

**CONSTITUTIONAL LAW II:
CIVIL RIGHTS AND CIVIL LIBERTIES
POLITICAL SCIENCE 427**

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COURSE DESCRIPTION

This is a survey course for undergraduates who are interested in understanding more about how the Constitution works to guarantee specific rights to US citizens. We will be studying many of the major decisions on civil rights that the Supreme Court has produced mostly since the 1860s to develop a deeper understanding of how the protection of rights fits into the structure of the Constitution. The bulk of the course will focus on rights developed through the equal protection and due process clauses of the Fourteenth Amendment. In particular, the framework of equal protection for people of color, women, and other groups, the evolution of due process as a protection for specific liberties, and the relationship between due process and equal protection in the context of regulations concerning families, sexuality, and freedom. We will not cover criminal law this term.

By the end of the term, students who succeed in the course should 1) be able to explain the historical development of civil rights in the United States, 2) understand and be able to analyze critically current debates over rights, 3) have improved their writing and capacity for critical analysis, and 4) have strengthened their abilities to discuss and criticize arguments about civil rights either as advocates or evaluators (judges).

Is this class right for me? This course will involve significant reading and writing requirements, probably among the most challenging you will encounter in the POS department. Although the page totals of the assignments are deceptively small, the reading requires a great deal of care and thought. You will be expected to complete all of the reading and to attend all of the lectures. Students who have tried in the past to get by through either doing the reading or coming to lectures have traditionally been unhappy with their final grades. The course demands a lot, but delivers a lot in return, in proportion to the effort you put into it. That being said, *effort alone* will not get you an A. Only outstanding performances on the various assignments will get you into the A range for this course. Of course, effort is not irrelevant in establishing outstanding performance!

REQUIREMENTS

Students will be expected to attend class and participate in class discussions. Constructive, informed, respectful participation that contributes directly to conversations about the course material will raise borderline grades; lack of participation or consistently disruptive participation may result in lower grades. Class participation and attendance will constitute 10%

of your grade. The baseline grade for class participation is a B, so a student who does not miss class but never participates in discussions can expect to get a B for this component of the course. You will be expected to keep up with the reading throughout the term. You cannot do well on the assignments or examinations without both attending lectures and doing the reading.

All students will participate in a moot court connected to a structured writing assignment, take three quizzes, and take a final examination. The quizzes will help you to acquire the skills you will need to do well on the final exam. The requirements and distributions of grades differ slightly depending on whether you choose to be a judge or a lawyer for the moot court.

The moot court and writing assignment ask you to argue or adjudicate a case on an issue that is currently unsettled. The topic and materials for this exercise will be posted on Blackboard. Lawyers will prepare briefs and deliver oral arguments defending one side or the other. Judges will ask questions during oral arguments and prepare opinions based on their readings of the evidence and the lawyers' briefs. You will write your brief or opinion in two drafts, both of which will be graded. The final draft will be due near or at the end of the term. There will be no "right" ruling in the case; you will be graded on your ability to argue effectively using the precedents and techniques we learn in the class.

Students electing to participate as lawyers will have more work during the first part of the term, while students electing to participate as judges will have more work near the end of the term. Judges should note that their final papers will be due on the last day of class. The moot courts in which the cases are argued will take place during class time. Attendance is absolutely mandatory; there is no feasible way to make up this portion of the course's workload. *If you know that you cannot attend class during moot court week for any reason whatsoever, please drop this class now.* More information about this exercise will be discussed during the first day of class and throughout the term.

The weights of your various obligations will differ depending on whether you are an attorney or a judge. The weights break down as follows:

<i>Attorneys</i>		<i>Judges</i>	
Oral Argument	10%	Draft Opinion	5%
Draft Brief	5%	Final Opinion	35%
Final Brief	25%	Quiz 1	5%
Quiz 1	5%	Quiz 2	5%
Quiz 2	5%	Quiz 3	5%
Quiz 3	5%	Class Participation	10%
Class Participation	10%	Final Exam	35%
Final Exam	35%		

Papers are due in class at the beginning of class where indicated in the syllabus. Because of the need to allow time for other students to read and react to your writing, these deadlines are very rigid. If your draft is late for any reason, you will be penalized.

POLICIES

Students with disabilities. If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with the professor soon.

Please request that the Counselor for Students with Disabilities send a letter verifying your disability and outlining suggested accommodations.

Class attendance. You will be expected to attend class. Each student is permitted to miss two days of class per term with no questions asked and no penalties or reductions in his or her class participation grade. Any classes missed beyond those two will be taken into account in determining your class participation grade, regardless of the reason.

Extensions for papers. To avoid creating problems for other students in the class, no extensions will be given for rough drafts of papers. Late papers will be penalized half a grade per day for every day that the paper is late, starting at the beginning of class the day the paper is due. Extensions for final papers will only be permitted under compelling circumstances and if the extension is requested in advance. Any student who does not turn in her or his paper on time and has not contacted the professor in advance will lose half a grade per day for every day the paper is late unless the student can provide a University-approved excuse.

Regrading of materials. You may request regrading of materials that have been graded by the professor. If you wish to make such a request, contact the professor for a copy of the regrading policy. You will be asked to provide a written explanation of why you wish to have the assignment regraded.

Plagiarism or cheating. This one's simple: don't do it. Don't even think about doing it. Plagiarism is the use of someone else's *words* or *ideas* without giving the original author credit by citing him or her. If you use someone else's language directly, you must use quotation marks. If you rely on another person's ideas in creating your argument, you must provide a citation. If you have any questions about plagiarism, please contact the professor before you submit the assignment for grading. If you plagiarize or cheat in this class on any assignment or test, the **BEST** outcome you can hope to achieve is a failing grade. Ignorance will not provide a defense to the application of this policy.

MATERIALS

The main text for the course is *American Constitutionalism Volume II: Rights and Liberties*. Additional required readings are available on Blackboard and may be made available in a course packet if there is interest. In the syllabus, these items are marked with an asterisk. To log on to Blackboard, go to <https://blackboard.albany.edu/> and follow the login instructions. **IMPORTANT NOTE: You will need to use Blackboard to get access to assignment materials if you misplace your copies and to research your papers.**

SYLLABUS

Unit One: Rights Before and During Reconstruction

August 26 Introduction

- Julie Novkov, "How to Read a Case"*
- Julie Novkov, "What are Rights for?"*

August 28 No class (professor away)

- Introduction to Rights and Liberties (AC 3-21)

September 2 Pre-Constitutional Understandings of Rights

- Chapter 2 Introduction (AC 25-29)
- Foundations (AC 29-36)
- Chapter 3 Foundations (AC 86-97)

September 4 Equality in the Early Republic and Jacksonian Era

- Chapter 4, Equality under Law: Race (AC 184-194)
- Chapter 4, Gender (AC 194-196)
- *Barron v. Baltimore* (AC 218-219)

September 9 Growing Concerns over Race and Slavery; Seneca Falls

- Chapter 5, Equality (AC 248-250)
- *Dred Scott v. Sandford* (AC 250-257)
- *Roberts v. City of Boston* (AC 257-259)
- Stanton, Keynote Address (AC 260-61)

September 11 Early Fourteenth Amendment Frameworks for Understanding Rights

- Civil War Amendment Debates (AC 286-295)
- *Slaughter-House Cases* (AC 296-300)
- *Bradwell v. Illinois* (AC 341-342)
- *Civil Rights Cases* (AC 379-383)

Unit Two: Fourteenth Amendment Equality and Liberty through the 1960s

September 16 The Rise of Jim Crow

- *Yick Wo v. Hopkins* (AC 440-441)
- The Rise of Jim Crow (AC 444-447)
- *Plessy v. Ferguson* (AC 447-450)
- John Knox, Address to the Alabama Constitutional Convention (AC 450-452)

September 18 The Strange Saga of Liberty I

- *Holden v. Hardy* (AC 395-397)
- *Lochner v. New York* (AC 397-400)
- *Muller v. Oregon* (AC 400-403)
- *Adkins v. Children's Hospital* (AC 403-406)

September 23 The Strange Saga of Liberty II

- *Commonwealth v. Campbell* (AC 414-416)
- *Meyer v. Nebraska* (AC 416-418)
- *Buck v. Bell* (AC 418)

QUIZ ONE

September 25 NO CLASS

September 30 Liberty and Property Reconsidered

- *Home Building & Loan v. Blaisdell* (AC 513-516)
- *West Coast Hotel v. Parrish* (AC 517-520)
- *Williamson v. Lee Optical* (AC 520-521)

October 2 The Rise of Modern Equality Doctrine

- *United States v. Carolene Products* (AC 492-493)
- *Korematsu v. United States* (AC 582-586)
- *Shelley v. Kraemer* (AC 507-509)

October 7 *Brown* and Strict Scrutiny

- Civil Rights Advocates Debate Strategy (AC 588-590)
- *Brown v. Board of Education I* (AC 590-594)
- *Bolling v. Sharp* (AC 594)
- *Brown v. Board of Education II* (AC 594-595)
- Implementing *Brown* (AC 595-598)

October 9 The Growth of Individual Rights Jurisprudence

- *Skinner v. Oklahoma* (AC 530-531)
- *Perez v. Sharp* (AC 531-533)
- *Griswold v. Connecticut* (AC 533-538)

Unit Three: Late Twentieth Century Concerns: Expansion and Retrenchment

October 14 *Brown's* Legacy and Continued Struggles: Race, Class, and Equality in the 1970s

- *San Antonio Independent School District v. Rodriguez* (AC 686-689)
- *Swann v. Charlotte-Mecklenburg Board of Education* (AC 692-694)
- *Regents of the University of California v. Bakke* (AC 696-702)
- *Washington v. Davis* (AC 702 -704)

October 16 Gender Emerges In Equal Protection I

- *Goesaert v. Cleary**
- *Reed v. Reed**
- Debate over the Equal Rights Amendment (AC 707-709)
- *Frontiero v. Richardson* (AC 709-711)

October 21 Gender Emerges in Equal Protection II

- Military Service and Pregnancy (AC 711-712)
- *Craig v. Boren**
- *Rostker v. Goldberg**

October 23 Reproductive Freedom

- *Roe v. Wade* (AC 657-662)

- The Reagan Administration on *Roe* (AC 782-784)
- *Planned Parenthood of Southeastern Pennsylvania v. Casey* (AC 784-792)

October 28 State Obligations and Limits

- *Dandridge v. Williams* (AC 646-647)
- *Goldberg v. Kelly**
- *DeShaney v. Winnebago County Dept. of Social Services* (AC 752-754)

QUIZ TWO

October 30 Legitimacy as a Suspect Class?

- *Levy v. Louisiana**
- *Fiallo v. Bell**
- *Nguyen v. INS**

November 4 The Affirmative Action Debate

- Two Presidents on Affirmative Action (AC 838-840)
- *City of Richmond v. Croson* (AC 840-844)

Unit Four: Contemporary Concerns

November 6 Lesbian and Gay Rights I

- *Bowers v. Hardwick* (AC 792-794)
- *Romer v. Evans* (AC 991-994)

November 11 Lesbian and Gay Rights II

- *Lawrence v. Texas* (AC 934-937)
- *Goodridge v. Department of Public Health* (AC 937-942)
- *United States v. Windsor**

November 13 The Right to Die

- *Cruzan v. Director, Missouri Dept. of Health**
- *Vacco v. Quill**
- The Terri Schiavo Affair (AC 949-951)
- *Schiavo ex rel. Schindler v. Schiavo* (AC 951-952)

LAWYERS' ROUGH DRAFTS DUE IN CLASS

November 18

MOOT COURT I

MOOT COURT II

JUDGES' ROUGH DRAFTS DUE IN CLASS

November 20

MOOT COURT III

MOOT COURT IV

November 25 Takings

- *Lucas v. South Carolina Coastal Council* (AC 757-760)
- *Kelo v. City of New London* (AC 903-907)

LAWYERS' FINAL BRIEFS DUE IN CLASS

December 2 Gender and Equality

- *United States v. Virginia* (AC 1012-1016)
- *National Legal Services Authority v. Union of India**

December 4 Race in the Twenty First Century

- *Grutter v. Bollinger* (AC 995-1003)
- *Parents Involved in Community Schools v. Seattle School District No. 1* (AC 1003-1008)
- *Schuette v. Coalition to Defend Affirmative Action**

QUIZ THREE

December 9 The Revitalized Second Amendment

- Guns (AC 923-924)
- John Ashcroft, Letter to the NRA (AC 924-925)
- *District of Columbia v. Heller* (AC 925-930)
- *Abramski v. United States**

JUDGES' FINAL OPINIONS DUE

FRIDAY, DECEMBER 12 FINAL EXAM

3:30-5:30 PM in our regular classroom