

PO 334: U.S. Constitutional Law: Rights & Liberties

Saint Michael's College - Spring Semester 2022
Jeanmarie Hall 377; Tuesdays & Thursdays 1:45pm-3:20pm

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Office Hours: Wednesdays 1:00pm-3:00pm, Thursdays 11:30am-1:30pm, & by appointment

Course Description

"I am cognizant of the interrelatedness of all communities and states. ... Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds." –The Reverend Doctor Martin Luther King, Jr., Letter from a Birmingham Jail 16 April 1963.

When we think of civil rights and civil liberties in the U.S., almost certainly Dr. King and the Civil Rights Movement he helped organize come to the forefront. The work of Dr. King, Malcolm X, Dorothy Height, Diane Nash, John Lewis, Roy Wilkins, Amelia Boynton, Daisy Bates, Bayard Rustin, and Rosa Parks among too many others to name stands out for its comprehensive reach in the fight for equal rights for Black people in the U.S. Over 60 years later, that work remains unfinished. Black Lives Matter is the modern-day continuation of the Civil Rights Movement, which itself was the continuation of previous movements and actions over the last 400 years that have sought to have Black people treated equally under the law in the U.S. Additionally, movements for women, LGBTQ+ people, persons with disabilities, indigenous communities, and others have all carried the banner of seeking to ensure that civil rights and civil liberties apply to all people in the United States. In short, civil rights and liberties are not relics of the past; they are central to ongoing legal and social questions in the United States today.

This course, which is the second of two courses on the study of constitutional law, will focus on exploring, explaining, and challenging how the Constitution restricts government power from trampling the rights and liberties of the people. At its core, this course will be a semester-long examination of how the U.S. government designed in the Constitution attempts to balance the power of governance with the freedom and liberty of the people. While we will primarily study these principles through judicial opinions and the court cases from which they stem, we won't be simply looking at this material from a legalistic lens. Remember, the Constitution is also a political document. The interpretation and application of the Constitution is not and has never been an apolitical and neutral process. In order to truly understand and appreciate the effect of the Constitution on the American democratic experiment, we must also use a political lens to complement our judicial analysis.

In short, during this course we will understand, analyze, and evaluate how the Constitution, and those who wrote it and later interpreted and applied it to governance, **1) establish rights and liberties of the people**, and **2) empower the judicial authority to protect (or fail to protect) individual rights and liberties from government intrusion**. In the fall, PO 332 will continue this discussion by focusing on how the Constitution divides and checks power within the structure of the national government.

Required Text

We will consult one textbook during our discussions, with additional material provided online through the course Canvas page. While the citation below is the version available through the Saint Michael's Bookstore, the first edition of the textbook (published in 2013) is also acceptable.

Gillman, Howard, Mark A. Graber, and Keith E. Whittington. 2017. *American Constitutionalism: Volume II, Rights and Liberties*, Second Edition. New York: Oxford University Press.

Readings are detailed in the Course Outline section of the syllabus. All readings, whether from the textbook or provided through the course Canvas page, are to be completed **before** the class session they are assigned.

Course Policies & Expectations

Attendance, Participation, & Lecture Resources

I will come to our class sessions on-time and prepared to lead a lecture and discussion for the full amount of time we have scheduled together; you can plan on a 5-10 minute break in the middle of each class. I expect each of you to also be ready to listen, question, and discuss for the same amount of time. I will aim to post lecture slides the morning of the class period of the lecture.

Attendance counts as a very small portion of your participation grade. If you need to be absent, including if you are not feeling well, just e-mail me to give me a heads-up and you won't lose any attendance credit. If you are frequently absent, you will hear from me to check in and see how I can help you catch up and make sure you are ok. In order to help me learn your name and to take attendance, **I'm asking you to make a name tag that you can display on your desk.** The best way to do this is to fold a normal sheet of paper in thirds, and use a marker to write your name in big, bold letters. You can stand the name tag like a pyramid on your desk.

We are a highly vaccinated community and continuing to implement mitigation strategies to limit the spread of COVID-19. **While your personal risk to the virus may be low, some of your peers, faculty, staff, and their families remain at high-risk.** Please do your part to practice good citizenship and adhere to the health and safety policies so we can have a productive and safe semester. And also remember, this is a highly contagious airborne virus; **contracting COVID-19 does not indicate a moral failure or a willful disregard for others.** Be compassionate and kind to each other - we could all do better at this in 2022.

There may be a reason for some or all of us to transition to an online format for a period of time - including if we are sick from a non-COVID-19 illness. To encourage you to stay home and relax when you are ill, all class sessions will be recorded and available in Echo360 on our course Canvas page. Please, take advantage of this setup and **do not come to class if you are not feeling well.**

Laptops & Other Electronics

The consensus of education scholarship¹ maintains that students who take notes by hand retain more information over time than those who take notes on laptops or other electronic devices. Aside from the learning benefits of abstaining from laptop use for notes, the benefits of removing the audio/visual distractions associated with the use of electronic devices, both to you and those around you, are significant. As such, **the use of laptops, tablets, smartphones, and other electronic devices to take notes is strongly**

¹Check out this [New York Times article](#) for a summary of the research.

discouraged during our time together. Using these devices for anything other than notetaking is not permitted in class.

If you insist on disregarding this notetaking advice, or you have a learning difference that is mitigated through the use of electronic devices, please avoid sitting in the front row(s) so you can minimize the distractions caused by your use of technology. Please note: if you are found to be using electronics for other activities (e.g. social media, checking e-mail, shopping, etc.) you will not be permitted to continue using electronic devices in class. Additionally, **audio and/or visual recording of lectures is not permitted** without prior authorization from me.

Office Hours & E-mail

I have four hours set aside each week where I am available in my office to consult with students. That time is **your** time; you do not need an appointment to come by. I strongly encourage students to come in and chat about topics from the readings or lecture, to discuss study skills, or to simply talk about any questions you may have with the course. I would prefer spending that time chatting with you instead of doing something else, so please, don't be a stranger! If your schedule prevents you from being able to see me during office hours, you are welcome and encouraged to e-mail me to set-up an appointment when we can meet.

As we are still proactively trying to mitigate the COVID-19 pandemic, **my office hours will be held virtually via Zoom**. The link is on the front page of our Canvas course. When you click on the link, you'll be placed in the virtual waiting room. I will transfer you from there to my feed as soon as I can. If you want to meet as a group, just let me know when I bring you in who else I should let in from the waiting room.

I welcome students getting in touch with me through e-mail. E-mails should primarily be used to address quick questions, not for requests to go over what was discussed in lecture because of an absence. E-mails are a form of professional correspondence, not informal text messages. I will respond to e-mails within 24 hours on weekdays (and often much sooner), but do not expect a reply after 5:00pm or on weekends.

I will communicate with the class often through Canvas messages or announcements. Please be sure your Canvas notifications are updated to ensure you are informed when these messages are sent out.

Late Submissions

College student life is busy. I have prepared a Course Outline that allows you to plan well in advance to complete our readings, assignments, and exams. I strongly encourage you to use this outline to ensure you prepare sufficient time to complete all the tasks associated with our course. Each of you can hopefully use the outline in conjunction with your personal calendars to avoid work piling up.

Even with good planning, life happens. As such, you have a 24-hour grace period to submit assignments. **For up to 24-hours after the due date of an assignment, you can submit it late, no questions asked, no excuses needed, and no penalty assessed.** If your circumstances make it necessary for you to submit work past the grace period, you should contact me so we can work out an arrangement and so I can provide you support in successfully completing the course. If you submit work after the grace period, but did not contact me in advance to discuss your unique circumstances, I will not grade the assignment and it will receive a zero. **I strongly advise that you do everything you can to submit at the deadline** and not view the "real" deadline as simply being the end of the grace period; technical difficulties will not permit an extension beyond the grace period. **Also, due to College policy, I cannot accept the final report late - it must be submitted by the deadline.**

Grade Appeals

I am committed to making the grading process as transparent as possible. I will prepare a rubric for most assignments/exams that outlines how they will be graded. When grades are posted, you should be able to see how you did according to the rubric in addition to any individual comments I make on your assignment or exam. **Grades are based on quality of work, not on a student's effort towards completing the work.** Think of your graded work like building a boat; you could spend a lot of time constructing that boat, but if when you take it out to the lake it immediately sinks, no one congratulates or pays you for spending a lot of time on building a defective boat. If you believe the grade does not adequately reflect the quality of your submitted work, you may take the following steps²:

- Review any comments/feedback I have provided, including the rubric for the assignment or exam.
- If after reviewing my feedback you still have questions about how your assignment or exam was graded, come to my office hours and we can discuss it. **Please note: I do not discuss grades for 24 hours after they have been handed back to students.** This policy allows for all parties to discuss an assignment or exam without the immediate emotional reaction of seeing the grade.
- If after discussing your grade with me in person, you still believe the grade does not adequately reflect the **quality of your work**, write a one-paragraph written request for a re-grade and submit it to me by e-mail. The request should outline specific examples of your work that you believe were incorrectly graded. **Any request for a re-grade must be submitted within one week of the assignment or exam being returned to the student.** If your request is approved, I will evaluate the assignment or exam as though it is a new submission. As such, the assignment or exam may receive a lower grade, the same grade, or a higher grade. The result of this re-grade is final.

Campus Resources

Any student in need of accommodations, or who is unsure if they should receive any, should contact the [Office of Accessibility Services](#), located on the top floor of the Durick Library. You should also contact me to discuss necessary accommodations well in advance of the deadline for any assignment or exam. I am committed to upholding the College's policy on ensuring students in need of accommodations are fully supported.

I highly recommend all students take advantage of the academic resources offered by the [Academic Enrichment Commons](#), also located on the top floor of the Durick Library. These resources include tools to improve study skills, academic writing, as well as select topic-specific assistance. Another valuable service available to you is the [Writing Center](#), located on the main floor of the Durick Library. The Writing Center provides a comfortable space for you to write, as well as find help from trained student writing coaches. Almost all of these services are included in your student fees, so take advantage of them and get your money's worth.

Finally, learning how to practice good mental health and maintenance is just as important as learning the skills and knowledge associated with your college degree. I invite and encourage each of you to take the opportunity to speak with a mental health professional as often as you need or want while at St. Mike's. These professionals at the [Bergeron Wellness Center](#) are specifically here and trained to provide you the support and care you need as a college student. Please use their services as an important resource during your college experience. Take a look at their services using the link above, and remember, **it's ok to not be ok; it's a sign of strength to ask for help when you need it.**

Academic Integrity

Simply put: do not cheat. Do not consider cheating, attempt cheating, or encourage others to cheat. All work done for this course must be done individually unless otherwise specified. You cannot submit work

²Please note due to time constraints in submitting course grades, final reports are not included in this policy

done in previous courses, or in another course during this semester, for credit in this course unless we discuss and I explicitly authorize it. You cannot plagiarize. I have posted a document on our course Canvas page explaining what constitutes plagiarism and how to avoid it. **I strongly encourage every student to review this document, even if you think you already know what constitutes plagiarism.** Accidental plagiarism is still plagiarism and will be treated as such. If you have any questions about academic integrity, please reach out to me.

Any and all instances of violating the College's [academic integrity policy](#) will be reported to the Associate Dean of the College, and the assignment(s) and/or exam(s) that are the subject of the infraction will receive a zero.

Social Justice and Allyship

At the core of Saint Michael's mission is for everyone in our community to become an advocate for social justice, including a personal effort to be "intentionally inclusive." Political science is heavily involved in scholarship and education addressing many topics of social justice and building a more just and equitable society. I am personally committed to fulfilling this mission, and encouraging my students to do likewise. I strive to ensure my office and our classroom, whether physical or virtual, are safe spaces of inclusion for all. I invite each of you to join me in creating and ensuring such an environment during our time together.

Recent events have drawn attention to the issues and deficiencies that still exist within our society. The "Me Too" movement has highlighted how sexism, sexual harassment, and sexual abuse continue to plague our institutions and communities. Black Lives Matter calls on us to recognize systemic racism, particularly in policing and government, and pro-actively become anti-racists. Pride marches present an opportunity to celebrate recent hard-earned judicial recognition of the civil rights and liberties for LGBTQ+ people, and the ongoing need to continue fighting for rights still denied. The consequences of policies regarding the treatment of immigrants, refugees, and undocumented people rouse us to consider how we can be more charitable and compassionate in our treatment of vulnerable and historically marginalized populations. This list is hardly comprehensive, as there remain other issues regarding religious persecution, income inequality, climate justice, and on and on.

While we will not touch on all of these issues, we will discuss many of them in the context of this course. I encourage all of you to intentionally consider how you advocate for social justice in your own life, and how you are striving to continually become an ally to those in need of your support. The College provides several resources and campus groups to help support what is both a personal and collective mission to promote social justice and allyship. I list some below and encourage you to check them out if you have not already during your time at St. Mike's.

- [Center for Multicultural Affairs & Services](#): They represent Saint Michael's "commitment to a campus and a world that values every human being, and supports and celebrates their uniqueness, experiences, and contributions." Some of their activities/groups include the Diversity Coalition, and the Martin Luther King, Jr. Society and Convocation.
- [Center for Women and Gender](#): Their mission is "to promote awareness and activism around women's and gender equity issues by educating students, faculty and staff." They also support individuals by providing them with resources and referrals.
- [Common Ground](#): A GSA (Gender and Sexuality Alliance) that seeks to provide a safe space on Saint Michael's campus for all members of the LGBTQ+ community.
- [Center for Global Engagement](#): Serves as "the collaborative hub for international activity at SMC, promoting global learning and literacy, deepening inter-cultural competency and inclusion, and supporting

opportunities for global engagement.” Includes opportunities for study abroad, international internships, international and post-graduate volunteer opportunities (e.g. Peace Corps), and supporting international students on campus.

Boilerplate Notices

The following are some boilerplate notices I have included as we implement greater accessibility for the course. If you have any questions or concerns about them, please feel free to get in touch with me.

Recording and Posting of Class Sessions

Class sessions may be recorded by the professor and posted only to a College-approved site (e.g. Canvas). The recordings may include the student or their video feed, their name, and any materials they share during the class session (e.g. screen share, chat messages, spoken comments, etc.). **By enrolling in this course, you consent to being recorded and for that recording to be posted to the course Canvas page.**

Professor’s Copyright of Course Materials

The professor’s lectures and course materials, including PowerPoint presentations, tests, outlines, and similar materials, are protected by U.S. copyright law and by College policy. The professor is the exclusive owner of the copyright in those materials they create. Students may take notes and make copies of course materials for their own use. Students may also share those materials with another student who is enrolled in or auditing this course. **Students may not reproduce, distribute or display (post/upload) lecture notes, recordings, or course materials in any other way, whether or not a fee is charged, without the professor’s express prior written consent.** Students also may not allow others to do so. If a student violates this standard, they may be subject to student conduct proceedings under the College’s academic integrity policy, including receiving a grade of F for the course.

Course Requirements

Grade Breakdown

All assignments are to be submitted in Canvas unless otherwise noted.

- 60% Analysis Papers - 4 papers at 15% each: one paper in each three week block due at 3:00pm on Friday, 11 February; Friday, 11 March; Friday, 8 April; Friday, 29 April (see outline for specific prompts).
- 25% Final Exam
 - Exam begins: Tuesday, 3 May
 - Exam responses due: Wednesday, 11 May at 3:30pm
- 15% Seminar Participation (including weekly reflection journal entries due at 3:00pm on Fridays)

Analysis Papers

When judges and justices decide on a case to interpret constitutional or statutory law, stating the outcome is the easy part. The difficult part is explaining in detail the legal reasoning behind the decided outcome. That long, detailed legal reasoning argument is what we call the opinion of the court (or judge, or justice). We’ll be talking a lot about majority and dissenting opinions throughout the course. You’ll have the assignment to evaluate these opinions and their legal reasoning in detail at least four times.

Each paper should be **no more than 5 double-spaced pages**, 12-pt font. You need to choose four days during the course in which you'll write an analysis paper responding to the prompt for that day (see the Course Outline for the prompts). Each day will have an accompanying paper prompt that asks you to analyze one or more of the opinions or legal arguments we'll be discussing in class. None of these papers will require you to do extra reading or research - and you're strongly discouraged from doing so. What I'm expecting to see is a clear argument in response to the prompt, and a demonstration of a careful, detailed, and deliberate consideration of the relevant assigned readings in supporting your argument. You should expect to cite relevant portions of the readings ([Chicago format](#) is preferred, though any citation format is acceptable provided that you're consistent), with in-text parenthetical citations and a references page at the end of the paper; you never need a title page. You'll submit one paper in each roughly three week block. The late submission policy still applies. Finally, **you also have the option to do a fifth paper**; if you submit five papers, I'll drop the lowest score of the five, thus leaving you with only four papers that count towards your grade.

Final Exam

We'll have a comprehensive final exam beginning on Tuesday, 3 May, and due on Wednesday, 11 May. Anything and everything from lecture, discussions, or readings is fair game for inclusion in the final exam. Since you will have access to all of the readings and the lecture slides, no additional study guide will be provided. The exam is open-book, open-note - meaning you can use all of the resources provided on Canvas and in your textbook; you are neither required nor expected to use any other resources, so please, do not do so. As always, even though the exam is being completed at home, it should be done individually (see the Academic Integrity section).

The format of the final exam will consist of a number of short answer essay questions. I'll explain the specific expectations at least one week in advance. You will have until **Wednesday, 11 May at 3pm** to submit your final exam responses on Canvas. Please remember, the final exam cannot be accepted if it is submitted after the due date/time.

Seminar Participation

Our course will only be successful if we all participate and learn together. I expect everyone to participate over the 15 weeks we have together. Participation does not mean just asking questions or contributing to the discussion every week (though you are certainly encouraged to do so), nor does it mean that you should contribute so much that you forget to listen to what your peers have to share. Good civic discourse requires both sharing and listening. Please be sure to do both on a regular basis.

This is a political science course and we will be discussing political issues. Each of us has a unique opinion about many political issues, and some of these views are considered foundational to our varied belief systems. When we discuss these issues, there will likely be disagreement. That's a key part of politics; democratic governance anticipates and indeed promotes disagreement and differences of opinion. While we may have disagreements, I insist we discuss our differences with respect, civility, and empathy. Do your best to try to understand the point of view of your peers, even if you think they are completely wrong.

This standard does not mean you should avoid participating when you have an alternative point of view because you do not want to provoke an argument. Be bold! Share what you believe! You may be challenged to defend your beliefs, but that is an opportunity for you to learn and grow, not an attack on who you are or what you think. Deliberative discourse succeeds in preserving democracy when we listen with an empathetic ear, rather than speak with a threatening tongue.

Your participation grade will be based on your active participation in class, as well as your completion of weekly reflection journal entries. These journal entries are an opportunity for you to reflect on what you

learned this week and what you still have to learn about a given topic. You can use this journal to help guide future research ideas, books to read, events to attend, and other activities towards developing a habit of lifelong learning. **For each entry, you should do the following two things at a minimum:** first, **discuss something new you learned this week and why it stood out to you.** This item could be additional information or a different perspective you hadn't previously considered, or something entirely new. Second, **share at least two questions you still have about the topics discussed this week or questions you now have after this week's discussions.** You'll submit these entries weekly via Canvas by 3:00pm each Friday. I recommend using a single Word document that you just add on with a new entry every week. The entries are graded on a completion/non-completion basis - I'm not grading *what* you write, but rather *whether* you wrote or not. **You have 3 free passes to forget or just skip submitting an entry;** after that, you'll lose points from your participation grade for each subsequent entry not submitted. **Because of this provision, journal entry submissions cannot be made up.**

Course Outline

This section provides a daily outline of what we will be doing during the next 16 weeks. Readings are to be completed **before** the class they are assigned. Any readings not from the textbook (GGW) can be found on [Canvas](#). This schedule is subject to change, but I will give you notice if/when that occurs.

Because the 2016 and 2013 versions of the GGW text are accepted, I have included the required reading for each text. You only need to read in one version!

Legend: [Canvas/Online Readings](#), [GGW 2017](#), [GGW 2013](#), [Paper Prompts](#), [Class Cancellation](#), [Exams & Assignments](#)

Founding to Reconstruction

1. Tuesday, 18 January: American Constitutionalism & Civil Liberties

- [Review syllabus](#)

2. Thursday, 20 January: Amending the Constitution

- [pgs 69-92](#)
- [pgs 81-106](#)
- *Paper Option 1:* The debate over the idea of a bill of rights is interesting because Americans in this era did not appear to disagree much over the rights worthy of protection. Instead, they disagreed over the process through which rights are best protected. Evaluate their competing arguments. Is there a perfect way to protect rights? Why did Madison call bills of rights “parchment barriers?” Take a look at the state bills of rights, Madison’s proposed list, and the final Bill of Rights as ratified: is there anything interesting about the changes from proposal to final language? (I’m not looking necessarily for a detailed parsing of each provision’s language, though you may do a bit of that; instead it is more about overall structure and goal of the provisions). What do these changes imply about the best way to protect rights?

3. Tuesday, 25 January: Speech and Property in the Early Republic

- [pgs. 47-53, 104-105, 131-136, 142-146, 176-178, 190-195](#)
- [pgs. 51-54, 120-122, 157-163, 172-178, 220-222, 239-245](#)
- *Paper Option 2:* Consider the Sedition Act of 1798 and whether it was constitutional. If it was inconsistent with the First Amendment, why was it enacted by both chambers of Congress, signed by President Adams, and enforced by federal judges when so many of these office holders (in all three branches) were themselves members of the founding generation? If it was consistent with the First Amendment after all, what lessons does this hold for our understanding of the freedom of speech today?

4. Thursday, 27 January: Slavery and the Bill of Rights

- [pgs. 54-56, 108-112, 150-158, 198-209](#)
- [pgs. 59-62, 129-134, 186-194, 247-259](#)
- *Paper Option 3:* *Dred Scott* is widely considered one of the worst decisions (if not the worst) ever made by the Supreme Court. While we justly denounce the morality of the decision today, consider honestly whether the Court broke with prior American experience at the time. In other words, how did prior experience treat slavery and the position of free African Americans in Antebellum America? Was *Dred Scott* a shift from this line of precedent?

5. **Tuesday, 1 February:** A New Birth of Freedom

- pgs. 227-237, 256-268
- pgs. 285-296, 324-343
- *Paper Option 4:* Reconstruction saw the first fundamental change to the constitutional text since the founding era. What was the intent of the Thirteenth and Fourteenth Amendments? Were they intended to simply correct the excess of the now repudiated institution of slavery or were they intended to more radically alter American law and politics?

6. **Thursday, 3 February:** The Lost Promise of Reconstruction

- pgs. 237-241, 296-300, 345-354
- If you're using the **GGW 2017** book, you need to read the discussion of *US v. Bhagat Singh Thind* posted to Canvas. It's already in the **GGW 2013** version.
- pgs. 296-300, 379-383, 441-454
- *Paper Option 5:* Read the *Slaughterhouse Cases* (1873) and *Civil Rights Cases* (1883). Did the Supreme Court live up to the purpose of the Thirteenth and Fourteenth Amendments? There is little doubt that the Court took a narrow view of these amendments initially, but does that necessarily mean it was hostile to civil rights protections? Does *Plessy v. Ferguson* (1896) complicate an answer to this question?

Reconstruction to the New Deal

7. **Tuesday, 8 February:** Democracy and Economic Liberty

- pgs. 252-256, 301-302, 307-322, 326-329
- pgs. 320-324, 383-385, 390-395, 397-406, 416-418
- *Paper Option 6:* Read *Lochner v. New York* (1905). What constitutional right did economic regulation violate? In other words, where in the Constitution is this right located? What does *Lochner* say about the role of the Court at the turn of the Twentieth Century? Would we be better off if the Court adhered to Justice Holmes's view today?

8. **Thursday, 10 February:** Free Speech During (and After) Wartime

- pgs. 329-339
- pgs. 418-429
- Summaries for 3 cases (*Abrams v. US* (1919), *Debs v. US* (1919), *Gitlow v. New York* (1925))
- *Paper Option 7:* Consider the degree to which the Espionage Act of 1917 was different, in any constitutionally relevant respect, from the Sedition Act of 1798. Today's materials represent the Court's first major engagement with the meaning of the First Amendment. How did the Court define freedom of speech? How effective was the protection offered? Consider Justice Holmes's dissent in *Abrams*; is his approach fundamentally different and, if so, better or worse than the Court majority?
- First Analysis Paper due at 3pm on Friday, 11 February

9. **Tuesday, 15 February:** A New Constitution

- pgs. 381-384, 388-391, 394-402, 410-414
- pgs. 490-493, 495-496, 507-509, 511-521, 529-538
- Summary for *Palko v. Connecticut* (1938)
- *Paper Option 8:* The New Deal Court abandoned *Lochner* completely but engaged in an extended debate about what the Court's role would be now in regards to civil liberties and rights. What role should the Court play in rights and liberties cases? In other words, are there good reasons for wanting to trust the courts over legislatures in defining the balance between rights and liberties?

10. **Thursday, 17 February:** No Classes - February Break

A Rights Revolution

11. **Tuesday, 22 February:** Civil Rights Movement & The Constitution

- pgs. 451-469
- pgs. 577-586, 589-602
- View a summary of *Loving v. Virginia* (1967)
- *Paper Option 9:* Today, *Brown* is widely accepted across the political spectrum as unquestionably correct. Does *Brown* represent an application of the Fourteenth Amendment's "original intent" or is it a recognition that constitutional meaning can change and evolve? In other words, how convincing is the Court's rejection of *Plessy v. Ferguson*? How committed to civil rights was the Court in *Brown II*? Or, in other words, why did *Loving* take so long?

12. **Thursday, 24 February:** Welfare Rights and Economic Justice

- pgs. 434-436, 501-504, 530-534, 645-648
- pgs. 574-576, 644-647, 686-689, 829-833
- *Paper Option 10:* Having established that racial classifications receive strict scrutiny, consider whether other classifications should also. What aspects of race justify this heightened scrutiny? Today, think of this question in terms of classifications based upon wealth. Should government be allowed to discriminate between people based upon their ability to pay? Should it matter that poverty and race frequently intersect?

13. **Tuesday, 1 March:** Protecting Political Speech

- pgs. 418-427, 431-432, 517-522
- pgs. 538-547, 549-555, 557-558, 664-674
- *Paper Option 11:* Free speech and public order have been in tension, if not outright conflict, many times in American history. Consider carefully the evolution from *Dennis v. U.S.* (1951) to *Brandenburg v. Ohio* (1969). What is the Court's stance on how to weigh free speech against public disruptions in *Brandenburg*? Should protection be broader, less broad, or did the Court get it just right?

14. **Thursday, 3 March:** Is Some Speech Not Really Speech?

- pgs. 427-431
- pgs. 553-557
- Summary of *Cohen v. California* (1971), and the 2 readings on obscenity and pornography
- *Paper Option 12:* Obscenity has long proven to be a thorny issue for free speech law. *Roth* concludes that obscenity is unprotected speech and yet engages in a free speech analysis anyway. Why is obscenity unprotected? If obscenity is unprotected, why does the Court bother to inquire into the issue further? Evaluate the struggle over defining obscenity. Does the Court reach an appropriate balance?

15. **Tuesday, 8 March:** Separation of Church and State

- pgs. 37-44, 97-103, 137-140, 402-406
- pgs. 37-45, 111-117, 164-169, 521-525
- Summary on *Lemon v. Kurtzman* (1971)
- *Paper Option 13:* There has always been a tension in American politics around the place that religion plays in government. On one side is the reality that the dominant religion of the U.S. has always been Christianity (in many forms). On the other, however, is the fact that the U.S. Constitution is arguably the most secular of Western constitutions. Consider the historical development of the Establishment Clause. Did the Warren Court, as some argue, illegitimately “kick God out of the classroom?” Or did it protect the right of all Americans to equal treatment within governmental institutions?

16. **Thursday, 10 March:** A Freedom of Religious Action?

- pgs. 44-47, 322-325, 406-409, 504-507
- pgs. 46-49, 409-413, 525-528, 648-653
- Summary on the Sunday Mail debate and *Cantwell v. Connecticut* (1940)
- *Paper Option 14:* Religious believers have long argued that government cannot legitimately compel them to violate their faith. Given the history of governmental exemptions (or lack thereof) do you agree with *Sherbert v. Verner’s* conclusion that sometimes the First Amendment requires exemptions for religiously motivated laws? Is the Court’s approach there a workable one?
- [Second Analysis Paper due at 3pm on Friday, 11 March](#)

17. **Tuesday, 15 March:** No Classes - Spring Break

18. **Thursday, 17 March:** No Classes - Spring Break

19. **Tuesday, 22 March:** Women’s Movement, pt.1

- pgs. 354-358, 468, 548-554, 658-660, 793-799
- pgs. 455-458, 600, 704-706, 707-711, 844-848, 1010-1016
- If using GGW 2013, you need to read the Stevens and Hamilton speeches posted to Canvas. These are already in GGW 2017.
- View this summary on *Craig v. Boren* (1976)
- *Paper Option 15:* A prime goal of the feminist movement since the 1920s was expansion of equality protections to cover gender discrimination. Consider the debates over the Equal Rights Amendment (ERA). Was this a proposal for radical change? Why did it fail? How did the Court respond to this failure?

20. **Thursday, 24 March:** Women's Movement, pt.2

- pgs. 414-418, 508-516
- pgs. 533-538, 654-664
- Summary on *Pierce v. Society of Sisters* (1925)
- *Paper Option 16:* In *Roe*, the Court concluded that women have a fundamental right to terminate a pregnancy. Where is this right to privacy located? Consider the Court's reasoning carefully. Are you convinced by the Court's approach? Is there anything odd about the nature of the *Roe* opinion?

When the Country Turns Right, Does the Constitution Turn With It?

21. **Tuesday, 29 March:** Civil Rights in a Conservative Era

- pgs. 540-545, 652-653, 779-791
- pgs. 696-702, 838-839, 995-1008
- Summary of *Fisher v. UT-Austin* (2016)
- *Paper Option 17:* Affirmative action remains one of the major racial equality issues in modern constitutional law. What standard should these programs be held to? Consider *Grutter v. Bollinger* (2003) carefully. Why is diversity an important state goal? Do you agree?

22. **Thursday, 31 March:** Contemporary Abortion Politics

- pgs. 607-618
- pgs. 781-792
- Summaries for *Gonzales v. Carhart* (2007) and *Whole Women's Health v. Hellerstedt* (2016)
- *Paper Option 18:* Since 1980, the Republican Party platform has "affirm[ed] our support of a constitutional amendment to restore protection of the right to life for unborn children." Given the dominance of Republican-appointees on the Supreme Court since 1980, is it surprising to see the core of *Roe* survive? Has the Court altered its approach to abortion regulations in more recent years?

23. **Tuesday, 5 April:** Queering the Constitution

- pgs. 618-621, 727-733, 774-778
- pgs. 792-794, 932-937, 989-994
- Summary of "Don't Ask, Don't Tell"
- *Paper Option 19:* If sodomy laws were so rarely enforced by the 1980s, why did LGBT rights groups focus on attacking them? Compare *Bowers v. Hardwick* (1986) and *Lawrence v. Texas* (2003). Why does the Court reverse itself in only 17 years? Is it that *Bowers* was incorrect, that the makeup of the Court was different, or that society had changed? Was the reversal legitimate?

24. **Thursday, 7 April:** Marriage Equality

- pgs. 733-739
- pgs. 942-948
- If using GGW 2017, read summaries on DOMA and State Debate on Same-sex Marriage
- If using GGW 2013, read summary on *Obergefell v. Hodges*
- Alabama Chief Justice Letter on Same-sex Marriage
- *Paper Option 20:* Few constitutional issues have seen as rapid an evolution from the fringe to widely accepted as same-sex marriage. Compare the text and tone of the 1996 Defense of Marriage Act (DOMA), the arguments in states, and the Supreme Court's decision in *Obergefell*. What explains the rapid evolution of the marriage debate? Is it a matter of simply applying a set of precedents beginning, at least, with *Loving v. Virginia* (1967)? Or is it a case of judicial will enforcing new moral understandings of equality?
- Third Analysis Paper due at 3pm on Friday, 8 April

25. **Tuesday, 12 April:** Free Speech in a Conservative Era, pt.1

- pgs. 578-580, 622-629, 740-748
- pgs. 744-747, 795-799, 803-806, 953-962
- Summaries for *R.A.V. v. St. Paul* (1992) and *Morse v. Frederick* (2007)
- *Paper Option 21:* *Brandenburg v. Ohio* (1969) broadened the protection for free speech dramatically from the days of clear and present danger. How far should this go? In other words, why should free speech trump contrary values such as patriotism or a right to equal treatment in the context of hate speech laws?

26. **Thursday, 14 April:** Free Speech in a Conservative Era, pt.2

- pgs. 522-526, 748-754
- pgs. 670-674, 962-967
- Summaries of *McCutcheon v. FEC* (2014), *Republican Party v. White* (2002), and *Williams-Yulee v. Florida Bar* (2015)
- *Paper Option 22:* Consider *Citizens United v. FEC* (2010). In what way does money equal free speech in elections? Are you convinced by the argument that corporations should have rights as extensive as those of natural persons? Are there any legitimate state interests to trump this right to spend unlimited amounts of money to influence elections?

27. **Tuesday, 19 April:** Church and State in a Conservative Era, pt.1

- pgs. 590-598, 706-713
- pgs. 760-765, 768-771, 908-915
- Summaries of *McCreary County v. ACLU* (2005) and *Town of Greece v. Galloway* (2014)
- *Paper Option 23:* One could argue that the Court's Establishment Clause jurisprudence is complicated, perhaps to the point of being incoherent. Evaluate this jurisprudence. Consider why prayer in public schools is unconstitutional while public support for religious private schools is not. Or the split decision over the Ten Commandments display. Do these cases represent a coherent jurisprudence or just a set of ad hoc decisions?

28. **Thursday, 21 April:** Church and State in a Conservative Era, pt.2

- pgs. 598-605, 713-721
- pgs. 771-778, 917-921
- If using GGW 2013 read the summary on *Burwell v. Hobby Lobby Stores* (2014) posted to Canvas
- Summaries of *Church of Lukumi Babalu Aye v. Hialeah* (1993) and *Stormans, Inc. v. Wiesman* (2016)
- *Paper Option 24:* A major part of the cultural conservative movement of the 1970s and '80s was aimed at the perceived attack on religion in the public square. Given this fact, is it surprising that a conservative Court would so dramatically reduce the protections offered by the Free Exercise Clause in *Employment Division v. Smith* (1990)? Consider the debate over the RFRA and the decision in *Hobby Lobby*. Does *Hobby Lobby* suggest an answer to whether *Smith* was mistaken or correct?

29. **Tuesday, 26 April:** Reemergence of Property Rights?

- pgs. 305-307, 586-590, 701-706
- pgs. 388-390, 755-760, 901-907
- View summary of *Penn Central Transportation Co. v. NYC* (1978)
- Summary of *Horne v. USDA* (2015)
- *Paper Option 25:* Much of the property rights activism has turned upon the Takings Clause of the Fifth Amendment: “nor shall private property be taken for public use without just compensation.” Two primary questions quickly emerged: were regulations of private property a “taking” and what counts as a “public use?” *Kelo v. New London* (2005) is the most controversial modern decision in this area. Evaluate the Court’s handling of the issue. Was it correct? If not, what would have been a correct holding?

30. **Thursday, 28 April:** Student Speech

- Summaries for *Tinker v. Des Moines* (1969), *Hazelwood v. Kuhlmeier* (1988), *Hosty v. Carter, 7th Cir.* (2005), and NYT articles Levin2020 and Liptak2020
- *Paper Option 26:* The Court’s views towards the rights of students, especially those under 18, has been mixed. While *Tinker* is the current precedent, schools have often found ways around it in the modern era. School newspapers and their writers are routinely censored, and punished if they attempt to publish elsewhere. Questions about student speech have become heightened with social media. Schools have attempted to punish students for cyberbullying, sexting, and for making offensive statements online - regardless of whether it occurred during or at school. Consider the precedent cases and the examples from the NYT. How would you expect the Court to rule on the two cases if/when they come up for review? Is *Tinker* no longer valid?
- Fourth Analysis Paper (and optional Fifth) due at 3pm on Friday, 29 April

31. **Tuesday, 3 May:** Tomorrow’s Court

- No readings; we’ll discuss upcoming cases and the future of the Court.
- Final exam begins after class, responses due in Canvas by 3pm on Wednesday, 11 May.