

**POLSCI 319 / HIST 411: Politics of Civil Rights and Civil Liberties**  
University of Michigan  
Fall 2019

Prof. Pamela Brandwein  
7765 Haven Hall  
Hours: Thursday, 2-4pm and by appt.  
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Description:

This course focuses on landmark civil rights decisions of the Supreme Court, which are a lens through which we can view America's unfolding struggle over race. Situated at the nexus of law, politics, and history, the course examines the links between civil rights decisions and wider social, political, and economic contexts. The goal is to explore the nature of Supreme Court decision-making, judicial power, the relationship of the Court to other branches of government and, generally, the constitutional politics of race and racialization. Along the way, we will consider legal doctrines pertaining to equality under law, due process, and presidential power.

The course is organized chronologically and topics include: the crisis over slavery; the law and politics of Reconstruction; the Jim Crow Era and *Plessy v. Ferguson* (1896); the legal construction of "whiteness" in the law of naturalized citizenship; "Mexican Repatriation," 1929-1936; the Japanese-American internment during World War II and *Korematsu v. United States* (1944); the Guantanamo Detainees and the "war on terror"; and the Trump Administration's "Travel Ban." The course concludes with a detailed examination of the iconic decision, *Brown v. Board of Education* (1954), the source of traditional notions of judicial power. A number of themes run throughout the course, including constitutional politics, race politics, and constructions of American identity. The touchstone for the course is a scholarly article about judicial power and inter-branch relationships, and we will work with this article throughout the semester.

Materials:

Roger Daniels, *Prisoners Without Trial: Japanese Americans in WW II*, Rev. Ed. (Hill and Wang, 2004).

Joseph Margulies, *Guantanamo and the Abuse of Presidential Power* (NY: Simon & Schuster, 2014).

+ materials on Canvas.

Requirements

Three Short Papers (~4 pages each, 15%, 20%, 25%)	<b>60%</b>
Final Essay Exam	<b>30%</b>
Section (includes participation in Draft Workshops)	<b>10%</b>

Schedule

Sept. 3            Introduction to Course

## **The Supreme Court and American Political Institutions**

- Sept. 5 Scott Lemieux and George Lovell, "Understanding the Impact and Visibility of Ideological Change on the Supreme Court," *Studies in Law, Politics, and Society* 44:1-33 (2008).
- This article is a touchstone for the course, and so get familiar with the Five "Do's and Don'ts" for Assessing Judicial Power. We will be working with these "Do's and Don'ts" over the entire course.

## **Slavery, Antislavery, and the Law and Politics of Reconstruction**

- Sept. 10 Mayor Mitch Landrieu, "Speech on the Removal of Confederate Monuments in New Orleans," *New York Times*, May 23, 2017.
- James Morone, "South: The Pro-Slavery Argument," in *Hellfire Nation* (New Haven: Yale University Press, 2003), 169-182.
- James M. McPherson, "Southern Comfort," *New York Review of Books*, April 12, 2001.
- Sept. 12 James Morone, "North: The Ragged Chorus of Union," in *Hellfire Nation*, 183-215.
- Sept. 17 Eric Foner, *A Short History of Reconstruction* (Harper & Row, 1990), 1-15, 82-103, 104-123.
- Civil Rights Act of 1866
- Sept. 19 Brandwein, *Rethinking the Judicial Settlement of Reconstruction* (Cambridge, 2011), 1-22.
- Sept. 24 Brandwein, *Rethinking the Judicial Settlement of Reconstruction*, 60-74, 161-173, 182-183.
- Sept. 26 *Civil Rights Cases*, 109 U.S. 3 (1883), excerpted in H. Gillman, M. Graber, and K. Whittington, *American Constitutionalism* (Oxford, 2017), 296-300.

## **The Jim Crow Era**

- Oct. 1 "A Lynching Memorial is Opening. The Country Has Never Seen Anything Like it," *New York Times*, April 25, 2018.
- Michael Klarman, "The Plessy Era," in *From Jim Crow to Civil Rights* (Oxford University Press, 2004), 8-39.
- David Blight, "The Lost Cause and Causes Not Lost," in *Race and Reunion: The Civil War in American Memory* (Harvard University Press, 2001), 255-299.
- Oct. 3 *Plessy v. Ferguson*, 163 U.S. 537 (1896), majority opinion.

First Paper Due: Friday, Oct. 4 @ 11:59pm on Canvas

- Oct. 8            *Plessy v. Ferguson*, 163 U.S. 537 (1896), dissenting opinion.
- Oct. 10           “Do Races Differ? Not Really, Genes Show,” *New York Times*, August 22, 2000.  
Ian H. Lopez, *White By Law: The Legal Construction of Race* (NYU, 1996), 49-77, 79-109.
- Oct. 15           Fall Study Break
- Oct. 17           “The Time a President Deported 1 Million Mexican Americans,” *Washington Post*,  
August 13, 2018  
“When Americans Lynched Mexicans,” *New York Times*, Feb. 20, 2015.  
Diego Rivera; Google Museum (interactive)  
NPR Interview (Francisco Balderrama, co-author, *Decade of Betrayal: Mexican Repatriation in  
the 1930s*).  
“America’s Forgotten History of Illegal Deportations,” *Atlantic*, March 6, 2017.

### **The Japanese-American Internment during World War II**

- Oct. 22           “Visit the Site of a Japanese-American Internment Camp,” *New York Times*, July 7, 2018.  
Daniels, *Prisoners Without Trial*, 3-71.
- Oct. 24           *Hirabayashi v. United States*, 320 U.S. 81 (1943), excerpts.  
*Korematsu v. United States*, 323 U.S. 214 (1944)
- Oct. 29           Joel B. Grossman, “The Japanese American Cases and the Vagaries of Constitutional  
Adjudication in Wartime: An Institutional Perspective,” 19 *Hawaii Law Review* 649 (1997).  
Read Sections III and IV, only.  
Daniels, *Prisoners Without Trial*, 88-121, especially chapter 6 (“Could it Happen Again”) and  
chapter 7 (“Epilogue”).

### **The Guantanamo Detainees**

- Oct. 31           John Yoo, *War by Other Means* (New York: Atlantic Monthly Press, 2006), 128-164.  
Joseph Margulies, *Guantanamo*, 1-84.

Second Paper Due: Friday, Nov. 1 @ 11:59pm on Canvas.

- Nov. 5 Joseph Margulies, *Guantanamo*, 131-181.
- “Access to Courts,” *New York Times*, June 29, 2004 (reporting on *Hamdi v. Rumsfeld* and *Rasul v. Bush*) (found in the Guantanamo Folder for 2004).
- Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), excerpts in H. Gillman, M. Graber, and K. Whittington, *American Constitutionalism* (Oxford, 2017).
- Nov. 7 “Appeals by Detainees Backed by Court, 5-4” *New York Times*, June 13, 2008 (reporting on *Boumediene v. Bush*) (found in the Guantanamo Folder for 2008).
- Stephen Vladeck, “One Huge Difference Between Kavanaugh and Kennedy,” *Washington Post*, July 11, 2018.
- Nov. 12 Margulies, *Guantanamo*, 221-263

### **The Trump Administration’s “Travel Ban”**

- Nov. 14 Comparison of Travel Ban I (EO 13769) and Travel Ban II (EO 13780), *Washington Post*, March 6, 2017.
- Cato Institute on Travel Ban I, Jan. 25, 2017. → Compare the Cato analysis with Travel Ban II, Sections 1 (e) and (h), which are posted on Canvas.
- Nov. 19 *Trump v. Hawai’i* (2018) (Travel Ban III [Proclamation 9645]), majority opinion by Justice Roberts (pp. 1-39).
- Nov. 21 *Trump v. Hawai’i* (2018), dissenting opinions of Justice Breyer (pp. 1-8) and Justice Sotomayor (pp. 1-28).

Third Paper Due: Monday Nov. 25 @ 11:59pm on Canvas

- Nov. 26 No Class, Happy Thanksgiving!

### **Brown v. Board of Ed: Revisiting the Source of the Traditional View of Judicial Power**

- Dec. 3 Jack M. Balkin, “Brown as Icon,” in *What Brown v. Bd. of Education Should Have Said* (New York University Press, 2001), 3-25.
- Michael Klarman, “School Desegregation,” in *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford University Press, 2004), 290-343.

- Dec. 5            *Brown v. Board of Education*, 347 U.S. 483 (1954)  
                       *Brown v. Board of Education II*, 349 U.S. 294 (1955)
- Dec. 10          Michael McCann, “Reform Litigation on Trial.” Review of *The Hollow Hope* by Gerald Rosenberg. In “Symposium: The Supreme Court and Social Change.” 17 *Law & Social Inquiry* (1992), 715-43.

**Final Exam: Monday, December 16, 4:00-6:00pm**

On the Assignments

Students will write three short papers (~4 pages each, 1200-1300 words) on topics to be distributed. All the assignments ask for critical engagement with course materials; **outside sources are neither required nor permitted.**

**Late Policy on papers:** Papers will reduced 1/3 of a grade for every 24 hours it is late. Requests for late submission must be made at least **48 hours** in advance of the due date/time.

Lecture notes or summaries will not be provided for missed classes.

The following offers the *rough* principles on which papers will be graded:

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|-----------|---|
| A/A-      | Paper offers a clearly stated thesis that is supported with a sound argument and abundant and illuminating evidence. The paper shows that the writer has thought about the assignment and developed his/her ideas about it, instead of just offering minimal responses to the different components of the assignment. Extensive evidence is provided. Organization and writing are clear; grammar is excellent. |
| B/B+      | Paper offers a clearly stated thesis that is supported, for the most part, with a sound argument and valid evidence. The paper stays on topic and considers all the relevant aspects of the assignment. Multiple sources of evidence are provided. Organization and writing are clear; grammar is solid.  |
| B-        | Paper offers a thesis and attempts to support it with argument and evidence. However, the thesis is simplistic and/or the argument and evidence are weak. Organization and writing are weak.  |
| C (range) | Paper offers a minimal thesis and argument. Little evidence is provided. Organization and writing are seriously flawed.   |
| D (range) | No Thesis, no argument, and/or no evidence. Organization is lacking; writing is very awkward, bordering on incoherent.  |
| E         | Paper displays a fundamental lack of understanding of the material or a basic failure to address the assignment.  |

A Word on Grammar: Students often ask whether they will be “graded on grammar.” The answer is both no and yes. “No” in the sense that grammar alone is not a grading criterion. But “yes” in the sense that bad grammar and awkward style detract from the argument and presentation. Errors in grammar make it difficult for a reader to follow an argument and go through the text. You are responsible for understanding the rules governing Standard Written English.

#### Grades-to-Points Conversion Scale:

A+	97	B+	87	C+	77	D+	67
A	93	B	83	C	73	D	63
A-	90	B-	80	C-	70	D-	60

### Academic Integrity

Plagiarism and cheating are violations of academic integrity and violations of the LSA Academic Conduct Code, and they will *automatically result in failure in the course*. The LSA Academic Judiciary Manual of Procedures specifies that a student may be expelled from the university for academic misconduct.

Scholastic dishonesty includes, but is not limited to, the submission of a piece of work that is, in part or whole, not one’s own. Dishonesty also includes submitting work in this course that you have submitted in another course. When writing papers, sources must be cited! Quotation marks must be used! As a general rule, scholastic dishonesty involves one of the following acts: cheating, plagiarism, collusion and/or falsifying academic records. Plagiarism – from the web or from any other source – and all other acts of scholastic dishonesty will be reported to the university.

Students are responsible for familiarizing themselves with what counts as plagiarism and academic dishonesty. To learn more about U-M policies regarding scholarly dishonesty and its consequences, go to <http://www.lsa.umich.edu/academicintegrity>. If students have any questions about what plagiarism means, they should consult a plagiarism tutorial found at <http://www.ctlw.duke.edu>. Students with any questions or concerns are encouraged to contact the professor.

### Grade Grievances

If you believe you have been unfairly graded, you must follow this procedure:

1. Wait 24 hours after receiving the grade before approaching your GSI.
2. Provide a written statement to your GSI, explaining why you believe the grade was unfair.
3. Meet with your GSI to discuss your paper and statement.
4. If a meeting with your GSI does not resolve your concerns, contact the professor.

Departmental grade grievance procedures are outlined on the political science website, at <http://www.polisci.lsa.umich.edu/undergrad/grievance.html>.

## **Accommodations for Students with Disabilities**

If you need an accommodation for a disability, please let Prof. Brandwein know at least two weeks prior to the time when the accommodation will be needed. Some aspects of this course, the assignments, the in-class activities, and the way the course is usually taught may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Services for Students with Disabilities (SSD) (tel. 734-763-3000 Voice/TTY/TDD; <http://www.umich.edu/sswd>) to help us determine appropriate academic accommodations. SSD typically recommends accommodations through a Verified Individualized Services and Accommodations (VISA) form. Any information you provide is private and confidential and will be treated as such.

## **Religious and Academic Conflicts**

Although the University of Michigan, as an institution, does not observe religious holidays, it has long been the University's policy that every reasonable effort should be made to help students avoid negative academic consequences when their religious obligations conflict with academic requirements. Absence from classes or examinations for religious reasons does not relieve students from responsibility for any part of the course work required during the period of absence. Students who expect to miss classes, examinations, or other assignments as a consequence of their religious observance shall be provided with a reasonable alternative opportunity to complete such academic responsibilities.

It is the obligation of students to provide faculty with reasonable notice of the dates of religious holidays on which they will be absent. Such notice must be given by the drop/add deadline of the given term. Students who are absent on days of examinations or class assignments shall be offered an opportunity to make up the work, without penalty, unless it can be demonstrated that a make-up opportunity would interfere unreasonably with the delivery of the course. Should disagreement arise over any aspect of this policy, the parties involved should contact the Director of Undergraduate Studies/Director of Graduate Studies. Final appeals will be resolved by the Provost.

## **Student Mental Health and Wellness**

University of Michigan is committed to advancing the mental health and wellness of its students. If you or someone you know is feeling overwhelmed, depressed, and/or in need of support, services are available. For help, contact **Counseling and Psychological Services (CAPS)** at (734) 764-8312 and <https://caps.umich.edu/> during and after hours, on weekends and holidays, or through its counselors physically located in schools on both North and Central Campus. You may also consult **University Health Service (UHS)** at (734) 764-8320 and <https://www.uhs.umich.edu/mentalhealthsvcs>, or for alcohol or drug concerns, see [www.uhs.umich.edu/aodresources](http://www.uhs.umich.edu/aodresources).

For a listing of other mental health resources available on and off campus, visit: <http://umich.edu/~mhealth/>.

## **Students Representing the University of Michigan**

There may be instances when students must miss class due to their commitment to officially represent the University. These students may be involved in the performing arts, scientific or artistic endeavors, or intercollegiate athletics. Absence from classes while representing the University does not relieve students from responsibility for any part of the course missed during the period of absence. Students should provide reasonable notice for dates of anticipated absences and submit **an individualized class excuse form**.