Introduction to American Government
POLS 1101
The University of Georgia
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Syllabus is on the website.
Exams

Students will be allowed to select one of the following two grade formulas:

Formula #1:

Class Attendance/Participation (10% of final grade): One of the goals for this class is for students to become comfortable discussing political institutions, issues and events. Hence, they will be encouraged to attend and participate in course discussions. More than two absences will result in a lowering of a student’s discussion section grade. A student’s participation grade may also include several small quizzes or assignments.

Midterm Exams (60% of final grade): Three midterm examinations (worth 20% each) will be given throughout the course. The dates are listed on the syllabus as May 20, May 27, and June 3. These exams will consist of multiple choice and short answer questions. The midterm examinations will be non-cumulative. If a student is unable to take one of the exams on the scheduled date, they should contact the course instructor beforehand. Missed exams will only be excused for a documented illness (documentation must be provided by a physician) or a death in the family. If you are excused from an exam, your final exam will be weighted accordingly.

Final Exam (30% of final grade): The final exam is scheduled for Wednesday, June 7, from 9:30am to 12:15 pm in the regular classroom. Like the midterms, it will feature a mix of multiple choice and short answer questions. The final exam will be cumulative, covering all materials from readings and lectures.

Exams

Students will be allowed to select one of the following two grade formulas:

Formula #2:

Class Attendance/Participation (10% of final grade): One of the goals for this class is for students to become comfortable discussing political institutions, issues and events. Hence, they will be encouraged to attend and participate in course discussions. More than two absences will result in a lowering of a student’s discussion section grade. A student’s participation grade may also include several small quizzes or assignments.

Midterm Exams (90% of final grade): Three midterm examinations (worth 20% each) will be given throughout the course. The dates are listed on the syllabus as May 20, May 27, and June 3. These exams will consist of multiple choice and short answer questions. The midterm examinations will be non-cumulative. If a student is unable to take one of the exams on the scheduled date, they should contact the course instructor beforehand. Missed exams will only be excused for a documented illness (documentation must be provided by a physician) or a death in the family. Students excused from a midterm exam will not be eligible to waive the final.

Final Exam (0% of final grade): If a student is happy with his or her final grade following the third midterm exam, they may select this grade formula and waive the final.
News

Harriet Tubman will bump Andrew Jackson from the front of the $20 bill while Alexander Hamilton will stay put on the $10 — a historic move that gives a woman prime placement on U.S. currency and quells a controversy kicked up by Hamilton super-fans. [Treasury Secretary Jack Lew] explained that Hamilton was on the chopping block as a matter of practicality — the $10 bill was the next one up for a redesign. Lew still got an earful from fans of Hamilton, who helped create the Treasury Department and the modern American financial system.

“Defiant and determined to transform the Democratic Party, Senator Bernie Sanders is opening a two-month phase of his presidential campaign aimed at inflicting a heavy blow on Hillary Clinton in California and amassing enough leverage to advance his agenda at the convention in July — or even wrest the nomination from her,” the New York Times reports. “Advisers to Mr. Sanders said on Wednesday that he was newly resolved to remain in the race, seeing an aggressive campaign as his only chance to pressure Democrats into making fundamental changes to how presidential primaries and debates are held in the future. They said he also held out hope of capitalizing on any late stumbles by Mrs. Clinton or any damage to her candidacy, whether by scandal or by the presumptive Republican nominee, Donald J. Trump.”

Calling it a “major-ass haul” that would provide “some much-needed scratch,” Vice President Joe Biden reportedly scored over 800 feet of copper wire from a foreclosed home in the D.C. suburbs, White House sources confirmed Thursday.

Marijuana-A Modern Federalism Issue

CNN (7/31/15): A Colorado bank has sued the Federal Reserve for not giving it permission to provide financial services to marijuana businesses. Fourth Corner Credit Union of Denver filed suit Thursday against the Kansas City branch of the Federal Reserve, which supervises banks in Colorado. The Fed denied Fourth Corner's request to allow it to operate within the banking system.

Medical marijuana is legal in about 23 states and recreational marijuana is legal in Colorado, Washington, Oregon, Alaska and Washington, DC. However, it is still illegal on the federal level. That means banks don't want anything to do with marijuana businesses, who are forced to operate in cash only. Fourth Corner was created specifically to serve the pot industry. It got state approval back in November, and was waiting for a green light from the Federal Reserve.

The industry was counting on the bank, hoping it would be a turning point for all their financial issues. The bank has a broad base of support, including from the a group of attorneys, business owners and legalization advocates…The lawsuit called the Fed's denial "anti-competitive, it is detrimental to public safety." It pointed out that businesses that have to deal only in cash have "significant public safety concerns." Indeed, it has led to a whole new industry of security firms catering to dispensaries.
Gay Marriage-A Modern Federalism Issue

**Washington Post (5/7/16):** Alabama Supreme Court Chief Justice Roy Moore already lost his job once. Now he’s at risk of losing it again.

A state commission on Friday suspended Moore from the bench, alleging that the top-ranking state judicial official disregarded “clear law” this year when he instructed state judges to ignore the landmark U.S. Supreme Court ruling last summer that established nationwide same-sex marriage rights.

“Chief Justice Moore flagrantly disregarded and abused his authority as the chief administrative officer of Alabama’s judicial branch,” the Alabama Judicial Inquiry Commission wrote in a Friday filing, uploaded by AL.com.

Moore, 69, faces six charges of violating judicial ethics, all stemming from a Jan. 6 order in which he told state probate judges that they have a “ministerial duty” to abide by state law limiting marriage to heterosexual couples. That order defies not only the high court’s ruling on Obergefell v. Hodges, but also two other court decisions, the commission found.

As a result of the ongoing case, Moore was automatically suspended from the bench, the Associated Press reported. But this isn’t his first time facing such charges.

American Federalism

Despite the Framers’ efforts to keep the national government out of the states’ business, was it inevitable that so many policies once left to the states are now handled by the federal government?
**American Federalism**

Federalism is a hybrid arrangement.

- Mixes elements of a **confederation** (lower level has real power) and a **unitary government** (national level monopolizes constitutional authority).
- In a federal system, the constitution usually divides authority between two or more distinct levels of government; in the U.S. division is between the national (federal) government and the states.

Before adopting a federal system in the Constitution the nation had experienced both of these alternatives.

- Monarchy/parliament – unitary.
- Articles of Confederation – confederation.

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**American-Style Federalism**

Worldwide, unitary governments are far more common.

Typically, the central government establishes national policies and raises and distributes funds to the local units to carry them out.

Lower-level units function primarily as the administrative apparatus of the national government.
Qualifications of Federal Systems

A government must have constitutional relations across levels, interactions that satisfy three general conditions:

1. The same people and territory are included in both levels of government.

2. The nation’s constitution protects units at each level of government from encroachment by the other units.

3. Each unit is in a position to exert some leverage over the other.

Qualifications of Federal Systems

The second condition, independence, sets the stage for the third condition, mutual influence.

Independence was the missing ingredient that made the national government impotent under the Articles of Confederation.

Note: Local governments are not a separate level of government.

• They are established by the state and do not exercise independent, constitutional authority. State law establishes their responsibilities and the extent of their discretion over policies.
Types of Federalism

Two distinct forms of American federalism: dual and shared.

Dual federalism leaves the states and the national government presiding over mutually exclusive “spheres of sovereignty.” It is the simplest possible arrangement. The nation, however, has never divided authority so neatly.

The second and more accurate conception of federalism is called shared federalism (or “cooperative federalism”). It recognizes that the national and state governments jointly supply services to the citizenry.

Federalism Evolving

From the early days of quite limited responsibility for the national government, nationalization has shifted authority to the national side and away from state governments.

Today the national government has a hand in almost all policies that “concern the lives” of the citizenry.

Dual federalism no longer describes that nature of federal-state relations.

Federalism is highly dynamic: nationalization of public policy is not based on a grand design by the Framers, but is rather the product of problem solving and constituency service – the interplay of political interests over time.
Federalism Evolving

Often the scope and complexity of modern problems mandate a joint, cooperative strategy across states and levels of government.

Pollution does not honor state boundaries, nor does unemployment, inflation, crime, and so on.

- Hurricane Katrina
- BP Oil Spill in Gulf of Mexico
- Complex dilemmas

And political logic: incentives for federal officials, members of Congress, etc., to expand federal government’s reach (desire to increase in power; national vs. state constituency)

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Federalism Evolving

But the question of whether or not the federal government actually assumed responsibility for a specific policy remained (and still is) a political decision.

*South Dakota v. Dole (1987)*

South Dakota, allowed 19-year-olds to purchase beer containing up to 3.2% alcohol.

In 1984, the United States Congress passed the National Minimum Drinking Age Act, withholding highway funds from states that did not adopt a minimum legal age of 21.

South Dakota challenges the law and loses 7-2. The ruling argues that this is a valid exercise of federal authority under the “necessary and proper clause.”
Transformation of the Senate

The greatest victory of states’ righters during the Constitutional Convention was the creation of a Senate whose members were to be selected by the state legislatures (Senators beholden to the state legislators).

In 1913 public pressure forced Congress and state legislatures to ratify the Seventeenth Amendment — rising from complaints that individuals were buying Senate seats with bribes to legislators.

- Consequence: diminishment of one of the props of federalism by removing senators’ ties to the state legislature.

The Tenth Amendment

The Tenth Amendment offers the most explicit endorsement of federalism to be found in the Constitution.

Yet despite its plain language, the Tenth Amendment has failed to play a major role in fending off national authority. Why?

The powerful combination of the supremacy and the elastic clauses have kept the Tenth Amendment from fending off federal/national authority, i.e. the Constitution variously endorses national power and states’ rights giving politicians easy openings to interpret the Constitution according to their own political objectives.
The Supremacy Clause

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof [that is, in keeping with the principles of the Constitution] … shall be the supreme law of the land.”

The provision of the Constitution with the most profound implication for modern American federalism is the so-called supremacy clause in Article VI, Clause 2.

This clause does not give the federal government free license.

Original intent was to have the national government prevail over states when both were acting in a constitutionally correct manner.

The Powers of Congress

Article I, Section 8 lists powers of Congress (enumerated powers).

These powers are important to federalism because they create jurisdictional boundaries between the states and the national government.

Some powers are broadly stated and thus helped open up state policy to national intervention.

Example: the commerce clause.

In addition, the elastic clause (necessary and proper clause) also eventually undermined the restrictive purpose of the enumerated powers.
Interpreting the Constitution

Supreme Court resolving disputes and setting precedents – judiciary often as aggressive as Congress in expanding the national authority over the states:

• **McCulloch v. Maryland** (1819)
  – Protected the national government from actions of the state.
• **Gibbons v. Ogden** (1824)
  – Only Congress possesses authority to regulate commerce.
• **Gitlow v. New York** (1925)
  – States could not abridge the free speech rights of their residents.
• **Near v. Minnesota** (1931)
  – Applied the First Amendment’s protections of a free press to the states.
• **Palko v. Connecticut** (1937)
  – States could not violate rights without which “neither liberty nor justice could exist.”
• **Griswold v. Connecticut** (1965)
  – Court held that a state prohibition on the use of contraceptives violated the inherent right to privacy of its residents.
• **Roe v. Wade** (1973)
  – Ruled that states could not impose strict limits on abortions as had existed in the Texas law that was scrutinized in *Roe v. Wade*.

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**McCulloch v. Maryland (1819)**

In 1816, a new national bank gets re-chartered. It’s not-popular.

Maryland is one of the states that is particularly cheesed with this new bank. They levy a 2% tax on it.

James McCulloch – a bank agent – refuses to pay the tax.

The case goes to the Supreme Court... The two primary questions: (1) Can Congress charter a bank? (2) Can a state tax a federal entity?
**McCulloch v. Maryland (1819)**

A unanimous Supreme Court rules for the federal government on both questions. In the majority opinion, Chief Justice John Marshall rules that:

(1) Yes. Under the necessary and proper clause, this is a Constitutional exercise of federal power.

(2) No. The 10th Amendment reserves to the states only powers not delegated to the federal government and the Constitution already gives the federal government the power to tax. Further, as the “power to tax involves the power to destroy,” the federal government is exempt from state taxes under the Supremacy Clause.

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**Gibbons v. Ogden (1824)**

New York State legislature gives Ogden a steamboat monopoly. A New Jersey steamboat operator, Gibbons, enters New York waters hoping to steal some of Ogden’s business.

Ogden is upset – pressures New York to ban Gibbons. Gibbons hires Daniel Webster and this goes to the Supreme Court.

The two primary questions: (1) Does the Constitution permit the federal government to regulate navigation? (2) Is the New York monopoly Constitutional under the 10th Amendment or does this violate the Commerce Clause?
**Gibbons v. Ogden (1824)**

A unanimous Supreme Court rules for the federal government on both questions. In the majority opinion, Chief Justice John Marshall rules that:

1. Yes, Congress can regulate navigation. Commerce is more than just buying and selling, and while the power to regulate commerce within a state belongs to the state, commerce among the states does not stop at the border.

2. No, the NY monopoly is unconstitutional because the Supremacy Clause gives the federal government's laws precedent here despite the 10th Amendment. However, the monopoly would have been fine if the federal government did not choose to regulate.

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**The Logic of Nationalization**

How does policy become nationalized?

Nationalization did not just happen.

- Reflects political decisions; competition of interests.
- Civil War at its heart was a conflict involving federalism.

Generally, two scenarios:

- Realities of collective action (problem solving).
- Purely political considerations (i.e., opportunities for political advantage).
The Logic of Nationalization

State jurisdiction over public goods that fall within its borders offers real advantages: efficiency and responsiveness.

But once the public good encompasses the larger community, the logic for local control disappears.

Take railroads for an example:

• Throughout the first half of the nineteenth century, America remained a nation of segmented communities that did not require much coordination of commercial endeavors.

• But changes over time, i.e. growth, urbanization, industrialization, changes desire and perception of public goods, aka can’t be provided by the local/state level

The Paths to Nationalization

The logic of collective action has assumed several forms:

First, Americans have at times decided collectively to adopt policies of such magnitude and scope that they outstripped the resources of states.
The Paths to Nationalization

Second, states have solicited federal intervention when they could not solve their problems by working together individually.

Finally, political considerations inspired national majorities to insist on federal involvement in what were formally state and local matters. Civil rights is a good example.

The Logic of Nationalization

The kinds of collective action dilemmas that prompt states to ask Washington for help often fall into one of three categories:

(1) Coordination problems.

(2) Reneging and shirking.

(3) Cutthroat competition.
Coordination Problems

A nation composed of fifty states is bound to face coordination problems.

Example of driver’s license laws:

- Lobby to standardization for interstate truckers -- what led to this federal intervention?
- Creation of bureau within DOT to centralize records of traffic violations.
- Easier to create centralized record keeping than to require each state to update its records with those of every other state.

Regulation of electricity industry

- Earlier state level policy made sense, but today power flows through an extensive continental grid.
- Fragmented state regulation; need for intervention?

Reneging and Shirking

States must always honor their commitments to their sister states.

The Constitution and national laws solve many of these dilemmas by authorizing the federal government to take direct action raising resources and administering policy.

Example: polluted air/water. Without enforcement states continue to pollute. Classic tragedy of the commons situation.
Cutthroat Competition

- At various times cutthroat competition has prompted state officials to lobby Washington to prevent bidding wars.
  - Examples: minimum wage standards, environmental regulation
- Competition can also emerge as states bid against each other for economic reasons – getting companies to relocate to their state by providing tax breaks or special services.
  - States spend as much as $40 billion annually to lure and retain large employers to their states.
- Race to the bottom
  - Cutting back on social services in order not to become a “welfare magnet”
- Competition between states and performance comparisons
  - Texas low education scores; No Child Left Behind

Political Logic of Nationalization

Sometimes those promoting a policy find that it is in their interest to shift their focus from the states to the national government. Why?

- Difficult to lobby/persuade fifty separate states.
- More efficient method – a single federal law can change policy in all fifty states at once.
- National government may be more receptive.

Environmental protection is a nice example. Local residents bear the brunt of the cost; lumber industry, coal burning industry.
Political Logic of Nationalization

Sometimes the reverse political process occurs, as groups that lose at the national level see smaller victories in those states where they enjoy majority support.

Examples: social conservatives on the issues of abortion rights and school prayer, stem-cell research in California, marijuana legalization, gun laws, etc…

Preemptive Legislation

Preemption are federal laws that assert the national government’s prerogative to control public policy in a field.

- Relatively little preemption prior to the New Deal. Afterwards, much more.
- Owes its existence to the Supremacy Clause.

On balance, federal government has not usurped states’ jurisdictions so much as it has joined with the states in formulating policy.

- Result: shared federalism.

How does the federal government induce cooperation from the constitutionally independent states?

- Carrots and sticks.
The Carrot: Federal Grants

During the last fifty years federal grants-in-aid have become an important part of intergovernmental relations. Few grants prior to New Deal.

These grants are more than simply inducements to states to carry out particular programs; they also allow the national government to define these state programs.

**Block grant**: set sum of money; if not all spent, remains in federal treasury. States have little incentive to curb costs.

**Matching grant**: matching sum in relation to state spending on a program; blank check; moral hazard.

Medicaid expansion by state lawmakers during flush economy versus their unwillingness to cut during poor economic times (lot of pain for little gain)

The Stick: Unfunded Mandates

Since the 1960s the federal government has relied increasingly on rules to pursue policy objectives.

States are required to administer policies they might object to, and they may even be asked to pay for the administration of the policies.

National government employs four basic methods:

- Cross-cutting requirements
- Crossover sanctions
- Direct orders
- Partial preemption
Unfunded Mandates: Cross-Cutting Requirements

Statutes that apply certain rules and guidelines to a broad array of federally subsidized state programs.

- Example: failure of any state to follow federal guidelines that prohibit discrimination can result in the prosecution of state officials as well as loss of grants.
- Example: All state programs that include major construction and changes in land use must file environmental statements with the federal government.

Unfunded Mandates: Crossover Sanctions

Stipulations that to remain eligible for full federal funding for one program a state must adhere to the guidelines of an unrelated program.

- Congress’s stipulation that federal highway funds be tied to state adoption of a minimum drinking age of twenty-one.
- Bill restricting sale of soft drinks on school grounds tied to school aid funds.
Unfunded Mandates: Direct Orders and Partial Preemption

Direct orders: Requirements that can be enforced by legal and civil penalties.

- Example: the Clean Water Act bans ocean dumping of sewage sludge

Partial Preemption: Certain federal laws allow the states to administer joint federal-state programs so long as they conform to federal guidelines. This practice is called partial preemption.

If an agency fails to follow the instructions of the federal agencies, the state might lose control of the program.

- Example: state air pollution policies. Public law and the EPA set minimally acceptable standards, but enforcement of these standards rests mostly with state agencies.

Federalism: A Byproduct of National Policy

Federal-state relations are dynamic.

- Dramatically transformed during the twentieth century.

Nationalization of public policy is not based on a grand design planned by the Framers. Product of the interplay of political interests.

- Politicians sought solutions to problems and responded to the interests of their constituents.

It’s likely to continue in this form.
Conclusion

Questions?

Enjoy the rest of your day!