Welcome to Civil Rights and Liberties. The Supreme Court and cases involving constitutional rights raise controversial and fascinating issues. Court decisions and nominees are often themselves a subject of political debate. In this course, we will look at how, and why, the Supreme Court decides, and has decided, cases involving civil rights and liberties. This includes landmark cases like Brown v. Board of Education, Roe v. Wade and Lawrence v. Texas, and controversial issues related to free speech, religion, privacy, and equal rights for women, members of racial minorities, and gay and lesbian Americans, to give a few examples.

The law often seems mysterious, and Supreme Court cases especially so. We’ll pull aside the curtain and consider what Supreme Court justices really do when they decide cases. We’ll talk about what “judicial activism” means (or doesn’t mean), we’ll discuss theories of strict construction, original intent, and whether there is a “living constitution” that can adapt to changing times.

Supreme Court decisions can only be fully understood in context, so we’ll also consider the historical context and other factors relevant to the cases. Who are, or were, the justices who decided these central cases? What contemporary issues and context formed the backdrop to their decision-making?

Court decisions can also be hard to understand, even when you know the context. We’ll discuss how to read a court decision and what judges mean when they use terms like “strict scrutiny”, and “suspect classification.” We’ll talk about how to brief decisions, and how to understand the interplay of majority, concurring, and dissenting opinions.

Class time is designed to be interactive and focused on discussion. That depends on your reading the cases: as noted below, part of your grade will be determined by your participation, which means being prepared and actively engaged in discussion. Please come to class prepared to discuss all the reading assigned each week, including the facts and outcome of assigned cases. If some circumstance beyond your control prevents you from attending or preparing for a particular class, please let me know as soon as possible.
### COURSE REQUIREMENTS AND GRADES

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<tr>
<th>Requirement</th>
<th>Percentage</th>
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<tr>
<td>Class Participation</td>
<td>15%</td>
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<td>Written Briefs</td>
<td>10%</td>
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<td>Mid-term Examination</td>
<td>25%</td>
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<td>Final Examination</td>
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Note: no laptops or electronic devices of any kind may be used during exams.

### Grading Criteria:

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**Written briefs:** As we will discuss during the first class, you will be responsible for handing in a short (usually, a few paragraphs will be sufficient, and always a page or less is fine) brief of one case five times during the semester, as noted below in the course outline. For the weeks when briefs are assigned, they are due by 8:30 a.m. on Tuesday of the week assigned. You may brief any case assigned for that week that is highlighted for class discussion below. Submitting briefs by email is highly preferable—my email address is edelson@american.edu.

The goals behind the briefing assignment are (1) so I can be sure you understand the cases we are studying; (2) to give you an opportunity to develop your writing skills (I will provide feedback on this); and (3) to help you prepare for the mid-term and final—briefing the cases will help you focus on key issues and I will provide feedback specifically aimed at further focusing your attention on important issues that will be covered in the exams. Your first brief will not be graded, but briefs 2-5 will be graded and will count toward your overall grade as noted above.

During the first class, I will give you detailed information about how to brief a case—if you haven’t done this before, don’t worry, it’s very manageable and not at all mysterious once you find out about the basics.

**Academic Integrity:** All students are required to follow the University’s Academic Integrity Code. If you have not already done so, please familiarize yourself with the standards and requirements of the University’s Academic Code of Conduct. Violations
of the Code of Conduct will not be tolerated and will be reported appropriately. Please see me with any questions on the Academic Integrity Code and its application to this course.

**Learning Objectives:** The key goals are for you to: (a) be able to brief, critically read, and understand Supreme Court decisions involving civil rights and liberties; (b) gain a basic understanding of our constitutional democracy and court system (including familiarity with some basic legal terms); (c) understand different theories of constitutional interpretation and how judges decide cases; and (d) discuss and debate the issues raised by cases studied in class, while understanding and being able to articulate both sides of the arguments.

If you experience difficulty in this course for any reason, please don’t hesitate to speak with me. In addition to the resources of the department, a wide range of services is available to support you in your efforts to meet the course requirements.

**Additional Information and Resources**

**Students Taking this Course For General Education Credit:** This second-level course links with the four Foundation Courses in Cluster One of Curricular Area 4, Social Institutions and Behavior (Institutions): COMM-100: Understanding Mass Media; ECON-100: Macroeconomics; GOVT-110: Politics in the United States; and SOCY-150: Global Sociology. General education credit will only be given if the prerequisite Foundation Course has previously been taken for General Education credit. If you have any questions about this, please let me know or please contact the General Education program.

**Academic Support Center** (x3360, MGC 243) offers study skills workshops, individual instruction, tutor referrals, Supplemental Instruction, and services for students with learning disabilities and ADHD. Writing support is available in the ASC Writing Lab or in the Writing Center, Battelle-Tompkins 228.

**Counseling Center** (x3500, MGC 214) offers counseling and consultations regarding personal concerns, self-help information, and connections to off-campus mental health resources.

**Disability Support Services** (x3315, MGC 206) offers technical and practical support and assistance with accommodations for students with physical, medical or psychological disabilities.

If you qualify for accommodations because of a disability, please notify me in a timely manner with a letter from the Academic Support Center or Disability Support Services so that we can make arrangements to address your needs.
Required Materials


COURSE CONTENTS AND OUTLINE

(Please note that this may be changed, depending on the pace of the course and other factors. I will give you sufficient notice if anything does change.)

Important note: the class discussion bulletpoints below are intended to help you prepare for discussion by **highlighting** some key issues and cases. However, you are responsible for **all** of the assigned reading, all of which may be discussed in class and/or covered on an exam.

For most weeks, a reading assignment is given that covers both classes. You can expect that we will typically cover roughly half of the assigned material on Tuesday and half on Friday, but, depending on the pace of the course, that may vary slightly.

Unless otherwise noted, page numbers refer to the Epstein and Walker text.

**Tuesday, August 25: Introduction to civil rights and liberties**

No assigned reading prior to first class.

Class Discussion:
- Introduction to the class and review of syllabus.
- How to read and brief a court’s decision.
- Overview of major themes we will cover.

**Friday, August 28: The Constitution and the Supreme Court**

**Assigned reading:** pp. 791-800 (the Constitution); p. 25, Box 1-3 (Antonin Scalia); p. 218, Box 5-1 (Oliver Wendell Holmes); p. 479, Box III-1 (Earl Warren); p. 734, Box 12-6 (Sandra Day O’Connor)

Class Discussion:
- Why have a constitution in the first place?
- The Supreme Court’s role in resolving constitutional issues.
- How do judges decide cases?
- Basics of the U.S. court systems (state and federal), and some key legal terms
- Justices on current Supreme Court
- Some past Supreme Court justices
- What, if anything, does it mean to be a “liberal” or “conservative” judge?
- Discussion of Constitution, with focus on Bill of Rights and 14th Amendment.
Tuesday, September 1 and Friday September 4
The Constitution and Judicial Review

Assigned reading: pp. 3-46; pp. 49-59

first brief due by 8:30 am Tuesday, Sept. 1

Class Discussion:

- How the Supreme Court works (pp. 10-21).
- Theories of constitutional interpretation (pp. 22-43)
- Interpreting and Applying the Constitution: Judicial Review and Marbury v. Madison (pp. 49-59)

Tuesday, September 8 and Friday, September 11:
Incorporation of the Bill of Rights: “Nationalizing” the Bill of Rights to Apply to State, as well as Federal, Government, and Introduction to Equal Protection Under the 14th Amendment.

Assigned reading: pp. 71-92; pp. 617-621

Class Discussion:

- Introduction to the 14th Amendment’s equal protection clause and “tiered scrutiny” (rational basis, intermediate scrutiny, strict scrutiny) (pp. 617-621).

Tuesday, September 15 and Friday, September 18:

second brief due Sept. 15

Assigned reading: pp. 626-642; pp. 647-650 (also re-read p. 479, Box III-1, Earl Warren, before reading the Brown v. Board decisions)

Class Discussion:

- What does the Constitution say about equality? The road to Brown v. Board and the NAACP’s role in putting an end to “separate but (un)equal”: Plessy v. Ferguson, Sweatt v. Painter, Brown I and II, Loving v. Virginia (pp. 626-642)
- Loving v. Virginia—parallels to marriage for same-sex couples? (pp. 647-650)
Tuesday, September 22 and Friday, September 25: The 14th Amendment’s Application to Discrimination Based on Sex and Sexual Orientation

Assigned reading: pp. 660-683; pp. 687-693

Class Discussion:

- What level of scrutiny applies to equal protection cases involving sex discrimination? Reed v. Reed, Frontiero v. Richardson, Craig v. Boren, U.S. v. Virginia (pp. 660-683)
- Rational basis “with teeth”: The Romer v. Evans decision and discrimination based on sexual orientation under the 14th Amendment. (pp. 687-693)

Tuesday, September 29 and Friday, October 2:
The Right to Privacy: From Contraception to Abortion-- Griswold, Roe v. Wade

third brief due Sept. 29

Assigned reading: pp. 412-448

Class Discussion:

- What is substantive due process and where does the right to privacy come from? (Olmstead, Lochner, Griswold v. Connecticut, Roe v. Wade, Casey and attempts to overturn Roe pp. 412-448).

Tuesday, October 6 and Friday, October 9:
The Right to Privacy: Personal Autonomy; also, in-class review for midterm (review is on Friday Oct. 9)

Assigned reading: pp. 450-460

Class Discussion:

- The right to privacy in terms of personal autonomy—the path to marriage equality for same-sex couples?: Lawrence v. Texas (pp. 452-460)
- Review for midterm
Tuesday, October 13: In-class Midterm

Friday, October 16 No class-Fall Break

Tuesday, October 20 and Friday, October 23:
Civil Liberties: Free Exercise of Religion

Assigned reading: pp. 95-130

Class Discussion:

• Introduction to free exercise of religion (pp. 95-104)
• The belief/action distinction: Cantwell (pp. 104-107)
• Applying strict scrutiny: Sherbert, Yoder (pp. 111-121)
• Away from strict scrutiny: Smith (pp. 124-130)

Tuesday, October 27 and Friday, October 30:
The Establishment Clause: a Limit on Free Exercise, or Additional Protection of Free Exercise?

fourth brief due October 27


Class Discussion:

• A wall of separation: Everson v. Board of Ed. (pp. 140-148)
• Early Cases Involving Prayer in Public Schools: Engel v. Vitale, School Dist. of Abington Township v. Schempp (pp. 184-189)
• The Lemon test: Lemon v. Kurtzmann (pp. 148-160)

Tuesday, November 3 and Friday, November 6:
More on the Establishment Clause and Introduction to Free Speech

Assigned reading: pp. 189-198; pp. 177-184; pp. 210-219 (note: again, please read in the order assigned here, not in the order these pages appear in the book)

Class Discussion:

• School prayer after Lemon: Lee v. Weisman (pp. 193-198)
• Evolution and creationism: Epperson v. Arkansas, Edwards v. Aguillard (pp. 177-184)
• The limits of free speech: should there be less protection during wartime or other crisis? Schenck v. U.S., Abrams v. U.S. (pp. 210-219)
Tuesday, November 10 and Friday, November 13:
More on the Limits of Free Speech: Dissent and Times of Crisis, Symbolic Speech

fifth and final brief due Nov. 10

Assigned reading: pp. 219-243; pp. 246-251

Class Discussion:

- The Court struggles to find a test for free speech cases: *Gitlow v. New York; Whitney v. California; U.S. v. Carolene Products; Dennis v. United States; Brandenburg v. Ohio* (pp. 219-243)
- Symbolic Speech: expressive conduct as speech: *U.S. v. O'Brien* (pp. 246-251)

Tuesday, November 17 and Friday, November 20:
More on Symbolic Speech; Coerced Speech/The Right Not to Speak; also, the 4th Amendment: Freedom from Unreasonable Searches and Seizures.


Class Discussion:

- Symbolic speech in the schools; flagburning as expression: *Tinker v. Des Moines Independent Community School Dist., Texas v. Johnson* (pp. 251-260)
- Coerced Speech/The Right Not to Speak: *West Virginia State Board of Ed. v. Barnette* (pp. 286-291)
- The evolving idea of what the 4th Amendment protects: *Katz v. U.S.* (pp. 484-488).
- The 4th Amendment and the “war on terror”: p. 507, p. 508 (Box 10-1).

Week of November 23—no class, Thanksgiving

Tuesday, December 1 and Friday, December 4:
The Eighth Amendment and Capital Punishment; Class Wrap-up and Discussion of Final Exam.

Assigned reading: pp. 581-584; 592-602

Class Discussion:

- Is the death penalty “cruel and unusual punishment” in some or all circumstances? *Atkins v. Virginia* (pp. 593-599).
- Class wrap-up and review for final exam.

Friday, December 11: final exam 11:20 a.m. - 1:50 p.m.