**LS 138: Supreme Court and Public Policy**

Spring 2024

Lectures: Physics Building 3 on TTh from 2:00pm-3:30PM

Discussion 101: Social Sciences Building 104 on M 11:00am-12:00pm

Discussion 102: Etcheverry 3105 on T 11:00am-12:00pm

Discussion 103: Evans 81 on W 12:00pm-1:00pm

Discussion 104: Evans 71on Th 9:00am-10:00am

*Teaching Team*

Professor

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Graduate Student Instructors (GSIs)

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*Professor Office Hours*Office hours are an excellent opportunity to get to know the teaching team better and to seek our advice, discuss grades, or work through course difficulties. In this syllabus, I have noted topics well suited to office hours discussion.

Days/Times: Tuesdays 11am-1pm; Wednesdays 12pm-2pm; by appointment.

Please sign up at this [link](https://www.wejoinin.com/sheets/ggghu) or arrange an appointment by email.

Location: (1) At Café Zeb, inside Berkeley Law School, or (2) via Zoom (permanent link under the bCourses -> Zoom tab) if arranged my student via email or indicated on Wejoin.

*Notable Dates*

First Class: Tues 1/16

Short Essay 1: Fri 2/23 (by 11:59pm)

Midterm Exam: Tues 3/12

Short Essay 2: Fri 4/5 (by 11:59pm)

Last Class: Th 4/25

Final Exam: Mon 5/6 11:30am-2:30pm

Semester End: Fri 5/10

No class:

* Th 2/29 (Pre-Recorded Lecture)
* T 3/26 (Spring Recess)
* Th 3/28 (Spring Recess)
* T 4/23 (Pre-Recorded Lecture)

**Synopsis:**

In this core social sciences course in the Legal Studies Program, we will examine the major legal, social, and political issues before the United States Supreme Court from the twentieth century to the present. An interdisciplinary mix of history and political science, the course is arranged around six case studies: Racial Desegregation and Civil Rights, Criminal Constitutional Law, Voting Rights, Reproductive Rights, Gun Rights, and Civil Rights for LGBT individuals, particularly Gay Marriage. Students will read deeply in the legal cases and academic commentary surrounding some of the most famous cases of the twentieth century, like *Brown v. Board of Education of Topeka* (1954) and *Roe v. Wade* (1973), as well as lesser known, but vitally important, decisions by the Court.

In each case study, we will explore the specific historical *events* surrounding the cases, the legal *reasoning* of the Court, and the social and political *effects* of the decisions over time. We will also think generally about the changing relationship between SCOTUS and American society by asking questions like: Under what conditions does SCOTUS produce social change? What roles does politics play in Supreme Court decisions? How do popular social movements influence the Court and translate their goals into law?

**Grades:**

All grades will be posted to bCourses. Major assignments will have rubrics provided in advance. Grading will be done by the GSI’s and they will provide you with more details throughout the semester.

You may inquire about your overall grade or individual assignment grades at any time, though your first stop should be with the GSI before discussing a grading matter with the Professor. This is a good topic for office hours.

Regrade Policy: You may appeal to the teaching team for a “regrade” on an essay or exam provided that you submit a paragraph explaining your reasoning with specific references to your own work and the rubric.

*Distribution*

Discussion Section assignments and participation - 15%

Mid-Term Exam – 25%

2 x Short Essays – 30% (15 each)

Final exam - 30%

**Readings**:

All text-based readings can be found as PDFs under the “Files” tab on our bCourses page, organized by weekly folders. Podcast assignments are linked below in the Schedule and can be found for free on podcast apps like Spotify or Apple Podcasts. Written transcripts will be provided under the Files tab. Readings should be completed before the lecture for which they are listed.

Please contact the Professor by email if you have problem accessing or using a PDF or file for our course.

Optional Readings: Some weeks I will list optional secondary or primary source readings. You may find these sources helpful but they will not be tested directly. Dive as deep down the rabbit holes as you like!

Difficulty: Some of the readings in this course, especially court cases, may prove challenging. This is normal. We will discuss some strategies for reading and taking notes but please speak to the GSI or the Professor if the readings routinely prove difficult and overly time-consuming. This is a good topic for office hours.

**Writing:**

Word Limits: Some written assignments have a word limit. This limit *excludes* citations. You may exceed the limit by 100 words before grade penalties will be applied. Note: 250 words roughly translates to 1 page.

Formatting & Citations: All writing assignments can be written in Microsoft Word (free Cal download, [here](https://software.berkeley.edu/microsoft)) or converted to a .docx format if written in Pages, Google Docs, or another word processor.

* Format: Please use Times New Roman, size 12 font, double spacing, and 1-inch margins. Please include a title, the word count, and number your pages in the header. Your work should be proofread for errors.
* Citations: When you need to use a citation, please use [Chicago style](https://www.chicagomanualofstyle.org/tools_citationguide.html.):
* We will cover how to do this in class. If you’re unsure *how* to cite something, then try your best and include the author’s name, date, and page number. An incorrect citation will get a note from the GSI about how to fix it but will not affect your grade; *failing* to cite ideas or words that are not your own *will* affect your grade.

Difficulty: If you have difficulty with the writing assignments please bring it up with the teaching team. This is a good topic for office hours. You might also consider reaching out to the [Student Learning Center Writing Program](https://slc.berkeley.edu/writing).

Academic Honesty: All work submitted must reflect your own work and the ideas and quotes of others should be cited. Your work will be analyzed by Turnitin software.

Large Language Models (AI Chatbots): In general, I would discourage you from using AI language models like ChatGPT, for reasons stated below. However, should you find these tools useful, for translation for instance, keep the following in mind.

You *must* substantially edit, revise, and check the work. Treat any AI-generated text as a *very* rough draft. For reasons of:

* Honesty: The submitted assignment *must* be substantially your own and not AI-generated text.
* Quality: My experience with ChatGPT suggests that, unedited, it will produce a “C”-quality undergraduate essay (at best).
* Falsehoods: Large Language Models can “hallucinate” and make up facts and even court cases. See this [video](https://www.youtube.com/watch?v=oqSYljRYDEM&ab_channel=LegalEagle) on how this has gone wrong in legal settings. Submission of an assignment with such obvious falsehoods *will* be considered evidence of academic dishonesty by the teaching team and result in a grade of 0 for the assignment.

**Other Course Policies:**

Contact with the Teaching Team: Please correspond with the teaching team by email. We will endeavor to respond to all weekday emails within 24 hours. However, this does not extend to weekends – do not expect a reply to your 9pm Friday email until the following Monday morning.

Disabled Students’ Program Accommodations: All DSP accommodations will be honored and supersede any and all course policies when called for in the letter. Do not hesitate to reach out with questions or concerns to myself, the GSIs, or the [DSP office.](https://dsp.berkeley.edu/)

Respectful Classroom Environment: This class contains discussion of personal and politically charged topics like abortion, police violence, the death penalty, guns, racial inequity, and so on. This is made more difficult by the current national political climate; however, bullying will not be tolerated.

Please keep the following in mind when engaging in our classrooms together *and* outside the classroom on bCourses, Discord, etc.:

* Normative versus Positive Statements: Most of the time, we will be discussing *positive* or analytical questions like “Why did the Supreme Court decide X case the way they did?” and not *normative* or value-based questions like “How *should* the Supreme Court have decided X case?” Understanding why the Supreme Court decided a case one way does not imply endorsement of that decision.
* Regard for Others: Your own experience and understanding does not reflect the universal experience of others in our class. Be respectful and responsive in terms of language usage, tenor, and comportment. Conversely, please *assume good faith* with those who express ideas with which you disagree.
* Discuss and Challenge Ideas not People: As best you can, keep the focus on the statements and ideas of your peers (and your teaching team) rather than on their identity or person.

Personal, Health, or Mental Heath Difficulties: Life happens during every semester. All of us, including the teaching team, may face stress, anxiety, depression, sickness, grief, etc. during our class. As far as you are comfortable, you may discuss these issues with the teaching team. However, we are not mental health professionals so please consider reaching out to Campus [Mental Health](https://uhs.berkeley.edu/mental-health) Services should the need arise.

Late Assignments and Extensions: Whenever possible, extensions should be cleared with the teaching team by email at least 24 hours before the due date of the assignment. An extension longer than 2 days should be discussed in office hours. Do not feel obligated to disclose personal or medical information to us. Without an extension, late assignments will be accepted up to one week from their original due date, with a grade penalty of -5% per day late. Remember, a maximum score of a 65 is way better than a maximum score of 0 for non-submission!

**Useful Databases/ Resources:**

NexisUni (for full case texts): <https://guides.lib.berkeley.edu/az.php>

Oyez (for case summaries and audio of oral arguments): <https://www.oyez.org/>

SCOTUSblog (for contemporary court news): <https://www.scotusblog.com/>

Linda Greenhouse, *The U.S Supreme Court: A Very Short Introduction* (available as a free e-book through the [library](http://oskicat.berkeley.edu/) or as an inexpensive paperback). We will read selections of this work but if you would like to read the whole work it is – as the title says – very short.

**Schedule of Assignments**

**Week 1: Course Introduction**

Tuesday 1/16: Welcome to LS 138!

* Readings (R): Syllabus; Linda Greenhouse, “Is There Any Tinge of Regret Among the Anti-Abortion Justices?” *New York Times*, June 23, 2023.

Thursday 1/18: Introduction to Constitutional Law

* R: Feinman, “Constitutional Law and Constitutional Politics.”

**Week 2: Introduction to SCOTUS**

Tuesday 1/23: A Bit of Political Science

* R: Gerald Rosenberg, *The Hollow Hope*, Chapter 1; Greenhouse, “The Court and the Other Branches.”

Thursday 1/25: A Bit of History

* R: Greenhouse, “Origins”; Alexander Hamilton, Federalist # 78; Brutus’s Essay 15.

**Week 3: Case Study 1: Advocating for Racial Integration**

Tuesday 1/30: Law in Jim Crow America

* R: Rebecca J. Scott, “Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge;” *Plessy v. Ferguson* (1896); 14th Amendment to the United States Constitution.
* Optional: Orin Kerr, “How to Read a Legal Opinion.”

Thursday 2/1: The Complex Revolutions of *Brown*

* R: *Brown v. Board of Education of Topeka* (1954); *Brown v. Board* II (1955); Michael Klarman, “Brown v. Board of Education: Law or Politics.”
* Optional: *Sweatt v. Painter* (1950).

**Week 4: Desegregation: Implementation, Resistance, and Limits**

Tuesday 2/6: Resistance and Backlash

* R: Michael Klarman, “Why Massive Resistance;” *Cooper v. Aaron* (1958); *Milliken v. Bradley* (1974).

Thursday 2/8: The Long Tail of Racial Desegregation

* R: *Parents Involved v. Seattle School District* (2007); Mary L. Dudziak, “The Court and Social Context in Civil Rights History.”

**Week 5: Case Study 2: Incorporating Criminal Constitutional Law**

Tuesday 2/13: The Law of Incorporation – 4th Amendment

* R: Bill of Rights of the U.S. Constitution (selections); Amar, “Fourth Amendment First Principles;” *Mapp v. Ohio* (1961).

Thursday 2/15: What the Warren Court Did

* R: Sara Mayeux, “What Gideon Did;” *Gideon v. Wainwright* (1963); *Miranda v. Arizona* (1966).

**Week 6: Enforcing Rights (or not!)**

Tuesday 2/20: Loopholes Abound

* R: *Terry v. Ohio* (1968); More Perfect Podcast, [“Mr. Graham and the Reasonable Man”](https://open.spotify.com/episode/5VAggqGc98iYYCL1KYXEq3?si=f28cd4fe0b9f4686) (1 hr 8 min); *Graham v. Connor* (1989); Obasogie and Newman, “The Futile Fourth Amendment.”
* Optional: *Whren v. United States* (1996).

Thursday 2/22: Prisoner’s Rights or Dealing with Death

* R: Rosenberg, “Criminal Law”

**\*Short Essay 1 due Fri 2/23 by 11:59pm\***

**Week 7: Case Study 3: Voting Rights - Into the Political Thicket**

Tuesday 2/27: Into the Political Thicket

* R: *Smith v. Allwright* (1943); *Baker v. Carr* (1962); More Perfect (Podcast), “[The Political Thicket Reprise](https://open.spotify.com/episode/27i3rsbFO2oPiRGNhzOBOK?si=5919cdf4d5824bcb)” (45 min).

Thursday 2/29: One Person, One Vote [Pre-Recorded Lecutre]

* R: *Reynolds v. Sims* (1964); *South Carolina v. Katzenbach* (1965).

**Week 8: Voting Rights II – Out of the Political Thicket & Reproductive Rights Start**

Tuesday 3/5: Exiting the Thicket

* R: *Davis v. Bandemer* (1986); *Shelby County v. Holder* (2013); *Rucho v. Common Cause* (2019); Rosenberg, “Reapportionment” (pages 293-303).

Thursday 3/7: Law, the Open Secret, and Criminal Abortions

* R: Leslie Reagan, “An Open Secret;” Reagan, “Radicalization of Reform.”

**Week 9: Midterm Exam & Case Study 4: Reproductive Rights**

Tuesday 3/12:

* The First Three Case Studies

**\*Timed Midterm Exam\***

Thursday 3/14: *Roe* and the New Law of Abortion

* R: *Griswold v. Connecticut* (1965); *Roe v. Wade* (1972); More Perfect Podcast, “[Part 1: The Viability Line](https://open.spotify.com/episode/1jogkuVa95lFPhawx4teTz?si=a76bf0369f2f4ff4)” (44 min)

**Week 10: Roe Rage and the Great Backlash**

Tuesday 3/19: The Great Compromise?

* R: Robert Post and Reva Siegel, “Roe Rage: Democratic Constitutionalism and Backlash;” *Planned Parenthood v. Casey* (1992).
* Optional: *Gonzalez v. Carhart* (2007).

Thursday 3/21: The Unraveling of a Right

* R: *Dobbs v. Jackson* (2022); More Perfect, “[If Not viability, Then What”](https://open.spotify.com/episode/4nUnXjXBh52oTM6Z7Pbl4r?si=5bfda124b5c143e7) (35 min); Greenhouse, “Religious Doctrine, Not the Constitution, Drove the Dobbs Decision.”
* Optional: Lens and Donley, “Abortion, Pregnancy Loss, & Subjective Fetal Personhood.”

**Week 11: Spring Break!**

Tuesday 3/26: NO CLASS

Thursday 3/28: NO CLASS

**Week 12: Case Study 5: The Right to Bear Arms**

Tuesday 4/2: The Forgotten Amendment

* R: *US v. Miller* (1939); Frye, “The Peculiar Story of United States v. Miller”

Thursday 4/4: Guns in the “Popular Constitution”

* R: More Perfect Podcast, [“The Gun Show Reprise”](https://open.spotify.com/episode/55si0A3oaGcqEoeDZpE2MS?si=9c3fc806977c4dc3) (1 hr 9 min); *DC v. Heller* (2008); Reva Siegel, “Dead or Alive: Originalism as Popular Constitutionalism in Heller.”

**\*Short Essay 2 due Friday 4/5 by 11:59pm\***

**Week 13: Originalism and its Discontents**

Tuesday 4/9: Some Theories of Constitutional Interpretation

* R: Levin, “Federalists in the Attic;” Lund, “The Second Amendment, Heller, and Originalist Jurisprudence.”
* Optional: Posner, “In Defense of Looseness.”

Thursday 4/11: Expanding the Right to Bear Arms through “Tradition!”

* R: *New York State Rifle & Pistol Association Inc. v. Bruen* (2022); U*nited States v. Rahimi* (2023).

**Week 14: Case Study 6: LGBT Civil Rights**

Tuesday 4/16: The Lavender Scare and the Birth of the Gay Rights Movement

* R: Cain, “Litigating for Lesbian and Gay Rights: A Legal History;” *Bowers v. Hardwick* (1986).
* Optional: Cervini, “The Mattachine.”

Thursday 4/18: The Struggle for Gay Marriage Rights

* R: *Romer v. Evans* (1996); *Lawrence v. Texas* (2003); *Obergefell v. Hodges* (2015).
* Optional: *United States v. Windsor* (2012).

**Week 15: Transgender Civil Rights, Religious Objectors, and Concluding Thoughts**

Tuesday 4/23: Let Them Eat Cake! [Pre-Recorded Lecture/ Study Session]

* R: *Bostock v. Clayton County* (2022); Other readings TBD

Thursday 4/25: The Roberts Court and Public Policy

* R: Greenhouse, “Look at What John Roberts and His Court Have Wrought Over 18 Years;” Erwin Chemerinsky, “Thinking about the Supreme Court’s Successes and Failures.”

**Final Exam:**

Mon 5/6: 11:30am-2:30pm