COURSE DESCRIPTION

This is the graduate survey course addressing how the Constitution works to guarantee specific rights to US citizens. We will be studying many of the major decisions on civil rights that the Supreme Court has produced mostly since the 1860s to develop a deeper understanding of how the protection of rights fits into the structure of the Constitution. The bulk of the course will focus on rights developed through the equal protection and due process clauses of the Fourteenth Amendment. In particular, the framework of equal protection for people of color, women, and other groups, the evolution of due process as a protection for specific liberties, and the relationship between due process and equal protection in the context of regulations concerning families, sexuality, and freedom. We will not cover criminal law this term.

This is a shared resource course with RPOS 427. You will attend the meetings of the undergraduate class and about ten additional meetings exclusively for graduate students. These extra meetings will provide time for presentations on secondary sources, but will also allow time for freewheeling discussions of any civil rights issues of interest to you. You will be responsible for all of the readings assigned to the undergraduates (primarily cases) and some additional secondary source readings.

By the end of the term, students who succeed in the course should 1) be able to explain the historical development of civil rights in the United States, 2) understand and be able to analyze critically current debates over rights, 3) have a good grasp on some key writings exploring the development of civil rights law in the United States, and 4) have drafted a good book review. Enrollees in 527 will have an additional writing assignment, either a take-home examination or a research paper.

Is this class right for me? This course is relentlessly cumulative. If you get behind early, you will find it difficult to catch up. Although the page totals of the assignments are not as large as some graduate seminars, the reading requires a great deal of care and thought. You will be expected to complete all of the reading, to attend all of the lectures, and to attend the extra sessions.

REQUIREMENTS

Students will be expected to attend class and participate in class discussions, both in the shared resource portion of the course and in our extra meetings. Constructive, informed, respectful participation that contributes directly to conversations about the course material will raise borderline grades; lack of participation or consistently disruptive participation may result in
lower grades. Class participation and attendance will constitute either 20% or 40% of your grade. The baseline grade for class participation is a B, so a student who does not miss class but never participates in discussions can expect to get a B for this component of the course. You will be expected to keep up with the reading throughout the term. You cannot do well on the assignments or examinations without both attending lectures and doing the reading.

All students will do a presentation on one of the assigned additional books addressing some aspect of civil rights. You will be expected to read six additional books over the course of the term, which we will discuss in our extra meetings. Students in the full four-credit version of the course will also complete either a research paper or a take-home examination in the form of a mock comp. The weights of your various obligations are broken down below:

<table>
<thead>
<tr>
<th>RPOS 527</th>
<th>RPOS 527R</th>
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<tbody>
<tr>
<td>Presentation</td>
<td>Presentation</td>
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<tr>
<td>Mock comp I</td>
<td>Mock comp II</td>
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<tr>
<td>Class participation</td>
<td>Class Participation</td>
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<tr>
<td>Mock comp II or final research paper</td>
<td>45%</td>
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A schedule will be developed for the extra meetings and the presentations early in the term. Extra meetings will take place either in my office on the downtown campus or, if the time works, immediately after class in the uptown contact office’s seminar room.

POLICIES

Students with disabilities. If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with the professor soon. Please request that the Counselor for Students with Disabilities send a letter verifying your disability and outlining suggested accommodations.

Class attendance. You will be expected to attend class. Each student is permitted to miss two days of class per term with no questions asked and no penalties or reductions in his or her class participation grade. Any classes missed beyond those two will be taken into account in determining your class participation grade, regardless of the reason.

Extensions for papers. To avoid creating problems for other students in the class, no extensions will be given for rough drafts of papers. Late papers will be penalized half a grade per day for every day that the paper is late, starting at the beginning of class the day the paper is due. Extensions for final papers will only be permitted under compelling circumstances and if the extension is requested in advance. Any student who does not turn in her or his paper on time and has not contacted the professor in advance will lose half a grade per day for every day the paper is late unless the student can provide a University-approved excuse.

Regrading of materials. You may request regrading of materials that have been graded by the professor. If you wish to make such a request, contact the professor for a copy of the regrading policy. You will be asked to provide a written explanation of why you wish to have the assignment regraded.

Plagiarism or cheating. This one’s simple: don’t do it. Don’t even think about doing it. Plagiarism is the use of someone else’s words or ideas without giving the original
author credit by citing him or her. If you use someone else’s language directly, you must use quotation marks. If you rely on another person’s ideas in creating your argument, you must provide a citation. If you have any questions about plagiarism, please contact the professor before you submit the assignment for grading. If you plagiarize or cheat in this class on any assignment or test, the BEST outcome you can hope to achieve is a failing grade. Ignorance will not provide a defense to the application of this policy.

MATERIALS

The text for the course is *American Constitutionalism Volume II: Rights and Liberties*. Additional required readings are available on Blackboard and may be made available in a course packet if there is interest. In the syllabus, these items are marked with an asterisk. To log on to Blackboard, go to https://blackboard.albany.edu/ and follow the login instructions. The course also has six additional books assigned for graduate students: Mark Brandon, *States of Union: Family and Change in the American Constitutional Order* (Kansas 2013); Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction* (Cambridge 2014); Howard Gillman, *The Constitution Besieged* (Duke 1992); Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge 2006); Ken Kersch, *Constructing Civil Liberties* (Cambridge 2004); and Gretchen Ritter, *The Constitution as Social Design* (Stanford 2006).

SYLLABUS

**Unit One: Rights Before and During Reconstruction**

August 26 Introduction
- Julie Novkov, “How to Read a Case”*
- Julie Novkov, “What are Rights for?”*

August 28 No class (professor away)
- Introduction to Rights and Liberties (AC 3-21)

September 2 Pre-Constitutional Understandings of Rights
- Chapter 2 Introduction (AC 25-29)
- Foundations (AC 29-36)
- Chapter 3 Foundations (AC 86-97)

September 4 Equality in the Early Republic and Jacksonian Era
- Chapter 4, Equality under Law: Race (AC 184-194)
- Chapter 4, Gender (AC 194-196)
- *Barron v. Baltimore* (AC 218-219)

**Week of September 9: Mark Graber, Dred Scott and the Problem of Constitutional Evil**

September 9 Growing Concerns over Race and Slavery; Seneca Falls
• Chapter 5, Equality (AC 248-250)
• *Dred Scott v. Sandford* (AC 250-257)
• *Roberts v. City of Boston* (AC 257-259)
• Stanton, Keynote Address (AC 260-61)

September 11 Early Fourteenth Amendment Frameworks for Understanding Rights
• Civil War Amendment Debates (AC 286-295)
• *Slaughter-House Cases* (AC 296-300)
• *Bradwell v. Illinois* (AC 341-342)
• *Civil Rights Cases* (AC 379-383)

**Unit Two: Fourteenth Amendment Equality and Liberty through the 1960s**

September 16 The Rise of Jim Crow
• *Yick Wo v. Hopkins* (AC 440-441)
• The Rise of Jim Crow (AC 444-447)
• *Plessy v. Ferguson* (AC 447-450)
• John Knox, Address to the Alabama Constitutional Convention (AC 450-452)

September 18 The Strange Saga of Liberty I
• *Holden v. Hardy* (AC 395-397)
• *Lochner v. New York* (AC 397-400)
• *Muller v. Oregon* (AC 400-403)
• *Adkins v. Children’s Hospital* (AC 403-406)

Week of September 23 Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction*

September 23 The Strange Saga of Liberty II
• *Commonwealth v. Campbell* (AC 414-416)
• *Meyer v. Nebraska* (AC 416-418)
• *Buck v. Bell* (AC 418)

September 25 NO CLASS

September 30 Liberty and Property Reconsidered
• *Home Building & Loan v. Blaisdell* (AC 513-516)
• *West Coast Hotel v. Parrish* (AC 517-520)
• *Williamson v. Lee Optical* (AC 520-521)

October 2 The Rise of Modern Equality Doctrine
• *United States v. Carolene Products* (AC 492-493)
• *Korematsu v. United States* (AC 582-586)
• *Shelley v. Kraemer* (AC 507-509)

Week of October 7 Howard Gillman, *The Constitution Besieged*
October 7    Brown and Strict Scrutiny
• Civil Rights Advocates Debate Strategy (AC 588-590)
• Brown v. Board of Education I (AC 590-594)
• Bolling v. Sharpe (AC 594)
• Brown v. Board of Education II (AC 594-595)
• Implementing Brown (AC 595-598)

October 9    The Growth of Individual Rights Jurisprudence
• Skinner v. Oklahoma (AC 530-531)
• Perez v. Sharp (AC 531-533)
• Griswold v. Connecticut (AC 533-538)
Mock comp I distributed

Unit Three: Late Twentieth Century Concerns: Expansion and Retrenchment

October 14    Brown’s Legacy and Continued Struggles: Race, Class, and Equality in the 1970s
• San Antonio Independent School District v. Rodriguez (AC 686-689)
• Swann v. Charlotte-Mecklenburg Board of Education (AC 692-694)
• Regents of the University of California v. Bakke (AC 696-702)
• Washington v. Davis (AC 702-704)

October 16    Gender Emerges In Equal Protection I
• Goesaert v. Cleary*
• Reed v. Reed*
• Debate over the Equal Rights Amendment (AC 707-709)
• Frontiero v. Richardson (AC 709-711)
Mock comp I due

October 21    Gender Emerges in Equal Protection II
• Military Service and Pregnancy (AC 711-712)
• Craig v. Boren*
• Rostker v. Goldberg*

October 23    Reproductive Freedom
• Roe v. Wade (AC 657-662)
• The Reagan Administration on Roe (AC 782-784)
• Planned Parenthood of Southeastern Pennsylvania v. Casey (AC 784-792)

Week of October 28    Kenneth Kersch, Constructing Civil Liberties
October 28    State Obligations and Limits
• Dandridge v. Williams (AC 646-647)
• Goldberg v. Kelly*
• DeShaney v. Winnebago County Dept. of Social Services (AC 752-754)

October 30    Legitimacy as a Suspect Class?
- Levy v. Louisiana*
- Fiallo v. Bell*
- Nguyen v. INS*

November 4  The Affirmative Action Debate
- Two Presidents on Affirmative Action (AC 838-840)
- City of Richmond v. Croson (AC 840-844)

Unit Four: Contemporary Concerns

November 6  Lesbian and Gay Rights I
- Bowers v. Hardwick (AC 792-794)
- Romer v. Evans (AC 991-994)

Week of November 11  Mark Brandon, States of Union
November 11  Lesbian and Gay Rights II
- Lawrence v. Texas (AC 934-937)
- Goodridge v. Department of Public Health (AC 937-942)
- United States v. Windsor*

November 13  The Right to Die
- Cruzan v. Director, Missouri Dept. of Health*
- Vacco v. Quill*
- The Terri Schiavo Affair (AC 949-951)
- Schiavo ex rel. Schindler v. Schiavo (AC 951-952)

November 18 - November 20
MOOT COURT WEEK – GRAD STUDENTS MAY OBSERVE

November 25  Takings
- Lucas v. South Carolina Coastal Council (AC 757-760)
- Kelo v. City of New London (AC 903-907)

Week of December 2  Gretchen Ritter, The Constitution as Social Design
December 2  Gender and Equality
- United States v. Virginia (AC 1012-1016)
- National Legal Services Authority v. Union of India*

December 4  Race in the Twenty First Century
- Grutter v. Bollinger (AC 995-1003)
- Parents Involved in Community Schools v. Seattle School District No. 1 (AC 1003-1008)
- Schuette v. Coalition to Defend Affirmative Action*

December 9  The Revitalized Second Amendment
- Guns (AC 923-924)
• John Ashcroft, Letter to the NRA (AC 924-925)
• District of Columbia v. Heller (AC 925-930)
Mock comp II distributed

Tuesday December 16 Mock comp II due by 5:00 PM