

SEX, RACE, & JUSTICE: THE U.S. SUPREME COURT AND EQUALITY

PL SC 497D
Spring 2016
TR 2:30-3:45pm
262 Willard

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Office Hours: TR 1-2PM
and by Appointment

COURSE DESCRIPTION

On June 26, 2015, the U.S. Supreme Court ruled that the U.S. Constitution protects the right of same-sex couples to marry, and legal scholars expect the court to rule in June 2016 about the constitutionality of affirmative action and new state-level restrictions on abortion. In this course, we will draw upon political science and legal approaches to examine the judiciary's approach to ensuring equality through an examination of cases, particularly recent and forthcoming Supreme Court decisions, involving discrimination on the basis of race, gender, and sexual orientation. We will explore difficult questions such as: How does the Court determine when the government has unlawfully discriminated against someone? As they make these decisions, are justices' decisions driven by law, ideology, or both? How is the Court's understanding of "equal protection of the laws" different today than it was 75 years ago? Readings include court cases, legal briefs, newspaper articles, and essays from political science and law journals.

OBJECTIVES

This course has three major objectives related to your knowledge of the U.S. Supreme Court and its jurisprudence. First, at the end of the course, you should be able to explain and apply the legal standards used by federal courts in the United States to adjudicate claims based on discrimination on the basis of race, sex, and sexual orientation. Second, by taking this course, you will be able to articulate how the equal protection and substantive due process doctrines in the U.S. federal and state constitutions, have been used by individuals and groups seeking judicial protection for their rights. Third, at the end of course, you will be able to explain the conditions under which judicial decisions are efficacious, both with respect to their implementation and the extent to which they are respected by members of the public.

Aside from content knowledge, I also have objectives for you that relate to your ability to think critically and communicate effectively. First, at the conclusion of the course, you should be able to make a persuasive legal argument, using precedent to formulate and defend a position against reasonable alternatives and correctly acknowledging your sources. Second, you should be able to make appropriate and cogent critiques of the Court's jurisprudence, both orally and in writing.

COURSE MATERIALS

1) A series of readings will be distributed to students on ANGEL.

COURSE REQUIREMENTS

The requirements for this course involve both (1) the completion of reading assignments and independent research outside of our class meetings and (2) your active and informed contributions

to our course discussions when we meet. Our class time will be divided among lectures and discussion.

SHORT PAPERS (30%). I will distribute prompts for four essays throughout the semester, and you will write an essay in response to the topic that I pose. The formats of the essays will vary. You may, for example, be asked to apply cases we have read to a hypothetical fact pattern or to make an argument based on our readings and class discussions. Your top three essay grades will contribute to this portion of your grade.

Exams (2 at 25% Each). You will sit for a midterm and final exam. The bulk of the examinations will be mainly in essay format, akin to the style of exam given in law school. These exams will require you to recognize issues, select the appropriate legal standards from the cases we have read, and to apply the law as discussed in class to the factual situation I provide.

PARTICIPATION (20%). *I expect you to come to class, to be prepared when you arrive, and to participate actively in discussion.* The final portion of your grade is based on your ability and willingness to contribute to our class. *I think of your seminar participation as akin to a semester-long oral exam.* That means you need to come to class consistently, prepared, and ready to engage in discussion. Everyone's experience in this course is enhanced by regular attendance and active participation; conversely, everyone's experience suffers if individuals do not participate. Remember that a sincere question often adds as much (if not more) to our understanding of the course material as an explanation of the week's readings. So, don't be afraid to speak up!

Please remember that attending class and sitting silently is not, by definition, "participation." Also, please note that I do not penalize you directly for missing class (though multiple absences will adversely affect your grade through a lower participation score).

SUMMARY OF DEADLINES AND ASSESSMENT

<i>Assignment</i>	<i>Due Date</i>
Essay #1	Feb. 9
Midterm Exam	Mar. 1
Essay #2	Mar. 15
Essay #3	Apr. 5
Essay #4	Apr. 28
Final Exam	Finals Week

EXPECTATIONS/PROCEDURES

RESPECT. In this course, we are all engaged in the endeavor of building a stronger understanding of the U.S. Supreme Court and its decisions. Everyone comes to this course with a different background in the subject. It is important that we all treat each other with the utmost respect.

OFFICE HOURS. Please come. I'm here to help. If my office hours conflict with another commitment, please e-mail me to find a time that works for both of us to meet.

WORKING TOGETHER. I encourage you to discuss our class material outside of class, particularly as you study for examinations. There is no better way to master this material than to work together on it.

LATE ASSIGNMENTS. Assignments not submitted by the assigned due date and time are late. Late submissions will be accepted; however, they will be subject to a one-half grade (5%) per day (including weekends) late penalty. All assignments must be completed in order to pass this course. I do not accept assignments over e-mail.

EXTENSIONS. Extensions will be granted in only the most severe circumstances. If you foresee the need for an extension, one needs to be requested and granted at least 24 hours before the due date. No one is entitled to an extension; they will be offered only at my discretion.

ACADEMIC DISHONESTY. I take violations of the University's academic dishonesty policy very seriously; it is printed on the next page. Please review the policy and let me know if you have any questions.

CHANGES HAPPEN. This syllabus is a best estimate about how our class will proceed. We have *no idea* what the Supreme Court is going to do with respect to our course material this semester. If they do something, *we're going to talk about it—that is the beauty of taking this class this semester*. Any changes will be discussed in class.

GRADING SCALE. The course will follow a standard grading scale:

93-100	A	80-82	B-
90-92	A-	77-79	C+
87-89	B+	70-76	C
83-86	B	60-69	D

REGARDING GRADES. I do not *give* grades. You *earn* grades. It is essential that you are proactive regarding your performance in this course; *do not wait* until grades are posted and then ask how your grade could be improved. At that point, barring a mathematical error on my part, it cannot be. If, at any point, you are unsure of your current standing in the course, please come to my office hours. I may (or may not) offer extra credit assignments to the entire class during the semester. I am sometimes asked about extra-credit or additional assignments after the final grades have been tallied by students who are unhappy with their grades. I will not offer such assignments to the class or individual students.

ACADEMIC INTEGRITY. Penn State defines academic integrity as the pursuit of scholarly activity in an open, honest and responsible manner. All students should act with personal integrity, respect

other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts (Faculty Senate Policy 49-20). Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the University's Judicial Affairs office for possible further disciplinary sanctions

ACADEMIC DISHONESTY. The Department of Political Science, along with the College of the Liberal Arts and the University, takes violations of academic dishonesty seriously. Observing basic honesty in one's work, words, ideas, and actions is a principle to which all members of the community are required to subscribe. All course work by students is to be done on an individual basis unless an instructor clearly states that an alternative is acceptable. Any reference materials used in the preparation of any assignment must be explicitly cited. Students uncertain about proper citation are responsible for checking with their instructor. In an examination setting, unless the instructor gives explicit prior instructions to the contrary, whether the examination is in class or take home, violations of academic integrity shall consist but are not limited to any attempt to receive assistance from written or printed aids, or from any person or papers or electronic devices, or of any attempt to give assistance, whether the one so doing has completed his or her own work or not. Lying to the instructor or purposely misleading any Penn State administrator shall also constitute a violation of academic integrity. In cases of any violation of academic integrity it is the policy of the Department of Political Science to follow procedures established by the College of the Liberal Arts. More information on academic integrity and procedures followed for violation can be found at: <http://laus.la.psu.edu/current-students/academics/academic-integrity/college-policies>

NOTE TO STUDENTS WITH DISABILITIES. Penn State welcomes students with disabilities into the University's educational programs. If you have a disability-related need for reasonable academic adjustments in this course, contact the Office for Disability Services (ODS) at 814-863-1807 (V/TTY). For further information regarding ODS, please visit the Office for Disability Services Web site at <http://equity.psu.edu/ods/>

Instructors should be notified as early in the semester as possible regarding the need for reasonable accommodations.

SCHEDULE

Below, you'll find a list of all class meetings, the topic we'll discuss, and the reading assignment. You should complete the reading assignment before you come to class and bring any questions that you have with you (along with a print or virtual copy of the reading) to our class meetings. In the event that deviations from this schedule are necessary, they will be announced in class.

Week 1 (1/12)

Tuesday: Introduction to Class. Defining Equality.

- Reading: None

Thursday: How does the U.S. judicial system work?

- Excerpt from Banks and O'Brien, *Courts and Judicial Policymaking*
- Kerr, "How to Read a Legal Opinion." [Recommended]

Week 2 (1/19)

Tuesday: The Opinions We Don't Like to Talk About

- *Dred Scott*
- *Buck v. Bell*

Thursday: *Plessy* and *Brown*

- *Plessy*
- *Brown*

Week 3 (1/26)

Tuesday: Did *Brown* Matter?

- Rosenberg, *The Hollow Hope* [Excerpt]

Thursday: Other race decisions

- *Loving*
- *Bob Jones University v. United States* [don't get too bogged down in the IRS technicalities]

Week 4 (2/2)

Tuesday: Race and Juries

- *Batson*
- New challenge to race and juries from GA (*Foster v. Chatman*)

Thursday: How do we pick the right level of scrutiny?

- *U.S. v. Carolene Products Co.* [Only footnote #4]
- *City of Cleburne v. Cleburne Living Center, Inc.*
- *Plyer v. Doe*

Week 5 (2/9)

Thursday: What factors can universities use to determine who to admit (historically)?

- *Bakke*
- *Grutter*

Thursday: What factors can universities use to determine who to admit (today)?

- *Fisher I* (U.S. Supreme Court)
- 5th Circuit opinion

Week 6 (2/16)

Tuesday: Fisher II

- *Fisher II* Briefs

Thursday: Sex Discrimination I

- *Bradwell v. Illinois*
- *Reed*
- *Craig*

Week 7 (2/23)

Tuesday: Sex Discrimination II

- *U.S. v. Virginia*
- *Young v. UPS*

Thursday: Substantive Due Process

- *Slaughterhouse Cases*
- *Lochner*

Week 8 (3/1)

Tuesday: Abortion I

- *Griswold*
- *Roe*
- Lepore, 2015. "To Have and To Hold." *The New Yorker*

Thursday: Abortion II

- *Casey*
- *Whole Woman's Health v. Cole*

Week 9 (3/15)

Tuesday: Sexual Orientation I

- *Bowers*
- *Lawrence*

Thursday: How did state courts justify legalizing same-sex marriage?

- *Goodrich*
- *Varnum*

Week 10 (3/22)

Tuesday: What is the Supreme Court's standard for marriage between same-sex couples?

- *Baker v. Nelson*
- *Windsor*

Thursday: Post-*Windsor*

- *Baskin* (Posner Majority Opinion)
- *Latta* (Berzon and Reinart concurrences)
- *Deboer* (Sutton Majority Opinion)

Week 11 (3/29)

Tuesday: Parties' Briefs in *Obergefell*

Thursday: Amicus Briefs in *Obergefell*

Week 12 (4/5)

Tuesday: SCOTUS Opinion in *Obergefell*

Thursday: No Class [MPSA Conference]

Week 13 (4/12)

Tuesday: Implementation of *Obergefell*

- Texas AG Opinion post *Obergefell*
- *Ex parte State of Alabama ex rel. Alabama Policy Institute* (Moore Concurrence)

Thursday: No Class

Week 14 (4/19)

Tuesday: Religious Liberty and Gay Rights

- *Burwell v. Hobby Lobby*

Thursday: Backlash, Bathrooms, and Bakeries

- *Elaine Photography v. Willock* (New Mexico florist case)
- Holden, “Why America’s Top LGBT Group is Losing an Argument over Bathrooms”

Week 15 (4/26)

Tuesday: Wrap-Up: Linking Race, Sex, and Sexual Orientation

- Klarman, “*Windsor* and *Brown*: Marriage Equality and Racial Equality.”
- “This is How Fast America Changes Its Mind” *Bloomberg News*
- “How Gay and Interracial Marriage Became Legal” *Wall Street Journal*

Thursday: Wrap-Up: Have Courts Mattered?