

PSCI 790:401 – American Constitutional Development

Professor Anthony Grasso
401 Cooper Street, Office 104
agrasso@camden.rutgers.edu
Class Time: 3:45-5:05
Class Location: Fine Arts 225
Office Hours: Via Zoom Appointment

Course Overview

This course serves as an introduction to American constitutional law and the development of the American constitutional system. We will be analyzing how debates and claims about the structures and powers of American government have been resolved through constitutional decision-making by courts. The course is designed to highlight how the resolution of such contests in U.S. courts has never been just a legal phenomenon, but a fundamentally political one as well. The case law on this syllabus thus includes legal cases covering a variety of issues, including the separation of powers among the branches of the U.S. government, the division of power between state and federal governments, national powers relating to war, the federal government's authority to stipulate and protect civil rights, the independence of the judiciary, the nature and scope of executive power, and the powers of Congress, including the extent of its legislative, foreign policy, and regulatory authority.

The readings focus on Supreme Court decisions, and the syllabus is designed to highlight the cases covered in each lesson's readings so it can serve as an organizational study aid. But American constitutionalism involves more than case law, and the Constitution is much more than what the Court says. As a political science class, this course will thus study American constitutionalism as a legal and political phenomenon. To this end, we will consider how a variety of political actors have shaped the development of American constitutional government. The readings thus include sources from philosophers, scholars, jurists, social movement leaders, party platforms, legislative debates, executive policy statements, and various other resources that demonstrate the input of numerous vital contributors to American constitutional thought and development.

Remember that this is a political science course, not a law school class. Though it is a case law course, we study the development of Supreme Court jurisprudence through the lens of political science.

Course Grading Scale

	Letter Grade	Percentage	Interpretation
Excellent	A	89.5-100	Mastery of concepts. Can clearly apply concepts to new situations.
Above Average	B+ B	84.5 – 89.49 79.5 – 84.49	Strong understanding of concepts. Acceptable foundation for future work.
Proficient	C+ C	74.5 – 79.49 69.5 – 74.49	Basic understanding. Questionable foundation for future work.
Marginal	D	59.5-69.49	Weak understanding and foundation for future work.
Failure	F	<59.5	Clearly failed to demonstrate understanding.

General Learning Goals

The study of civil rights and liberties jurisprudence is a useful means of developing general skills for lifelong learning, including:

- (1) Engaging in critical inquiry and analysis, by studying how legal decisions have been made over time that address significant social and political problems in American history.
- (2) Engaging in creative thinking, by debating the merits and demerits of Supreme Court decisions on normatively important topics through a structured framework of constitutional reasoning.
- (3) Engaging in ethical reasoning, by debating the moral quality of major Supreme Court precedents and their impact on the world.

Course Learning Goals

Students in this course will learn the following about the Constitution and American politics:

- (1) The origins of American constitutionalism as it relates to the structures and powers of American government.
- (2) The various ways Supreme Court judges have structured their reasoning and decision-making in cases about American constitutional politics over time.
- (3) How the Reconstruction Era Amendments remade the Constitution and impacted the subsequent development of the American constitutional system.
- (4) How the Court's jurisprudence has evolved in different ways and branched out into different issue areas over time.
- (5) How the Supreme Court's ideological balance has shifted and how this has impacted the nature of American political life.

Course Assignments and Grading

Throughout the course there will be multiple graded assignments which assess your knowledge of the material and ability to critically analyze and apply concepts discussed.

ASSIGNMENT	PERCENTAGE OF GRADE
Participation/Attendance	10%
Briefs (4 x 2.5% each)	10%
Case Hypotheticals Paper	15%
Exam 1	20%
Exam 2	20%
Final Exam	25%

Participation/Attendance (10%): The course will be a discussion-driven seminar, so all students are expected to participate in our discussions in ways that reflect a strong understanding of the course material. Come to class ready to provide a summary of the cases and express your opinions and thoughts on them. Know that I grade your participation from 0-10 each day. At the end of the semester I average your daily scores to determine your overall participation score (e.g. an average of 9.4/10 receives a 94%). Each student gets up to 2 unexcused absences free of penalty; all others must be excused.

Case Briefs (10%): Students will need to submit four written case briefs for cases we read over the course of the semester. While I encourage you to brief *all* the cases in your reading notes, the submitted briefs will be graded as checks to make sure you understand the cases and are reading them. Four lessons are marked on the syllabus and listed below as requiring briefs. Choose one of the cases for that day and submit a brief of the case before the start of class time that day. You should both upload the brief to Canvas and bring a hard copy to submit in class. Each brief should be roughly 1 single-spaced page. Below are the lessons for which briefs are due:

- Monday, October 10
- Wednesday, October 26
- Wednesday, November 16
- Wednesday, November 30

Case Hypothetical Paper (15%): On Nov-21, students will be required to submit a paper resolving a hypothetical court case. I will provide a list of optional scenarios for you to rule on. Your paper will consist of five parts. As part of the hypothetical, you are required to write (1) a majority opinion, (2) a concurring opinion, and (3) a dissenting opinion. You are also required to write separate sections detailing (4) your personal opinion and (5) what you think the political impacts and consequences would be of the ruling. The paper should be a minimum of 1,500 words.

Exam 1 (20%): There will be an exam on October 3.

Exam 2 (20%): There will be an exam on November 7.

Final (25%): The final exam will be comprehensive and cover material from the entire course.

Tips for Preparing for Class

In this course, we will be reading a lot of court cases. I view the study of constitutional law and judicial decision-making as an opportunity for students to develop critical thinking skills that involve questioning your own assumptions and preferences to understand all perspectives on an issue. This does not require you to be less passionate about your beliefs, but it does make you more informed.

However, court decisions rely on a unique style of writing that may be different from anything you've read. Below are some tips for how to read, take notes, and prepare for this class.

- The readings for Lesson 1 provide guidance on how to analyze cases. Be especially attentive to the section on briefing cases. While there are assigned case briefs you will submit to me for a grade, briefing cases is helpful to do regularly in preparation for exams. Pay attention to these readings and do not hesitate to return to them, especially as we read judicial opinions.
- Please come to class prepared to speak about the material and cases we read. This requires unpacking the facts, constitutional questions, and primary rulings/dissents in a given case before discussing the opinion's political ramifications and what your thoughts are about it.
- Do not be afraid to ask for help understanding and assessing the cases, from both me *and* your classmates. While you should not hesitate to use me as a resource, remember that you are likely not the only person to whom legal reasoning is new. Don't be afraid to collaborate with your peers. But if you use shared notes or study guides, make sure to use your own words on assignments to avoid any appearance of copying or cheating.
- It is easy to find summaries of the cases online. I do not care if you read them *as a supplement* to the reading, but doing the assigned reading is a requirement and there are several dangers of reading online case summaries *in lieu of* our textbook. Summaries often have particular legal language not in the original cases, which can be a giveaway that you are not doing the reading (especially if it sets off plagiarism alerts on Canvas). Online summaries also do nothing to provide details on the political context of the cases, which is discussed in the textbook and is key to our discussions. And importantly, online summaries often overlook the specific parts of cases that we emphasize in class. All this to say, relying on online summaries easily leads to partial or complete misunderstandings of the course material and gives you no political context or background on the cases, all of which can significantly hurt your grade.

For Those Interested in Law School

While American constitutionalism is an interesting, important, and relevant topic to people from all sorts of backgrounds and interests, I assume that some of you enrolled in this class because you are considering law school. For those of you in this situation, please note the following:

- Remember that I am a political scientist, not a lawyer. Our approach to studying the law will be through the lens of political science.
- Consider this as an *immersion* course in critical legal thinking. We primarily read cases in this class, which may be a challenge. Keep at it. The more you read cases, the easier it will become.
- As a pre-law advisor, I am happy to discuss any questions or considerations you have about law school. Feel free to email me to make an appointment.

Administrative Policies

Mask Mandate: In order to protect the health and well-being of all members of the University community, masks must be worn by all persons on campus when in the presence of others (within six feet) and in buildings in non-private enclosed settings (e.g., common workspaces, workstations, meeting rooms, classrooms, etc.). Masks must be worn during class meetings; any student not wearing a mask will be asked to leave. Masks should conform to CDC guidelines and should completely cover the nose and mouth. Each day before you arrive on campus or leave your residence hall, you must complete the brief survey on the My Campus Pass symptom checker self-screening app.

Absences: If you are ill or experiencing symptoms of transmittable disease, please remain home and do not attend in-person class meetings. Given COVID-19, I am aware that handling absences will require flexibility and understanding. I just ask that you make a reasonable effort to contact me via email (agrasso@camden.rutgers.edu) if you anticipate missing class or were absent and that you make socially responsible choices if you are feeling ill. Students who are absent will have the opportunity to watch lecture recordings and makeup their quizzes.

However, attendance does factor into your grade and is expected if you are healthy. If you miss class, email me and I will send you the recording of class, but this does not mean you can simply take the course online by choice. While I forgive up to 2 unexcused absences, if you continue to miss class and make no attempt to contact me or do not provide valid explanation upon request, I will penalize your grade and cease sending you lecture recordings.

Lateness: If you anticipate turning in an assignment late, email me and inform me when you anticipate turning it in. In the absence of extenuating circumstances, you will be deducted ten percent for every 24 hours the assignment is late. However, I am aware that handling lateness requires flexibility and understanding when people are dealing with illness, work, and family responsibilities. I encourage you to speak with me if you need extra time on an assignment, and I will work to accommodate students when it is appropriate and needed.

Lecture Recordings: Lectures will be recorded and available for those who need to miss class. Again, please do not attend in-person classes if you are feeling ill.

Office Hours: Please email me to schedule an office hours visit. My regular office hours for this semester will be held Thursdays from 10:00AM-12:00PM on Zoom. Email me ahead of time to reserve an increment of time. I can also schedule by appointment if need be.

Makeup Exams: Make-up exams will only be offered at the discretion of the instructor and only in the event of illness or emergency. It is the responsibility of the student to email the instructor well in advance of the exams to inform the instructor of any problems in taking the exam. While I will be understanding and flexible in understanding general absences, I will require formal proof to schedule a make-up exam without penalty. If you cannot validate your reason, your make-up exam will be graded with a deduction.

Academic Integrity: All Rutgers students are expected to abide by the University's academic integrity standards. Each student should review the academic integrity standards, available on the Rutgers Academic Integrity website. For this class you may use any generally recognized style manual to format your citations (Chicago Manual of Style, MLA Style Guide, APA Style Guide). It is strongly suggested

that you use Rutgers Library's RefWorks platform for citation. See the current Academic Integrity Policy here: <https://policies.rutgers.edu/10213-currentpdf>

Plagiarism: Academic dishonesty will not be tolerated. All source material MUST be cited when presenting someone's words or ideas. If you are ever unsure about citations, please speak to me. I would much rather answer your questions ahead of time rather than handle a plagiarism case.

Disabilities: Any student in need of classroom accommodations due to disabilities should contact the Coordinator of Disability Services as soon as possible: (856) 225-6442, Fax: (856) 225-6443 or at the Rutgers-Camden Learning Center, Armitage Hall, Room 231. **No accommodations can be made without the explicit approval of the Office of Disability Service.**

Learning Support: If you are having trouble with this course, I encourage you to reach out to me and to take advantage of the full range of programs and services available at Rutgers Camden to support your learning. Details may be found on the website of the Rutgers Camden Learning Center (<https://learn.camden.rutgers.edu/>).

Readings and Class Prep: Please have all readings available to you during class meetings.

Writing and Formatting: Format your writing assignments in typed in 12-point sized appropriate fonts. Papers should be double-spaced with standard margins. Citation format is your choice, as long as you remain consistent.

Respect: The foundation of learning is respect for diverse opinions. We may discuss some controversial issues and people throughout the course, and students are welcome to express their views and opinions in the discussion. It is essential in order to foster a good discussion that we have respect for each other's opinion and political views. The expectation is that you will listen and learn from each other, and treat each other with the respect that you would expect yourself.

Course Readings and Required Texts

This course requires two books available through the campus bookstore. If you buy the Gillman, Whittington, and Graber casebook used, buy the correct edition (2nd edition). We read short excerpts from the book, and it will be *very* difficult to find the correct excerpts if you purchase an older volume.

- Gillman, Howard, Keith Whittington, and Mark Graber. *American Constitutionalism, Volume I: Structures of Government*, 3rd ed. (New York: Oxford University Press, 2021). (**GGW I** on syllabus)

Additional readings will be posted on Canvas in a PDF packet of supplemental cases (labeled **Packet** on syllabus).

Lesson Schedule

Our lesson schedule follows the outline provided unless otherwise noted. The readings from **GGW I** and the **PACKET** will typically consist of edited cases and source excerpts. The cases and sources provided in the assigned reading are listed with each lesson to provide an outline of what we study.

Wed., Sept. 7: Course Introduction

- Course Syllabus
- **GGW I**, pp. 769-778 (skim pp. 775-778)

Mon., Sept. 12: Judicial Power in the United States

- **GGW I**, pp. 1-18, 49-62
- Erwin Chemerinsky, “In Defense of Judicial Review,” *Prospect*, July 18, 2022
<<https://prospect.org/justice/in-defense-of-judicial-review/>>
- Ryan Cooper, “The Case Against Judicial Review,” *Prospect*, July 11, 2022
<<https://prospect.org/justice/the-case-against-judicial-review/>>
- Sources:
 - Brutus, Nos. 11 and 12 (1788)
 - Federalist, No. 78 (1788)

Wed., Sept. 14: American Constitutionalism

- **GGW I**, pp. 45-47, 68-70, 755-767
- Sources:
 - The Declaration of Independence (1776)
 - Articles of Confederation (1777)
 - The U.S. Constitution and Bill of Rights

Block 1: Rights and Liberties from the Founding Through Reconstruction

Mon., Sept. 19: Constitutionalism in the Early Republic

- **GGW I**, pp. 101-112, 151-155
- Cases and Sources:
 - *Chisholm v. Georgia* (1793)
 - *Calder v. Bull* (1798)
 - *Marbury v. Madison* (1803)
 - “Thomas Jefferson on Departmentalism” (1804, 1819)

Wed., Sept. 21: The Jacksonian Constitution

- **GGW I**, pp. 112-116, 129-133, 142-147, 185-89, 214-15
- Cases:
 - *Martin v. Hunter’s Lessee* (1816)
 - *McCulloch v. Maryland* (1819)
 - *Gibbons v. Ogden* (1824)
 - *Worcester v. Georgia* (1832)

- *Barron v. Baltimore* (1833)
- *Luther v. Borden* (1849)

Mon., Sept. 26: Slavery

- **GGW I**, pp. 194-208
- Cases and Sources:
 - *Prigg v. Pennsylvania* (1842)
 - *Dred Scott v. Sandford* (1857)
 - Salmon Chase, “Speech in the Case of the Colored Woman Matilda” (1837)
 - John Crittenden, “Opinion on the Constitutionality of the Fugitive Slave Bill” (1850)
 - Abraham Lincoln, “Speech on Slavery in the Territories” (1860)

Wed., Sept. 28: The Constitution at War

- **GGW I**, pp. 235-42, 277-281, 286-293
- Cases and Sources:
 - *Ex parte Merryman* (1861)
 - Edward Bates, “Opinion on the Suspension of the Privilege of the Writ of Habeas Corpus” (1861)
 - Benjamin Curtis, “Executive Power” (1862)
 - *The Prize Cases* (1863)
 - *Ex parte McCordle* (1869)

Mon., Oct. 3: **Exam 1**

Wed., Oct. 5: The Post-War Constitution

- **GGW I**, pp. 242-252, 270-74
- **PACKET**, pp. 1-3
- Cases:
 - Congressional Debate on the Legal Tender Bill (1862)
 - *Mississippi v. Johnson* (1867)
 - *Texas v. White* (1869)
 - *Hepburn v. Griswold* (1870)
 - *The Legal Tender Cases* (1871)

Mon., Oct. 10: The Reconstruction Amendments

- **GGW I**, pp. 309-318, 322-328
- **PACKET**, pp. 4-9
- **Case Brief #1 Due**
- Cases and Sources:
 - *Bradwell v. Illinois* (1872)
 - *The Slaughter-House Cases* (1873)
 - *The Civil Rights Cases* (1875)
 - *US v. Cruikshank* (1876)

Wed., Oct. 12: The Gilded Age Economy

- **GGW I**, pp. 329-330, 334-337, 360-63, 365-370 (skip Cooley, “Constitutional Limitations”)
- **PACKET**, pp. 10-11
- Cases:
 - *Munn v. Illinois* (1876)
 - *Wabash v. Illinois* (1886)
 - *U.S. v. E.C. Knight* (1895)
 - *In re Debs* (1895)

Mon., Oct. 17: Progressive Constitutionalism I: Rights and the State

- **PACKET**, pp. 12-25
- Cases:
 - *Plessy v. Ferguson* (1896)
 - *Jacobson v. Massachusetts* (1905)
 - *Buchanan v. Warley* (1917)
 - *Gitlow v. New York* (1925)
 - *Buck v. Bell* (1927)

Wed., Oct. 19: Progressive Constitutionalism II: Economic and Foreign Powers

- **GGW I**, pp. 337-339, 351-355
- **PACKET**, pp. 26-31
- Cases:
 - *Champion v. Ames* (1903)
 - *Lochner v. New York* (1905)
 - *The Selective Draft Law Cases* (1918)
 - *Missouri v. Holland* (1920)

Mon., Oct. 24: New Deal Constitutionalism I: Domestic Powers

- **GGW I**, 427-437, 446-450
- **PACKET**, pp. 32-35
- Cases:
 - *Schechter Poultry Corp. v. U.S* (1935)
 - *U.S. v. Butler* (1936)
 - *West Coast Hotel v. Parrish* (1937)
 - *NLRB v. Jones & Laughlin Steel Corp.* (1937)
 - *U.S. v. Carolene Products* (1938)
 - *Wickard v. Filburn* (1942)

Wed., Oct. 26: New Deal Constitutionalism II: War Powers

- **GGW I**, pp. 457-466, 473-475
- **PACKET**, pp. 36-44
- **Case Brief #2 Due**
- Cases:

- *US v. Curtiss-Wright Export Co.* (1936)
- *Ex parte Quirin* (1942)
- *Korematsu v. United States* (1944)
- *Youngstown Sheet & Tube Co. v. Sawyer* (1952)

Mon., Oct. 31: Civil Rights I: Expansion and Protection

- **GGW I**, pp. 408-410, 440-446
- **PACKET**, pp. 45-53
- Cases:
 - *Shelley v. Kraemer* (1948)
 - *Brown v. Board I and II* (1954, 1955)
 - *Cooper v. Aaron* (1958)
 - *Heart of Atlanta Motel v. U.S.* (1964)
 - *South Carolina v. Katzenbach* (1966)

Wed., Nov. 2: Civil Rights II: Backlash and Resistance

- **PACKET**, pp. 54-66
- Cases:
 - *Green v. County School Board of New Kent* (1968)
 - *Swann v. Charlotte-Mecklenberg* (1971)
 - *Moose Lodge v. Iris* (1972)
 - *San Antonio School District v. Rodriguez* (1973)

Mon., Nov. 7: **Exam 2**

Wed., Nov. 9: Great Society Liberalism: Government Power

- **GGW I**, pp. 498-504, 511-516
- **PACKET**, pp. 67-75
- Cases:
 - *Shapiro v. Thompson* (1969)
 - *Dandridge v. Williams* (1970)
 - *U.S. v. Nixon* (1974)
 - *National League of Cities v. Usury* (1976)

Mon., Nov. 14: Great Society Liberalism: Rights Protections

- **PACKET**, pp. 76-94
- Cases:
 - *Griswold v. Connecticut* (1965)
 - *Roe v. Wade* (1973)
 - *Frontiero v. Richardson* (1973)
 - *Regents of the University of California v. Bakke* (1978)

Wed., Nov. 16: The Reagan Revolution and Government Powers

- **GGW I**, pp. 537-540, 548-562
- **PACKET**, pp. 96-103

- **Case Brief #3 Due**

- Cases
 - *INS v. Chadha* (1983)
 - *Chevron U.S.A. v. Natural Resources Defense Council* (1984)
 - *South Dakota v. Dole* (1987)
 - *Morrison v. Olson* (1988)
 - *Employment Division v. Smith* (1990)

Mon., Nov. 21: **No Class. Case Hypothetical Papers Due.**

Mon., Nov. 28: Contemporary Issues I: Federalism

- **GGW I**, pp. 585-599, 606-612, 658-667
- **PACKET**, pp. 104-108
- Cases:
 - *United States v. Lopez* (1995)
 - *Printz v. US* (1997)
 - *United States v. Morrison* (2000)
 - *Gonzalez v. Raich* (2005)
 - *NFIB v. Sebelius* (2012)

Wed., Nov. 30: Contemporary Issues II: Executive Branch Constitutional Politics

- **GGW I**, pp. 616-620, 633-640
- **PACKET**, pp. 109-116
- **Case Brief #4**
- Cases:
 - *Clinton v. Jones* (1997)
 - *Bush v. Gore* (2000)
 - *Hamdi v. Rumsfeld* (2004)
 - The Eastman Memo

Mon., Dec. 5: Contemporary Issues III: Race, Money, and Voting Rights

- **GGW I**, pp. 667-673
- **PACKET**, pp. 117-128
- Cases:
 - *Citizens United v. Federal Election Commission* (2010)
 - *Shelby County v. Holder* (2013)
 - *Rucho v. Common Cause* (2019)

Wed., Dec. 7: Contemporary Issues IV: Privacy and Sexuality

- **PACKET**, pp. 129-151
- Cases:
 - *Planned Parenthood v. Casey* (1992)
 - *Obergefell v. Hodges* (2015)
 - *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018)

Mon., Dec-12: Contemporary Issues V: The Modern Court

- **PACKET**, pp. 152-175
- Cases:
 - *Fulton v. City of Philadelphia* (2021)
 - *Dobbs v. Jackson Women's Health Organization* (2022)
 - *West Virginia v. Environmental Protection Association* (2022)
 - *Moore v. Harper*, "Petition for Writ of Certiorari" (2022)

Wed., Dec. 14: Course Conclusion