American Constitutionalism II:
Rights and Liberties
Political Science 217
Williams College

Justin Crowe                   Spring 2017
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Schapiro 229, x2418                    Griffin 2
W 9-10, F 1:30-3, and by appointment

Description.
How has the American Constitution been debated and understood over time? What is the relationship between constitutional and political change? This course examines the historical development of constitutional law and politics from the Founding to the present. Our focus is on rights and liberties—freedom of religion and speech, property, criminal process, autonomy and privacy, equality—but, to the extent that these concerns implicate structural debates about the role of the judiciary or the balance of power between federal and state governments, we will touch on governmental power as well. (Those issues, along with the limits on congressional lawmaking, the growth of presidential power, and much more, are covered extensively in American Constitutionalism I: Structures of Power.) The specific disputes range from abortion to affirmative action, hate speech to capital punishment, school prayer to same-sex marriage; the historical periods to be covered include the early republic, the ante-bellum era, the Civil War and Reconstruction, World Wars I and II, the Warren Court, and contemporary America. Throughout the semester, our goal will be less to remember elaborate doctrinal rules and multi-part constitutional “tests” than to understand the changing nature of, and changing relationship between, constitutional rights and constitutional meaning in American history.

Objectives.
Thinking Contextually. Contrary to popular (and even much academic) belief, the Constitution exists outside the marble temple of the Supreme Court. In fact, rather than solely the province of “law,” constitutional disputes and resolutions are the products of executive, legislative, bureaucratic, partisan, and mass politics. Thus, while we will pay close attention to the Supreme Court, we will also strive to make sense of constitutional struggles not as exclusively judicial or peculiarly apolitical occurrences but as one (perhaps unique) type of politics that is inextricably woven into the fabric of American government. In other words, we will attempt to imagine the Constitution not in isolation but within the broader context of the American socio-polity.

Thinking Dynamically. The Constitution shapes politics, but, as we shall see, it is also shaped by politics—and, indeed, by many other forces as well. Our challenge, therefore, is two-fold: first, to think about both the ways in which the Constitution responds to political, social, economic, and intellectual currents and crises; and, second, to think about the ways in which such phenomena are a function of the structure and substance of the Constitution itself. As a result, we will consider the readings not as static cases or documents but as parts of broader trajectories and narratives of legal, political, and constitutional evolution.

Format.
Class will combine elements of lecture, discussion, and what is traditionally considered the “Socratic method” (targeted questioning of students). In order to facilitate broad participation, I will
both accept volunteers and call on students directly. In either case, there will be ample opportunity for you to ask questions, share your views, and interrogate the course material.

Materials.
- The Constitution of the United States of America (handout) (Const)
- PSCI 217 course packet (in four volumes) (CP)**

Contributions.***

**Essays (20% each for a total of 60%).** Three 5-7 page analytic essays due on dates of your own choosing, with the stipulation that you hand in at least one essay for or before session 13 (“The Road To and From Brown” – March 17) and at least one essay after that session. (Failure to do so will result in a zero for one of your essay grades.) You may, if you wish, submit a fourth essay, in which case I will drop the lowest of the four—provided it is not a zero—when calculating your course grade. Each essay will answer a question from the attached list and is due at the beginning of the class for which that particular question is posed. Your challenge in these essays is neither to embark upon outside research nor to summarize the views of others but, rather, to analyze the material (both primary and secondary), reflect on the issues at hand, and articulate your own argument in the form of a well-reasoned and well-supported answer to the assigned question.

**Final Exam (25%).** A cumulative exam consisting of identifications, notable quotations, and essays. Provided sufficient interest, I will be glad to hold a review session at the conclusion of the semester. More details on both the exam and the review session will be provided at a later date.

**Class Participation (15%).** A process of active engagement that entails more than simply showing up. Accordingly, participation grades are not a “free 15%” but, rather, a reflection of my holistic assessment of your performance in class.

Evaluation.

**Written Work.** Good writing is good thinking—that is to say, writing well first requires thinking well. The manner in which and the depth with which you approach writing and thinking will be the determining factors in your grade. More specifically, I base grades for written work on the following three factors: the extent to which you make a clear, compelling, and original argument; the extent to which you support that argument through close analysis and consideration of primary and secondary source evidence; and the extent to which you organize and articulate your thoughts in a logical and sophisticated structure. Needless to say, proper mechanics of writing—including features such as grammar, capitalization, punctuation, spelling, and so forth—are assumed; be sure to proofread your work in order to catch any errors along these lines.

Written work in the A range is characterized by a strikingly creative, perceptive, and persuasive argument; comprehensive synthesis and trenchant analysis of an abundance of course material; straightforward yet sophisticated organization of thoughts; and clear, cogent, fluid, and error-free prose. Written work in the B range is characterized by a sound, original, and reasonably thoughtful argument; competent analysis of various course material; logical and intelligible organization; and clear, cogent, and error-free prose. Written work in the C range is characterized

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* Available for purchase at Water Street Books.
** The first volume is available for pickup at the Class of ’37 House (51 Park Street) from 9am to 3:30pm M-F; the subsequent volumes will be distributed in due course.
*** I reserve the right to fail any student who fails any element—essays, final exam, class participation—of the course.
by a relatively underdeveloped, simplistic, or derivative argument; partial, inconsistent, or faulty analysis of course material; convoluted organization; and awkward, stilted, or otherwise distracting prose. Written work in the D range is characterized by an incoherent or extremely confusing argument; superficial or fleeting engagement with the course material; chaotic or irrational organization; and distorted, error-riddled prose. Written work that lacks any argument or analysis, fails to engage the course material, or is any way incomprehensible earns an F.

**Participation.** Three factors contribute to class participation grades: the degree to which you demonstrate analytic or critical understanding of the course material, the degree to which you articulate thoughtful or original questions and arguments in response to the course material, and the degree to which you succeed in advancing discussion by responding meaningfully to what others have said. The emphasis here is on quality, not quantity. Select insightful offerings are infinitely more valuable than a multitude of derivative or mediocre ones. Worry not: provided you attend class, complete the reading, and think carefully about the themes of the course, you will be in an excellent position to contribute thoughtfully to discussion.

Participation grades in the A range are reserved for those students who consistently come to class with questions and comments, engage others in a respectful manner, and generally elevate the level of discussion. Participation grades in the B range are earned by those students who participate but do not stimulate discussion, adequately listen to their classmates, or relate their comments to the direction of the conversation. Participation grades in the C range are for those students who are infrequent or unwilling contributors to discussion. Participation grades of D and F, respectively, are for those students who do not arrive adequately prepared for class and for those who disrupt and detract from the overall quality of the course.

**Responsibilities.**

**Attendance.** Put simply, I expect you to be in class each and every day. I do not formally call roll, but I notice—and make a mental note!—when you are absent. Besides avoiding my undying wrath, you should plan on full attendance for three reasons. First, participation, which counts for 15% of your final grade, is impossible if you are not present. Second, the lectures and discussions that occur in class will be crucial elements of your learning in this course. Third, and most importantly, by choosing to take this class, you are making a commitment to me, to your classmates, and to yourself that you will be an active and engaged participant in our academic community. Class will go on without you, but everyone’s learning will suffer as a consequence of your absence. If you know in advance that missing class will be unavoidable, please have the courtesy to let me know.

**Punctuality and Preparedness.** As part of your aforementioned commitment to me, your classmates, and yourself, you are expected to arrive in class on time, prepared, and without technological distractions. This means, first, that you have thoroughly and carefully read the material before class and, second, that you have thought about that material and are willing and ready to contribute your thoughts to discussion. Of course, I recognize that students lead busy lives, have commitments (both academic and otherwise) in addition to this course, and may occasionally be affected by unforeseen events and unpredictable circumstances that make adequate preparation difficult. Even in those instances, I still urge you to come to class and encourage you to let me know—either through an email in advance of class or a quick comment upon entering class—that you were unable to prepare as fully as you had hoped. Not only will you not be penalized for your disclosure, but I

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*The following adjectives capture the essence of what individual grades mean in this course: truly exceptional (A+), outstanding (A), excellent (A-), very good (B+), good (B), satisfactory (B-), fair (C+), sub-par (C), poor (C-), seriously deficient (D+), minimally acceptable (D), borderline unacceptable (D-), completely unacceptable (F).*
agree not to call on you for that period. I trust you not to abuse my generosity by availing yourself of this option more than twice.

**Discourse and Decorum.** You are responsible for conducting yourself appropriately—both in your own comments and in your responses (verbal or otherwise) to the comments of your peers. As respectful discourse is the norm, criticism should be reserved for ideas, arguments, and opinions rather than for people; ad hominem comments will not be tolerated.

**Submitting Work.** Since there is already considerable flexibility built into the schedule of course assignments (*twenty* distinct dates for which, and subjects on which, to write an essay!), I expect you to hand in work on time. Because the assignments are intended to provoke critical thinking about particular issues *before* we discuss them in class, I will neither grant extensions nor accept late work. Moreover, since class discussions will often (though not always) be geared around the essay questions and thus reliant on students who have answered them to offer opinions and insights, I only accept essays submitted *in class and in person.* These policies are not meant to be punitive but, rather, to help enrich learning by enabling each of you to develop ideas independently and then share those ideas with the rest of us in the appropriate class session.

**Academic Honesty.** I hope—frankly, I *expect*—this will not be an issue, but it is worth repeating that all work you do in this course is governed by the College’s Honor Code. (If you have any questions about how the Honor Code applies, do not hesitate to ask!) I take scholarly integrity very seriously, and any suspected violations will be pursued to the fullest extent. *No exceptions.*

**Contact Information.**

**Email.** The most efficient way to reach me is via email. Emails received before 9pm will usually receive a reply that day; emails received after 9pm will likely receive a reply the following day.

**Office Hours.** For my regularly scheduled office hours, no sign-up or prior notice is necessary, nor is a specific course-related question or concern. (If you wish to schedule an appointment for another time, you should let me know a few days in advance.) Although I am obviously available to discuss any issues that may arise in class or in the reading, you are also more than welcome to stop by and join me for some friendly conversation. Indeed, I encourage you to do so; really—come see me. I am interested in learning about you and your thoughts, and I never (well, ok, hardly ever) tire of talking about American constitutionalism.

**Some Final Thoughts.**

I take teaching seriously, and I hope you will reciprocate by taking learning seriously. That said, I intend for our classes to be enjoyable—both for you and for me. This course revolves around rich, interesting, and controversial debates, many (if not all) with direct connection to current events and contemporary American politics. So expect to teach each other and to learn from each other, but also expect to enjoy yourself; for my part, I promise to do the same.

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**Introduction**

1. Festivus, Footbaths, and Constitutional Fill-in-the-Blank  (February 1)
I. Rights Demanded, Rights Granted

2. From Colonies to Confederation to the Miracle at Philadelphia (February 6)
   CP: The Declaration of Independence
       Paine, excerpts from Common Sense and The Crisis
       The Articles of Confederation
       Madison, “Vices of the Political System of the United States”
       Virginia Plan
       New Jersey Plan
       Wood, “Introduction” from The Radicalism of the American Revolution
       Ellis, “The Generation” from Founding Brothers
   IR: pp. 1-58

3. We the People (February 8)
   CP: Epps, “How to Read a Constitution” from American Epic
   Const: Preamble and Articles I-VII (a general sense)
           Preamble and Articles I-VII (a fine-toothed comb)
           Preamble and Articles I-VII (a critical eye)

4. Rights Consciousness and the Nauseous Project of Amendments (February 10)
   CP: Virginia Declaration of Rights
       Madison, “Memorial and Remonstrance Against Religious Assessments”
       Centinel, Brutus, and Federal Farmer, selections from The Anti-Federalist
       Publius, selections from The Federalist
       Jefferson, “Letter to James Madison on the Bill of Rights”
       Madison and Jefferson, “Correspondence on the Bill of Rights”
   Const: 1st-10th Amendments
   IR: pp. 59-82
   CP: Santos, “Religious Monument Gets a Sidekick: Bill of Rights”

II. Adrift in a Structural Age

5. Liberties and Their Keepers (February 13)
   Const: Article I, Section 10, Clause 1
   Article III
   CP: Brutus, The Anti-Federalist XI and XII
       Publius, The Federalist 78 and 81
       Alien and Sedition Acts
       Virginia and Kentucky Resolutions
       Marbury v. Madison (1803)
       Thomas Jefferson on Departmentalism
       Eakins v. Raub (1825)
   IR: pp. 85-111

* Quite remarkably, the College owns original copies of the nation’s founding documents, including the Declaration of Independence, the Articles of Confederation, the Constitution, The Federalist, and the Bill of Rights—all housed in the Chapin Library (on the fourth floor of Sawyer Library). While I will not require you to visit, I cannot recommend strongly enough that you choose to do so at some point during this first unit.
6. The Sanctity of Contracts (February 15)
   Const: Article I, Section 10, Clause 1
   CP: Fletcher v. Peck (1810)  
       New Jersey v. Wilson (1812)  
       Dartmouth College v. Woodward (1819)  
       Sturges v. Crowninshield (1819)  
       Ogden v. Saunders (1827)  
       Charles River Bridge v. Warren Bridge (1837)
   Const: 5th Amendment
   CP: Barron v. Baltimore (1833)
   IR: pp. 111-115, 126-131, 133-136 (from “Three years after…”), 140-146
   CP: Lerner, “John Marshall and the Campaign of History”

7. The Sectional Crises of Slavery and Secession (February 20)
   Const: Article I, Section 2, Clause 3  
       Article I, Section 9, Clauses 1 and 2  
       Article II, Section II, Clause 1  
       Article IV, Sections 2 and 3  
       Article V
   CP: Garrison, “On the Constitution and Union”  
       Prigg v. Pennsylvania (1842)  
       Fugitive Slave Act of 1850  
       Douglass, “What to the Slave is the Fourth of July?”  
       Dred Scott v. Sandford (1857)  
       Lincoln, “Speech on the Dred Scott Decision”  
       The Lincoln-Douglas Debates  
       Davis, “The Right of Secession”  
       Lincoln, “First Inaugural Address”  
       Ex Parte Merryman (1861)  
       Bates, “Opinion on the Suspension of Habeas Corpus”  
       Lincoln, Second Annual Message to Congress  
       Lincoln, “Emancipation Proclamation”  
       Lincoln, “Gettysburg Address”  
       Ex Parte Milligan (1866)
   IR: pp. 137-140, 147-189
   CP: Bestor, “The American Civil War as a Constitutional Crisis”

III. Rights in Flux

8. Stumbling Out of the Gate (March 1)
   Const: 13th-15th Amendments
   CP: Civil Rights Act of 1866  
       Johnson, “Veto of the Civil Rights Act of 1866”  
       The Slaughterhouse Cases (1873)  
       Civil Rights Act of 1875  
       The Civil Rights Cases (1883)  
       Seneca Falls “Declaration of Sentiments and Resolutions”  
       Bradwell v. Illinois (1873)
9. Janus-Faced Liberty (March 3)
   Const: 14th Amendment
   CP: Munn v. Illinois (1876)
       Lochner v. New York (1905)
       Muller v. Oregon (1908)
   Const: 19th Amendment
   CP: Adkins v. Children’s Hospital (1923)
       Ely, “The Doctrine of Laissez Faire is Unsafe in Politics and Unsound in Morals”
       Sumner, “The Absurd Effort to Make the World Over”
       Meyer v. Nebraska (1923)
       Pierce v. Society of Sisters (1925)
   IR: pp. 235-243, 248-264

10. The Red Scare (March 6)
    Const: 1st Amendment
    CP: Espionage Act of 1917
        Sedition Act of 1918
        Chafee, “Freedom of Speech”
        Schenck v. US (1919)
        Debs v. US (1919)
        Abrams v. US (1919)
        Gitlow v. New York (1925)
        Whitney v. California (1927)
    IR: pp. 265-293
    CP: Emerson, excerpts from The System of Freedom of Expression
        Posner, “ISIS Gives Us No Choice But to Consider Limits on Speech”
        Post, “Protecting the First Amendment in the Internet Age”

11. New Deal, New Court, New (Bill of) Rights (March 10)
    Const: 5th and 14th Amendments
    CP: Roosevelt, “Fireside Chat on the Court-Packing Plan”
        Senate Judiciary Committee Report on Court-Packing Plan
        West Coast Hotel v. Parrish (1937)
        US v. Carolene Products (1938)
        Barron v. Baltimore (1833) [from session 6]
        Palko v. Connecticut (1937)
        Adamson v. California (1947)
        Black, “The Bill of Rights”
12. Patriotism in (World and Cold) Wartime (March 13)
   Const: 1st and 14th Amendments
   CP: Minersville School District v. Gobitis (1940)
       Roosevelt, “Four Freedoms Speech”
       West Virginia State Board of Education v. Barnette (1943)
       Japanese Relocation Order
       Hirabayashi v. US (1943)
       Korematsu v. US (1944)
       Alien Registration Act of 1940 (Smith Act)
       Dennis v. US (1951)
       Communist Control Act of 1954
       Senate Censure of Senator Joseph McCarthy
       Yates v. United States (1957)
   IR: pp. 335-364, 377-382
   CP: Liptak, “A Discredited Supreme Court Ruling That Still, Technically, Stands”
       Feldman, “Why Korematsu Is Not a Precedent”
       Tushnet, “Defending Korematsu?”
       Singer, “I Pledge Allegiance”

13. The Road To and From Brown (March 17)
   Const: Article VI, Clause 2
       14th Amendment
   CP: Missouri ex rel. Gaines v. Canada (1938)
       Sweatt v. Painter (1950)
       Rehnquist, “A Random Thought on the Segregation Cases”
       Brown v. Board of Education (1954)
       Bolling v. Sharpe (1954)
       Brown v. Board of Education II (1955)
       Southern Manifesto
       Eisenhower, “Address to the Nation on the Introduction of Troops in Little Rock”
       Cooper v. Aaron (1958)
   IR: pp. 365-377, 383-408
   CP: Amar, “Kansas: Living in the Shadow of Brown v. Board” from The Law of the Land
       Rosenberg, “Substituting Symbol for Substance”
       Sunstein, “Did Brown Matter?”
       Carr, “In Southern Towns, ‘Segregation Academies’ Are Still Going Strong”
       Liptak, “From 19th-Century View, Desegregation Is a Test”

IV. The “S&S Years”

14. The Trinity of Inequalities (April 3)
   Const: 14th Amendment
       King, “I Have a Dream”
Loving v. Virginia (1967)
Johnson, “First State of the Union Address”
Johnson, “Commencement Address at Howard University”
Shapiro v. Thompson (1969)
National Organization for Women, “Bill of Rights”
Redstockings, “The Redstockings Manifesto”
Citizens Advisory Council on the Status of Women, “Memorandum on the ERA”
Frontiero v. Richardson (1973)
Craig v. Boren (1976)
Michael M. v. Superior Court of Sonoma County (1981)
IR: pp. 413-417 (until “Racial discrimination is…”)
CP: Dollinger, “A Long Island Bar’s Age Policy Differs for Men and Women. Is It Legal?”

15. A Wall With Many Holes (April 7)
Const: 1st Amendment
Everson v. Board of Education (1947)
Engel v. Vitale (1962)
Lemon v. Kurtzman (1971)
Cantwell v. Connecticut (1940)
Sherbert v. Verner (1963)
Wisconsin v. Yoder (1972)
IR: pp. 409-412 (until “The Court’s decisions…”)
CP: Kramnick and Moore, “The Godless Constitution”
Hamburger, “Against Separation”

16. Speech in Many Shapes and Sizes (April 10)
Const: 1st Amendment
CP: Roth v. US (1957)
Miller v. California (1973)
US v. O’Brien (1968)
Brandenburg v. Ohio (1969)
Cohen v. California (1971)
CP: Strossen, excerpts from Defending Pornography
MacKinnon, excerpts from Just Words
Kristol, “Pornography, Obscenity, and the Case for Censorship”
Fleeman, “Should Rape Porn Be Banned?”
Rosen, “Gosh Darn Sons of Guns”
Ember, “Can Libel Laws Be Changed Under Trump?”

17. Law and (Dis?)Order (April 14)
Const: 4th-8th Amendments
CP: Mapp v. Ohio (1961)
Gideon v. Wainwright (1963)
Exzobedu v. Illinois (1964)
Miranda v. Arizona (1966)
Nixon, “Speech Accepting the Republican Presidential Nomination”
Furman v. Georgia (1972)
Gregg v. Georgia (1976)

IR: pp. 417-418 (from “Racial discrimination is…” until “The Warren Court told…”)
CP: Lewis, excerpts from Gideon’s Trumpet
Simon, excerpts from Homicide
Morgan, “Enfeebling Law Enforcement” from Disabling America
Cohen, “How Americans Lost the Right to Counsel, 50 Years After ‘Gideon”
Chemerinsky, “Why Have Miranda Rights Failed?”
Spence, “How Donald Trump and Friends Can Crush the Great Crime Wave”
Bers, excerpts from For Capital Punishment
Black, excerpts from Capital Punishment

18. The Sexual Revolution (April 17)
Const: 1st, 3rd, 4th, 5th, 9th, and 14th Amendments
CP: Buck v. Bell (1927)
Skinner v. Oklahoma (1942)
Griswold v. Connecticut (1965)
Friedan, Our Revolution Is Unique
Roe v. Wade (1973)

IR: pp. 420, 423-449
CP: Ginsburg, “Speaking in a Judicial Voice”
Bradley, “Roe v. Wade at 40”
Powe, “What Was the Warren Court?” from The Warren Court and American Politics
Tushnet, “The Burger Court in Historical Perspective”
Schwartz, “The Burger Court in Action”

V. Contemporary Controversies

19. Private Property and Public (or Not-So-Public) Use (April 21)
Const: 5th Amendment
CP: Hawaii Housing Authority v. Midkiff (1984)
Nollan v. California Coastal Commission (1987)
Lucas v. South Carolina Coast Council (1992)
Dolan v. City of Tigard (1994)
Horne v. Department of Agriculture (2015)
Rosen, “The Unregulated Offensive”
Epstein, excerpts from Supreme Neglect
Filipov, “Vt. Farmer Draws a Line at US Bid to Bolster Border”
Nelson, “Eminent Domain Property in New London Sits Undeveloped”
Shlaes, “Playing Monopoly in New Jersey”
Dewan, “Eminent Domain: A Long Shot Against Blight”
20. Different Doesn’t Mean Better or Worse… (April 24)
   Const: 14th Amendment
   CP: Regents of the University of California v. Bakke (1978)
       Fisher v. University of Texas (2016)
       Romer v. Evans (1996)
   CP: Liptak, “The Same Words, but Differing Views”
       Kahlenberg, “The New Look of School Integration”
       Taylor, Jr., “Race-Based Affirmative Action Makes Things Worse, Not Better”
       Liptak, “Justices’ Rulings Advance Gays; Women Less So”
       Macedo, “But Was the Court’s Ruling on Marriage Democratic?”
       Epstein, “Hard Questions on Same-Sex Marriage”
       Greenfield, “The Slippery Slope to Polygamy and Incest”
       Macedo, “From Same-Sex Marriage to Polygamy”
       Saletan, “Incest Is Cancer”
       Keenan, “Legalize Polygamy!”
       Douthat, “The Prospects for Polygamy”

21. Flags, Crosses, and Pasties—Oh My! (April 28)
   Const: 1st Amendment
   CP: Chaplinsky v. New Hampshire (1942)
       McCullen v. Coakley (2014)
       Walker v. Texas Division, Sons of Confederate Veterans (2015)
   IR: pp. 468-471
   CP: Sullivan, “What’s So Bad About Hate”
       Greenawalt, “Insults, Epithets, and Hate Speech” from Fighting Words
       Rosen, “The Delete Squad”
       Epps, “Free Speech Isn’t Free”
       Bazelon, “Screen Crime”
       Liptak, “Hip-Hop Stars Support Mississippi Rapper in First Amendment Case”
       Greenfield, “The Limits of Free Speech”
       Jeong, “Should We Be Able to Reclaim a Racist Insult—as a Registered Trademark?”

22. Religion in the Public Square (May 1)
   Const: 1st Amendment
       Board of Education of Kiryas Joel v. Grumet (1994)
       Allegheny County v. ACLU (1989)
McCreary County v. ACLU (2005)
Lee v. Weisman (1992)
Town of Greece v. Galloway (2014)
Employment Division v. Smith (1990)
IR: pp. 412-413 (from “The Court’s decisions . . .”), 483-96
CP: Hunter, Culture Wars
Rosen, “Is Nothing Secular?”
podcast: This American Life, “Godless America” – Prologue, Act I
CP: Shorto, “Founding Father?”
Eckholm, “Battling Anew Over the Place of Religion in Public Schools”
Goodstein, “To Fight Religious Monuments, Atheists Plan Their Own Symbols”
Goodstein, “In Seven States, Atheists Push to End Largely Forgotten Ban”
Stewart, “A Big Win for the Prayer Lobby”
Lithwick, “Checking In on the Town of Greece”
Sullivan, “The Impossibility of Religious Freedom”
Eckholm, “Religious Protection Laws, Once Called Shields, Are Now Seen as Cudgels”
Graham, “The Limits of Religious Freedom Protections”
Siegel and NeJaime, “Conscience and the Culture Wars”
Greenhouse, “Drawing the Line Between Civil and Religious Rights”

23. At the Raw Edges of Human Existence  (May 5)
Const: 9th and 14th Amendments
CP: Buchanan, “The Cultural War for the Soul of America”
Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)
Gonzales v. Carhart (2007)
Whole Woman’s Health v. Hellerstadt (2016)
Cruzan v. Director, Missouri Department of Health (1990)
IR: pp. 457-468, 473-480, 500-511
CP: Dworkin, “Sex, Death, and the Courts”
Stansell, “Partial Law”
Eckholm, “Access to Abortion Falling as States Pass Restrictions”
Tavernise and Stolberg, “Abortion Foes, Emboldened by Trump, Promise ‘Onslaught’ of Tough Restrictions”
Rosen, “The Day After Roe”
Taylor, “What Terri Schiavo’s Case Should Teach Us”
Eckholm, “‘Aid in Dying’ Movement Takes Hold in Some States”

24. The Specter of Crime and the Machinery of Death  (May 8)
Const: 2nd, 8th Amendments
Maryland v. King (2013)
Riley v. California (2014)
Roper v. Simmons (2005)
Hall v. Florida (2014)

podcast: This American Life, “Guns” – Act IV

CP: Lepore, “Battleground America”
Goldberg, “The Case for More Guns (and More Gun Control)”
Greenhouse, “The Supreme Court’s Next Gun Battle”
Re, “Inaugurating the Digital Fourth Amendment”
Eckholm, “Juveniles Facing Lifelong Terms Despite Rulings”
Liptak, “Justices Expand Parole Rights for Juveniles Sentenced to Life for Murder”
Liptak, “Supreme Court Strikes Down Part of Florida Death Penalty”
Thompson, “What I Learned From Executing Two Men”
Bazelon, “Where the Death Penalty Still Lives”
Liptak, “Virginia Has Solitary Confinement Case, if Justices Want It”
Blinder, “In U.S. Jails, a Constitutional Clash Over Air-Conditioning”

Conclusion

   Const: 1st-10th, 13th-15th, 19th, 24th, 26th Amendments
   CP: DeShaney v. Winnebago County (1989)
   IR: pp. 527-531
   CP: Epp, “Courts and the Rights Revolution”
      Klarman, “Rethinking the Civil Rights and Civil Liberties Revolution”
      Lee, “Noted With Interest”
      Brake, “Elected Officials Flunk Constitution Quiz”
      Liptak, “We the People’ Loses Appeal With People Around the World”
      Glendon, “The Land of Rights” from Rights Talk
      Barber, “The Reconstruction of Rights”
      Roosevelt, “Eleventh State of the Union”
      Liptak, “Justice Breyer Sees Value in a Global View of Law”
      Jones, “Trust in U.S. Judicial Branch Sinks to New Low of 53%”
      Rosen, “Constitutional Futurology, or What are Courts Good For?” from The Most Democratic Branch

   Liptak, “Right Divided, a Disciplined Left Steered the Supreme Court”
   Liptak, “The Right-Wing Supreme Court That Wasn’t”
   Bazelon, “Will John Roberts Save the Supreme Court from Donald Trump?”