"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."

-- Chief Justice Earl Warren, Reynolds v. Sims (1964)

Course Description

This course will study legal concepts of voting rights and election law that impact the ability of citizens to participate in the democratic process. What is the nature of the right to vote? Who gets to participate and on what terms? As we head into the first presidential election in 50 years without a key protection of the Voting Rights Act, amidst unprecedented legal and legislative activity regarding the right to vote, we will look at the timely and dynamic debates on voting and the underlying legal, historic, policy and political movements surrounding them. Many may find it hard to believe that there is no explicit "right to vote" in the U.S. constitution – part of a compromise inextricably tied to the history of race in America. Yet there are more constitutional amendments governing the right to vote than any other, prohibiting the abridgment of voting based on race, gender, property ownership, age and other qualifications. Legislative enactments have also established rights with respect to voting. Each extension of voting rights has been a product of and brought about, social and political change. Today there are more legislative enactments conditioning access to the ballot box than at any other time in history since the post-reconstruction era, and many states will be facing new voting restrictions for the first time in this year’s presidential election. This course will examine the interplay of law and politics, history and political movements in the right to vote.

The course will begin with a historical look at the development of voting rights from the founding of our country to the present. What factors have caused us to redefine who gets to participate in the electoral process and how? We will then apply these principles to current controversies in voting rights heading into the upcoming presidential elections, through examination of current litigation and policy debates, and by assessing proposed solutions for voting rights going forward.

The course involves study of fundamental court cases, interactive discussion of contemporary debates, and review of current litigation and legislative proposals. The course will be supplemented by occasional media and guest visits by election officials, lawyers, lawmakers, advocates or others.

Text


Significant additional readings will be available online on the course website.

**Grading**

**Class Attendance and Participation (25% + 5%)**: Our class meetings will be highly interactive and therefore attendance & preparation for class is very important. Students should be prepared to discuss the readings with your classmates in class and apply the concepts to current controversies. Discussion and debate is critical to understanding of the issues in this class. Attendance and participation at each class meeting is expected. Students can also participate in discussion through the bulletin board on the course website.

Participation in one voting activity outside of class (voter registration drive, election day monitoring, etc) will account for 5% of your grade.

**Presentation (15%)**: Each student will assist in facilitating class discussion on one of our topic areas by making a presentation highlighting a controversy in that area, framing the arguments of the debate, and discussing how the readings and current events or their experiences have affected their thinking on the issue. This should be a fairly short (approx. 10 minute). Select one of the topics we are covering, and present on current debate or news item on that topic. Keep the presentation focused on one particular example. Provide the facts and background of the issue, and its implications, and raise two questions for class discussion. The presentation will allow us to example one example of the impact in your selected topic and serve as a springboard for debate about how the law should be applied.

**Short Answer Questions (25%)**: You will be asked submit short answers to 1-3 questions posed relative to the issues covered in the class. These can be submitted via email or in class on the date the topic will be discussed. These will be used to spur class discussion and students will be asked to share their thoughts on the question topics in class.

**Final Paper (30%)**: In this approximately 10-12 page paper, you will assess a current controversy related to voting rights. The controversy can relate to current litigation, legislation, policy proposal or issue. It could also analyze the saliency of particular tactics to move the law forward. The paper should analyze the legal rights impacted by the issue, how your thinking on the issue has been impacted by your service learning experience, and include an argument in favor of a policy or legal outcome for how the controversy should be resolved. Detailed instructions available on the class website.

Grades will be based on an average of the above as follows:

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<th>Grade</th>
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**Policy regarding academic dishonesty**: This course will follow Washington University's policies on academic dishonesty. Academic dishonesty will result in failure for the assignment in question and/or referral to the college's Academic Integrity Office, which has discretion to impose a stricter penalty. Academic dishonesty includes plagiarism in written assignments. Plagiarism is not only passing off someone else's work as your own, but also giving your work to someone else to pass as their own, as well submitting work from another course. While I strongly encourage you to discuss your work with each other in and out of class, and while you may research issues together, your writing should be your
own. The papers you submit must be your work alone, and must include citations to all references in your work. For web-based articles, please include the author, title, URL and date accessed.

**Accommodation of disabilities:** Washington University is committed to providing accommodations and/or services to students with disabilities. Students seeking support for a disability should contact the Disability Resource Center (DRC) at 5-4062 in Gregg Hall. (drc@dosa.wustl.edu). The DRC is responsible for arranging accommodations for students.

**Course Outline**

**Aug. 29 Introduction**
- A “fundamental” right to vote? See: [Voting: A Right or a Privilege?](#) – The Atlantic
- Constitutional Foundations. See: [Voting Rights History: Two Centuries of Struggle](#)

**Sept. 5 Labor Day – No Class**

**Sept. 12**
Constitutional Foundations & The Beginnings of Our Democracy
- The Revolution & the Vote (Keyssar, Ch. 1)
- Ascent of Democracy (Keyssar, Ch. 2)
- Backsliding – Race, Class & Immigration (Keyssar, Ch. 3)
- The Missouri Compromise (1821)
- *Dred Scott v Sanford* (1857)

**Sept. 19**
Building Our Democracy – Civil War, Reconstruction and Post-Reconstruction
- Civil War (Keyssar, Ch. 4)
- Disenfranchisement after the Civil War: Reconstruction (Keyssar, Ch. 5)
- *Civil Rights Cases* (1863)
- *Plessy v Ferguson* (1896)
- *Giles v Harris* (1903)

**Sept. 26**
Women’s Suffrage
- The Women’s Suffrage Movement (Keyssar, Ch. 6)
- *Minor v. Happersett* (1874)
- Film suggestion: *Iron Jawed Angels*
Oct. 3

The Civil Rights Movement & The Voting Rights Act

- Breaking Barriers (Keyssar, Ch. 8)
  - South Carolina v Katzenbach (1966)
  - Harper v Virginia Board of Elections (1966)
  - Oregon v Mitchell (1970)
  - Dunn v Blumstein (1972)

- Recommended: (Berman, Chapters 1-3)


- Film Suggestion, Mississippi America

Oct. 10

Towards Universal Suffrage: Election Administration Reforms

- NVRA (1993) and Getting the Electorate to the Polls (Keyssar, p. 253-257)
- 2000 Elections & Aftermath (Keyssar, Ch. 9, pp.258-263)
  - Bush v Gore (2000)
- Help America Vote Act of 2002 (Keyssar, Ch. 9, pp.265-273)
- Recommended: (Berman, Ch. 4-5)
- Film Suggestion: Recount

Oct. 17 FALL BREAK – no class

Oct. 24

Election Administration and Voting Rights Today - Voter ID

- Suppression & Fraud (Keyssar, Ch. 9, pp. 277-291)
  - Crawford v. Marion County (2008)
  - Weinschenk v Missouri (Mo. 2006)
  - Frank v Walker

- Missouri Amd 6 (readings on website)

- Recommended: Berman, Ch. 8
Oct. 31

Election Administration and Voting Rights Today – Who can vote

- Citizenship
  - *Arizona v InterTribal Council of Arizona* (2013)

- Felon Disenfranchisement (Keyssar, Ch. 9, pp. 273-277)
  - *Farrakhan v Washington* (9th Cir. 2003)

Nov. 7

Technology! Electronic Voting Machines & Internet Voting

- Readings on website

Nov. 14

VRA Redux

- *Shelby v Holder* (2013)

- *NC NAACP v McCrory* (4th Cir. 2016)

- *Veasey v Abbot* (5th Cir. 2016)

- Recommended: Berman, Ch. 9-10

Nov. 21

Making voting accessible

- Early Voting

- Same Day Registration

- Mail-in Voting
  - *Ohio Democratic Party v Husted* (6th Cir. 2016)
  - *NC NAACP v McCrory* (4th Cir. 2016)

Nov. 28

Moving Forward – Voting Proposals

- Election Day Holiday

- Internet Voting

- Universal Voter Registration

- Voting Rights Advancement Act
Dec. 5
A Comparative Look – Elections and Voting Around the World
  • Readings on website
Dec. 12
  • A Fundamental “Right to Vote?” (Keyssar, p. 291)
  • Final paper presentations
Dec. 19
Final Papers Due