

Political Science 272
Modern American Constitutional Law:
Public Power and Civil Rights from WW I to the Present

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M 10-12

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This course explores the structures, purposes, and transformations in the American constitutional system from World War I to the present. Issues include the division of powers between state and national governments and the branches of the federal government; economic powers of private actors and governmental regulators; the authority of governments to enforce or reduce racial and gender hierarchies; and the extent of religious and expressive freedoms, privacy rights, and rights of persons accused of crimes. Readings focus on Supreme Court decisions, and major cases are listed on the syllabus as a study aid. But American constitutionalism involves much more than judicial rulings, so the readings also include legislative and executive constitutional arguments, party positions, views of social movement leaders, and other vital contributions to American constitutional thought.

Course requirements: This class uses a SAIL (Structured Active In-Class Learning) format. In addition to required *readings* each week, videolectures placed on the Canvas course site are required *viewing*. Class time is devoted not to lectures but to discussion--aided by PollEverwhere polling to get a sense of our range of views--and to large-group exercises. Polling participation is tracked, and total participation is equal to **2%** of the total course grade. To insure preparation and aid learning, students are required to take weekly online quizzes on the Canvas site, prior to each Monday class. Quiz scores are equal to **3%** of the total course grade. Recitations will be venues for fuller participation in small-group discussions and activities. Recitation participation scores will be assigned by the Teaching Assistants and equal to **5%** of the course grade.

Students will also write a 3 page paper, due January 31st, which counts for **10%** of the final course grade; a "moot court" take-home midterm, due March 6th, which counts for **35%** of the final course grade; and a final exam on May 5th, which counts for **45%** of the final course grade. Students are also encouraged, but not required, to submit brief one or two paragraph responses to each week's readings, e-mailed to their TA and to Professor Smith. Those who submit 10 satisfactory responses can write a 10-12 page paper in place of the final exam if they so choose. The professor or T.A. must approve all paper topics. Final papers are also due on May 5th. There are *no* extensions without instructor approval. All papers must contain full citations to their sources and comply with the Penn requirements of academic honesty. Late assignments will be penalized at the rate of one grade level per day (i.e., A to A-, A- to B+, etc.). *Students must complete all the requirements listed above to pass the course.*

Course materials: Most course readings are from a two-volume casebook, American Constitutionalism, by Howard Gillman, Mark Graber, and Keith Whittington (GGW I and II on syllabus). We are using the SECOND EDITION, released August 2016. The Penn Book Store is making new and used copies available for sale or rent, along with eBooks. The best price may shift; you can also rent an electronic copy of Vol. 1 at <https://www.vitalsource.com/products/american-constitutionalism-howard-gillman-v9780190632380>. Vol. 2 is at <https://www.vitalsource.com/products/american-constitutionalism-howard-gillman-v9780190632397>. If need be, books can be ordered directly by from the Oxford Press, <http://global.oup.com/academic/?cc=us&lang=en>. Students can also rent hard copies at Amazon.com; and for those with disciplined work habits, the two volumes are *on reserve at the library*.

PowerPoint polling via “PollEverywhere” can be done from any smartphone or tablet. Students do not have to purchase or rent a clicker. Note that we will NOT be using some parts of both the GGW volumes, but that both volumes will also be drawn on for the readings in PSCI 271, “Classic American Constitutional Law,” in fall 2020. (Both PSCI 271 and PSCI 272 can be taken *without* taking the other, and they can be taken in *either order*. Though a chronological order may seem more natural, the past is *always* studied only after we have some familiarity with the present). Some additional readings as well as the videolectures are available on the Canvas course site. *Videolectures are available via "Class Recordings". Some additional cases, along with all weekly reading assignments, are posted in "Modules."*

Wk. 1, January 15: Our Conflicted Constitution in the 21st Century (no cases or videolectures).

Required: GGW I, Ch. 1, pp. 3-26, 311-322 (to II); GGW II, Ch. 1, pp. 3-8 (to IV), 14 (at VII)-21, 279-285 (to II).

Recommended: GGW I or II, Appendix 2 (on researching legal documents, but also maps out structure of American judicial system). You should also be referring to Appendix I (the text of the Constitution) a LOT during the course!

Wk. 2, January 22 (No class Jan. 20): Early 20th Century Battles over Governmental Powers

Required: GGW I, 368(D)-372(F); 386(V)-397(D).

Wk. 2 videolectures.

Cases:

Missouri v. Holland

Selective Service Law Cases

Myers v. U.S.

J.W. Hampton, Jr. & Co. v. U.S.

Recommended: GGW I, all of Chapter 7.

Wk. 3, January 27-29: Early 20th Century Divisions over Individual Rights

SHORT PAPER DUE JANUARY 31.

Required: GGW II, 325(C)-339(B); 354(C)-358(D); 364(*DeFore*)-370.

Wk. 3 videolectures.

Recommended: GGW I, 352-354 (to B); GGW II, 383-386 (to *Mugler*)

Cases:

Meyer v. Nebraska

Buck v. Bell

Schenck v. United States

Whitney v. California

Near v. Minnesota

People v. DeFore

Olmstead v. U.S.

Powell v. Alabama

Recommended: GGW II, all of Chapter 7.

Wk. 4, Feb. 3-5: New Deal Constitutionalism and Economic Regulation

Required: GGW I, 403-423 (to Southern Manifesto); 441(III)-450(to *Wickard*); 463(C)-470(to IV); 484(C)-491(D). GGW II, 372-383(B); 393(at III)-401(to *Williamson v. Lee Optical*).

Wk. 4 videolectures.

Cases:

Home Building & Loan Association v. Blaisdell

Humphrey's Executor v. U.S.

Schechter Poultry Co. v. U.S.

U.S. v. Butler

U.S. v. Curtiss-Wright Export Corporation

National Labor Relations Board v. Jones & Laughlin Steel Corp.

Steward Machine Co. v. Davis

West Coast Hotel v. Parrish

U.S. v. Carolene Products

Wk. 5, February 10-12: War, Governmental Powers, and Civil Rights and Liberties

Required: GGW I, 450(*Wickard v. Filburn*)-454(B). GGW II, 388 (at State Action)-391 (to *Jones v. Alfred Mayer*); 401(*Williamson*)-404(*Engel*); 409(C)-411 (to *Perez v. Sharp*); 418(IV)-423 (to Internal Security Act); 448(V)-457 (to *The Road to Brown*); 473 (*Ex Parte Quirin*)-475(B).

Everson v. Board of Education of Ewing Township (on Canvas site).

Wk. 5 videolectures.

Recommended: GGW I, all of Chapter 8.

Cases:

Wickard v. Filburn

Ex Parte Quirin

Skinner v. State of Oklahoma ex rel. Williamson

West Virginia State Board of Education v. Barnette

Korematsu v. United States

Shelley v. Kraemer

Everson v. Board of Education

Wk. 6, February 17-19: The Cold War, National Security, and Civil Rights and Liberties

Required: GGW I, 423 (the Southern Manifesto)-426(C); 474(A)-482(B); GGW II, 401 (*Williamson v. Lee Optical*)-402(B); 423 (*Dennis v. U.S.*)-427(to *New York Times v. Sullivan*); 457 (*The Road to Brown*)-466 (to *Green v. New Kent County*).

Wk. 6 videolectures.

Cases:

Dennis v. United States

Youngstown Sheet & Tube Co. v. Sawyer

Brown v. Board of Education of Topeka I

Bolling v. Sharpe

Brown v. Board of Education of Topeka II

Williamson v. Lee Optical

Cooper v. Aaron

Wk. 7: February 24-26: MIDTERM SIMULATION; The Great Society and Civil Rights

Required: GGW I, 433(*Baker v. Carr*)-439(D); 454(B)-463(C). GGW II, 433(B)-448(C); 467(*Green v. New Kent County*)-469 (to VI).

Wk. 7 videolectures.

Cases:

Baker v. Carr

Reynolds v. Sims

Harper v. Va. Bd. of Elections

Heart of Atlanta Motel v. U.S.

South Carolina v. Katzenbach

Katzenbach v. Morgan

Green v. County School Board of New Kent County

Wk. 8: March 2-4: The Great Society and Civil Liberties; MIDTERM DUE MARCH 6th.

Required: GGW I, 427(C)-433(*Baker*); GGW II, 383(B)-388 (to State Action); 402(B)-409(C); 414(*Griswold*)-418(to IV); 469(C)-471(*Quirin*); 475(B)-486(D).

Wk. 8 videolectures.

Recommended: GGW II, all of Ch. 8 (only after you finish the midterm! Great fun during spring break...)

Cases:

Mapp v. Ohio

Engel v. Vitale

Sherbert v. Verner

Flast v. Cohen

Griswold v. Connecticut

Katz v. United States

Miranda v. Arizona

Duncan v. Louisiana

March 7-15: Spring Break

Wk. 9: March 16-18: Sixties Liberalism Facing Fire: Issues of Racial Equality

Required: GGW I, 495-501(A). GGW II, 427 (*New York Times v. Sullivan*)-432(B); 491-504(B); 529(V)-548(C).

Shapiro v. Thompson (on Canvas site).

Wk. 9 videolectures

Cases:

New York Times v. Sullivan *New York Times v. Sullivan*

U.S. v. O'Brien

Brandenburg v. Ohio

Shapiro v. Thompson

Swann v. Charlotte-Mecklenberg Board of Education

Dandridge v. Williams

Moose Lodge v. Iris

San Antonio School District v. Rodriguez

Regents of the University of California v. Bakke

Washington v. Davis

Wk. 10: March 23-25: Sixties Liberalism Facing Fire: Governmental Powers, Gender Equality, Economic Rights, and Personal Liberties

Required: GGW I 510(at III)-517(V); 527(B)-533. GGW II, 504(B)-517(A); 522 (at Campaign Finance)-526(B); 548(C)-560(to *People v. Disbrow*).

Penn Central Transportation Co. v. City of New York (on Canvas site).

Wk. 10 videolectures.

Recommended: GGW I and II, all of Chapters 9.

Cases:

Wisconsin v. Yoder

Roe v. Wade

Frontiero v. Richardson

U.S. v. Nixon

U.S. v. Calandra

Harris v. New York

Buckley v. Valeo

National League of Cities v. Usery

Penn Central Transportation Co. v. City of New York

Wk. 11: March 30-April 1: The Reagan Revolution: National Powers, Federalism, Property Rights, and Religious Rights

Required: GGW I, 537-551 (to Bork Nomination); 556(III)-584. GGW II, 571-578 (to Debate over the Flag Protection Amendment); 581(B)-595(Lee v. Weisman); 598 (Free Exercise)-605(C).

Wk. 11 videolectures.

Cases:

Immigration and Naturalization Service v. Chadha

Garcia v. San Antonio Metropolitan Transit Authority

South Dakota v. Dole

Morrison v. Olson

Lucas v. South Carolina Coastal Council

DeShaney v. Winnebago Co. Dept. of Social Services

Mueller v. Allen

Employment Division v. Smith

Recommended: GGW I and II, all of Chapters 10.

Wk. 12: April 6-8: The Reagan Revolution: Equal Protection, and Civil Liberties

Required: GGW II, 607-621; 629(B)-637(Lani Guinier Fight); 652(Affirmative Action)-658(c); 662(A)-666(to *Skinner*).

Wk. 12 videolectures.

Johnson v. Transportation Agency, Santa Clara (on Canvas site)

Cases:

United States v. Leon

Bowers v. Hardwick

Richmond v. Croson

Johnson v. Transportation Agency, Santa Clara

Planned Parenthood of Southeastern Pennsylvania v. Casey

Shaw v. Reno

Wk. 13: April 13-15: Modern Struggles over Separation of Powers & Executive Powers

Required: GW I, 585-594 (to Nomination of Alito); 599 (*Massachusetts v. EPA*)-602; 607(III)-635(A); 641(B)-647(C); 679(D)-687(E); 689(F)-693; GW II, 685-691(A); 714 (*Boerne v. Flores*)-717 (up to *Burwell v. Hobby Lobby*, and sorry for GW repetitions on *Boerne!*).

Wk. 13 videolectures.

Recommended: GW I and II, all of Chapters 11.

Cases:

United States v. Lopez

Massachusetts v. EPA

Printz v. U.S.

City of Boerne v. Flores

Clinton v. Jones

U.S. v. Morrison

National Federation of Independent Business v. Sebelius (Affordable Care Act Case).

Hamdi v. Rumsfeld

Wk. 14: April 20-22: Modern Struggles over Civil Rights and Civil Liberties I:

Race, Gender, Religion, Speech, Sexuality, Property

Required: GGW II, 701(III)-714 (*Boerne*); 717-721(C); 727(D)-739(IV); 778(B)-799(VI); *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (on Canvas site).

Wk. 14 videolectures.

Cases:

U.S. V. Virginia

Zelman v. Simmons-Harris

Grutter v. Bollinger

Lawrence v. Texas

Obergefell v. Hodges

Parents Involved in Community Schools v. Seattle School Dist. #1

Kelo v. City of New London

Burwell v. Hobby Lobby

Masterpiece Cakeshop v. Colorado Civil Rights Commission

Wk. 15: April 27-29: Modern Struggles over Civil Rights and Civil Liberties II:

Gun Rights and Voting Rights

Required: GGW II, 691(A)-696(*Boumediene v. Bush*); 721(C)-727(D); 748(Campaign Finance)-754(to “Other Free Speech Issues”); 764-769(*Crawford*); *Rucho v. Common Cause* (on Canvas site).

Wk. 15 videolectures.

Cases:

District of Columbia v. Heller

McDonald v. City of Chicago

Citizens United v. Federal Election Commission

Shelby Co. v. Holder

Rucho v. Common Cause