I will randomly call on students so that everyone has an equal chance to participate. Your participation grade is primarily based on those instances in which you are called on. Being unprepared or absent on those days will severely hurt this part of your grade. Though it is no substitute for being absent or unprepared on the days you are called on, you can help your participation grade by volunteering as often as you wish.
Moot Court and Papers

Participation in the Supreme Court decision-making exercise and paper - all students are required to participate in the exercise acting as a Supreme Court Justice. Failure to attend a conference day will result in a reduction of one full grade on your overall paper grade for each conference missed. No exceptions. Each student is required to write two 5-6 pp. papers written in the form of an opinion (either majority, concurring, or dissenting) on one moot court case from each conference (one paper from one of the cases in the conference covering separation of powers and one paper from one of the cases in the conference covering federalism). IT IS ESSENTIAL THAT YOU FOLLOW THE SUGGESTIONS ON THE “PAPER TIPS” DOCUMENT located in the “course documents” section of Blackboard.

Final Exam

The final exam is a comprehensive essay covering the entire course. You will be asked to answer an overall question based on specific opinions in the cases we have read. You may use your notes, briefs, or anything that is your own work. You may not use the book or any other material that is not your own work with the exception of a copy of the syllabus and the U.S. Constitution. Can your notes/briefs be typed? Of course they can. The final will take the entire exam period so managing your allotted time well is essential. Bring a blue book or two and something to write with. Write legibly. If I can’t read it, I can’t grade it.

Grading System

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Participation</td>
<td>25%</td>
</tr>
<tr>
<td>Moot Court Paper 1</td>
<td>25%</td>
</tr>
<tr>
<td>Moot Court Paper 2</td>
<td>25%</td>
</tr>
<tr>
<td>Final Exam</td>
<td>25%</td>
</tr>
</tbody>
</table>

Grades are determined by the following scale: A (93.5-100), A- (89.5-93.4), B+ (86.5-89.4), B (83.5-86.4), B- (79.5-83.4), C+ (76.5-79.4), C (69.5-76.4), D (59.5-69.4), and F 0-59.4).

Note: do not contact the instructor with questions about when grades will be posted. Grades will be posted on Blackboard by the date they are due to be turned in to the University – generally the week after the course ends.

Frequently Asked Questions (FAQ) about grades from the NIU Registration and Records website is available at: [http://www.niu.edu/regrec/grading/gradingfaqs.shtml](http://www.niu.edu/regrec/grading/gradingfaqs.shtml)

Course Policies
Late Work - Any work that you do in this course must be completed by the deadlines listed on the syllabus. You may not, under any circumstances, turn in your work late. You have the entire semester to complete your work. If you leave work to the end of the course and are unable to finish it on time, you will earn a zero. It is your fault for not doing the work sooner in the semester. If you are unable to give the course the attention you should, you should withdraw from the course early in the semester rather than try to complete everything at the end, attempt to turn in late work, or beg for an extension/incomplete. There are no extensions/incompletes and this kind of begging is not only unseemly, it will reflect poorly on you in the eyes of the instructor.

Cheating and Plagiarism - PLAGIARISM, SIMPLY DEFINED, IS TAKING SOMEONE ELSE'S WORDS OR IDEAS AND REPRESENTING THEM AS BEING YOUR OWN. It is specifically prohibited by University regulations, which state:

Good academic work must be based on honesty. The attempt of any student to present as his or her own work that which he or she has not produced is regarded by the faculty and administration as a serious offense. Students are considered to have cheated if they copy the work of another during an examination or turn in a paper or an assignment written, in whole or in part, by someone else. Students are guilty of plagiarism, intentional or not, if they copy material from books, magazines, or other sources without identifying and acknowledging those sources or if they paraphrase ideas from such sources without acknowledging them. Students guilty of, or assisting others in, either cheating or plagiarism on an assignment, quiz, or examination may receive a grade of F for the course involved and may be suspended or dismissed from the university. (Undergraduate Catalog)

Statement Concerning Students with Disabilities - Northern Illinois University is committed to providing an accessible educational environment in collaboration with the Disability Resource Center. Any student requiring an academic accommodation due to a disability should let his or her faculty member know as soon as possible. Students who need academic accommodations based on the impact of a disability will be encouraged to contact the Disability Resource Center if they have not done so already. The Disability Resource Center is located in the 4th floor of the Health Services Building, and can be reached at 815-753-1303 [v], 815-753-3000 [TTY] or email at drc@niu.edu.

Undergraduate Writing Awards - The Department of Political Science will recognize, on an annual basis, outstanding undergraduate papers written in conjunction with 300-400 level political science courses or directed studies. Authors do not have to be political science majors or have a particular class standing. Winners are expected to attend the Department's spring graduation ceremony where they will receive a certificate and $50.00. Papers, which can be submitted by students or faculty, must be supplied in triplicate to a department secretary by the end of February. All copies should have two cover pages - one with the student's name and one without the student's name. Only papers written in the previous calendar can be considered for the award. However, papers completed in the current spring semester are eligible for the following year's competition even if the student has graduated.

Department of Political Science Web Site - Undergraduates are strongly encouraged to consult the Department of Political Science web site on a regular basis. This up-to-date, central source of information will assist students in contacting faculty and staff, reviewing course requirements and syllabi, exploring graduate study, researching career options, tracking department events, and accessing important details related to undergraduate programs and activities. To reach the site, go to http://polisci.niu.edu

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**COURSE SCHEDULE**

Note: There will be no face-to-face class meeting on T Oct 27.

**Course Introduction**

- Lecture: How to Succeed in College (and in Life)
- Syllabus review; introduction to the U.S. Supreme Court; how to brief a case.
- Read – Epstein & Walker introductory material, the U.S. Constitution in back of book, and Kerr’s “How to Read a Legal Opinion” and Kommers, Finn, and Jacobsohn’s “Understanding Supreme Court Opinions” in the Content area of Blackboard.

**Institutional Authority**

**Judicial Review**
Marbury v. Madison (1803)
Martin v. Hunter's Lessee (1816)
**Constraints on the Judiciary**
Ex parte McCardle (1869)
Nixon v. United States (1993)
Flast v. Cohen (1968)

**Internal Affairs of Congress**
Powell v. McCormack (1969)

**Sources & Scope of Legislative Power**
McCulloch v. Maryland (1819)
McGrain v. Daugherty (1927)

**Watergate**
In class we will listen to the key Nixon Oval Office Tapes:

**Domestic Powers of the Presidency**
Morrison v. Olson (1988)

**The Disputed Election of 2000**

**War Powers**
The Prize Cases (1863)
Ex parte Milligan (1866)
Ex parte Quirin (1942)
Korematsu v. United States (1944)
Youngstown Sheet & Tube v. Sawyer (1952)
- Read “War on Terrorism & Executive Authority Timeline” in course content area of Blackboard.

**Conference Day I** -- Justices meet to deliberate and vote on cases. Papers from Conference I are due three weeks after the date of Conference I. Print out and hand in at the start of class.
Nation-State Relations

Federalism - The Doctrinal Cycle
McCulloch v. Maryland (1819)
Dred Scott v. Sandford (1857)
Lochner v. New York (1905)
Muller v. Oregon (1908)
Hammer v. Dagenhart (1918)
Adkins v. Children’s Hospital (1923)
Carter v. Carter Coal (1936)
West Coast Hotel v. Parrish (1937)
New York v. United States (1992)
Printz v. United States (1997)

Commerce Clause
Gibbons v. Ogden (1824)
United States v. E.C. Knight (1895)
Stafford v. Wallace (1922)
Schechter Poultry v. United States (1935)
N.L.R.B. v. Jones & Laughlin (1937)
United States v. Darby Lumber (1941)
Wickard v. Filburn (1942)
Gonzales v. Raich (2005)

Conference Day II - Justices meet to deliberate and vote on cases.

Economic Liberties

Contract Clause
Fletcher v. Peck (1810)
Dartmouth College v. Woodward (1819)
Charles River Bridge v. Warren Bridge (1837)
Stone v. Mississippi (1880)
Home Building & Loan Assn. v. Blaisdell (1934)
United States Trust Co. v. New Jersey (1977)

Takings Clause
United States v. Causby (1946)
Penn Central Transportation Company v. City of New York (1978)
Berman v. Parker (1954)
Hawaii Housing Authority v. Midkiff (1984)
The Power to Tax and Spend
Pollock v. Farmers’ Loan & Trust (1895)
McCray v. United States (1904)
Bailey v. Drexel Furniture Co. (1922)

Final opinions from Conference II due on Thursday, December 3. Print out and hand in at the start of class.

Final Exam – in class on Tuesday December 8, 10-11:50am.