

# POSC/LAWP 290: LAW & AMERICAN SOCIETY

Spring 2022

Tuesdays and Thursdays, 10:30-11:45 am

Denny 313

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Office: Denny 210 and Zoom

Office hours: Mondays and Thursdays 3-5 pm (or by appointment)

## Course Description

This course examines the politics of constitutional law in the United States. In the first part of the course, we will acquire the theoretical and historical framework necessary to think analytically about contemporary controversies in constitutional law. We will consider the relationship between law and violence in a democratic state, the drafting of the Constitution as well as debates concerning its ratification, the arguments for and against the practice of judicial review, and the competing – and perhaps complementary – approaches to constitutional interpretation. In the second part of the course, we will put this knowledge into practice as we engage with several significant constitutional debates on matters like: equal protection, school desegregation, affirmative action, reproductive health, privacy, sexual conduct, religious freedom, free speech and hate speech, campaign finance, the right to bear arms, access to voting, and more. By the end of the semester, we will be better able to make sense of legal arguments, especially those rendered by the Supreme Court, and to interpret these arguments in relation to the broader trends in American politics and culture.

This course takes place during a complex political, social, and legal moment in American history. In order to enrich our understandings of the Supreme Court's jurisprudence, and its relationship to the rule of law, we will make regular interventions into socio-legal scholarship and what is known as "the lived experience." This means that we will study not just the overarching trends in how the Court resolves complex debates on the matters of civil liberties as articulated in the amendments to the Constitution, but so too will we assess and analyze how these trends tell us something important about life lived in the United States – and who can access what rights under which conditions. Our course materials will thus draw from case law, scholarly journals and book chapters, news articles from publications like *The Atlantic* and *The New York Times*, podcasts, plays, and films. I intend our course to be dialogic in nature; if you come across what you believe to be an emerging and relevant legal issue – or a particularly potent snippet of popular culture – please do send it my way and we can make space to discuss it in class.

## Learning Objectives

This is a course taught within the ethically- and philosophically-informed tradition of "law and society" scholarship. Thus, what is different about the approach of this course, as opposed to traditional courses in political science, philosophy, sociology, or history, will be the attention paid to how the law

shapes both the day-to-day lives of individuals *and* the achievement of institutional values like equal protection and non-discrimination. As a result, in addition to scholarly texts, you can expect to analyze cases, statutes, and laws that govern the state and the individuals who compose it.

Our course activities will provide a space for discussion in order to tease out how reading law in combination with academic scholarship reveals new conundrums or socio-legal complexities. As a result, this course encourages active learning – through posing questions, through peer-to-peer discussion, through close reading – as a way to develop critical writing and thinking skills. Upon completion of this course, you will be able to:

- understand why and how the Supreme Court claims the power of judicial review;
- discern the power of the law to compel, regulate, or otherwise construct the lives of ordinary individuals;
- explain how considerations of identity – like race, class, sexual orientation, sex, gender, national origin, and disability – inform (or are disregarded within) the development of constitutional jurisprudence;
- distill complex legal arguments into easily understandable nuggets that can be used to inform your peers and community;
- critically assess a variety of texts in order to produce argumentatively-informed papers; and
- articulate complex legal views in an empathetic and clear manner.

### **An Inclusive Learning Environment**

*Creating Community.* Due to the collaborative nature of this course, I encourage your consistent attendance and participation. At the beginning of each class, I will take roll. Because this is a fully enrolled class, and because we gather in a time of illness and stress, it is important for us to intentionally and creatively build community with one another. To do this, we will – at crucial points during class and over the course of the semester – we will make space for us to use student-led discussions, engage with movement as a tool of learning, reflect holistically on our course structure, and assess critically our use of technology.

*Classroom Climate.* One key feature of creating an inclusive classroom is to understand the classroom as a cooperative learning community that cultivates an atmosphere of active, mutual respect for all. To this end, and given that this course covers sensitive materials, I have zero tolerance for belittling, harassment, or abusive and inappropriate language and behavior. Over the course of the semester, we will read works that make us uncomfortable or unsure about ourselves and our knowledge. These feelings of uncomfortableness or unsureness are welcome and encouraged; indeed, such feelings motivate discussion, critical engagements with the text, and reassessment of our own opinions, biases, and commitments. Uncomfortableness or unsureness is not an appropriate reason for opting-out of discussion or delegating textual interpretation to other individuals; if you feel hesitant about speaking in class on sensitive or difficult topics, please do come see me and we can work together to create a plan for your engagement with the class.

*Flexibility and Responsiveness.* We do not know what this semester has in store for us, given the prevalence of new Covid variants. As a result, this course has been designed to keep flexibility and responsiveness to new (and continuing) vectors of difficulty in mind. We may, at times, be required to move our class to Zoom and we may, at times, be required to shift our readings and due dates to

accommodate new scheduling requirements. Rest assured that I am prepared to undertake these shifts and will communicate with you when anything arises. Our assignments in this class have also been designed to accommodate different pandemic learning needs; I have high expectations for our collective learning goals, but you are not (and will not) be unsupported in your pursuit of them.

## Course Materials and Reading Preparation

In this course, I ask that you purchase one textbook. All other readings contained in the syllabus will be uploaded to our shared Moodle site; if you have difficulty accessing any of the texts, please do not hesitate to be in touch. If a court case is followed by an asterisk (\*), that means that the case is *not* in our casebook, but rather on Moodle.

As this is an upper division course, I have high expectations for your ability to keep up with the assigned materials. Indeed, the texts we cover in this class must be approached with care. I would encourage you to engage fully with the provocations, subtleties, and tensions of our readings by resisting the allure of online summaries. I follow Dickinson College's guidelines on out-of-class preparation: I expect you to spend approximately two hours outside of class on course materials (inclusive of assignments) for every hour you spend in class. I recognize that the conditions of our contemporary lives can make achieving this goal difficult. If you find yourself falling behind, or in need of assistance, reach out to me as soon as you are able and we can chart a way forward together.

Required Textbook. The following book is available on Amazon, Bookshop, the publisher's website, and in the Dickinson bookstore. It will be noted in the syllabus as "CL."

- O'Brien, David M. (late) and Gordon Silverstein. *Constitutional Law and Politics, Volume 2: Civil Rights and Civil Liberties* (New York: WW Norton and Company, 2020). 11<sup>th</sup> Edition. ISBN: 978-0393696745

Required PPE. Per Dickinson's Covid policy, you are required to wear a mask in academic buildings, inclusive of hallways, classrooms, offices, and restrooms. Each person on campus will receive 5 KN95 masks at the start of the semester. However, if your stash of masks runs out, and if you are unable to locate a high-quality, high-protection mask, please do not hesitate to reach out to me; I have a stash of KN95s and N95s that I would happily share. I ask that you wear your mask over your nose and mouth when in my classroom and office; out of respect for our communal spaces and for those who may be more vulnerable, I will also enforce consistent and proper mask-wearing. You may, however, briefly remove your mask to take a drink or a quick bite of a snack.

## Office Hours

I hold two drop-in sets of hybrid office hours on Mondays and Thursdays from 3-5 pm and I am also available by appointment. You may drop into my physical office hours (with a mask!) in Denny 210 or you are also welcome to Zoom into my office hours from your dorm, your library desk, or a red chair on the quad. The Zoom link can be accessed on Moodle.

I much prefer to discuss substantive matters (like questions on a given text or expectations for an essay) face-to-face (via Zoom or in-person meeting), rather than over email. Please think of me as a resource – office hours are a space in which you can pose questions, deepen your knowledge of course

materials, discuss paper ideas, connect the themes of the course to your other intellectual interests and pursuits, and more. I especially encourage you to meet with me if you have any reservations about participating in class, or if there is anything outside of class that impacts your ability to learn.

## Grading Policy and Assignments

This course will be letter graded, but some of your contribution to class will be assessed on a credit/no credit metric. This is to allow you some creative space to connect with your own understanding of the law and to work through specific legal conundrums from the viewpoint of a legal-scholar-in-training. Credit/no credit *is not* assessed on your correctness or incorrectness, but rather your willingness to engage in the matter at hand.

All work submitted must be your own. Your final grades will be assigned based on the following rubric, rounding up at the .5 mark:

|           |           |           |                 |
|-----------|-----------|-----------|-----------------|
| A: 100-93 | B: 87-83  | C: 77-73  | D: 67-63        |
| A-: 92-90 | B-: 82-80 | C-: 72-70 | D-: 62-60       |
| B+: 89-88 | C+: 79-78 | D+: 69-68 | F: 59 and below |

Each assignment is briefly described below the table, but we will discuss them in a more in-depth fashion as the semester progresses. The relative weight and due date of each component is as follows:

| Assignment                               | Grade Percentage | Modality         | Due Date                         |
|------------------------------------------|------------------|------------------|----------------------------------|
| Attendance and Participation             | 20%              | Graded           | Ongoing                          |
| On Call Contributions                    | 5%               | Credit/No Credit | See schedule below               |
| Paper #1                                 | 15%              | Graded           | Friday, February 18, at 11:59 pm |
| Paper #2                                 | 20%              | Graded           | Friday, April 15, at 11:59 pm    |
| <i>What the Constitution Means to Me</i> | 10%              | Credit/No Credit | Friday, May 6, at 11:59 pm       |
| Paper #3                                 | 30%              | Graded           | Thursday, May 12, at 5 pm        |

|                            |                                               |                  |                                         |
|----------------------------|-----------------------------------------------|------------------|-----------------------------------------|
| Extra Credit Opportunities | Points added to participation or paper grades | Credit/No Credit | Ongoing<br>(will be announced in class) |
|----------------------------|-----------------------------------------------|------------------|-----------------------------------------|

Attendance and Participation. Your consistent attendance and thoughtful participation are essential to achieving the learning outcomes identified for this course. You are allowed **two** absences over the course of the semester, no questions asked – these absences, however, do not apply to the day that you are “on call,” unless in the event of an illness or an emergency. Any absence beyond these two initial absences will reduce your overall attendance and participation grade by one step (for example, from a B+ to a B). If you have ongoing concerns (parenting or familial responsibilities, etc), something troubling arises, or you experience an emergency, please contact me as soon as you are able – we will work together to come to a solution.

Participation extends beyond merely showing up. I expect the classroom to be a kind of intentional community, where the free and vital exchange of ideas is encouraged; respect for persons is fundamental to cultivating this atmosphere. Participation includes asking questions, actively listening, offering an interpretation of a text or of a peer’s comments, providing oral or written feedback on peers’ essays, synthesizing differing arguments, promoting civil discourse, attending office hours, and meeting with a Writing Center consultant, just to name a few. If you feel hesitant about speaking in class on sensitive or difficult topics, as will happen over the course of the semester, please do come talk to me and we can work together to create a plan for your engagement with the class.

However, **if you feel sick, do not come to class.** If you are ill, please do let me know as soon as you are able, so that I may anticipate your absence. Once you’re feeling well, you may participate asynchronously by listening and responding to class recordings. If you miss two or more consecutive classes, it is expected that you will respond to course materials (either the readings and/or the class recording) in writing.

The practice of cold calling. In popular culture, cold calling – which is the practice of calling on students who have not raised their hands – is associated with high-stress situations and public humiliation. Such representations often depict a professor with a nearly impossible to answer question choosing an unsuspecting student at random – and then making an example of the student’s answer.

This is not something I practice. Over the course of the semester, I will ask pre-assigned small groups of students to be “on call” four times. You can expect to take the lead in recalling what we discussed last class period, interpreting a particular passage, posing answers to classroom question, and more – think of yourselves as the starting line-up for a given class period. Following the “cold call,” the discussion will be opened up to the entire class. This may seem stressful at first, a feeling with which I sincerely empathize. However, studies – and student feedback from previous semesters – have shown that, in classes with low-stakes cold calling, student comfort with voluntarily participating in class rises and holistic understanding of the material significantly increases. Such studies also report that students feel more comfortable in a class in which all students have a “stake” in the conversation – and it allows me to hear from those that often feel lost in larger classes like ours. If you have accommodations that exempt you from speaking in class, or if you have ongoing trauma associated with class participation, please do come speak with me and we can set up an alternative arrangement.

The dates for being on-call are below. Please note that when you are on call, and if there are cases assigned for that day, I expect you to come prepared to brief the case; we will discuss what “briefing” a case looks like in the first few weeks of the semester.

[redacted]

Papers and Delayed Grading Policy. At crucial points throughout the semester, I will ask you to complete an analytic paper. I will provide several prompts for each paper, but you are also welcome to consult with me to develop your own approach to your paper. These papers will ask you to engage critically with the material in the course, develop an argumentative thesis and a cohesive argumentative thread, and provide both textual support for that argument and a rebuttal for it. The first paper will be 4-5 pages in length (due Friday, February 18, at 11: 59 pm), the second paper will be 5-6 pages in length (due Friday, April 1, at 11:59 pm), and the third and final paper will be 7-8 pages in length (due Thursday, May 12, at 5 pm).

Since March 2020, I have noticed that the practice of assigning grades on papers (in particular) is a source of stress, anxiety, and difficulty for students. Students report that, when they focus on receiving an A in a paper, they often create overwhelming expectations for themselves – and lose their ability to focus on improving the craft of their argument or their prose. To this end, I have developed what I call a “delayed grading policy.” A delayed grading policy means that, when you receive your paper back, you will receive comments and feedback – but no grade. You will then be offered the opportunity to submit an introspective response to my feedback for extra points added to your grade; I will, in other words, ask you to write 3-4 sentences about what you intend to improve upon for your next paper. At the conclusion of this extra credit submission period, you will receive your grade back, with points added. I have found that this system – although it initially seems stressful – cultivates stronger and more robust improvement across the whole semester. It also helps lessen student anxiety surrounding grades by shifting our attention towards improvement, rather than immediate outcomes.

What the Constitution Means to Me. Following our unit on reproductive rights, we will gather in the evening – with food provided! – to watch Heidi Schrek’s play, [\*What the Constitution Means to Me\*](#), in which she traces the impact of the 14<sup>th</sup> Amendment’s equal protection and due process clauses on her life. This play builds on an underlying theme in this course: that there often is, in the law, an “official” story told to us in Court decisions and an “unofficial” story that can be understood through lived experience – and that the difference between these stories, and how the Court interprets them, can often induce violence (see, for instance, Sarat and Kearns). In the days that follow the showing, I will ask you to complete a paper that answers the final question of the play: given the lived experience of individuals under the law, does the Constitution have the capacity to protect all persons in the United States and, if not, should it be abolished and rewritten? In asking this question, I ask you to reflect on what you have learned in this class, how you understand the Constitution to operate in lived experience (either your own or another’s), and the Constitution’s promises and limits as it continues to guide our democracy in the 21<sup>st</sup> century. This paper should be 3 pages long, double spaced and it is graded credit/no credit. As the paper is due the final day of classes (Friday, May 6), the delayed grading policy does not apply to this paper.

Extra Credit Opportunities. There will be several opportunities to earn extra credit in this class. More details will be forthcoming as the dates near.

## **Paper Formatting**

Where specified, written work must be uploaded to our Moodle site by the date and time assigned. Your papers should be formatted as follows: 1-inch margins (top, bottom, left, and right), 12-point Times New Roman font, and double-spaced line formatting. Your papers should also be submitted in .doc or .docx format. *Do not submit a .pdf or share a Google doc with me.*

For citations, I would prefer in-text parenthetical citations (rather than footnotes), and I would ask that if an assignment is 3 pages long (for instance), you write to the end of the third page (rather than stopping at 2.25 pages).

## **Late Policy**

The principle guiding belief in this course is responsiveness and flexibility. We do not yet know what challenges may await us over the course of the semester, and many of us are currently struggling with emergent issues related to physical and mental health, economic stability, and access to technology. Each assignment deadline in this course is accompanied by a 24-hour grace period, which you are welcome to exercise, no questions asked. This means that if the paper is due at 11:59 pm on Thursday, you may take until 11:59 pm on Friday without penalty.

If you feel you will need more than this grace period, each student in this class may take advantage of a one-time 3-day extension. If you need to exercise this option, you should email me – in advance of the assignment's due date – to tell me that you will be using your extended extension. This means that if the paper is due at 11:59 pm on Thursday, you may take until 11:59 pm on Sunday to submit your work.

If an assignment is late beyond the grace period, and you have not reached out to take advantage of your 3-day extension (or if you have already used your extension), I will assess a late penalty of one grade step deduction for each day it is late.

## **Email and Communications**

I will endeavor to respond to any questions you send me within 24 hours, although I may take up to 48 hours. While you should feel free to contact me with any questions regarding the course, I prefer not to engage in a substantive discussion about the material over email. If you would like to talk to me about the reading or would like to discuss a particular topic further, ask in class, come to office hours, or schedule an appointment.

## **Academic Integrity and Plagiarism**

Broadly understood, plagiarism is the presentation of another's words or ideas as one's own without attributing the proper source. Plagiarism includes copying material from books and journals, as well as taking material from the internet. Plagiarism also includes privately purchasing or obtaining papers from others, which one then presents as one's own. Any material taken word-for-word from another source must be placed in quotation marks and footnoted or cited within the text. You can use ideas and information from other authors without directly quoting from them, but you must acknowledge them in your footnotes or parenthetical documentation. Ways to avoid plagiarism and maintain academic integrity can be found here:

[http://www.dickinson.edu/info/20273/dean\\_of\\_students/867/community\\_standards/2](http://www.dickinson.edu/info/20273/dean_of_students/867/community_standards/2).

For any student discovered to have committed plagiarism, I will impose a proportionate sanction for the infraction – for example, for a small plagiarism infraction, you may be required to resubmit an assignment for reduced credit; for a more serious infraction, you may receive reduced credit or a zero on an exam or paper; or for an egregious infraction, you may receive a reduced final grade or a failing grade in the course. I may also refer the matter to the Dean of Students for possible institutional action. Procedures for suspected violations are explained here:

[http://www.dickinson.edu/info/20273/dean\\_of\\_students/1079/conduct-process](http://www.dickinson.edu/info/20273/dean_of_students/1079/conduct-process).

In this course, I encourage you to be skeptical of open-sourced websites like Wikipedia and SparkNotes. If you feel lured to them regardless, you must cite them and you ought to remain intellectually vigilant and adopt a critical stance towards these sources.

### **Electronic Etiquette Policy**

Computer use (and the use of tablets and e-readers) during class is by permission only, as the minimization of electronic devices also minimizes the chances of distraction. There is the inevitable temptation to text, check email, scroll Twitter, or buy a pair of shoes from your favorite online retailer. I ask that, to the best of your ability, you take notes with pen and paper – but if you are a student who wishes to use a laptop for notetaking, please come see me during office hours or catch me after class. For more on the benefits of a no-laptops policy, see:

<http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>.

This class will be recorded in order to ensure access and equity, and to help care for those who are not able to attend class due to Covid or Covid-like illness. I will record our conversations and post the recordings to Moodle shortly after class ends, and you may use these recordings to aid in writing your essays or in revisiting our class material. It is strictly prohibited to distribute or disseminate these recordings; indeed, it may be in violation of Pennsylvania's Wiretapping and Electronic surveillance laws. It would also be a break of Dickinson's community standards, which are accessible here: [http://www.dickinson.edu/info/20273/dean\\_of\\_students/867/community\\_standards](http://www.dickinson.edu/info/20273/dean_of_students/867/community_standards).

### **Title IX Disclosure**

As a member of Dickinson College's faculty, I am a mandatory reporter for instances of sex-based harassment and sexual violence. This means that I am required – by law – to report to Dickinson any mentions or observances of sex- or gender-based discrimination and assault. Because our course may engage with narratives of sexual violence, please be aware that *specific* discussions of assault will be reported to our Title IX office. In sum: I can promise you respect and privacy, but not absolute confidentiality. If you have any questions or concerns about Title IX, please do not hesitate to reach out.

### **Accommodations**

Dickinson values diverse types of learners and is committed to ensuring that each student is afforded equitable access to participate in all learning experiences. If you have (or think you may have) a learning difference or disability – including a mental health, medical, or physical impairment – that would hinder your access to learning or demonstrating knowledge in this class, please contact Access

and Disability Services (ADS). They will confidentially explain the accommodation request process and the type of documentation that Dean and Director Marni Jones will need to determine your eligibility for reasonable accommodations. To learn more about available supports, go [www.dickinson.edu/ADS](http://www.dickinson.edu/ADS) or email [access@dickinson.edu](mailto:access@dickinson.edu).

If you've already been granted accommodations at Dickinson, please follow the guidance at [www.dickinson.edu/AccessPlan](http://www.dickinson.edu/AccessPlan) for disclosing the accommodations for which you are eligible and scheduling a meeting with me as soon as possible so that we can discuss your accommodations and finalize your Access Plan. If test proctoring will be needed from ADS, remember that we will need to complete your Access Plan in time to give them at least one week's advance notice.

Additionally, *all students* may find it helpful to peruse Dickinson's site for strategies, organization, and achievement while taking remote (or in-person!) classes. In addition to the site's collection of academic success resources, there are two new pages dedicated to time management and study strategies in the remote learning environment, as well as tips to promote social, emotional, and mental wellness. It can be accessed here: <https://www.dickinson.edu/SOAR>.

*I reserve the right to alter this syllabus as the semester progresses.*

## COURSE SCHEDULE

### Unit 1: The Promises and Limits of the Constitution

|                      |                                                                                                                                                           |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tuesday, January 25  | <u>Introductions</u><br>“Declaration of Independence” and “The Constitution of the United States,” <i>CL</i> , pp. 1-26                                   |
| Thursday, January 27 | <u>Law and Violence in a Democracy</u><br>Austin Sarat and Thomas Kearns, “A Journey Through Forgetting: Toward a Jurisprudence of Violence,” pp. 211-273 |

### Unit 2: Constitutional Beginnings, the Right to Judicial Review, and Competing Interpretative Acts

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|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tuesday, February 1<br><i>On Call: Group 1</i>   | <u>Ratifying the Constitution</u><br>Brutus, “Selected Anti-Federalist Writings (Nos. 1, 11-15),” pp. 302-313, 331-360<br>Publius, “Selected Federalist Writings (Nos. 10, 78, 84),” pp. 145-152, 227-244                                                                                                                                                 |
| Thursday, February 3<br><i>On Call: Group 2</i>  | <u>Establishing Judicial Review</u><br>“The How, Why, and What to Briefing and Citing Court Cases,” <i>CL</i> , pp. 1605-1608<br>“Establishing and Contesting the Power of Judicial Review,” <i>CL</i> , pp. 27-44<br><i>Marbury v. Madison</i> (1803), <i>CL</i> , pp. 49-58<br>Podcast: “Court Packing ( <i>Marbury v. Madison</i> )” (appx 15 minutes) |
| Tuesday, February 8<br><i>On Call: Group 3</i>   | <u>Constitutional Interpretation, Part I</u><br>“The Politics of Constitutional Interpretation,” <i>CL</i> , pp. 68-78, 82-87, 90-99, 104-107<br>Antonin Scalia, “Originalism: The Lesser Evil,” pp. 849-865<br>William Rehnquist, “The Living Constitution,” pp. 401-415                                                                                 |
| Thursday, February 10<br><i>On Call: Group 4</i> | <u>Constitutional Interpretation, Part II</u><br>Ronald Dworkin, “Constitutional Cases,” pp. 163-184<br>William Brennan Jr., “The Constitution of the United States: Contemporary Ratification,” pp. 433-445<br>Sonia Sotomayor, “A Latina Judge’s Voice,” pp. 1-11                                                                                       |

### Unit 3: Towards a Jurisprudence of Equal Protection

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|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tuesday, February 15                             | <u>Can the Constitution Guarantee Racial Equality? Part II</u><br>Podcast: “More Perfect: American Pendulum II” (appx 33 minutes)<br>Field trip to the Dickinson archives                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Thursday, February 17                            | <u>Visit with Prof. Anna Lvovsky, Harvard Law</u><br><i>Extra credit opportunities available</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Friday, February 18</b>                       | <b><u>Paper #1 due at 11:59 pm</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Tuesday, February 22<br><i>On Call: Group 5</i>  | <u>Can the Constitution Guarantee Racial Equality? Part I</u><br>“Racial Discrimination and State Action,” <i>CL</i> , pp. 1330-1346<br><i>Dred Scott v. Sandford</i> (1857), <i>CL</i> , 1346-1357<br>President Lincoln’s First Inaugural Address (1861)<br>Emancipation Proclamation (1863)                                                                                                                                                                                                                                                                                                     |
| Thursday, February 24<br><i>On Call: Group 1</i> | <u>Reconstruction and Early Judicial Interpretation</u><br>Re-read the 13 <sup>th</sup> , 14 <sup>th</sup> , and 15 <sup>th</sup> Amendments to the Constitution<br><i>The Civil Rights Cases</i> (1883), <i>CL</i> , pp. 1359-1365<br><i>Plessy v. Ferguson</i> (1896), <i>CL</i> , pp. 1366-1370<br><i>Shelley v. Kraemer</i> (1948), pp. 1370-1372<br>Podcast: “You’re Wrong About: Reconstruction”<br><a href="https://open.spotify.com/episode/0ELsp5U5QJAGZO8zv6TQsD?si=17418ac286c74fdd&amp;nd=1">https://open.spotify.com/episode/0ELsp5U5QJAGZO8zv6TQsD?si=17418ac286c74fdd&amp;nd=1</a> |
| Tuesday, March 1<br><i>On Call: Group 2</i>      | <u>But Hark! Scrutiny, Suspect Classifications, and Disparate Impact</u><br><i>Yick Wo v. Hopkins</i> (1886)*<br><i>United States v. Carolene Products</i> (1938)*<br><i>Korematsu v. United States</i> (1944)*<br>Observe: “I am an American” (1941)<br>Podcast: “More Perfect: American Pendulum I” (appx 54 minutes)                                                                                                                                                                                                                                                                           |
| Thursday, March 3<br><i>On Call: Group 3</i>     | <u>Equal Protection Through Desegregation, Part I</u><br>“Racial Discrimination in Action,” <i>CL</i> , pp. 1376-1388<br><i>Brown v. Board of Education</i> (1954), <i>CL</i> , pp. 1389-1400                                                                                                                                                                                                                                                                                                                                                                                                     |
| Tuesday, March 8<br><i>On Call: Group 4</i>      | <u>Equal Protection Through Desegregation, Part II</u><br><i>Milliken v. Bradley</i> (1974), <i>CL</i> , pp. 1410-1412<br><i>Freeman v. Pitts</i> (1992), <i>CL</i> , pp. 1414-1416<br><i>Parents Involved v. Seattle School District</i> (2007), <i>CL</i> , pp. 1417-1428                                                                                                                                                                                                                                                                                                                       |
| Thursday, March 10                               | <u>Affirmative Action and its Challengers, Part I</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| On Call: Group 5                      | <p>“Affirmative Action and Reverse Discrimination,” <i>CL</i>, pp. 1432-1441</p> <p><i>Regents of the University of California v. Bakke</i> (1978), <i>CL</i>, pp. 1441-1448</p> <p><i>City of Richmond v. J.A. Croson</i> (1989), <i>CL</i>, pp. 1454-1462</p> <p>Podcast: “Race-Conscious Remedies” (appx 18 mins)</p> |
| Tuesday, March 15                     | <u>No Class: Spring Break!</u>                                                                                                                                                                                                                                                                                           |
| Thursday, March 17                    | <u>No Class: Spring Break!</u>                                                                                                                                                                                                                                                                                           |
| Tuesday, March 22<br>On Call: Group 1 | <p><u>Affirmative Action and its Challengers, Part II</u></p> <p><i>Gratz v. Bollinger</i> (2003), <i>CL</i>, 1462-1466</p> <p><i>Grutter v. Bollinger</i> (2003), <i>CL</i>, pp. 1466-1474</p> <p><i>Fisher v. University of Texas</i> (2016), <i>CL</i>, pp. 1486-1490</p>                                             |

#### Unit 4: The Rise of Sustentative Due Process

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| Thursday, March 24<br>On Call: Group 2 | <p><u>Equal Protection and Sex-Based Discrimination</u></p> <p>“Nonracial Classifications and the Equal Protection of the Laws,” <i>CL</i>, pp. 1490-1496</p> <p><i>Bradwell v. Illinois</i> (1873)*</p> <p><i>Buck v. Bell</i> (1927)*</p> <p><i>Reed v. Reed</i> (1971)*</p> |
| Tuesday, March 29<br>On Call: Group 3  | <p><u>Suspect Classifications and Unsettling Stereotypes, Part I</u></p> <p><i>Frontiero v. Richardson</i> (1973), <i>CL</i>, pp. 1497-1500</p> <p><i>Craig v. Boren</i> (1976), <i>CL</i>, pp. 1500-1504</p>                                                                  |
| Thursday, March 31<br>No On Call Group | <p><u>Suspect Classifications and Unsettling Stereotypes, Part II</u></p> <p><i>United States v. Virginia</i> (1996), <i>CL</i>, pp. 1508-1519</p>                                                                                                                             |
| Tuesday, April 5<br>On Call: Group 4   | <p><u>Penumbra of Privacy and Undue Burdens, Part I</u></p> <p>“The Right of Privacy,” <i>CL</i>, pp. 1228-1244</p> <p><i>Griswold v. Connecticut</i> (1965), <i>CL</i>, pp. 350-360</p> <p><i>Roe v. Wade</i> (1974), <i>CL</i>, pp.1247-1256</p>                             |
| Thursday, April 7<br>On Call: Group 5  | <p><u>Penumbra of Privacy and Undue Burdens, Part II</u></p> <p><i>Planned Parenthood v. Casey</i> (1992), <i>CL</i>, pp. 1267-1279</p> <p>Supreme Court Crystal Ball: <i>Dobbs v. Jackson Women’s Health</i> (forthcoming 2022)*</p>                                          |
| Tuesday, April 12<br>On Call: Group 1  | <p><u>A Right to Sex, a Right to Marriage, Part I</u></p> <p>“Privacy and Personal Autonomy,” <i>CL</i>, pp. 1286-1294</p> <p><i>Bowers v. Hardwick</i> (1986)*</p>                                                                                                            |

Thursday, April 14  
*No On Call Group*

Visit from President (Judge) John Jones  
*Whitehood v. Wolf* (2014)\*  
*Extra credit opportunity available*

**Friday, April 15**

**Paper #2 Due at 11:59 pm**

Tuesday, April 19  
*On Call: Group 2*

A Right to Sex, a Right to Marriage, Part II  
*Lawrence v. Texas* (2003), *CL*, pp. 1294-1305  
*Loving v. Virginia* (1967)\*

**Tuesday, April 19**

**Film Night! “What the Constitution Means to Me”**  
*Denny 313, 7 pm. (Food provided beginning at 6:30 pm)*

\*\* Please note that this film has discussions of intimate partner violence, sexual violence, and makes brief reference to gender-based slurs. This film – which is a filmed play – is not available through Dickinson’s library, so I expect you to be in attendance. It is also the basis of a paper due May 6.

Thursday, April 21  
*On Call: Group 3*

A Right to Sex, a Right to Marriage, Part III  
*Obergefell v. Hodges* (2015), *CL*, pp. 1534-58  
Melissa Murray, “One is the Loneliest Number,” pp. 1263-1271\*

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| Unit 5: Ideals of Liberty and Appeals to Freedom |
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Tuesday, April 26  
*On Call: Group 4*

Liberties of Contract and the Right to Work  
“Economic Rights and American Capitalism,” *CL*, pp. 232-233  
“The Development and Demise of a ‘Liberty of Contract,’” *CL*, pp. 256-269  
*The Slaughterhouse Cases* (1873), *CL*, pp. 270-274  
*Lochner v. New York* (1905), *CL*, pp. 277-283  
*West Coast Hotel v. Parrish* (1937), *CL*, pp. 286-289

Thursday, April 28  
*On Call: Group 5*

The Right to Free Expression: Clear and Present Danger  
“Freedom of Expression and Association,” *CL*, pp. 416-434  
*Schenk v. United States* (1919), *CL*, pp. 434-436  
*Abrams v. United States* (1919)\*  
*Brandenburg v. Ohio* (1969), *CL*, pp. 451-455

Tuesday, May 3  
*No On Call Group*

The Right to Free Expression: the Challenge of Hate Speech  
*Virginia v. Black* (2003), *CL*, pp. 538-546

Thursday, May 5  
*No On Call Group*

The Right to Free Expression: Work and Public Accommodation  
*Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), *CL*, pp.  
1558-1570  
*Bostock v. Clayton County* (2020)\*  
Supreme Court Crystal Ball: *303 Creative v. Elenis* (forthcoming 2023)\*

Friday, May 6

**“What the Constitution Means to Me” Due at 11:59 pm**

Thursday, May 12

**Paper #3 due at 5 pm**