

Political Science 341 — Constitutional Law: Civil Rights Fall 2014

Section 01
Mondays & Thursdays 1:10-2:25pm
Room 706 HW

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Office hours: Mondays 2:30-3:30pm & 6-7pm,
1719 HW

Course description

The Supreme Court is often described as the “least democratic” branch in that its members are not popularly elected, rather they are appointed by the president pending approval by the United States Senate. Despite this, the court is also often seen as the branch charged with defending the rights of minorities against the tyranny of the majority. In this course we will explore Supreme Court decision-making in landmark cases regarding civil rights, including discrimination on the basis of race, ethnicity, sex, and sexual orientation. It is assumed that students have a general understanding of how the court works from prior American government courses. However, we will be reading about theories and approaches regarding judicial interpretation of the constitution, adjudication of disputes, as well as analyzing specific cases throughout American history.

The Supreme Court is the court of last resort, and although it is one of three coequal branches in our government, its decisions become legally binding regarding the constitutionality of laws. Questions of race and sex have permeated American politics since our nation’s founding. After 200 years, important legal questions and issues remain unresolved. Even though the institution of slavery was banned, a civil war was fought, African American & women’s suffrage was achieved, and the struggles of the Civil Rights Era have come and passed, many of today’s problems can trace their historic roots to the immoral institution of slavery and heteropatriarchal norms enshrined in our original constitution. How the court adjudicates these issues is the focus of our endeavors in this class.

Course objectives

In this course, students will familiarize themselves with important civil rights cases decided before the United States Supreme Court, including their history and context. This class will introduce students to theories and approaches of judicial interpretation. Students will read case law and use these frameworks in their own analyses as we write briefs for some of the most important court cases in American history. Students will analyze legal writings and consider legal doctrines and how they have endured, been altered, or disappeared from American jurisprudence. Students will complete the class with not only a better understanding of the history of civil rights cases before the Supreme Court, but of the limits and constraints on the court’s decision-making in deciding important issues regarding race, sex, and rights.

Accessibility

In compliance with the Americans with Disabilities Act of 1990 (ADA) and with Section 504 of the Rehabilitation Act of 1973, Hunter College is committed to ensuring educational parity and accommodations for all students with documented disabilities and/or medical conditions. It is recommended that all students with documented disabilities (Emotional, Medical, Physical and/ or Learning) consult the Office of AccessABILITY located in Room E1124 to secure necessary academic

accommodations. For further information and assistance please call (212- 772- 4857)/TTY (212- 650- 3230).

Statement on Academic Honesty

Hunter College students are expected to do their own work and give attribution to works that are not their own or acknowledge any help received from others. I am committed to the principle of academic honesty and will pursue suspected violations in all written assignments through the university's formal mechanisms. Plagiarism is a serious issue and students are expected to do their own work. As the instructor, I reserve the right to request students to provide digital copies of any and all written assignments for submission on Turnitin.com, the plagiarism checking software the political science department utilizes, before a grade can be assigned.

Course Requirements

- 1) Attend class regularly and on time. Please do not arrive late. Attendance will be recorded at the start of each class period and any late arrivals will be counted as an unexcused absence.
- 2) Complete the weekly required reading assignments listed below. It is crucial that students come to class prepared to discuss the week's readings and assigned court cases.
- 3) Participate in class. Each week I will call on students to go over their briefs from the cases assigned for that week. Your readiness to go through your case briefs is critical for the productivity of our classroom and depends on students completing the work assigned each week in order to facilitate discussion.
- 4) Prepare case briefings before each class. These must be typed and handed in after our discussion at the end of every class. Briefs that I deem inadequate will be returned to students with a 0 grade and may include instructions for corrections in order to be accepted for a grade. Typically, each case brief is about 1-2 pages long.
- 5) Complete all written assignments. This is a writing intensive course. Your final grade, as outlined in the section below, is calculated by the completion of weekly writing assignments, an in-class written midterm and final, as well as the written assignments related to the moot court exercise at the end of the semester (each person's individual role in the exercise will be determined later in the semester and individualized assignments will be given based on your role).

Grading

Participation will be graded based on timely attendance to each class meeting, contributing when called upon regarding assigned case briefs for the day, and other discussions throughout the semester.

Written assignments are due at the beginning of each class. All assignments must be typed. Handwritten assignments are not accepted. If you miss an exam, you will be permitted to take a make-up test only when you have provided a valid excuse supported by written documentation. Late papers, without a documented, valid excuse, will be penalized through grade deductions. Incompletes will be

granted only with a documented excuse and only for a limited time (usually no longer than the time you were incapacitated), the duration to be set at the time the incomplete is approved.

Case briefs will be completion grade for each individual case (1 page each). The midterm, final, as well as written assignment for moot court will be assigned a letter grade.

Note on credit/no credit grading: College rules specify that to be eligible for credit/no credit, students must complete all course requirements. In this course, students who wish to be graded on the credit/no credit system must take both the midterm and the final as well as complete all written assignments, including case briefs and the moot court assignments. Failure to do all these things will void a credit/no credit request, and a conventional letter grade will be entered instead.

- 10% -- Attendance and participation
- 20% -- Case briefs
- 30% -- Midterm
- 30% -- Final
- 10% -- Moot court written assignments

Required texts

1.) *Constitutional Law for a Changing America: Rights, Liberties, and Justice* by Lee Epstein and Thomas G. Walker, 7th Edition (2009).

2.) Coursepack available at Shakespeare Bookstore

This is an older edition of the textbook. Both the 7th and 8th editions are acceptable. The book is designed for a civil liberties and civil rights course, so we will focus mostly on Section IV of the text with supplemental readings online (newer cases) and the coursepack. A copy of both the coursepack and textbook will be made available on reserve in the library.

Schedule

The dates that follow are approximate and are subject to change (due to, for example, inclement weather). It is the responsibility of students to stay up to date on the schedule. If you are absent from class, please contact me to determine the next assignment due when you return. (Note: The textbook page numbers below reflect the 7th edition)

INTRODUCTION

Week 1

Thursday, Aug 28th

Introduction and syllabus

Week 2

Monday, Sept 1st – Labor Day, no class

Thursday, Sept 4th

Epstein and Knight (p. 3-46) (from this point forward in the schedule, page numbers following a case title indicate a reading in the E&K textbook)

Week 3

Monday, September 8th

Clayton & Gillman "Beyond Judicial Attitudes: Institutional Approaches to Supreme Court Decision-Making" in *Supreme Court Decision-Making: New Institutional Approaches*

Epstein, Lee and Jack Knight, *Choices Justices Make*, 1998 (both readings in coursepack)

Thursday, September 11th

Hart, H.L.A. *The Concept of Law*, Chapter 5 (coursepack)

ANTEBELLUM AMERICA

Week 4

Monday, September 15th

Melone & Kalvelage (coursepack)

Prigg v. Penn <http://faculty.law.miami.edu/zfenton/documents/Priggv.Pnnsylvania.pdf> (Westlaw)

Civil Rights Cases (1883) <https://supreme.justia.com/cases/federal/us/109/3/case.html> (Justia)

Thursday, September 18th

Dred Scott v. Sandford http://en.wikisource.org/wiki/Dred_Scott_v._Sandford (Wikisource)

Plessy v. Ferguson (p. 586-590)

Sweatt v. Painter (p. 591-594)

Tushnet & Lezin, "What Really Happened in *Brown v. Board of Education*" *Columbia Law Review* 81, no. 8 (Dec 1991) (coursepack)

14th AMENDMENT

Week 5

Monday, September 22nd

Rosenberg *Hollowed Hope* (coursepack)

Brown v. Board of Education I (p. 594)

Brown v. Board of Education II (p. 598)

Thursday, Sept 25th – No class

Week 6

Monday, Sept 29th

Swann v. Charlotte-Meckleburg Board of Education (1971) (p. 601)

Parents Involved in Community Schools v. Seattle School District No. 1 (p. 606)

Meredith v. Jefferson County Board of Education (2007) (p. 606)

Thursday, October 2nd

Loving v. Virginia (1967) (p. 612)

Shelley v. Kraemer (1948) (p. 617)

Burton v. Wilmington Parking Authority (1961) (p. 619)

Week 7

Monday, October 6th

Moose Lodge No. 107 v. Irvis (1972) (p. 622)

San Antonio Independent School District v. Rodriguez (1973) (p. 650)

Thursday, October 9th

Midterm

SEX DISCRIMINATION

Week 8

Monday, October 13th – NO CLASS

Thursday, October 16th

Reed v. Reed (1971)

Craig v. Boren (1976) (p. 630)

United States v. Virginia (1996) (p. 635)

Week 9

Monday, October 20th

Ledbetter v. Goodyear Tire and Rubber Co. (2007) PDF ON BLACKBOARD

Crenshaw, Kimberlé, “A Black Feminist Critique of Antidiscrimination Law and Politics” in *The Politics of Law*, David Kairys, editor (coursepack)

VOTING AND THE CIVIL RIGHTS ACT

Thursday, October 23rd

Richardson v. Ramirez (1974)

http://scholar.google.com/scholar_case?case=1225774961511485821&hl=en&as_sdt=6&as_vis=1&oi=scholar (Google Scholar)

Bush v. Gore (2000) (p. 691)

Week 10

Monday, Oct 27th

South Carolina v. Katzenbach (1966) (p. 1966)

Crawford v. Marion County Election Board (2008) (p. 707)

Thursday, October 30th

Kersch, Ken. *Constructing Civil Liberties*, Chapter 3 excerpts (coursepack)

Week 11

Monday, November 3rd

McConnell v. Federal Election Commission (2003) (p. 712)

Reynolds v. Sims (1964) (p. 721)

Miller v. Johnson (1995) (p. 729)

Thursday, November 6th

Heart of Atlanta Motel, Inc. v. United States (1964) ON BLACKBOARD

Katzenbach v. McClung (1964)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=379&page=294> (Findlaw)

United States v. Morrison (2000) ON BLACKBOARD

ETHNIC MINORITY CIVIL RIGHTS

Week 12

Monday, November 10th

Korematsu v. United States

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214> (Findlaw)

Plyler v. Doe (1982) (p. 656)

Thursday, November 12th

Nackenhoff, Carol, "Constitutionalizing Terms of Inclusion: Friends of the Indian and Citizenship for Native Americans, 1880s—1930s" in *The Supreme Court and American Political Development*, edited by Ronald Kahn and Ken Kersch (coursepack)

AFFIRMATIVE ACTION

Week 13

Monday, November 17th

Regents of the University of California v. Bakke (1978) (p. 661)

Adarand Constructors, Inc. v. Peña (1995) (p. 671)

Grutter v. Bollinger (2003) (p. 676)

Thursday, November 20th

Griggs v. Duke Power Co. (1971)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=401&invol=424> (Findlaw)

Fisher v. University of Texas at Austin (2013) ON BLACKBOARD

Shelby County v. Holder (2013) ON BLACKBOARD

Week 14

Monday, November 24th

Ricci v. DeStefano (2009) (p. 686-686) and ON BLACKBOARD

DISCRIMINATION BASED ON SEXUAL ORIENTATION

Romer v. Evans (1996) (p. 643) **READ BEFORE MOOT COURT***

**Individualized readings will be assigned based on your role in moot court

November 27-30th –Thanksgiving Break, no class

Week 15

Monday, December 1st and Thursday, December 4th

Moot Court (assignments to be distributed based on individual roles for exercises)

Week 16

Monday, December 8th

U.S. v. Windsor (2013) ON BLACKBOARD

Hollingsworth v. Perry (2013) ON BLACKBOARD

Thursday, December 11th

Klarman, Michael J. "*Windsor and Brown: Marriage Equality and Racial Equality*" *Harvard Law Review* 127 (coursepack)

Week 17th

Monday, December 15th

Last class, final review

FINAL EXAM – Thursday, December 18th, 1:45-3:45pm