# The Politics of Civil Rights and Liberties (POSC 4251) – Prof. Paul Nolette

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<th><strong>THE POLITICS OF CIVIL RIGHTS AND LIBERTIES</strong></th>
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<td><strong>POSC 4251</strong></td>
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<tr>
<th><strong>Instructor Information:</strong></th>
<th><strong>Class Time:</strong></th>
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<tr>
<td>Professor Paul Nolette, J.D., Ph.D.</td>
<td>Tuesdays &amp; Thursdays 2:00pm – 3:15pm</td>
</tr>
<tr>
<td><a href="mailto:paul.nolette@marquette.edu">paul.nolette@marquette.edu</a> (414) 288-5821</td>
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<tr>
<th><strong>Office:</strong></th>
<th><strong>Class Location:</strong></th>
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<tr>
<td>William Wehr Physics Room 454</td>
<td>Olin Engineering Room 128</td>
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<tr>
<th><strong>Office Hours:</strong></th>
<th><strong>Class Time:</strong></th>
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<tr>
<td>Tuesday: 12:30pm-2pm Wednesday: 1pm-3:30pm and by appointment</td>
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## 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 race discrimination, the right to privacy, voting rights, criminal process rights, freedom of speech, and religious freedom. Consistent with the rise of the "rights revolution" in the United States in the decades 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):


In addition to this text, additional required reading material will be made available on D2L.

## 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.
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. This will especially give students who are less comfortable speaking in class a 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 26 & 28 and April 11 & 16** in Cramer Hall Room 42. 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 paper 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, February 5**.

(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, April 5**.
(4) **Midterm Exam (15%).** There will be one midterm exam for this course, which will be held in class on **Thursday, March 7.** The exam will be closed-book and will contain a variety of question types (including multiple choice, fill in the blank, and short answer 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, and short answer questions) along with 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 **Wednesday, May 8 at 1pm.**

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

**List of Important Dates:**
- 2/5 (Tu)............................Oral Argument Reaction Due
- 2/26 (Tu) and 2/28 (Th),.........Simulations #1 and #2
- 3/7 (Th).........................Midterm Exam
- 3/19 (Tu).............................Judicial Opinions Due for Simulations #1 and #2
- 4/5 (F)..............................Justice Analysis Paper Due
- 4/11 (Th) and 4/16 (Tu)........Simulations #3 and #4
- 5/2 (Th).............................Judicial Opinions Due for Simulations #3 and #4
- 5/8 (W)..........................Final Exam
**Grading Scale:**

<table>
<thead>
<tr>
<th>Grade</th>
<th>Achievement</th>
<th>Grade Points</th>
<th>Cut-off</th>
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<tr>
<td>A</td>
<td>Superior</td>
<td>4.0</td>
<td>93+</td>
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<tr>
<td>AB</td>
<td></td>
<td>3.5</td>
<td>87-92.9</td>
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<tr>
<td>B</td>
<td>Good</td>
<td>3.0</td>
<td>82-86.9</td>
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<tr>
<td>BC</td>
<td></td>
<td>2.5</td>
<td>77-81.9</td>
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<tr>
<td>C</td>
<td>Satisfactory</td>
<td>2.0</td>
<td>72-76.9</td>
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<tr>
<td>CD</td>
<td></td>
<td>1.5</td>
<td>67-71.9</td>
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<tr>
<td>D</td>
<td>Minimum Passing</td>
<td>1.0</td>
<td>60-66.9</td>
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<tr>
<td>F</td>
<td>Failing</td>
<td>0.0</td>
<td>Below 60</td>
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**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 one week in advance of the assignment due 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 in this event I will notify the class of any and all changes well in advance.

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

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<thead>
<tr>
<th>PART I. RIGHTS, LIBERTIES, AND THE SUPREME COURT</th>
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<tr>
<td>Week One: Introduction</td>
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<td>1/15 (Tu): Course Introduction</td>
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<tr>
<td>No reading assignment</td>
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<tr>
<td>1/17 (Th): Constitutional Rights and Constitutional Moments</td>
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<tr>
<td>(1) U.S. Constitution, Amendments 1-10 (ACL, pp. 1078-1079)</td>
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<td>(2) *Declaration of Independence</td>
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<td>(3) *Gettysburg Address</td>
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<td>(4) *Emancipation Proclamation</td>
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<td>(5) *FDR, Four Freedoms Speech</td>
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<tr>
<th>PART II. CIVIL RIGHTS IN THE MODERN ERA</th>
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<tr>
<td>Weeks Three and Four: The Rights Revolution and the Nationalization of Civil Rights</td>
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<tr>
<td>1/29 (Tu): The Civil War Amendments</td>
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<tr>
<td>(1) U.S. Constitution, Amendments 13-15 (ACL, pp. 1080-1081)</td>
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<tr>
<td>(2) ACL, pp. 763-779</td>
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<tr>
<td>• Cases: Dred Scott v. Sandford (pp. 767-770); Civil Rights Cases (pp. 774-776); Plessy v. Ferguson (pp. 776-779)</td>
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1/31 (Th): Incorporation of the Bill of Rights and “Tiers of Scrutiny”
(1) *Carolene Products*, Footnote Four
(2) *Lucas Powe, The Warren Court and American Politics*, Chapter 1

2/5 (Tu): ORAL ARGUMENT REACTION DUE (1 PAGE)
*Brown v. Board* and the Rise of Public Law Litigation
(1) ACL, pp. 779-782
(2) ACL, pp. 787-791
- **Cases:** *Brown v. Board of Education* (pp. 788-791); *Bolling v. Sharpe* (p. 791)
(3) *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)
(4) *The Declaration of Constitutional Principles [The "Southern Manifesto"]* (1956)

2/7 (Th): Implementing Civil Rights After *Brown v. Board*
(1) ACL, pp. 792-795
- **Cases:** *Brown v. Board of Education II* (pp. 792-793); *Cooper v. Aaron* (pp. 793-795)
(2) ACL, pp. 802-812
- **Cases:** *Shelley v. Kraemer* (pp. 806-808); *Jones v. Mayer Co.* (pp. 808-809); *Heart of Atlanta Motel v. United States* (pp. 810-812)

Weeks Five and Six: The Expansion of Equal Protection and Due Process

2/12 (Tu): Affirmative Action
(1) ACL, pp. 812-833
- **Cases:** *Regents of U. of California v. Bakke* (pp. 822-825); *Fullilove v. Klutznick* (pp. 825-827); *Richmond v. Croson Co.* (pp. 828-829); *Adarand Constructors v. Pena* (pp. 829-832)
(2) *Grutter v. Bollinger* and *Gratz v. Bollinger*

2/14 (Th): Gender Discrimination
(1) ACL, pp. 835-858
- **Cases:** *Bradwell v. State* (pp. 840-842); *Frontiero v. Richardson* (pp. 854-856); *Craig v. Boren* (pp. 856-858)
(2) ACL, pp. 865-871
- **Cases:** *Rostker v. Goldberg* (pp. 865-866); *United States v. Virginia* (pp. 868-871)

2/19 (Tu): Rights of Gays and Lesbians
(1) ACL, pp. 889-894
- **Cases:** *Romer v. Evans* (pp. 890-893)
(2) ACL, pp. 939-949
- **Cases:** *Bowers v. Hardwick* (pp. 944-947); *Lawrence v. Texas* (pp. 947-949)
2/21 (Th): The Right to Privacy
(1) ACL, pp. 895-899
(2) ACL, pp. 902-918
   - **Cases:** Griswold v. Connecticut (pp. 904-906); Roe v. Wade (pp. 915-918)
(3) ACL, pp. 924-932
   - **Cases:** Planned Parenthood v. Casey (pp. 924-927); Stenberg v. Carhart (pp. 927-929); Gonzalez v. Carhart (pp. 930-932)

Weeks Seven and Eight: Justice Simulations and Voting Rights

2/26 (Tu): SIMULATION #1
No reading assignment

2/28 (Th): SIMULATION #2
No reading assignment

3/5 (Tu): Voting Rights
(1) ACL, pp. 971-989
   - **Cases:** Smith v. Allwright (pp. 980-982); Harper v. Virginia Board of Elections (pp. 982-983); South Carolina v. Katzenbach (pp. 983-986); Mobile v. Bolden (pp. 986-988)

3/7 (Th): MIDTERM EXAM

3/9 to 3/17: SPRING BREAK

PART III. CIVIL LIBERTIES IN THE MODERN ERA

Weeks Nine and Ten: Criminal Procedure

3/19 (Tu): JUDICIAL OPINIONS FOR SIMULATIONS #1 AND #2 DUE
Criminal Process Rights
(1) ACL, pp. 629-633
   - **Cases:** Powell v. Alabama (pp. 631-633)
(2) ACL, pp. 649-662
   - **Cases:** Palko v. Connecticut (pp. 655-657); Mallory v. United States (pp. 661-662)

3/21 (Th): Criminal Process Rights, continued
(1) ACL, pp. 663-670 and 672-674
   - **Cases:** Gideon v. Wainwright (pp. 668-670); Miranda v. Arizona (pp. 672-674)
(2) ACL, pp. 705-726 and 729-735
   - **Cases:** California v. Ciraolo (pp. 729-730); United States v. Ross (pp. 730-732); Terry v. Ohio (pp. 733-735)


3/26 (Tu): The Exclusionary Rule  
(1) ACL, pp. 748-761
  • Cases: Weeks v. United States (pp. 753-755); Mapp v. Ohio (pp. 755-757); United States v. Leon (pp. 757-759)

3/28 (Th): EASTER BREAK

Weeks Eleven, Twelve, and Thirteen: Freedom of Speech and the Press

4/2 (Tu): Free Speech, National Security, and the Development of Legal Standards  
(1) ACL, pp. 439-454
  • Cases: Schenck v. U.S. (pp. 443-444); Abrams v. U.S. (pp. 444-446); Gitlow v. New York (pp. 446-448); Whitney v. California (pp. 448-449); Dennis v. U.S. (pp. 450-452); Yates v. U.S. (pp. 452-454)

4/4 (Th): Regulating Forums for Speech  
(1) ACL, pp. 462-482
  • Cases: Brandenburg v. Ohio (pp. 470-471); Cohen v. California (pp. 471-474); R.A.V. v. St. Paul (pp. 474-476); Tinker v. Des Moines (pp. 476-478); Morse v. Frederick (pp. 478-482)

4/5 (F): JUSTICE ANALYSIS PAPERS DUE

4/9 (Tu): Regulating Forms of Speech  
(1) ACL, pp. 482-487 and 491-498
  • Cases: Texas v. Johnson (pp. 485-487); FCC v. Pacifica Foundation (pp. 493-496)
  (2) ACL, pp. 537-549 and 554-557
  • Cases: Roth v. United States (pp. 545-547); Miller v. California (pp. 547-549)

4/11 (Th): SIMULATION #3
No reading assignment

4/16 (Tu): SIMULATION #4
No reading assignment

4/18 (Th): Regulating the Press  
(1) ACL, pp. 504-516
  • Cases: Near v. Minnesota (pp. 509-511); New York Times v United States (pp. 511-514); Branzburg v. Hayes (pp. 514-516)
  (2) ACL, pp. 525-537
  • Cases: New York Times v. Sullivan (pp. 529-532); Gertz v. Robert Welch, Inc. (pp. 532-535); Hustler Magazine v. Falwell (pp. 535-537)
# Weeks Fourteen and Fifteen: God, Guns, and the Constitution

### 4/23 (Tu): Gun Rights
- (1) ACL, pp. 697-703
  - **Cases:** District of Columbia v. Heller (699-703)
- (2) *McDonald v. Chicago*

### 4/25 (Th): Free Exercise
- (1) ACL, pp. 559-577
  - **Cases:** Minersville School District v. Gobitis (pp. 570-571); West Virginia State Board of Education v. Barnette (pp. 571-574); Goldman v. Weinberger (pp. 574-575)

### 4/30 (Tu): Establishment Clause
- (1) ACL, pp. 577-584 and 589-594
  - **Cases:** Employment Division v. Smith (pp. 589-591); Boerne v. Flores (pp. 592-594)
- (2) ACL, pp. 594-603 and 605-607
  - **Cases:** Lemon v. Kurtzman (pp. 605-607)
- (3) ACL, pp. 609-615 and 620-622
  - **Cases:** Lee v. Weisman (pp. 620-622)

### 5/2 (Th): JUDICIAL OPINIONS FOR SIMULATIONS #3 AND #4 DUE
- Catch-up and Exam Review
- No reading assignment

### 5/8 (W): FINAL EXAM (1:00-3:00 PM)