

Syllabus - Linfield College - Political Science 320 - Law, Rights, & Justice (LC: IS or UQ)
Fall 2014



Instructor: Nick Buccola — **Class Meeting Time:** Monday & Wednesday, 2:35pm to 4:15pm
Office: Walker 125 — **Phone:** 503-883-2246 — **E-Mail:** nbuccol@linfield.edu
Office Hours: Monday, 10:00AM to 11:30AM & Wednesday, 10:00AM to 11:30PM, & By Appointment

Course Description

In this course, we will focus on several questions related to the interplay of law, politics, and morality in the United States. What is justice? How do we know what justice requires? What does it mean to have a right? How do we know we have rights? What rights do we have? When is it legitimate for some people to use the law to force others to behave in certain ways? How do we know such exercises of legal authority are justified?

In the first part of the class, we will examine how a number of prominent political philosophers and legal scholars have responded to these questions through an exploration of libertarian, progressive, and communitarian philosophies of law, rights and justice. Although we will only have time to discuss each of these perspectives briefly, the ideas explored in Part I will come up repeatedly throughout the semester. The political philosophies discussed will provide the lenses through which we will view the moral controversies we debate during the rest of the semester.

Most of the semester will be devoted to debating several current legal controversies in the United States. With your help, I have selected a number of legal controversies that will be (or might be) coming up for a vote in Oregon in the near future. First, we will discuss the law, rights and justice of same-sex marriage. Second, we will discuss the law, rights and justice of affirmative action. Third, we will the law, rights, and justice of increased taxation for universal preschool. Fourth, we will consider the law, rights, and justice of church-state relations through an examination of the idea of providing school vouchers with which parents could send their children to private, religious schools. We will conclude the semester with a consideration of the law, rights, and justice of marijuana legalization.

Course Objectives (Linfield Curriculum Designations: UQ or IS)

In this course, students will have the opportunity to:

- Think critically about the ways that law affects individual behavior and the ways individual behavior can bring about changes in the law.
- Analyze critically fundamental beliefs about the rights of individuals, the role of law in society, and the meaning of justice.
- To develop greater wisdom, ability for meaningful dialogue, and understanding about law, rights and justice.
- Articulate how key theoretical principles can be used to explain law, rights and justice.
- Appreciate questions that lead to deeper insights into our political actions and the reasons for them.

NOTE: If you are a student who entered Linfield fall 2010 or later, in order to earn a UQ or an IS for this course, you must complete the electronic submission of exemplar work and supporting descriptions by the last day of finals week, as discussed in the Linfield College Course Catalog.

Required Texts: these books are available in the Linfield bookstore. Additional readings on blackboard and Supreme Court opinions are available on www.oyez.org.

- Michael Sandel, *Liberalism and Its Critics* (New York University Press)
- Randy Barnett, *Restoring the Lost Constitution* (Princeton University Press)
- Beau Breslin, *The Communitarian Constitution* (Johns Hopkins University Press)
- Jack Fruchtman, *The Supreme Court: Rulings on American...Society* (Lanahan)
- Andrew Cohen / Christopher Wellman, *Contemporary Debates in Applied Ethics* (Wiley)
- Additional readings on Blackboard & www.oyez.org

Course Evaluation

PARTICIPATION: 10%

The format of this course will combine lecture with small and large group discussion. It is essential that you come to class prepared to discuss the readings. This is a reading intensive class. Many of the readings are long and difficult. Give yourself plenty of time to complete, think about, and prepare to discuss the readings prior to class. Participation is often a deciding factor for borderline grades (e.g. A - or B + / C - or D +). If you are a talkative person, please try to avoid dominating discussion with too many comments or filibuster-like comments.

- ***Defender/Critic/Discussion Leading Responsibility:*** on several occasions during the semester, you will be serve as the “defender,” “critic,” or “discussion leader” for a class session. The “defender” will deliver a five-minute speech in defense of the central arguments presented by one of the authors we have read for the class session (designated with an asterisk below). The “critic” will deliver a five-minute speech that critiques the central arguments presented by one of the authors we have read for the class session (designated with an asterisk below). The “discussion leader” will be responsible for leading the discussion of all assigned readings for 30 minutes. The “discussion leader” should prepare discussion questions to share with the rest of us. Five or six well-crafted questions (with at least one on each reading) should fill 30 minutes. The quality of your discussion leading will be factored into your participation grade.
- ***Moral Court Participation:*** all students are required to participate in several “Moral Court” activities. The sign-up sheet & instructions for “Moral Court” will be distributed early in the semester. The quality of your performance in “Moral Court” activities will be factored into your participation grade.
- ***Extra Participation Credit Opportunities:*** throughout the semester, I will announce opportunities to get extra participation credit through attendance at various events on campus (faculty lectures, pizza & politics, etc.) If you would like credit for attendance at an event, you must send a 1-page response essay to my [blackboard](#) e-mail account.

EXAM: 25% - there will be a take-home exam at the conclusion of Part I.

MORAL COURT BRIEFS: 40% (2@20%) - during the semester, you will be a “Moral Court Advocate” in two moral court sessions. In addition to participating in the oral arguments of the Moral Court session, you are required to submit a 6-8 page essay that describes your central arguments. Detailed instructions will be distributed.

MORAL COURT OPINION: 20% - once during the semester, you will play the role of a Justice on the Moral Court. In addition to participating in the oral arguments of the Moral Court session, you are required to submit a 6-8 page essay that defending your vote in the case.

FINAL EXAMINATION ON ALL POST-EXAM 1 READINGS: 5% - there will be a final exam on all post-Exam 1 readings. Be sure to keep up with the readings throughout the semester.

PROSEMINAR: Students enrolled in the proseminar for the course should schedule a meeting with me during the first 2 weeks of the semester.

Notes Regarding Evaluation

A Word on Manners: I would not say it, but experience tells me I must. Please behave. Arrive to class on time, pay attention, and be respectful. “Facebooking,” “texting” and other such things are best done in the comfort of one’s dorm room. Also, **leave your laptops at home**. Research indicates that the presence of laptops in the classroom detracts from your learning and the focus of those around you. Inappropriate behavior in class will result in a low participation grade.

COURSE POLICY on CELL PHONES: due to an outbreak of in-class texting, I am instilling a draconian policy on cell phones in class. If I see you using your cell phone in class (please note I see everything & you won’t get away with texting under the desk - why in the world would you spend so much time staring at your shoes?) you will receive an e-mail from me with the subject “Your Penance for Violating Universal Standards of Taste & Decency.” In the body of the e-mail, you will receive an assignment to write a 5-page essay on why using your cell phone in class is an affront to universal standards of taste & decency. Your failure to turn in this essay by the next class meeting will result in an automatic deduction of 5% from your participation grade. If you have a special reason for staring at your cell phone during class time (e.g., you are waiting to hear news about the success of an operation on a close relative), please alert me before the start of class so we can discuss the merits of your case.

A Word on Grading: grades in the “A range” are earned for work that demonstrates a mastery of course material, grades in the “B range” are earned for work that demonstrates a good understanding of course material, grades in the “C range” are earned for work that demonstrates a basic understanding of course material, and grades in the “D & F range” for work that demonstrates you have an inadequate understanding of course material. My hope is that each of you will achieve excellence in this class. Also, please be patient when waiting for assignments to be returned. I put a lot of time and energy into grading in order to be sure everyone is treated fairly.

Make-Up Exams: Make-Up Exams will be granted only in extraordinary cases. If you miss an exam due to an emergency, documentation will be required. “I want to go home early for break” is not an extraordinary case.

Late Papers will be marked down 1/3 of a grade per day late (One day = B to B -). Extensions will only be granted in extraordinary circumstances.

No Cheating: You are expected to live up to the standards of **ACADEMIC INTEGRITY** that govern Linfield College. Plagiarism will not be tolerated. Cheaters will be reported to the Dean.

Help Me Help You: Please feel free to seek **assistance** and feedback on the course materials from me, your classmates, and other college resources (the Writing Center).

Note Regarding Disabilities: Students with disabilities are protected by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. If you are a student with a disability and feel you may require academic accommodations please contact Learning Support Services (LSS), as early as possible to request accommodation for your disability. The timeliness of your request will allow LSS to promptly arrange the details of your support. LSS is temporarily located in Malthus Hall, Room 3 ([503-883-2562](tel:503-883-2562)), and will relocate to Melrose Hall 020 during the semester. We will email notification to all students and faculty when this occurs. We also encourage students to communicate with faculty about their accommodations.

Class Schedule

NOTE: readings will be discussed on the date listed above them - e.g. Randy Barnett's *Restoring the Lost Constitution* (Chapters 1, 2, &3) will be discussed on Wednesday, September 10th.

Part I. Visions of Law, Rights, and Justice

Monday, August 25th: Introduction to the class, one another; assessment exercise

In-Class Reading: *Deshaney v. Winnebago County*

Wednesday, August 27th: The Intersection of Law, Political Theory, and Morality

Stephen L. Darwall, "Theories of Ethics" in *Contemporary Debates in Applied Ethics*, page 13-32

Isaiah Berlin, "Two Concepts of Liberty" in *Liberalism and Its Critics*, page 15-34*

Griswold v. Connecticut in *The Supreme Court: Rulings on American Government & Society*, 32-35

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, September 1st: Labor Day - No Class

Wednesday, September 3rd: Libertarian Visions of Law, Rights, & Justice

Friedrich Hayek, "Equality, Value, and Merit" in *Liberalism and Its Critics*, page 80-96*

Robert Nozick, "Moral Constraints and Distributive Justice" in *Liberalism & Its Critics*, page 100-118

Randy Barnett, "Preface" and "Introduction" in *Restoring the Lost Constitution*, page ix - 5

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, September 8th: "How to Win a Pulitzer Prize" - A Special Visit from Jack Rakove

James Madison - A Politician Thinking

Jack Rakove, "The Dilemma of Declaring Rights" on blackboard

Today, we will have a special visitor: Jack Rakove, a Pulitzer Prize-winning historian from Stanford University.

During our class period, Professor Rakove will be chatting with you about how to become an excellent researcher and a compelling writer. In addition, we will engage in some substantive discussion of his essay "The Dilemma of Declaring Rights." In addition, on Monday, September 8th, Professor Rakove will be delivering two public lectures.

You are required to attend at least one of the lectures:

- **12:30pm in Riley 201**: Professor Rakove will speak about "A Politician Thinking: The Political Thought of James Madison." Lunch will be served!
- **6:30pm in Ice Auditorium**: Professor Rakove will speak on "How Do We Know What the Constitution Means?"

Wednesday, September 10th: Libertarian Constitutional Theory

Randy Barnett, *Restoring the Lost Constitution*, Chapters 1, 2, & 3, page 11-86*

Kyllo v. United States in *The Supreme Court*, 241-245

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, September 15th: Wednesday, September 10th: Libertarian Constitutional Theory

Randy Barnett, *Restoring the Lost Constitution*, Chapters 9 & 10, page 224-269*

Lochner v. New York in *The Supreme Court: Rulings on American Government & Society*, 228-233

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, September 17th: Progressive Visions of Law, Rights, & Justice

John Rawls, "The Right and the Good Contrasted" in *Liberalism and Its Critics*, page 37-57*

Michael Walzer, "Welfare, Membership, and Need" in *Liberalism and Its Critics*, page 200-218

Holden v. Hardy on oyez.org

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, September 22nd: Progressive Constitutional Theory

Robin West, *Progressive Constitutionalism*, Chapters 1 & 2, page 1-72* on Blackboard

"Segregation and Desegregation Cases" in *The Supreme Court*, 172-190

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, September 24th: Progressive Constitutional Theory (Continued)

Robin West, *Progressive Constitutionalism*, Chapters 3, 4, & 5, page 73-143* on Blackboard

U.S. v. Lopez in *The Supreme Court*, page 77-83

U.S. v. Virginia in *The Supreme Court*, page 217-222

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, September 29th: Communitarian Constitutional Theory

Beau Breslin, *The Communitarian Constitution*, Chapters 1, 2, & 3, page 1-112*

Deshaney v. Winnebago County on oyez.org

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, October 1st: Communitarian Constitutional Theory (Continued)

Beau Breslin, *The Communitarian Constitution*, Chapters 5, 6, & 7, page 150-218*

Texas v. Johnson in *The Supreme Court*, page 118-124

Defender/Critic/DL: D: _____ C: _____ DL: _____

TAKE-HOME EXAM DUE via email to nbuccol@linfield.edu by Sunday, October 5th at 2:00pm

Monday, October 6th: Readings for Moral Court 1 - Same-Sex Marriage Amendment

Loving v. Virginia on oyez.org

Bowers v. Hardwick on oyez.org

Lawrence v. Texas in *The Supreme Court*, page 307-314*

U.S. v. Windsor in *The Supreme Court*, page 315-322

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, October 8th: Readings for Moral Court 1 - Same-Sex Marriage Amendment

Ralph Wedgwood, "Same-Sex Marriage: A Philosophical Defense" on Blackboard

John Corvino, "Same-Sex Marriage and the Definitional Objection" in *Contemporary Debates in Applied Ethics* *

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, October 13th: Readings for Moral Court 1 - Same-Sex Marriage Amendment

Jeffrey Jordan, "Is It Wrong to Discriminate on the Basis of Homosexuality?" on Blackboard

Sherif Girgis, "Making Sense of Marriage" in *Contemporary Debates in Applied Ethics* *

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, October 15th: Moral Court 1 - Same-Sex Marriage Amendment

Monday, October 20th: Readings for Moral Court 2 - Affirmative Action

Bernard Boxill, "Compensation for Past Injustice" in *Contemporary Debates in Applied Ethics*, page 191-202*
Nashon Perez, "Must We Provide Redress for Past Wrongs?" in *Contemporary Debates in...Ethics*, page 203-215
"Affirmative Action and Race: Cases" in *The Supreme Court*, page 191-215

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, October 22nd: Readings for Moral Court 2 - Affirmative Action

Andrew Valls, "The Libertarian Case for Affirmative Action" on Blackboard
Albert Mosley, "A Defense of Affirmative Action" in *Contemporary Debates in Applied Ethics* *

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, October 27th: Readings for Moral Court 2 - Affirmative Action

Sidney Hook, "Reverse Discrimination" on Blackboard
Celia Wolfe-Devine, "Preferential Policies Have Become Toxic" in *Contemporary Debates in Applied Ethics* *

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, October 29th: Moral Court 2 - Affirmative Action

Monday, November 3rd: Readings for Moral Court 3 - Millionaire Tax for Universal Preschool

Kai Nielson, "Radical Egalitarianism" on Blackboard*
John Rawls, "Justice as Fairness: A Restatement" on Blackboard
Edward Zigler, et al. "The Universal Preschool Movement" on Blackboard

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, November 5th: Readings for Moral Court 3 - Tax for Universal Preschool

Tibor Machan, "The Nonexistence of Basic Welfare Rights" on Blackboard*
Jan Narveson, "Contracting for Liberty" on Blackboard

Defender/Critic/DL: D: _____ C: _____ DL: _____

Monday, November 10th: Moral Court 3 - Millionaire Tax-Universal Preschool

Wednesday, November 12th: Readings for Moral Court 4 - School Vouchers

"The Establishment Clause: Cases" in *The Supreme Court*, page 146-160
Lemon v. Kurtzman on oyez.org*
Hunt v. McNair on oyez.org
Committee for Public Education v. Nyquist on oyez.org
Agular v. Felton on oyez.org

Defender/Critic/DL: D: _____ C: _____ DL: _____

FRIDAY, NOVEMBER 14th - SPECIAL EVENT: Mark Hall (George Fox University) will be on campus to deliver a lecture on the idea of religious liberty in the American Founding. The lecture will be delivered during the lunch hour and lunch will be free (and good). Your attendance is required.

Monday, November 17th: Readings for Moral Court 4 - School Vouchers

Wallace v. Jaffree on oyez.org
Zobrest v. Catalina Foothills School District on oyez.org
Zelman v. Simmons-Harris on oyez.org*

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, November 19th: Moral Court 4 - School Vouchers

Monday, November 24th through Friday, November 28th: Thanksgiving Break

Monday, December 1st: Readings for Moral Court 5 - Marijuana Legalization

Douglas Husak, "Liberal Neutrality and Drug Prohibitions" on Blackboard *

Douglas Husak, "In Favor of Drug Decriminalization" in *Contemporary Debates in Applied Ethics*, page 335-345

Defender/Critic/DL: D: _____ C: _____ DL: _____

Wednesday, December 3rd: Readings for Moral Court 5 - Marijuana Legalization

Samuel Freeman, "Liberalism and the Rights of Drug Use" on Blackboard

Peter de Marneffe, "Against the Legalization of Drugs" in *Contemporary Debates in Applied Ethics*, pg. 346-358 *

Defender/Critic/DL: D: _____ C: _____ DL: _____

Tuesday, December 9th @ 1pm: Moral Court 5 - Marijuana Legalization