

**Princeton University  
Department of Politics**

**POL 314 – American Constitutional Development  
Spring 2008**

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MW, 1:30-2:20 pm  
001 Robertson Hall  
office hours: by appointment via online scheduler  
(<https://weblamp.princeton.edu/~officehr/>)

Preceptor: Michael Sullivan ([mjsulliv@princeton.edu](mailto:mjsulliv@princeton.edu))

This course will examine the development of American constitutional law, conceptions, and practices over the course of American history, with particular focus on the period predating World War II (that is, prior to most of the constitutional law that you typically see in other classes), and on governments structures and powers. We will examine how the Supreme Court has interpreted the Constitution over time, but we will also be interested in how constitutions are written and amended and how political practices that give shape to our constitutional system evolve. We will explore the continuing tension between the Constitution as an empowering device and the Constitution as a limiting rule. We will be interested in how the Constitution serves as an instrument of popular power and a symbol of political ideals, as well as how it serves as a fundamental law constraining government action. We will be interested in how our constitutional values and practices have changed over time, and how we can reconcile those changes with the idea of a written constitution and a consistent constitutional tradition extending from the founding to the present. We will see how different political actors with different sets of political ideals and commitments struggle to meet the governing objectives of the moment while remaining faithful to larger constitutional objectives.

The class will be particularly concerned with thinking about American constitutionalism from a political perspective. Rather than abstracting constitutional law into ahistorical doctrines, we will situate constitutional developments within the political, social and intellectual environments within which they occur. We will be interested not only in the major decisions of the Supreme Court, but also the debates and decisions that occur within the Court, Congress, the executive branch, the states, and the larger public sphere. In keeping with that goal, the material is arranged chronologically, rather than thematically. Hopefully as a result, we will see familiar issues in a new light, encounter unfamiliar issues that have often been pushed into the background, and attend to the processes by which constitutional claims are asserted, contested, and settled.

This course complements rather than repeats or directly relies upon what you would study elsewhere (e.g., POL 315 and POL 316). The logic of separating constitutional “structures and powers” from “civil rights and civil liberties” will be one issue that we will take up as the semester progresses, but we will give particular attention to matters of government structure and power. Likewise, theories of constitutional interpretation will be somewhat in the background, but certainly not irrelevant to our discussions.

Schedule:

Introduction

Week 1: Constitutionalism and constitutional change

Read: *American Constitutionalism*, introductions and appendix

Sanford Levinson, "How Many Times Has the Constitution Been Amended?"  
*Constitutional Commentary* (1991)

Bruce Ackerman, "Higher Lawmaking," in *Responding to Imperfection*, ed. Sanford Levinson

Precepts will not meet this week

## Colonies to Constitution

Week 2: Pre- and post-revolutionary debates over centralization of power

Read: *American Constitutionalism*, ch. 2, pp. 1-20, 36-43

Read: *American Constitutionalism*, ch. 3, pp. 1-53

Week 3: Separation of powers and constitutional ratification

Read: *American Constitutionalism*, ch. 2, pp. 21-35

Read: *American Constitutionalism*, ch. 3, pp. 54-95

## Federalists and Jeffersonians

Week 4: Centralization

Read: *American Constitutionalism*, ch. 4, pp. 1-42, 50-79, 98-110, 120-130

Week 5: Separation of Powers and Judicial Review

Read: *American Constitutionalism*, ch. 4, pp. 132-157, 162-178, 180-240, 254-258

Week 6: Limiting the states

Read: *American Constitutionalism*, ch. 4, pp. 89-98, 259-273

Read: *American Constitutionalism*, ch. 5-B, pp. 6-18

Read: *American Constitutionalism*, ch. 5, pp. 59-74

## SPRING BREAK

## Jacksonian Era

Week 7: Jacksonian era debates (centralization, slavery, presidential power)

Read: *American Constitutionalism*, ch. 5, pp. 1-50, 74-83, 93-152

MIDTERM EXAM due March 31<sup>st</sup>, 1:30 pm

## Civil War and Reconstruction

Week 8: Secession and executive power

Read: *American Constitutionalism*, ch. 6, pp. 1-3, 87-101, 118-180

Week 9: National power, federalism, and civil rights

Read: *American Constitutionalism*, ch. 6, pp. 4-59, 77-86, 101-117

Gilded Age to New Deal

Week 10: National power, federalism, presidential power

Read: *American Constitutionalism*, ch. 7, pp. 1-20, 26-89, 92-95, 97-102, 109-150

Week 11: *Lochner*, the New Deal, and judicial review

Read: *American Constitutionalism*, ch. 7, pp. 159-160, 167-202, 219-223

Read: *American Constitutionalism*, ch. 8, pp. 1-7, 266-291, 340-348, 354-384

Read: *American Constitutionalism*, ch. 9, pp. 248-277, 310-324

Some Contemporary Developments

Week 12: presidential power and war powers

Read: *American Constitutionalism*, ch. 8, pp. 156-237, 257-264

Read: *American Constitutionalism*, ch. 9, pp. 1-10, 131-135, 168-242

### Precepts:

There are three available precept times: W 2:30-3:20, W 3:30-4:20, and W 7:30-8:20 pm. Precepts are a required component of the course, and you must sign up for and regularly attend a precept. Regularly attending the precept is a necessary but not a sufficient condition for a passing grade in participation. Participation in the precept constitutes a fifth of your grade in the class.

You will be expected to have at least skimmed that week's reading by the time of the first class meeting of the week. You will be expected to have thoroughly, carefully and thoughtfully read that week's materials by the time of your precept. You should arrive at precept not only with your own questions about that week's lectures and materials, but also with your own thoughts about both the substantive issues involved in those materials and the more general issue of how they shed light on the workings of American constitutionalism.

Unless otherwise announced, the first meeting of the precepts will be in week 2.

### Materials:

There is only one required book for the course:

Howard Gillman, Mark Graber and Keith Whittington, *American Constitutionalism*

This book is NOT available for purchase, as it only exists in manuscript form. Readings for each week will be posted in the assignments section of the course website in Blackboard. The upside of this arrangement is that there is no cost to you for the books for this course this semester. The downside is that you will be using a book that is still in draft form. Some parts of the book will be fairly polished; other parts will be pretty rough. Feedback on the book itself will be most welcome.

The assignment section will break the readings out on a week-by-week basis. If there is a discrepancy, the pages specified on the course website trump the pages specified on the syllabus since the course website will be updated over the course of the semester.

Some additional readings will also be posted on Blackboard.

### Requirements:

The requirements of the course include both written and oral components. To obtain a passing grade for the course, a student must fulfill **all** course requirements. Thorough preparation for, and faithful attendance at, lectures and precepts is among these requirements. In particular, you will be expected to arrive at precepts fully familiar with the assigned material and prepared to discuss the issues and concepts raised that week. Participation in precept will constitute a fifth of your final grade.

You will be required to complete two written assignments, consisting of one midterm take-home exam and one final exam. The take-home midterm will be made available on the course website on Thursday, March 27<sup>th</sup> and will be due in class at 1:30 pm on Monday, **March 31**. The final exam will be at the time and place designated by the Registrar's Office. The quality of your writing will be a factor in determining your grade on written assignments. The take-home exam will be penalized one full letter grade if it is handed after 1:30 pm but before 5:00 pm on the due date. Exams will not be accepted after 5:00 pm on the due date.

The lectures are designed to supplement and complement, but not to simply repeat, the readings and the discussion in precept. Likewise, the precepts will complement, and not simply repeat, the subjects covered in lecture. Everything covered in the readings, the lectures, and the precept discussions is eligible for inclusion in the exams.

Your grade for the course will be calculated using the following formula:

Midterm 35%  
Final Exam 45%  
Participation 20%

You may appeal any written grade within two weeks of receiving it. In order to appeal a grade, submit a copy of the exam and a short (500 words) written statement as to what error you think was made in your initial grade. A different preceptor will then grade your paper from scratch. The new grade may be **either higher or lower** than the original, and will be final.

The grading is standardized across precepts. Your final grade will not be affected by which precept you attend, though your preceptor has first responsibility for grading your work.