

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

Justin Crowe
jec3@williams.edu
Schapiro 229, x2418
W 2-3, F 10-12, and by appointment

Spring 2018
M(W)F 8:30-9:45
Griffin 6

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)
- Irons, *A People's History of the Supreme Court*, revised ed. (2006) (IR)*
- 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 16) 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 two-part endeavor combining an abbreviated (one hour) scheduled exam of identifications and notable quotations with a 24-hour take home essay exam. Provided sufficient interest, I will be glad to hold a review session at the conclusion of the semester.

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

* Available for purchase at The Williams Bookstore.

** 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. To the extent that class only works if you are all there—engaged in a common enterprise, building the intellectual and interpersonal connections (with both me and one another) that are necessary for sustained and robust debate about weighty and contested issues—I expect you to be in class *each and every day*. I do not formally call roll, but do not mistake my distaste for that tedious ritual for indifference to your company: 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. Thus, you should treat attendance as a firm requirement, not some fungible quasi-commitment that can be trumped by other desires or conveniences as you see fit.**

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*

* 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).

** Note well: if you are a member of an athletic team or some other extracurricular organization that travels for competitions or performances, I suggest you check your schedule—and/or consult your coach, captain, or advisor—now. If you have a conflict with our class time and are not willing, as I assure you is your right, to choose class over whatever activity is compelling you to miss it, you should drop this course.

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 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. Email received before 9pm will usually receive a reply that day; email 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.

• • •

Introduction

1. Festivus, Footbaths, and Constitutional Fill-in-the-Blank (February 2)

I. Rights Demanded, Rights Granted*

2. From Colonies to Confederation to the Miracle at Philadelphia (February 5)
 - 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 7)**
 - 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 9)
 - 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 12)
 - Const: Article I, Section 10, Clause 1
 - Article III
 - CP: Brutus, *The Anti-Federalist* XI and XII
 - Publius, *The Federalist* 78 and 81

* 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.

** Since we will lose one of our class sessions in February for Winter Carnival—a function solely of meeting MF rather than MW—we are adding a Wednesday session here.

Alien and Sedition Acts
Virginia and Kentucky Resolutions
Marbury v. Madison (1803)
Thomas Jefferson on Departmentalism
Eakin v. Raub (1825)

IR: pp. 85-111

6. The Sanctity of Contracts (February 19)

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 23)

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 (February 26)

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)

Strauder v. West Virginia (1880)

Chinese Exclusion Act of 1882

Yick Wo v. Hopkins (1886)

Plessy v. Ferguson (1896)

IR: pp. 190-232

CP: Vorenberg, “Bringing the Constitution Back In”

9. Janus-Faced Liberty (March 2)

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

CP: Ross, “The Constitutional Legacy of the School Decisions,” from *Forging New Freedoms*

10. The Red Scare (March 5)

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*

Walker, “War, Repression, and the Origins of the Free Speech Fight, 1917-1918” from

In Defense of American Liberties

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 9)
 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”
 IR: pp. 294-296, 312-317 (from “Roosevelt buried Landon...”), 323-335
 CP: Cortner, excerpts from “The Nationalization of the Bill of Rights in Perspective”
 Leuchtenburg, excerpts from *The Supreme Court Reborn*
12. Patriotism in (World and Cold) Wartime (March 12)
 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: Hauser, “High School Students Threaten to Punish Students Who Kneel During Anthem”
 Liptak, “A Discredited Supreme Court Ruling That Still, Technically, Stands”
 Feldman, “Why Korematsu Is Not a Precedent”
 Tushnet, “Defending *Korematsu*?”
 Ford, “The Return of *Korematsu*”
 Bromwich, “Trump Camp’s Talk of Registry and Japanese Internment Raises Muslims’ Fears”
13. The Road To and From *Brown* (March 16)
 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: 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 2)
 - Const: 14th Amendment
 - CP: Wallace, “Segregation Today, Segregation Tomorrow, Segregation Forever”
 - 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)
 - San Antonio School District v. Rodriguez* (1973)
 - 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)
 - 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. Speech in Many Shapes and Sizes (April 6)
 - Const: 1st Amendment
 - CP: *Roth v. US* (1957)
 - Miller v. California* (1973)
 - US v. O’Brien* (1968)
 - Tinker v. Des Moines School District* (1969)
 - New York Times v. Sullivan* (1964)
 - Brandenburg v. Ohio* (1969)
 - Cohen v. California* (1971)
 - IR: pp. 418-420 (from “The Warren Court told...” until “Earl Warren endured...”)
 - CP: Strossen, excerpts from *Defending Pornography*
 - MacKinnon, excerpts from *Just Words*
 - Kristol, “Pornography, Obscenity, and the Case for Censorship”
 - Keenan, “Should Rape Porn Be Banned?”
 - Rosen, “Gosh Darn Sons of Guns”
 - Ember, “Can Libel Laws Be Changed Under Trump?”
 - Epps, “Did the President Incite a Riot?”

16. A Wall With Many Holes (April 9)
 - Const: 1st Amendment
 - CP: Jefferson, Letter to the Danbury Baptists
 - 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”
 Kruse, “A Christian Nation? Since When?”
17. Law and (Dis?)Order (April 13)
 Const: 4th-8th Amendments
 CP: *Mapp v. Ohio* (1961)
Gideon v. Wainwright (1963)
Escobedo 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*
 Graetz and Greenhouse, “Taming the Trilogy” from *The Burger Court and the Rise of the Judicial Right*
 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”
 Berns, excerpts from *For Capital Punishment*
 Black, excerpts from *Capital Punishment*
18. The Sexual Revolution (April 16)
 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 20)

Const: 5th Amendment

CP: *Hawaii Housing Authority v. Midkiff* (1984)

Nollan v. California Coastal Commission (1987)

Lucas v. South Carolina Coastal Council (1992)

Dolan v. City of Tigard (1994)

Kelo v. City of New London (2005)

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 23)

Const: 14th Amendment

CP: *Regents of the University of California v. Bakke* (1978)

Grutter v. Bollinger (2003)

Parents Involved in Community Schools v. Seattle School District No. 1 (2007)

Schuette v. Coalition to Defend Affirmative Action (2014)

Romer v. Evans (1996)

US v. Windsor (2013)

Obergefell v. Hodges (2015)

IR: pp. 450-457, 471-473, 497-499, 514-519

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”

Macedo, “But Was the Court’s Ruling on Marriage Democratic?”

Epstein, “Hard Questions on Same-Sex Marriage”

Liptak, “Cake Is His ‘Art.’ So Can He Deny One to a Gay Couple?”

Greenfield, “The Slippery Slope to Polygamy and Incest”

Macedo, “From Same-Sex Marriage to Polygamy”

Keenan, “Legalize Polygamy!”

Douthat, “The Prospects for Polygamy”

21. Flags, Crosses, and Pasties—Oh My! (April 27)

Const: 1st Amendment

CP: *Chaplinsky v. New Hampshire* (1942)

Texas v. Johnson (1989)

R.A.V. v. St. Paul (1992)

City of Erie v. Pap’s A.M. (2000)

McCullen v. Coakley (2014)

Packingham v. North Carolina (2017)

IR: pp. 468-471

CP: Sullivan, “What’s So Bad About Hate”
 Fiss, excerpts from *The Irony of Free Speech*
 Greenawalt, “Insults, Epithets, and Hate Speech” from *Fighting Words*
 Greenfield, “The Limits of Free Speech”
 Phillips, “Founder of Neo-Nazi Site Daily Stormer Argues ‘Troll Storm’ Against Jewish Woman is Free Speech”
 Lukianoff and Perrino, “Why Even Nazis Deserve Free Speech”
 Savage, “Twitter Users Blocked by Trump File Lawsuit”
 Bazelon, “Screen Crime”
 Liptak, “Hip-Hop Stars Support Mississippi Rapper in First Amendment Case”

22. Religion in the Public Square (April 30)

Const: 1st Amendment

CP: *Edwards v. Aguillard* (1987)
Board of Education of Kiryas Joel v. Grumet (1994)
Zelman v. Simmons-Harris (2002)
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, excerpts from *Culture Wars*

Rosen, “Is Nothing Secular?”

podcast: *This American Life*, “Godless America” – Prologue, Act I

CP: 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”
 Graham, “The Limits of Religious Freedom Protections”
 Siegel and NeJaime, “Conscience and the Culture Wars”
 Liptak, “States Must Aid Some Church Programs, Justices Rule”

23. At the Raw Edges of Human Existence (May 4)

Const: 9th and 14th Amendments

CP: Buchanan, “The Cultural War for the Soul of America”

Bowers v. Hardwick (1986)
Lawrence v. Texas (2003)
Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)
Stenberg v. Carhart (2000)
Gonzales v. Carhart (2007)
Cruzan v. Director, Missouri Department of Health (1990)
Washington v. Glucksberg (1997)

IR: pp. 457-468, 473-480, 500-511

CP: Dworkin, “Sex, Death, and the Courts”

Eckholm, “Access to Abortion Falling as States Pass Restrictions”

Tavernise and Stolberg, “Abortion Foes, Emboldened by Trump, Promise ‘Onslaught’ of Tough Restrictions”
 Traister, “Warning: Abortion’s Deadly DIY Past Could Soon Become Its Future”
 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 7)

Const: 2nd-8th Amendments

CP: *District of Columbia v. Heller* (2008)

Maryland v. King (2013)

Riley v. California (2014)

Atkins v. Virginia (2002)

Roper v. Simmons (2005)

Graham v. Florida (2010)

Glossip v. Gross (2015)

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”

Cole, “What Liberals Can Learn from the N.R.A.”

Valentine, “The Second Amendment Issue the Supreme Court Can’t Avoid”

Re, “Inaugurating the Digital Fourth Amendment”

Liptak, “How a Radio Shack Robbery Could Spur a New Era in Digital Privacy”

Eckholm, “Juvéniles Facing Lifelong Terms Despite Rulings”

Liptak, “Supreme Court Strikes Down Part of Florida Death Penalty”

Blinder, “Arkansas Judge Moves to Block Executions”

Thompson, “What I Learned From Executing Two Men”

Fortin, “U.S. Had 23 Executions in 2017, Second-Lowest Number in a Quarter-Century”

Liptak, “Virginia Has Solitary Confinement Case, if Justices Want It”

Blinder, “In U.S. Jails, a Constitutional Clash Over Air-Conditioning”

Conclusion

25. Being Civil: Rights, Liberties, and the Future of American Constitutionalism (May 11)

Const: 1st-10th, 13th-15th, 19th, 24th, 26th Amendments

CP: *DeShaney v. Winnebago County* (1989)

Strauss, “Due Process, Government Inaction, and Private Wrongs”

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”

Jones, “Trust in U.S. Judicial Branch Sinks to New Low of 53%”

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"

Rosen, "Constitutional Futurology, or What are Courts Good For?" from *The Most Democratic Branch*

Bazelon, "Will John Roberts Save the Supreme Court from Donald Trump?"

Liptak, "A Polarized Supreme Court, Growing More So"