

Law and Democracy

PLPT 4500 – Fall 2017

Time:	Thursday, 6:00-8:30	Instructor:	Christopher D. Berk
Room:	New Cabell Hall 068	Email:	chrisberk@virginia.edu
		Office Hours:	Wednesday, 3:30-5:00 Gibson Hall, Room S342

Description

It's been noted that the two and a half millennia during which democracy has been discussed, debated, attacked, supported, ignored, established, destroyed, and re-established has not, in fact, produced agreement on some of the most fundamental questions about democracy. Chief among those concerns is the place of law. This course introduces students to the complex and contested role law plays in shaping democratic institutions and civic life. We'll discuss both court cases and case-studies, focusing on election law and disqualification, and those discussions will be enriched by reading a wide-ranging assortment of political and legal theorists.

Course Objectives

Students in this course will learn, elaborate, and apply elements of legal reasoning to complex moral and political problems related to democracy. The problems covered are various and sundry: constitutionalism, apportionment, vote dilution, gerrymandering, free speech, and felon disenfranchisement, to name a few. The assignments will hone your ability to reason from evidence and push you to communicate complex ideas efficiently and effectively.

Course Structure

This is a seminar and not a lecture course. Most of the classroom time will be dedicated to discussion, deliberation, and debate. We'll begin most sessions with a close reading of a particular court case or case study, then move to the more abstract readings. I'm in the process of arranging a class session at the Fluvanna Correctional Center for Women (FCCW). This voluntary session will likely be the week of **November 6**.

Assignments

Participation (10%): First, and most important, students are expected to read the assigned material before class and to contribute to discussion regularly and thoughtfully. As we will be referencing the material during our seminar discussions, I expect that you will *print the articles and bring them with you to class*. Attendance is mandatory. Students with three unexcused absences will fail the participation section of the course.

Second, class discussion will be a combination of open conversation and cold-calling. If you do not feel able to participate on a given day for whatever reason, you can email me by noon the day of class to let me know. Please do not do this more than two or three times over the term.

Issue papers (60%): Each student must prepare two short issue papers. In the first paper I expect students to (1) highlight the core issues raised by the prompt, and (2) present the strongest arguments on both sides of the issue (20%, 1500 words). It will be due **September 25**. In the second paper, you'll have to make a persuasive argument. Not only will you highlight the core issues raised by the prompt, but I expect you to respond to counter-arguments in the process of forwarding your central claim (40%, 2000 words). Due **October 23**. I will provide a more detailed grading rubric ahead of releasing each prompt.

Final (30%): The final is a take-home examination (single prompt, 3000 words).

Submission Requirements

Except in documented cases of illness or emergency, late papers will lose 1/3 of a letter grade per day. However, each student may, at his or her discretion, take a 48-hour extension for one of the issue papers, no questions asked. If you are using your extension please indicate this on the first page of your paper.

Please submit all papers electronically in an *editable* format (.doc, .docx, .odf, etc.) to chrisberk@virginia.edu no later than 5pm on the due date. Do *not* put your name on your paper; use your student ID number. Please put the word count at the end of your document.

Computer Use During Class

You're welcome to use a computer (tablet, etc.) in class, but if you bring a computer you will be expected to post copies of your class notes on the course wiki (in UVA Collab) following the class session to share with others. If you are not willing to do this, do not bring a computer with you.

Disability Accommodation

If you are in need of accommodation for an impairment or disability, contact me as soon as possible. You should also contact the Student Disability Access Center (SDAC) to document

your needs and determine a reasonable accommodation. They can be reached at sdac@virginia.edu.

I assume that all of us learn in different ways, and that the organization of any course will accommodate each student differently. For example, you may prefer to process information by speaking and listening, so that some of the written handouts I provide may be difficult to absorb. Please talk to me as soon as you can about your individual learning needs and how this course can best accommodate them. If you do not have a documented disability, remember that other support services, including the UVa Writing Center and the Office of Health Promotion, are available to all students.

Reading Schedule

This course is self-contained. All material will be available through the course UVA Collab page.

Practical notes on reading:

The reading for this class will, at times, be difficult. While the number of pages assigned each session might not be high, you'll quickly discover this does not mean the reading load is light. You should expect to spend at least four hours reading per class session. Some of it will be detailed reading of texts, particularly court cases, where accuracy and command are necessary. At other times, you'll need to read quickly through a large amount of material, passing rapidly over details and pulling out the central themes and concepts.

UNIT: INTRODUCTION

Week 1 [8/24]

- Introduction

Week 2 [8/31]

- No class

UNIT: CONSTITUTIONALISM, DEMOCRACY, COURTS

Week 3 [9/7]

- *Minor v. Happersett* (1875)
- Przeworski, *Democracy and the Limits of Self-Government*

Week 4 [9/14]

- Karl Llewellyn, “The Constitution as an Institution”
- Elster, “Introduction” in *Constitutionalism and Democracy*
- Graber, “Constitutional purposes” in *A New Introduction to American Constitutionalism*

Week 5 [9/21]

- *United States v. Carolene Products Co.* (1938)
- Graber, “Constitutional Authority” in *A New Introduction to American Constitutionalism*
- Dworkin, “Constitutional Cases” in *Taking Rights Seriously*

UNIT: THE RIGHT TO PARTICIPATE

ISSUE PAPER 1 DUE, 5pm [9/25]

Week 6 [9/28]

- *Giles v. Harris* (1903)
- Young, “Five Faces of Oppression” in *Justice and the Politics of Difference*
- Keyssar, “The Redemption of the North” in *The Right to Vote*

Week 7 [10/5]

- Pateman, “Recent theories of democracy and the ‘classical myth’” in *Participation and Democratic Theory*
- *Lassiter v. Northhampton County Board of Electors* (1959)
- *Harper v. Virginia State Board of Elections* (1966)
- *Kramer v. Union Free School District No. 15* (1969)
- Keyssar, “Breaking Barriers” in *The Right to Vote*

Week 8 [10/12]

- *Schenck v. United States* (1919)
- *Gitlow v. New York* (1925)
- Weinrib, *The Taming of Free Speech*

- *National Socialist Party of America v. Village of Skokie* (1977)
- *Kessler v. City of Charlottesville* (2017)

UNIT: REAPPORTIONMENT, REDISTRICTING, AND REPRESENTATION

Week 9 [10/19]

- *Reynolds v. Sims* (1964)
- Cohen, “Procedure and Substance in Deliberative Democracy”

Week 10 [10/26]

ISSUE PAPER 2 DUE, 5pm [10/23]

- Whelan, “Prologue: Democracy and the Boundary Problem”
- *Vieth v. Jubelirer* (2004)
- *Gill v. Whitford* (2017)

Week 11 [11/2]

- Minow, “The Dilemma of Difference” in *Making All the Difference*
- Voting Rights Act of 1965
- *Thornburg v. Gingles* (1986)

UNIT: DISQUALIFICATION

Week 12 [11/9]

CLASS TRIP TO FLUVANNA CORRECTIONAL CENTER FOR WOMEN [TBD]

- *Ruffin v. Commonwealth* (1871)
- *Green v. Board of Elections* (1966)
- Locke, *Second Treatise of Government*
- Darrow, “Address to the Prisoners in the Cook County Jail” (1902)

Week 13 [11/16]

- *Buck v. Bell* (1927)
- *Doe v. Rowe* (2001)
- Bérubé, “Citizenship and Disability”

Week 14 [11/23]

- THANKSGIVING RECESS (no session on 11/23)

Week 15 [11/30]

- *Oregon v. Mitchell* (1970)
- Archard, *Children: Rights and Childhood*

FINAL EXAM DUE, 5pm [12/8]