

PSCI 790:442 – Human Freedoms and the Constitution

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Synchronous Online Course
Class Time: 2:05-3:25
Office Hours: By Appointment

Course Overview

This course serves as an introduction to American constitutional law regarding civil rights and civil liberties. We will be analyzing how competing rights claims have been resolved in American politics, particularly by studying constitutional decision-making by courts. However, the course is designed to highlight how the resolution of rights claims in U.S. courts is not just a legal phenomenon, but a political one as well. The case law on this syllabus thus includes legal cases over a variety of issues, including religious exercise, religious establishment, free speech, property rights, gun rights, labor standards, election law, voting rights, due process, equal protection, criminal procedure, punishment, affirmative action, privacy, and equality along the dimensions of race, gender, and sexuality.

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 emphasize not only the *law* of civil rights and liberties but also the *politics* of civil rights and liberties. To this end, we will consider how a variety of political actors have shaped the development of civil rights and liberties. The readings thus include a wealth of 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.

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.

Some Notes About Online Learning

What follows are a few notes about how this course will be conducted online:

- Given the small size of the course and the nature of the material, which is best taught through discussion and debate, we will be regularly meeting synchronously via Zoom.
- Please come to class prepared to speak about the material, especially ready to summarize the cases that we read. See the next sections for some guidance on how to read case law.
- During class keep your microphone off and only turn it on if you are called on to speak. Use the raise your hand function on Zoom if you would like to speak.
- The chat function should only be used to ask clarification questions about the material. If you have a more complex question – especially one that may provoke discussion or be met with competing responses and opinions – use the hand raise function so I can call on you to speak.
- Be flexible. I am ready to adapt our lessons dependent on how things go. I do not anticipate doing many lectures, but I am prepared to try different things to see what works for our class (perhaps occasional lectures coupled with discussion board posts, small assignments, or cases analyses, etc.). If discussion and performance in alternative teaching formats consistently falters, be prepared for alterations to our lesson structures that involve regular quizzes.

Reading Cases

In this course, we will be reading a lot of court cases. I view the study of constitutional law and decision-making as an opportunity to develop analytical and critical thinking skills which requires students to question their own assumptions, beliefs, and preferences in order to see and understand all perspectives on an issue. Thinking analytically about the topics covered in these cases does not require being any less passionate about your beliefs, but it does require you to be deeply informed about them. But court decisions involve a unique style of writing that may be different from anything you've read. Below are some tips for how to read and take notes for this class:

- Be aware that the readings for Lesson 1 provide guidance on how to analyze cases. Pay close attention to those readings and do not hesitate to return to them as we start reading cases. Remain especially attentive to the section on briefing cases. While there is an assignment in which you submit case briefs, briefing cases is helpful to do regularly in your reading notes.
- 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 and writing is new. Don't be afraid to collaborate.
- 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 summaries *in lieu of* the cases in our textbook. First, summaries often have legal language not in the original cases, which if you use in your work is a clear giveaway that you are not doing the reading (especially if it sets off plagiarism alerts on Canvas). Second, the online summaries do nothing to provide details on the political context of the cases or their broader implications, which is discussed in the textbook. Finally, online summaries often overlook key parts of cases that we emphasize in class and, in more complicated cases, often address only *part* of a ruling. This can lead to serious misunderstandings that hurt your grade.

For Those Interested in Law School

While civil rights and civil liberties 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:

- While this course is of significant interest to those considering a career in law, be aware that I am a political scientist and not a lawyer. Our approach to studying the law will be through the lens of political science.
- Consider this course as an *immersion* course in critical legal thinking. We primarily read cases from Lesson 2 on, which may be a challenge. Keep at it. The more you read cases, the better you'll become at it. Use this to gauge whether you think you'd enjoy the work of law school.
- Expect some gentle cold calling and Socratic-style discussion. I do not use this teaching technique in a harsh way to shame students who did not understand the reading, but as a way to get you, the students, to take responsibility and ownership over the material and lead our discussions. These are teaching techniques commonly employed in law schools, and while I do not use them exactly as law professors do, they will encourage you to get in the habit of coming to class ready to summarize the facts, reasonings, rulings, and implications of assigned cases as you would have to do in law school.
- 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.

Course Assignments and Graded Events

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
Case Briefs	10%
Participation	15%
Presentation	15%
Midterm	25%
Final Exam	35%

Participation (15%): Despite running remotely, the course will be a discussion-driven seminar, so participation is key to success. All students are expected to participate in our class discussions in ways that reflect a strong understanding of the course material. You are expected to be ready to provide a summary of the readings, particularly the cases we read, if I call on you. Understand 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% participation score).

Reading quizzes may be administered at random times throughout the semester. They will test you for comprehension of the material as well as your ability to think critically and insightfully about the reading. Your scores will be averaged into your participation score at the end of the semester to

calculate your overall participation grade. The better our class discussions are, the less frequently I will institute reading quizzes – but expect them to become a regular occurrence if discussion falters.

Case Briefs (10%): Students will need to submit 3 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. While you can submit briefs for cases of your choosing, they must be spread out over the semester – you must submit one brief during each of the three main course modules for any case of your choosing (with the exception of *Marbury v. Madison*, for which I will provide a sample). The briefs are due uploaded to Canvas before the start of class time on the day the case is assigned. Each brief should be no more than 1 single-spaced page. Your best two briefs are worth 4% of your grade; your brief with the lowest grade is worth 2%.

Case Presentation (15%): On Monday, November 23 students will give presentations on cases they read that are not on the syllabus. I will provide a list of cases for students to sign up for to make sure that everyone presents something different. You will be expected to provide a 5-6 minute long presentation over Zoom detailing the case facts, questions at stake, majority ruling, and any significant concurrences/dissents (with a PowerPoint or visual aid). You also have to submit a brief of no more than 1 page in length on the case and write 600-800 words about how the case connects to themes and/or cases we discussed in class.

Midterm (25%): There will be a single midterm exam administered covering the material from the first half of the semester.

Final (35%): There will be a final exam that will be comprehensive, covering material from the entire course.

Administrative Standards

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 is a severe offense, and plagiarism will not be tolerated. All source material **MUST** be cited when presenting someone else's words or ideas. If you have any questions about citing source material, please speak to me. I would much rather correct any accidental errors in citation and attribution ahead of time rather than address them after turning in an assignment.

Readings and Class Prep: Students should attend class prepared to thoroughly discuss the lesson's readings and must have access to the assigned readings with them during class. As noted, if in-class discussion falters, I will create in-class quizzes to count towards participation.

Absences: Students who miss class should make a reasonable effort to contact me before class. Students automatically get one free excused absence, but it is helpful for me to have an idea about attendance in advance. Any additional absences beyond the excused one require documentation, and without appropriate documentation they count as unexcused and you receive a 0 for your daily participation score. Any absence that prevents you from completing a graded requirement such as an exam cannot be counted as your automatic excused absence and requires documentation ahead of a makeup, otherwise your grade will be penalized.

Late Submissions: If you anticipate turning in an assignment late, email me immediately and inform me when you anticipate turning it in. In the absence of extenuating circumstances or documentation to excuse it, you will be deducted ten percent for every 24 hours the assignment is late.

Writing Standards: The ability to write clearly and articulately is an important skill. As such, your writing in this course will be evaluated against several dimensions of good writing. This means I will not only evaluate the substance of your paper – meaning persuasiveness, factual accuracy, strong use of evidence, and critical and intelligent thought – but I will also give you feedback on your writing style. In your written work, you should pay attention to organization and presentation, writing tone, sentence structure, grammar, spelling, punctuation, and proper citations and documentation. All writing should conform to a standardized citation format (MLA, APA, Chicago, etc.). Whichever is fine, but please remain consistent in your writing. All papers should be typed in 11- or 12-point of a standard font (Times New Roman, Arial, Cambria, etc.) with standard 1-inch margins.

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.**

Course Readings and Required Texts

This course requires one book that is available through the campus bookstore. If you buy it used, please buy the correct edition (2nd edition). For each lesson we read numerous short excerpts from the book, and it will be very difficult to determine the correct excerpts if you purchase an older volume.

- Gillman, Howard, Keith Whittington, and Mark Graber. *American Constitutionalism, Volume II: Rights and Liberties*, 2nd edition (New York: Oxford University Press, 2017). (Labeled as **GGW II** on the syllabus)

Additional readings from the supplemental material for the GGW volume will be posted on the course website in a PDF packet of case excerpts. (Labeled as **Packet** on the syllabus)

Course Schedule

WED, SEP-2: Course Introduction

- **GGW II**, pp. 3-21, 843-852

MODULE 1: Rights and Liberties from the Colonial Era Through New Deal

TUE, SEP-8: The Constitution and Bill of Rights

- **GGW II**, pp. 31-35, 74-90 (skip “State Bills of Rights”), 829-841

WED, SEP-9: Rights and Liberties in the Early Republic

- **GGW II**, pp. 108-114, 123-131 (skip “The Law of Nations” and “*US v. La Jeune Eugenie*”)
- Cases:
 - *Commonwealth v. Jennison* (1783)
 - *Calder v. Bull* (1798)
 - *Marbury v. Madison* (1803)

MON, SEP-14: Antebellum Rights and Liberties

- **GGW II**, pp. 131-136, 150-160, 173-175
- Cases:
 - *Martin v. Commonwealth* (1805)
 - *Fletcher v. Peck* (1810)
 - *Amy v. Smith* (1822)
 - *Barron v. Baltimore* (1833)

WED, SEP-16: The Civil War

- **GGW II**, pp. 198-207, 227-237, 271-278
- Cases:
 - *Dred Scott v. Sandford* (1857)
 - *Ex parte Milligan* (1866)

MON, SEP-21: Reconstruction

- **GGW II**, pp. 237-241, 256-261, 296-300
- **Packet**, pp. 1-3
- Cases:
 - *Slaughter-House Cases* (1873)
 - *US v. Cruikshank* (1875)
 - *Civil Rights Cases* (1883)

WED, SEP-23: The Gilded Age

- **GGW II**, pp. 279-285, 322-325, 339-350
- Cases:
 - *Reynolds v. US* (1879)

- *Yick Wo v. Hopkins* (1886)
- *Plessy v. Ferguson* (1896)
- *US v. Wong Kim Ark* (1898)

MON, SEP-28: The Progressive Era

- **GGW II**, pp. 289-294, 307-310, 313-316, 326-333 (skip *Meyer v. Nebraska*)
- **Packet**, pp. 4-6
- Cases:
 - *Lochner v. New York* (1905)
 - *Twining v. NJ* (1908)
 - *Schenck v. US* (1919)
 - *Gitlow v. NY* (1925)
 - *Buck v. Bell* (1927)

WED, SEP-30: New Deal

- **GGW II**, pp. 373-384, 398-401, 419-423, 452-457, 469-473
- **Packet**, pp. 6-8
- Cases:
 - *West Coast Hotel v. Parrish* (1937)
 - *Palko v. Connecticut* (1937)
 - *US v. Carolene Products* (1938)
 - *West Virginia v. Barnette* (1943)
 - *Korematsu v. US* (1944)

MODULE 2: The Warren Court Era Rights Revolution

MON, OCT-5: Desegregation

- **GGW II**, pp. 451-452, 457-468, 491-496
- **Packet**, pp. 9-13
- Cases:
 - *Brown v. Board I and II* (1954, 1955)
 - *Bolling v. Sharpe* (1955)
 - *Heart of Atlanta Motel v. US* (1964)
 - *Green v. County School Board of New Kent* (1968)

WED, OCT-7: Freedom of Speech

- **GGW II**, pp. 423-432, 517-522
- **Packet**, pp. 14-17
- Cases:
 - *Dennis v. US* (1951)
 - *New York Times v. Sullivan* (1964)
 - *US v. O'Brien* (1968)
 - *Brandenburg v. OH* (1969)

- *New York Times v. US* (1971)
- *Miller v. California* (1973)

MON, OCT-12: Free Exercise and Establishment

- **GGW II**, pp. 402-409, 504-507
- **Packet**, pp. 18-25
- Cases:
 - *Engel v. Vitale* (1962)
 - *Sherbert v. Verner* (1963)
 - *Wisconsin v. Yoder* (1971)
 - *Lemon v. Kurtzman* (1971)

WED, OCT-14: **No Class. Midterm.**

MON, OCT-19: Voting and Elections

- **GGW II**, pp. 432-445
- **Packet**, pp. 26-33
- Cases:
 - *Baker v. Carr* (1962)
 - *Reynolds v. Sims* (1964)
 - *Harper v. Virginia Board of Elections* (1966)

WED, OCT-21: Privacy Rights

- **GGW II**, pp. 410 (Section D only), 414-418, 508-516
- Cases:
 - *Griswold v. Connecticut* (1965)
 - *Roe v. Wade* (1973)

MON, OCT-26: Criminal Justice I: Arrest and Processing

- **GGW II**, pp. 475-487
- **Packet**, pp. 34-39
- Cases:
 - *Mapp v. Ohio* (1961)
 - *Miranda v. Arizona* (1966)
 - *Katz v. US* (1967)
 - *Terry v. Ohio* (1968)

WED, OCT-28: Criminal Justice II: Trial and Sentencing

- **GGW II**, pp. 383-388, 487-488
- **Packet**, pp. 40-56
- Cases:
 - *Gideon v. Wainwright* (1963)

- *Duncan v. Louisiana* (1968)
- *Furman v. GA* (1972)

MODULE 3: Backlash to the Warren Court and the Modern Era

MON, NOV-2: Backlash to the Warren Era

- **GGW II**, pp. 496-501, 529-538, 562-567, 571-576
- Cases:
 - *Swann v. Charlotte-Mecklenburg Board* (1971)
 - *Moose Lodge v. Iris* (1972)
 - *San Antonio School District v. Rodriguez* (1973)
 - *Gregg v. Georgia* (1976)

WED, NOV-4: Affirmative Action

- **GGW II**, pp. 540-545, 652-658, 685-691, 779-784
- **Packet**, pp. 57-62
- Cases:
 - *University of California Davis v. Bakke* (1978)
 - *Richmond v. Croson* (1989)
 - *Grutter v. Bollinger* (2003)
 - *Fisher v. University of Texas* (2016)

MON, NOV-9: Free Speech

- **GGW II**, pp. 522-526, 622-625, 740-744, 748-757
- Cases:
 - *Buckley v. Valeo* (1976)
 - *Texas v. Johnson* (1989)
 - *Boy Scouts of America et al. v. Dale* (2000)
 - *Citizens United v. Federal Elections Commission* (2010)
 - *Snyder v. Phelps* (2011)

WED, NOV-11: Religious Liberty

- **GGW II**, pp 598-603, 713-721
- **Packet**, pp. 63-67
- Cases:
 - *Employment Division v. Smith* (1990)
 - *Church of Lukumi Babalu Aye v. Hialeah* (1993)
 - *Boerne v. Flores* (1997)
 - *Burwell v. Hobby Lobby* (2014)

MON, NOV-16: Voting and Elections

- **GGW II**, pp. 633-637, 757-768
- **Packet**, pp. 68-73

- Cases:
 - *Shaw v. Reno* (1993)
 - *Bush v. Gore* (2000)
 - *Shelby County v. Holder* (2013)
 - *Rucho v. Common Cause* (2019)

WED, NOV-18: Sexuality and Privacy

- **GGW II**, pp. 607-621, 727-739
- Cases:
 - *Bowers v. Hardwick* (1986)
 - *Planned Parenthood v. Casey* (1992)
 - *Lawrence v. Texas* (2003)
 - *Obergefell v. Hodges* (2015)

MON, NOV-23: Presentations in class.

MON, NOV-30: Criminal Procedure

- **GGW II**, pp. 661-666, 670-675, 803-810
- Cases:
 - *US v. Leon* (1984)
 - *Batson v. Kentucky* (1986)
 - *Dickerson v. US* (2000)
 - *US v. Jones* (2012)

WED, DEC-2: Punishment and Detainment

- **GGW II**, pp. 675-682, 696-701, 821-827
- **Packet**, pp. 74-83
- Cases:
 - *McCleskey v. Kemp* (1987)
 - *Hamdi v. Rumsfeld* (2004)
 - *Boumediene v. Bush* (2008)
 - *Brown v. Plata* (2011)

MON, DEC-7: Gun Control and Takings

- **GGW II**, pp. 691-696, 701-706, 721-727
- Cases:
 - *Kelo v. New London* (2005)
 - *DC v. Heller* (2008)
 - *McDonald v. Chicago* (2010)

WED, DEC-9: Course Conclusion