

PO- 507, Fall 2015
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Office hours: Wednesdays 10:00-12:00

American Constitutional Development:

This course is a highly interactive exploration of the American Constitution, the Supreme Court, the structures of American government, and their development from the founding through today. Using landmark court cases, other primary sources, and scholars' analysis we will focus on questions about the distribution of powers and prerogatives in the American system. This means investigating issues such as the proper roles of the federal and state governments, the separation of powers, and the Supreme Court's use of judicial review in these and other areas. We will trace these issues and more to try to understand how the American system, the meaning of the Constitution, and the Supreme Court have evolved. While Supreme Court decisions are our core materials, this is very much a political science class. We are more concerned with the political, institutional and policy implications of cases than about legal doctrine for its own sake.

This is not a lecture course. It is a small advanced seminar. Some of the time we will help each other make sense of cases and readings together with me expecting you to be able to answer guiding questions when called upon. Other times I will ask for your opinions and arguments about readings and themes. Your participation in this class is essential, you will not be able to sit and passively absorb lectures.

Readings and Discussion:

The reading list primarily comprises Supreme Court decisions, along with other primary documents, and scholarly readings. It also includes a few more textbook and descriptive pieces to provide additional context. As the semester proceeds and we develop more of our own context, there will be less of this kind of reading. The text book contains substantially more context and background information than I require you to read. **This is an adult class and I expect you to read / skim extra for context as needed.**

While it looks like a long syllabus, the number of pages of reading will be relatively light for a 500 class. **Nearly all of the readings are only a couple of pages long.** This is because I expect

you to do the reading very carefully. **In fact, to do well you will probably need to read the cases more than once and/or take extensive notes.** Court opinions require special attention to detail and a focus on the exact words, nuances, and distinctions. I will expect you to operate with a high level of intellectual precision and rigor in class and on assignments - much more than in other classes because these details matter so much. With all this said, I reserve the right to add or subtract readings once we see how things are going.

I expect you to come to class prepared to answer questions, evince understanding, and speak intelligently about the day's materials. This means everything from leading the class through the basics of a Court decision to synthesizing multiple cases to identify themes and trends.

While I will call on people involuntarily, this is not meant to embarrass or punish anyone. I know some are more comfortable speaking than others and that we all draw blanks from time to time. I also know at some point in the term all of you will get buried with other things. I will give you one free exemption where you can privately tell me before class that you are not ready to go that day and I will call on you. **More importantly, if you are less comfortable talking in class, please let me know and we can figure out how to help.**

Books for Purchase:

There are two books for purchase. All of the remaining readings will be on Blackboard in folders for each day/week.

The required books are

Robert McCloskey, *the American Supreme Court*, Fifth Edition, University of Chicago Press, 2004

Gillman, Graber, and Whittington, *American Constitutionalism: Volume I: Structures of Government*

McCloskey is a common book and should be available at the book store. You should also be able to find inexpensive used copies on Amazon and elsewhere. The textbook is brand new to the market

Assignments: The final grade for the course will be based on your participation in class and your performance on assignments and exams.

Towards the end of the semester there will be one long in class exam. This will be a late midterm. There is no final. The **exam is open note** and designed to test both your understanding of basics and your ability to put course ideas together in interesting ways. The exam will comprise short answers and a long essay.

Earlier in the semester we will have in class simulations of two famous recent cases. Each of you will participate a moot court simulation for one of the two cases as either a lawyer or a justice. One is the health care individual mandate case and the other is the “Hobby Lobby” contraceptives mandate case.

Before the simulation you will all write a very short background brief on your case. For main part of the assignment, Lawyers will also submit their own briefs before the in class simulation in which they lay out their case. Justices will write opinions after our oral arguments.

Your other assignment is a substantial (approximately 20 pages) political science style research paper which addresses an interesting question about one of the Supreme Court’s recent civil liberties cases. You may work alone or with a partner as long as working with a partner leads to a better and more ambitious paper than working alone. The paper is open as to methods (historical analysis, survey, experiment.....) and we will read and discuss some papers which may give you ideas about questions and approaches. This is a substantial assignment and cannot be done well in one or two weeks. Most of the reading is front loaded so that you will have time to work on your research in the final third of the semester.

Your grade for the course will be based on your performance on the above assignments, as well as your preparedness for and participation in class.

- **Participation and every day excellence 15%**
- Exam 35%
- Final Paper 30%
- Simulation 20%

Grades for Written Work and Exams: For written work, the A range will comprise only work which features strikingly original thinking and/or argumentation, expressed in clear, cogent, error-free writing. Only students that go well beyond class materials and discussions (in thought, not extra research) will be considered for an A grade. Papers and examinations in the B range exhibit mastery of the course materials and discussions, expressed in clear, cogent, error-free writing. Papers and examinations in the C range exhibit inadequate understanding of the course materials and discussions and/or deficient, error-plagued writing. Papers and examinations in the D range exhibit wholly inadequate understanding of the course materials combined with deficient, error-plagued writing. Hopefully the D range and worse will not be an

issue. Pluses, minuses, or flat grades within any of these ranges reflect the instructors' judgment of the merits of the paper or examination relative to other papers in the same range. All late assignments will be reduced 1/3 of a grade for every day they are late. Students may appeal grades they feel they received in error but we reserve the right to increase or decrease their grade upon reconsideration.

Other Practical Matters:

Email: The most efficient way to reach me is via email. No promises, but I'll try to respond quickly. If you write and don't hear back in 24 hours, please write again. **Before emailing please verify that the answer to your question cannot be answered by consulting the syllabus.**

Office Hours: My official office hours are listed at the top of the syllabus, but I aim to be around and as accessible as possible. If you cannot make it to the scheduled office hours, email with some times that work for you. **I'd rather you come to office hour and say you don't understand a reading before class, than to sit through class without contributing or learning because you didn't understand the reading.**

Laptops: While understanding that there are benefits to having laptops in class, at this point, experience suggests that the negatives outweigh the positives. I know you have limited printing access so if you need them on days with significant readings outside of the books we can discuss them. Otherwise, no laptops. Even if you are only taking notes, you shouldn't be taking so many notes that you need to type them. If you're spending that much time taking notes, you're not properly engaging with the discussion. I have had this paragraph on my syllabus for years and I've now been vindicated by research. Students learn and remember more when they take notes by hand.

<http://www.psychologicalscience.org/index.php/news/releases/take-notes-by-hand-for-better-long-term-comprehension.html>

Readings marked **BB** are on Blackboard. GGW = Gillman, Graber and Whittington "American Constitutionalism," Mcc = McCloskey book.

1. 9/8 - Introduction , the American System, and reading a case
 - Fun debates to warm up
 - Michelle Singletary, Knee Defenders or Not it's All About the Money, The Washington Post, http://www.washingtonpost.com/business/get-there/knee-defenders-or-not-its-really-all-about-money/2014/08/29/90d58780-2e37-11e4-bb9b-997ae96fad33_story.html
 - Tanya Lewis and Andy Kiersz, "Why Women Are Always Freezing in the Office, Business Insider, 2015 <http://www.businessinsider.com/why-women-are-always-freezing-in-office-buildings-according-to-science-2015-7>
 - Charles Wheelan, Introduction to Public Policy, Selections from Chapters 4 (Understanding Group Behavior: Collective Action) and 8 (The Role of Government) **BB**
 - GGW 31-35, 38-40, 44-47
 - The Articles of Confederation – GGW 65-66
 - The Constitution – Preamble and Articles I-VII – GGW Appendix
 - GGW 10-22
 - Julie Novkov. Intro to Briefing a Case:
<http://www.albany.edu/~jn293713/profession/caseguid.htm> **BB**
 - *Hill v. CO?* Read Very Carefully and Prepare to Brief in Class per the Novkov reading **BB**
 - Federalist 78 GGW 58-61
 - Brutus 11, 12 GGW 56-58
 - Marbury v. Madison (1803), GGW 106-112 – **Read Very Carefully**
2. 9/15 - Constitutionalism, Commerce, and the early Court
 - Re-read – Constitution Article I
 - Charles Wheelan, Introduction to Public Policy, Selections From Chapter 8 (The Role of Government) **BB**
 - McC: 30-45
 - Fletcher v. Peck (1810) **BB**
 - GGW 118-129
 - McCulloch v. Maryland (1819, GGW 129) – **Read Very Carefully**
 - Gibbons v. Ogden (1824, GGW)
 - Barron v. Baltimore (1833) **BB**
 - McC: Pages 45-59
 - GGW 145-146
 - GGW 163-166, 185-190, 200-206, 228-231
 - Wilson v. Black Bird Creek Marsh Co (1829 GGW)

- Mayor of New York v. Miln (1837 GGW)

3. 9/22 –Commerce and the Civil War

- McC: 59-66
- GGW 206-208, 212-214
- Prigg v. Pennsylvania (1842 GGW)
- Dred Scott v. Sanford (1856 GGW)
- GGW 272-276, 319-326
- McCloskey 77-90
- Constitution – 13th-15th Amendments
- The Slaughterhouse Cases (1873 GGW)
- GGW 346-347
- The Civil Rights Cases (1883 GGW)
- Wabash, St. Louis and Pacific Railway v. Illinois (1896 GGW)
- Munn v. Illinois (1877 GGW)
- US v. E.C. Knight (1895 GGW)

4. 9/29 - The Lochner Court and Economic Freedom

- Holden v Hardy BB
- Lochner v. New York (1905 GGW)
- Hammer v. Dagenheart (1918 GGW)
- Bailey v. Drexel Furniture Company (1919 GGW)
- The New Republic's Coverage of the Lochner Era:
<http://www.newrepublic.com/article/122652/supreme-courts-power-shift>
- McCloskey 106-117
- Herbert Hoover, "Rugged Individualism," BB
- Roosevelt undelivered Gold Clause Speech (GGW 431-432)
- Schechter Poultry Corp v. U.S. (1935 GGW)
- U.S. v. Butler (1936 GGW)
- McCloskey 116-128
- GGW 417-424
- FDR Fireside Chat on Court Packing Plan, GGW 433-437

5. 10/6 The New Deal Shift and Modern Constitutionalism

- GGW 490-492
- West Coast Hotel v. Parish (1937) BB
- NLRB v. Jones and Laughlin Steel (1937 GGW)
- U.S. v. Darby (1941) **BB**

- Wickard v. Filburn (1942 GGW)
- U.S. v. Carolene Products (1938 GGW) – **pay close attention to footnote 4**
- Robert Jackson, Memo on Wickard GGW 470
- Williamson v. Lee Optical of Oklahoma (1955) **BB**
- GGW 530-531, 563-572, 576-581
- United States v. Lopez (1995 GGW)
- Gonzales v. Raich (2005 GGW)
- South Dakota v. Dole (1987 GGW)
- Brian Beutler, The Rehabilitationists, *The New Republic*, 2015
<http://www.newrepublic.com/article/122645/rehabilitationists-libertarian-movement-undo-new-deal>

10/13 – No Class – “Monday”

6. 10/20 Privacy and Religion –

- Stephen Breyer (2005), Activity Liberty, Introduction, The Theme, Privacy, **BB**
- Antonin Scalia, Scalia, “Originalism: The Lesser Evil,” **BB**
- Griswold v. Connecticut (1965) **BB**
- Roe v. Wade (1973) **BB**
- Reynolds v. US (1878) **CB**
- Braunfield v. Brown (1961) **BB**
- Sherbert v. Verner (1963) **CB**
- **CB 649-650**
- Employment Division v. Smith (1990)

7. 10/27 In Class Simulations of ACA Mandate case and Hobby Lobby “Contraceptives Mandate”
--DON'T READ ACTUAL SCOTUS DECISIONS BEFOREHAND

Lawyers Briefs Due by Monday 8:00 PM

Policy Background – Lawyers will want to do more research

- Ezra Klein, “Unpopular Mandate,” *The New Yorker*, 6/25/12
- David Brady and Daniel Kessler – Who Supports Health Reform, PS, 2010 – short
- Kaiser Family Foundation, “A Guide to the Supreme Court’s Review of the 2010 Health Care Law”
 - <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8270-2.pdf>
- Kaiser Family Foundation, “The Health Reform Law’s Medicaid Expansion: A Guide to the Supreme Court Arguments”

- <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8288.pdf>
- Jaime Fuller, “Here’s What You Need to Know about the Hobby Lobby Case, The Washington Post”
 - <http://www.washingtonpost.com/blogs/the-fix/wp/2014/03/24/heres-what-you-need-to-know-about-the-hobby-lobby-case/>
- David Gans, Silence Inc, “What Side Has Corporate America Taken in the Hobby Lobby Challenge?,” Slate
 - http://www.slate.com/articles/news_and_politics/jurisprudence/2014/02/hobby_lobby_contraception_mandate_challenge_why_have_corporations_refused.html
- Eric Posner, “Stop Fussing Over Personhood,” Slate
 - http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/12/personhood_for_corporations_and_chimpanzees_is_an_essential_legal_fiction.html

8. 11/3 – First Half Wrap Up and Transition Back to The Rights Revolution: Equality, Federalism and Democracy

- NFIB v. Sebelius (2012) **BB**
- Burwell v. Hobby Lobby (2014) **BB**

- Korematsu vs. US (1944) **BB**
- McC: 139-151
- Plessy v. Ferguson (1896) **BB**
- Brown v. Board of Education I (1954) **BB**
- Adam Liptak, “From 19th Century View, Desegregation is a Test,” The New York Times, 11/9/2009
- Cass Sunstein, “Did Brown Matter,” *The New Yorker*, May 3, 2004
http://www.newyorker.com/archive/2004/05/03/040503crbo_books?printable=true **BB**
- Reynolds v. Simms (1964) **BB**
- Crawford v. Marion County Election Board (2008) **BB**
- Shelby County v. Holder (2013) **BB**
- GW 456-458

9. 11/10 – Speech, Establishment, and Equal Protection – A Sampler

- McC: 129-134, 153-165
- US v. O’Brien (1968) **BB**
- Citizens United v. FEC (2010) **BB**
- Zelman v. Simmons Harris (2002) **BB**

- Craig v. Boren (1976) BB
- San Antonio Independent School District v. Rodriguez (1973) BB
- Rumsfeld v. Fair (2006) BB

10. 11/17 Modern Separation of Powers, Commerce, and Federal Powers

- GGW 530-531, 563-572, 576-581
- Federalist 51
- GGW 543-549
- INS v. Chadha (1983 GGW)
- Clinton v. City of New York (1998 GGW)
- Garcia v. San Antonio Metro Transit Authority (1985 GGW)
- U.S Term Limits v. Thornton (1995) GGW
- Printz v. U.S. (1997 GGW)
- Granholm v. Heald (2005) BB
- Zivotofsky v. Kerry (2015) BB

- **Exam Review**

11. 11/24 **No Class (Night before Thanksgiving), but I will have office hours someplace fun to discuss paper topics and exam questions with those who are around**

12. 12/1 **In Class Exam**

14. 12/8 **Exam Moot Court, Paper Workshop, Contemporary Cases (TBD)**

2 Page Paper Outline Due in Class

- Arizona v. US (2012) BB
- Grutter vs. Bollinger (2003) BB
- Kelo v. City of New London (2005) BB
- McCutcheon?
- Obergefell?

Final Paper Due at end of time block registrars schedules our final exam (which we don't have)