



C O L L E G E O F G E N E R A L S T U D I E S

C A P S T O N E 2 0 1 5

ETHICS, POLITICS, AND THE LAW

The concept of a capstone project is older than, and certainly not unique to, the College of General Studies. A final research project has historically been considered the culmination of a liberal arts education. In addition to historical and academic meanings of the term, there is an architectural sense to the word “capstone.” A capstone is the final block that is placed on top of a construction project to tie the whole structure together. Further, in the language of the building industry, each layer of brick is called a “course.” Therefore, it is appropriate to use the word “capstone” for our final project at the College since it will be the final stage of your education here, the last course which caps two years of study.

As you begin this project, keep two thoughts in mind. First, just as the construction of a building is not an individual effort, but rather the culmination of the labors of an organized group, so too is the Capstone Project a group effort. You will be expected to work together for the success of your group. The more that each individual gives to the group, the more each person will gain from the month’s work. The final product will be better and your paper will be more rewarding. Secondly, the Capstone paper is *not* to be merely a fifty-page research term paper. Instead it should be a synthesis, or combining of separate elements to form a coherent whole. The Capstone is also a kind of drama, requiring an act of imagination as you assume the roles of experts or advocates and present your findings in real-world formats. Research is, to be sure, an indispensable part of the project; but you will be expected to construct arguments, to analyze and synthesize this research in order to make a proposal or reach a verdict and justify your conclusions. In other words, research is more than gathering raw data as an end-in-itself. What is important is the synthesis of these data into a meaningful whole which, if done properly, will be greater than the sum of its parts.

Introduction

It has been observed that the United States of America was founded by lawyers. They set up a constitution with an independent judiciary and a Supreme Court to interpret the meaning of that founding document. Throughout American history many issues have been resolved by court decisions.

A political community may be conceived broadly as a rule-governed assembly of individuals who are called upon to base their public conduct on a common set of laws. But such an arrangement raises ethical questions as well. Moral absolutists like Plato and Kant share a conviction that there can be a difference between what is ethical and what is legal. These philosophers believe in an objective standard of rightness or goodness with which the laws of a state may or may not accord. Therefore they seek to improve the laws by bringing them nearer to this higher standard of justice. On the other hand, moral relativists, like Machiavelli and Hobbes, admit no measure of rightness higher than conventional law. According to such philosophers, a citizen does the right thing simply by adhering to the human-made laws of his or her political community. Yet even moral relativists recognize that the laws must be interpreted and that there can be foolish laws in need of reform. Absolutism and relativism also have their respective drawbacks. The former can be inhumanly rigid, as in theocratic states; the latter can lead to wavering, unequal treatment, and corruption by special interests.

Political philosophy evokes similarly thought-provoking questions: Should we maintain a belief in human rights that are “natural” and hence universal, or is the very idea of “unalienable rights” (e.g. rights to life, liberty, property, and the pursuit of happiness) a mere construct or even illusion? In which ways do rights imply duties? Should we base the legitimacy of a political regime on some sort of “social contract” between ruler and ruled and, if so, what are their mutual duties and obligations? Is democracy (whether in pure or republican form) the best possible form of government in all circumstances? How are the rights of individuals and minorities to be assured? With reference to the United States and other industrialized Western nations, are there any possible tensions or even contradictions between the underlying principles of a democratic political system and those of a capitalistic economic system? And, within any given political regime, what is the proper relationship between the individual and the government?

This year’s Capstone topics include some of the most pressing political, legal, and constitutional issues of our time. The syllabus invites you to think like attorneys and political philosophers, to carry out legal research, and to grapple with some of the most serious contemporary ethical and legal debates.

MECHANICS OF THE CAPSTONE PROJECT

1. Groups: The Capstone Project is a group project. The groups, each made up of 5 to 7 students, will be organized according to criteria established by your team’s faculty. You will be a member of the group during the entire project and each group will need to work out for itself some form of division of labor and responsibility. Each member of the group will be responsible not only to herself or himself, but to the other members as well. We encourage you to use Google Documents, DropBox, Google Wave, or other group projects tools to add to, edit, and co-edit your Capstone paper. We especially encourage you to document your contributions to the group’s work using E-Portfolio. Each student should create a specific Capstone tab for his or her work on the E-Portfolio site to document individual contributions. This should be done by listing the work you accomplished during each week of the project. In addition, we request that you use your E-Portfolio to assess your experience of the Project after the final report is submitted on April 27

but before the oral defenses begin the following week. Instructions for this assessment will be made available before the end of the Project period.

2. Project Grades: You will receive one grade for the Project as a whole. This grade will make up 25% of your semester grade in Natural Science, Social Science, and Humanities. There will be three components of the grade: the written report, the oral defense, and your individual participation in the project. You will be evaluated as a *group* on the written report (in other words each member of the group will receive the same paper grade), but as *individuals* on the oral defense and participation. Thus, each individual will be evaluated on the paper, his or her performance during the oral defense, and participation in the total project. Your final Capstone grade will be a combination of these three components.

3. Reporting of Capstone Grades: No Capstone grades will be released until the conclusion of all oral exams. This is necessary because team faculty do not assign Capstone grades until all orals are finished. Your faculty will discuss the mechanics of reporting grades to you. Note that you will receive only your individual Capstone grade, as this is what constitutes 25% of your semester grade in each course.

4. The Written Report: The length of the Capstone paper should be no more than 50 double-spaced pages. This does not include preliminary pages (table of contents, abstract, etc.), or endnotes, bibliography, or appendices. Copies of the report must be provided for each faculty member and also each member of the group in order to prepare for the oral defense.

5. The Oral Defense: After the final report has been submitted to the faculty, your group will meet at an appointed time to defend its work before your team faculty. The oral defense usually lasts two hours. Each group member should be prepared to answer questions on all aspects of the report. **Again, feedback will be offered during the oral and not through written comments.**

6. The Project Schedule: The project will begin on Friday, March 27 and continue to the end of the semester on Friday, May 8. This period of time will be subdivided as follows:

a. Capstone will begin with a kickoff assembly for each team on Friday, March 27. Unless you have a conflict with an elective, be sure to attend. The event will take place at the same hour as each team's Monday Humanities lecture and in the same room.

b. Individual groups will have scheduled meetings with their faculty twice during the week of March 30 and once during the week of April 6.

c. The period from April 8 through April 23 will be devoted to writing, editing, copying, and binding the finished report.

d. The written project report will be due at **NOON** on Friday, April 24. **THERE WILL BE NO EXTENSIONS.**

All sophomores are to be present in Jacob Sleeper Auditorium at NOON, Friday, April 24, at which time all Capstone Projects will be collected by faculty teams.

e. There will then follow a period from Monday, April 27 to Friday, May 8 during which your group's oral defense will be scheduled. Scheduling of the orals is carried out by the faculty teams.

7. Statement on Plagiarism: To plagiarize is "to take (ideas, writings, etc.) from another and pass them off as one's own" (*Webster's New World Dictionary*, 3rd College Edition, New York: Simon and Schuster, 1988, p. 1031). You are expected to indicate sources using approved

techniques. Since students are often confused about the use of quotation marks, the faculty has established the general rule that whenever five words are copied consecutively from another author, the material must be put in quotation marks; failure to do this is plagiarism. Students should note that the sources of ideas and thoughts, even though paraphrased in one's own words and expressed in what is commonly called an indirect quotation, must be credited.

8. Turnitin and the Internet.: Students will be required to submit their own individual portions of the project to an online plagiarism checker. BU has a contract with Turnitin and team faculty will set up a Capstone Turnitin project via their Blackboard Learn sites. This service not only checks your writing for originality by comparing it to thousands of other websites, both internal to BU and external, but also provides a grammar and spelling checking service to improve writing. Both faculty and students can learn more about this service via:

<http://www.bu.edu/tech/support/desktop/distribution/turnitin/blackboard/>. Students may submit multiple revisions of their writing to this service and faculty will be able to access reports on all students. Students should submit their portions of the Capstone prior to the final editing of the project to ensure that all group members have properly attributed sourced material and have eliminated all spelling and grammatical errors. Failure to submit your own portion of writing to this service may have an impact your individual grade on the Capstone Project, depending on the specific requirements of your team's faculty members.

The Internet can be a valuable resource for you during this project, but most information available on the Internet is not checked or regulated, and therefore is not necessarily accurate. However, you can find authentic research sources through the Internet by carefully reading a web site. Often, a helpful bibliography is posted at the end of a web site. Use of Google Scholar can often point you to helpful primary sources, but note that the BU Library website and its physical building will provide you with the greatest and most useful sources. In addition, the BU librarians will have set up a special site for the Capstone topics that will greatly help you find sources—you should use this site as much as possible when getting started on your topic. You should consult with your team faculty regarding other types of information that they consider acceptable for use in the Capstone, and for guidance in proper methods of citing internet sources.

THE GROUP'S IDENTITY

Each Capstone group is charged with the task of formulating a policy recommendation or court decision on an issue that is related to the theme of ethical problems in various fields of contemporary public life. For that purpose, the group may constitute itself as a panel of experts that has been charged with the responsibility of surveying the history and scope of an appropriate problem, considering the many possible solutions, and recommending what it determines to be the best alternative. The group may be a special commission of inquiry, bureaucrats in a government agency, an independent panel of scholars or citizens, etc. The group will consider the ethical, philosophical, social, political, scientific, and technological implications of the chosen problem and of the policy. The research necessary to formulate such policy recommendations should reflect the scientific method of investigation.

FORMAT OPTIONS FOR THE WRITTEN REPORT

Your group may choose to act either as an informed panel investigating one of the problems outlined later in this syllabus and developing a recommendation that is presented to a government agency or international group (**Policy Recommendation Format**), or to act as the arbitrator in a dispute, deciding between two conflicting advocates. The group argues both sides of the contention and then the group makes the final decision (**Adversary Format**). Once you choose your topic you should discuss the format of your presentation with your team faculty.

I. POLICY RECOMMENDATION FORMAT:

If your group chooses this format you will set yourselves up as a commission that is charged with investigating a specific problem (e.g., affirmative action policy) and will through your investigation develop a realistic recommendation as a solution to the problem. Your recommendation will be presented to the proper policy enforcing agency, the U.S. House or Senate, a state legislature or local entity, a government agency, international organization, or even a private corporation. Your paper should follow these general guidelines:

A. Introduction: Clearly state the problem you are investigating, why it is important to investigate this problem, and to whom you will be presenting your recommendation. Your introduction should make the readers realize the nature of the problem, and why a solution is needed.

B. Discussion and Development of the Problem: This section of the paper should provide the background information on the problem and present data on all its aspects. Do not simply outline the research you have done on the issue, but present data that draw together all aspects of your research and help to express the **controversy** that makes your topic a **problem**. This section organizes and presents data that:

- 1) outline and develop the problem,
- 2) develop the various and most likely competing responses to the problem,
- 3) direct you toward, and ultimately support, your policy recommendation.

C. The Recommendation: Your recommendation should be a logical outcome of the data and background you presented in section B. It may be a recommendation that has already been proposed (which you discovered from your research); it may combine various aspects of different published proposals, or it may be a unique solution. This section should reiterate what data support your recommendation and why your recommendation is superior to others. You should also be careful to include what values (scientific, ethical, social) you used to develop your recommendation. Your recommendation should be a realistic solution, not a utopian, pie-in-the-sky proposal. You should discuss how your recommendation will be implemented. You must consider the cost (how much and to whom) of the implementation of your proposal. Finally, you should argue the functional role of your recommendation. Who will benefit from your proposal: society, the individual, a country, the world? Is your recommendation a long-term solution or a short-term fix? The major point is not to sit on the fence with your proposal, but to make a statement and be able to defend it.

II. ADVERSARY FORMAT:

In this format your group presents alternative solutions and acts as the arbitrator of a dispute (e.g., for or against new Internet privacy regulation). Two petitioners argue their respective positions on the controversy and the arbitrator makes a final ruling in favor of one of the petitioners. Your paper will develop competing arguments for each side of the controversy in an orderly, logical manner, render a judgment, and explain the reasons for favoring one position over the other. Your paper should be organized as follows:

A. Introduction: Clearly state the controversy, and why it is a controversy. It may help to provide a brief history of the controversy in this section. Indicate who the two petitioners are and what positions they will be representing.

B. Petitioner I - Arguments: State the controversy that is being argued and what judgment is desired. Develop the history behind the controversy that will support this petitioner's arguments. Present, in a logical, clear manner, the data that support this petitioner's position. For

example, if you were arguing against the use of property taxes to fund public education you might want to present data showing that such funding leads to inadequate resources for schools in poor districts. Any evidence that will support the petitioner's position and sway the judgment towards their side should be presented.

C. Petitioner II - Arguments: Follow the same approach as above. It is advisable to present counter-arguments and evidence that opposes the other petitioner's position. These arguments can be developed as in a point-counterpoint debate; for example, if you were arguing in favor of the current use of property taxes to fund public education you might want to provide data that shows that it does provide adequate resources. Petitioner II should present evidence that will support their position and sway the judgment towards their side.

D. Judgment by the Arbitrator: State what the ruling of the arbitrator is, then logically develop the rationale for the ruling. Data presented by both petitioners should be used to support the ruling. You should strive for a realistic ruling and one that is consistent with the arguments presented. Be careful not to rule against a strong argument, or if you do, be able to justify your ruling. Try to be realistic in the ruling and consider such points as implementation of the favored position, cost to both society and the individual of the ruling, and what values were important in arriving at your ruling.

General Points: Be careful to present opposing positions objectively. Do not weaken one petitioner's arguments just to arrive at a ruling favored by the group. It strengthens this type of paper to present arguments as near to equally strong as possible.

FOCUSING YOUR MAJOR TOPIC AREA

After your group chooses a major topic area and has decided which type of format to use, you should ask yourselves some of the following questions to help focus your area.

1. What *specific* problem do you want to examine? A word of caution: Do not be *too inclusive* (e.g., "We are going to study Free Speech."). You must define a problem which is manageable within the framework of the Capstone project. Your faculty will help with this task.
2. Investigate your problem from an historical perspective. Include any pertinent background information you can find.
3. What is the current thinking about your issue? Whether or not you elect to use the adversary format, you should present opposing views about the issue and become familiar with the disagreements surrounding the issue. This lends more credibility to your eventual policy recommendations.
4. What are the various alternative policies or solutions to the problem you are investigating? Be sure to discuss each of them.
5. Your group must select one of these alternatives or you may create an alternative you believe is superior to any suggested by your study of the literature. In constructing your solution you should draw upon your knowledge of ethics to justify the goals you seek to achieve and the means you propose to use.
6. How can your policy be implemented?
7. What are the implications of your recommendations? What are the political, social, economic, technological, and cultural ramifications of your suggestions?

TOPICS

I. The Right to Be Forgotten

The Age of the Internet has brought with it a new anxiety, that of being defined by a Google search over which individuals have no control. Damaging public records, unflattering photographs, regrettable posts, and adolescent political rants may all turn up when prospective employers, or prospective dates, check you out.

In January, 2012, the European Commission for Justice, Fundamental Rights, and Citizenship formally proclaimed a “right to be forgotten” for people living in the European Union. This declaration was prompted by a case brought by a Spanish citizen who objected to Google searches that featured a twenty-year-old notice of foreclosure for unpaid debts on a house he once owned. He claimed it damaged his reputation and his business. There have been plenty of other cases though, including a French mother trying to have pictures of her scantily clad teenage daughter removed, a Romanian woman who wanted details of her messy divorce case deleted, and a former British politician who insisted Google eliminate all links to a book about him he thought defamatory.

In May of last year, Europe’s highest court confirmed the right of individuals to influence what can be found out about them via online searches with the sole limitation being “particular reasons” not to do so. The court did not spell out these reasons in much detail but did assert that “as a general rule” search engines should place the right to privacy above the public’s right to information. Shortly thereafter, Google announced it would endeavor to comply, though the company opposes the idea and claim they never intended to have an editorial function, let alone the responsibility for determining which information about what people is or is not relevant, outdated, or in the public interest. Still, as codified in Europe, if Google and similar entities do not go along with the decision they would open themselves up to costly law suits and financial penalties, even for not removing items complainants posted themselves. This puts the company in the position of determining what is a “youthful folly” and what isn’t, which information is too old to be of public interest and which isn’t, what is good for the public to know and what isn’t. The same would be true for Wikipedia, Facebook, Yahoo, etc.

Some see this right as necessary and fair in an age when almost everything about us can show up in a permanent, public, easily searchable record. They speak of the right to be forgotten leading to a “purification of the Internet” and laud the European court’s decision as a step forward for human rights and dignity. Others worry that a right to veto the Internet might not just turn a Google search into something resembling a self-aggrandizing About.me page but could lead to serious abuses by individuals with something to hide, political censorship, even an Orwellian rewriting of history.

The Commission’s decision revealed a contrast between European and American cultural and legal values. Most, though not all, American legal scholars, while conceding that the Internet does raise problems regarding privacy rights, see the EU policy as a poor solution and argue that the European ruling is contrary to the First Amendment. European commentators generally support the policy, though by no means unanimously.

Research the issue of the right to be forgotten, including its origins in French law, details of the European court decision, and the views of those who favor and oppose it. Then imagine a civil case brought before a U.S. federal court asserting the right to have specific information removed from Internet searches. Using the adversary format, argue the case, reach a decision, and justify it.

2. Teacher Tenure and Seniority in Public Schools

For years there have been bitter arguments in many states over whether it is good to grant job security guarantees to public school teachers through tenure and seniority and the role of teachers' unions, which pursue these conditions in contract negotiations. Tenure makes it difficult to terminate a teacher while seniority means that staffing cuts will be made on the basis of years of service.

The arguments for tenure and seniority are that they help to attract talented people to a profession that pays relatively less than others. An experienced teacher is a great asset in the classroom and as a mentor, and seniority reflects this value. Years of service is an objective standard on which to make staffing decisions while "competence" is not. Finally, these practices insulate teachers from unwarranted community and administrative interference.

Those opposed to these practices argue that they keep incompetent or burnt-out teachers in front of students, that they hinder significant and needed reforms, that they are unfair to students, particularly those with disadvantaged backgrounds, and that seniority, though an objective standard, has nothing to do with a teacher's ability or the quality of his or her work.

This debate has gone on in state legislatures, among members of local school boards, between superintendents and union leaders, as well as among members of the public. It has become not only a policy issue but a political one, too. Democrats and liberals generally back the unions and Republicans and conservatives usually oppose them.

Last year, however, the issue became a legal and constitutional one. In deciding a suit before the California Superior Court, *Vergara v. California*, Judge Rolf M. Treu struck down the laws on tenure and seniority in California as unconstitutional because they violated the right of students to a good education. "Substantial evidence presented makes it clear to this court that the challenged statutes disproportionately affect poor and/or minority students," he wrote. "The evidence is compelling. Indeed, it shocks the conscience."

David Welch, the Silicon valley magnate who funded the suit, promises to file similar cases in states with powerful teacher unions and tenure laws. A few states have already eliminated tenure and seniority from teacher contracts and several more have significantly modified the guarantees.

Using the adversary format, choose one of these states, formulate such a suit, decide who the plaintiffs and defendants would be, formulate the strongest arguments for both sides, then decide it.

Some of the issues you should examine: the basis on which tenure is awarded (after a significant probationary period and careful assessment of performance or merely at the end of a set period of employment); the history of teacher tenure (how and when it came about), and the experience of those states and districts which have done away with tenure and seniority protections.

Here is a link to Judge Treu's decision:

<http://studentsmatter.org/wp-content/uploads/2014/06/Tenative-Decision.pdf>

3. Redistricting for the House of Representatives

Congressional districts are revised after each decade's census. In thirty-six states redistricting is the prerogative of state legislatures. Due to partisan bitterness and the precise demographic analysis made possible by computer technology, it has become routine for whichever party controls the legislature to construct districts for their own political gain or to protect incumbents—in short, Gerrymandering (a Massachusetts invention, by the way). Many political

scientists believe it is this partisan redistricting that has contributed to the stalemate that has paralyzed the Congress. For instance, safe districts for Republicans and Democrats lead incumbents to fear primary challenges from the extreme right or left and so makes them intransigent and fearful of the consequences of compromising, or even entering into discussions, with members of the other party. Moreover, districts contorted to make them “safe” lack the cohesion and shared interests the Constitution seems to have had in mind for the House of Representatives.

In an attempt to eliminate such abuses, five states have set up independent bipartisan commissions to carry out redistricting and two others use independent bodies but leave the final decision to the state legislature. Movements for redistricting reform have been established in many states, backed by local activists and national organizations like Americans for Redistricting Reform and Common Cause. Many disputes over redistricting have wound up in the federal courts. In 2004 a split decision by the Supreme Court in effect permitted elected officials to choose their constituents. The result has been that each party now controls as much as two hundred safe seats so that a relatively small number of competitive districts in a few states can decide which party controls the House of Representatives.

One problem for the reformers is that even non-partisan commissions can be turned to partisan purposes. This is why most reformers favor a national system to ensure competitive elections, legislative diversity, and proportional voting to make elections more democratic and the House of Representatives more representative. While it is unclear that national legislation would pass a Constitutional challenge, there is precedent for federal regulation of redistricting, as federal law makes redistricting that disenfranchises racial groups illegal.

What is the purpose of redistricting? How does it work, and under what rules? What federal legislation regulates redistricting? What court decisions affect redistricting? What has been the experience of those states that have set up non-partisan commissions?

A report on this topic could take the form of proposed national legislation, an argument before the Supreme Court on the constitutionality of such a law, a court case over a proposed redistricting plan in a single state, or a debate between advocates of the current system and those who wish to reform it.

Good online sources with which to begin with are www.fairvote.org and <http://www.commoncause.org/site/pp.asp?c=dkLNKtMQIwG&b=4949997>

Considerable recent and valuable data can be found at:

http://ballotpedia.org/State_Legislative_and_Congressional_Redistricting_after_the_2010_Census

4. Should Civil Disobedience be Prosecuted?

Civil disobedience has a long history and is closely associated with democratic cultures. Plato's *Crito* raised the issue first. Socrates refuses both to evade Athenian law and to submit to the will of the Assembly that he forgo his teaching. Henry David Thoreau's essay "On the Duty of Civil Disobedience" was inspired by his ethical objections to slavery and the Mexican War. Refusing to pay a poll tax that would support the latter, he spent a night in a Massachusetts jail.

I cannot for an instant recognize that political organization as *my* government which is the *slave's* government also Unjust laws exist; shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? . . . [The government] can have no pure right over my person and property but what I concede to it. ("On the Duty of Civil Disobedience," in *Walden and On Civil Disobedience*, New York: Mentor, 1959)

Thoreau's idea of non-violent resistance to unjust laws influenced two of its greatest 20th century practitioners, Mahatma Gandhi and Martin Luther King, Jr. As these noble examples imply, it is the willingness of a dissenter to be punished by the law he or she intends to change

that provides his or her proof of sincerity and respect for the concept of law itself. It should also be considered that a dissenter's idea of justice may not necessarily be superior to that of the majority.

One controversial instance is presented by the case of Edward Snowden, called traitor by some and heroic conscientious dissenter by others and for the same action, appropriating and releasing vast quantities of data collected by the National Security Agency. Mr. Snowden depicts himself as one practicing civil disobedience; however, he did not, like the others, face the law. He fled to Russia instead.

Whether or not the claims to moral authority of somebody like Edward Snowden are well founded, it is obvious that the motives of dissenters are distinct from those of common criminals. In view of this, should those who practice civil disobedience be prosecuted like any other lawbreakers?

The conventional view held by many thinkers is simply that conscientious dissent is the same as lawlessness and not to prosecute and punish dissenters would undermine the fairness of law. As Captain Vere observed, the law must apply impartially to all, even those who may be *morally* justified in violating it. This is the basis of a civil society. But there are other views. For example, the philosopher and legal scholar Ronald Dworkin argues that:

Society "cannot endure" if it tolerates all disobedience; it does not follow, however, nor is there evidence, that it will collapse if it tolerates some. (*Taking Rights Seriously*, Cambridge: Harvard University Press, 1977, 206)

In fact, Dworkin believes that society may *benefit* by tolerating this kind of dissent and proposes there are good reasons for not prosecuting conscientious dissenters:

One is the obvious reason that they act out of better motives than those who break the law out of greed or a desire to subvert the government. Another is the practical reason that our society suffers a loss if it punishes a group that includes . . . some of its most thoughtful and loyal citizens. (*Op. cit.*)

The contrary argument is that those who receive the benefits of living in a law-abiding society shoulder its burdens and must not undermine the law, just as Socrates said to Crito. Erwin Griswold, Solicitor General of the United States during the Vietnam War, argued that "[It] is of the essence of law that it is equally applied to all, that it binds all alike . . . For this reason, one who contemplates civil disobedience out of moral conviction should not be surprised and must not be bitter if a criminal conviction ensues."

Is it a valid privilege or even be a positive duty of citizenship to violate laws one believes to be unjust? Are conscientious people who dissent in a civil fashion benefactors of the state, as Socrates claimed he was, rather than its enemies? In Dworkin's view, government "should make accommodation for [such citizens] as far as possible . . ."

Research the history of civil disobedience both as theoretical concept and as political practice. Examine the legal precedents and philosophical arguments over its prosecution. Consider the discretion afforded prosecutors. Consider also how social contract theory looks on these activities as well as other theories of how society organizes itself. Then imagine a case of civil disobedience to test the principles.

For a relevant recent and local case, see:

<http://thinkprogress.org/climate/2014/09/10/3565445/lobster-boat-district-attorney-climate-history/>

5. Affirmative Action and Higher Education

Last year the Supreme Court upheld a Michigan law banning the use of racial criteria in college admissions. The justices found 6-2 that a lower court did not have the authority to set aside a 2006 referendum supported by 58% of voters that prohibits publicly funded colleges from

granting “preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin.” Justice Sotomayor vociferously dissented:

For members of historically marginalized groups, which rely on the federal courts to protect their constitutional rights, the decision can hardly bolster hope for a vision of democracy that preserves for all the right to participate meaningfully and equally in self-government. . . . This refusal to accept the stark reality that race matters is regrettable.

Justice Kennedy wrote for the majority:

This case is not about how the debate about racial preferences should be resolved. It is about who may resolve it. Michigan voters used the initiative system to bypass public officials who were deemed not responsive to the concerns of a majority of the voters with respect to a policy of granting race-based preferences that raises difficult and delicate issues.

The decision was just the latest turn in a decades-long legal and political battle over whether state colleges can or should use race and gender as a factor in choosing what students to admit. The decision also highlights the question of whether the matter should be decided by legislatures, courts, or popular referenda.

Here is a series of questions you might need to consider. What has been the history and purpose of affirmative action legislation in the United States? What procedures are mandated and illegal? Is affirmative action aimed at making up for past discrimination, the legal promotion of diversity and equal opportunity within our institutions, or is affirmative action itself a form of discrimination? What is the distinction between using affirmative action guidelines to reflect the diversity of our population and the establishment of quotas? Is affirmative action good or bad for its apparent beneficiaries? Are quotas for hiring, appointments, and admission to educational institutions good or bad things, or were they once necessary but no longer needed? Are considerations of ethnic background, gender, and economic class legitimate criteria for institutional preferences? Should some of these categories be stressed over others—especially, as many have argued, class over both race or gender? Two recent books examine this issue in detail, Sheryll Cashin’s *Place, Not Race* and Carnavale, Rose, and Strohl’s *The Future of Affirmative Action*. How should a multi-ethnic, multi-racial nation with a history like that of the United States live up to its traditional ideals of equality and fairness, and are these ideals still generally agreed upon? Are they furthered or undermined by affirmative action? What are the ethical positions of those who favor affirmative action and those who oppose it? Is affirmative action so vexing because it sets two core American values against one another, equality and merit?

You could present your findings in the form of a general policy statement for a state or a college or university. Or you could create an imaginary court case testing affirmative action policy, such as that of the Commonwealth of Massachusetts under Executive Order 526:

<http://www.mass.gov/governor/legislationexecorder/executiveorder/executive-order-no-526.html>

6. Money in Politics and Campaign Finance Reform

According to recent decisions by the US Supreme Court, money given to fund political causes is a form of constitutionally protected free speech. Furthermore, according to this argument, corporations and unions have the same rights as individuals when it comes to certain ways of expressing their political interests. And money given to special groups can also be used for political campaigns when it is disguised as “issue advocacy.” Some believe that this is a correct

interpretation of the First Amendment, but others fear that it leads to political influence peddling and outright bribery. The public's trust in their representatives may be undermined when political positions and votes are possibly influenced more by money than by intellectual debate.

The concern with large-scale contributions to candidates and causes has led to several major attempts to enact relevant legislation, beginning as early as the Tillman Act of 1907 and leading up to the Federal Election Campaign Act (FECA), which was enacted in 1972. The long-running struggle for legislative reform culminated in the Bipartisan Campaign Reform Act (the BCRA, also known as "the McCain-Feingold Act," after its Senate sponsors) of 2002. In December 2003, the Supreme Court had upheld the constitutionality of most of the BCRA in *McConnell v. Federal Election Commission*.

But opponents of such reform have argued that political contributions are simply the expression of an individual's or group's right to free speech. This argument dates back to the *Buckley v. Valeo* decision in 1976 and two recent Supreme Court decisions have followed a similar logic: *Citizens United v. Federal Election Commission* (2010) and *McCutcheon v. Federal Election Commission* (2014). The majority's decision in the former case ruled that the BCRA's ban on "independent expenditures" by corporations, labor unions, and other associations (most especially for funding "electioneering communications" such as political advertisements) violates the First Amendment's guarantee of the right to free speech. The majority's decision in *McCutcheon* ruled as unconstitutional the FECA's establishment of an "aggregate limit" on contributions by individuals to national political parties as well as to the campaign committees of federal candidates.

The *Citizens United* and *McCutcheon* verdicts were extremely close (5-4) decisions and there are currently other proposals for legislative reform. Imagine that there is a change on the court in the near future and certain members of the Congress are encouraged to try new legislation that goes straight to the Supreme Court. Such a case would require a consideration of prior decisions along with the actual merits of regulating campaign contributions. Research the relevant court cases as well as the various pieces of legislation dealing with campaign finance reform. Do you agree with the view that too much money in politics can undermine the public's overall trust in the political system and that limits and restrictions should be put into place? Or do you agree with the majority in the recent Supreme Court decisions? Should any distinction be drawn between individual and corporate contributions, if any? Which elements of the BCRA ("McCain-Feingold") would you support or not support? An adversarial format may work best when evaluating the arguments of both sides in such a debate.

7. War Crimes

The idea that even in war there are acts that cannot be justified has a long history. In the 6th century B.C.E. the Chinese philosopher Laotse wrote that "a good general effects his purpose and stops . . . effects his purpose but does not love violence." The Chinese general and military philosopher Sun Tzu, the biblical book of Deuteronomy, the Hindu *Book of Manu*, all address regulation of military action. Plato wrote of the prosecution of war crimes in *The Laws*, and the Roman lawyer and philosopher Cicero developed the concept of *jus ad bellum*, or the just war and its restrictions which was taken up by Christian theologians, secularized in Italy during the Renaissance, and codified in Holland by Hugo Grotius in the 16th century (See Paul Christopher, *The Ethics of War and Peace*, 2nd edition, New Jersey: Prentice Hall, 1999, Chapters 1-6).

People and governments are understandably reluctant to punish soldiers fighting for them, and the established practice was for governments to be responsible for policing their own troops' behavior. American military officers convicted of war crimes during the savage guerrilla war in the Philippines were scarcely punished at all. After World War I Germany was permitted to prosecute all 896 members of its military accused of war crimes by the Allies. Only six were convicted; all were given short sentences and permitted to escape.

The approach to war crimes changed after World War II when international tribunals were first set up by the Allies to try war criminals. The time had come to distinguish between

necessary military actions and activities that rose to the level of what were called crimes against humanity. At Nuremberg and Tokyo many were convicted and some executed. During the Cold War no such courts were established, subjecting the post-WWII trials to the lingering charge of “victor’s justice.” However, in the early 1990s two international criminal tribunals were established by the U.N. Security Council to try war criminals from the Former Yugoslavia and Rwanda. Since then more cases have been brought before the International Criminal Court established at the Hague under a treaty the United States has not ratified. Alleged war crimes by American personnel are tried by American military courts.

The obvious conflict in trying war crimes, or even defining them, is that between a soldier’s obligation simultaneously to follow orders and to be legally and morally responsible for his or her actions. The first principle tends to limit any culpability under the second. “I was only following orders” was the standard defense at Nuremberg. The 4th of the Nuremberg Principles, however, states that: “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him” (Yehuda Melzer, *Concepts of Just War*, Leyden: A.W. Sijthoff, 1975, 61).

This distinction might be adequate if the laws of war were themselves clear. For example, international law permits “reprisals” which, if they were not reprisals, would be war crimes. Moreover, virtually all the restrictions in the Nuremberg Principles as well as the Geneva and Hague Conventions—all accepted by the United States—may be violated to meet the exigencies of “military necessity.” Finally, there is the problem of holding soldiers responsible for distinguishing lawful from illegal commands, as required by the U. S. military. (See Leon Friedman, *The Law of War: A Documentary History*, 1732).

In writing a report on the topic of War Crimes you should research the history of the concept, American laws concerning war crimes, including the U.S. Army Field Manual, executive orders, and congressional legislation, as well as key legal precedents.

There are a number of ways you might approach this in a report. You may choose to invent a case and try it in an American military court. You could imagine hearings before a Congressional committee contemplating reform of existing laws and policies. You might explore U.S. policy on how to deal with war criminals who are not U.S. citizens, since the nation does not participate in the ICC. Finally, your group could debate one of the many issues surrounding the concept of war crimes.

8. A Democracy’s “Self-Defense”: Legally Banning Extremist Parties

This topic explores politics, ethics, and the law within an international context, with a special focus on Europe. While liberal modern democracies have faced an increasing threat of terrorism in the post-Cold War world, they have also experienced challenges from extremist and anti-democratic groups that form political parties and compete within the democratic process. Such groups can be either of the far left or the far right, though in recent years the greatest activity has been from right-wing nationalist, anti-immigrant, anti-EU parties. Examples are the “Golden Dawn” party in Greece, the National Front (FN) in France, the British National Party (BNP) in the United Kingdom, the National Democratic Party (NPD) in Germany, the “Tricolour Flame” in Italy, the Freedom Party in Austria, the Party for Freedom (PVV) in the Netherlands, the Sweden Democrats, and the Freedom (“Svoboda”) party in the Ukraine. A prominent example on the other side of the political spectrum is the “Left Party” in Germany.

The above-mentioned groups operate either fully or mostly within the democratic system. And yet for some critics, they pose a threat to democracy. These critics are mindful of what Hitler’s propaganda minister Joseph Goebbels said: “It will always remain one of the best jokes of democracy that it provided its mortal enemies with the means through which it was annihilated.”

Some have argued that extremist viewpoints should be confronted through open and honest debate rather than legal exclusion. Others are convinced that democracies must defend themselves. For example, the Welfare Party of Turkey was banned by that nation’s constitutional court in 1998, a decision that was upheld by the European Court of Human Rights. And Germany

has established a federal office for the protection of its democratic constitution. In 1948 US Supreme Court Justice Robert Jackson, fresh from his job as chief prosecutor at the Nuremberg trials, declared in a dissenting decision on the abuse of free speech: “The Constitution is not a suicide pact.” And Aharon Barak, former Attorney General and Supreme Court President of Israel, has similarly stated that “civil rights are not an altar for national destruction” (Jan-Werner Mueller, “Should Extremist Parties Be Banned?”, *IWM Post*, No. 112, Winter 2013/14, 5).

The question this topic poses is whether extremist groups, especially those with anti-democratic agendas, should be legally banned from the political process and whether this ought to be done by a non-partisan constitutional court. Furthermore, if this should occur in an EU member country, how should the European Union respond to such a ban?

One approach to the report would be to imagine that your group is an advisory committee that has been assigned by the European Parliament or European Commission to research this issue and present a policy recommendation. Another approach would be to use the adversary format and imagine a case before the European Court of Human Rights or the EU’s Court of Justice dealing with the attempt by a member nation to ban a specific party.

Along the way, you will need to consider some of the following questions: Should we make a possible distinction between “radical” and “extremist” parties? Should extremist groups be banned if they have not practiced violence against the government and their fellow citizens? Has there been a rise in extremist politics in Europe over the past decade and, if so, why? Can extremist groups be relied on to moderate their views once they begin to participate officially in the democratic process? How much political power have such parties actually achieved? What are the chief values and goals of specific far-left and far-right parties, and how do they help to explain why a given group has been labeled as “extremist” and “anti-democratic”?

9. Genetic Privacy

With progress in genomic research, concerns have arisen about the privacy of individuals’ genetic information. These were heightened due to the transference and even sale of medical information among companies.

The conflict over medical confidentiality is between an individual’s right to keep his or her medical information private and the claim of some organization or authority to access it. One reason for the controversy is that the term “privacy” is vague and has been applied in various ways in different political and legal contexts. There is no clear right to privacy spelled out in the U.S. Constitution, though the Supreme Court has found *implicit* provision for a right to privacy in the Fourth Amendment’s restriction on governmental searches and seizures.

In 1999 President Clinton signed the Gramm-Leach-Bliley Act (GLB), a major piece of legislation that permits the merging of banks, brokerage houses, and insurance companies. Under such a law, personal information could possibly be dispersed among various divisions and affiliates of a merged institution. The law offers no uniform privacy standards for medical records, and some critics are concerned that a bank merged with an insurance company, for example, might be able to access one’s medical history before granting credit. This is especially problematic when an individual’s medical records include genetic information about the potential for future illnesses.

A related development causing concern is the rise of genetic databanks. The Human Genome Project aims at identifying all possible sequences of human DNA and examining the possible effects and implications of various configurations of these sequences. It is likely in the near future that patients’ genetic make-up will become part of their record and many believe that such information should remain private, known only to the patient and his or her immediate physician. Insurance companies and potential employers might counter that they have a right to such information in order to assess risk.

In order to resolve such concerns, Congress passed the Genetic Information Nondiscrimination Act (GINA) in 2008. Senator Ted Kennedy called GINA the “first major new civil rights bill of the new century.” This significant and complex legislation bars group health plans and health insurance companies from denying coverage or charging higher premiums based solely on information about genetic

predispositions. The Act also prohibits employers from basing decisions about hiring, firing, and promotion on a person's genetic information.

Though GINA was passed with overwhelming support in both the House and Senate, it has been the subject of great debate. Groups such as the NIH's National Human Genome Research Institute and the Coalition for Genetic Fairness approved of the law because it would make patients more willing to submit to important genetic diagnostic tests and also help to prevent forms of genetic discrimination, especially in terms of access to health care and health insurance. Other groups, however, have criticized the law for being overly broad and ambiguous as well as giving the insured an unfair advantage over their insurers. Still others have criticized GINA for not being sufficiently comprehensive. They point out that the law does not cover all types of insurance, thereby leaving loopholes through which companies might access genetic information.

In *Maryland v. King* (2013) the Supreme Court ruled on the issue of genetic privacy when it voted 5-4 to allow law enforcement authorities to collect DNA samples without a search warrant from people arrested but not convicted of a crime. The majority concluded that such DNA-collecting is "reasonable" under the Fourth Amendment, as long as the arrest was made for "probable cause." The minority dissented vehemently, and the American Civil Liberties Union, among others, criticized this decision as being a "blow to genetic privacy."

Using the policy format, imagine that you are a Congressional committee assigned to evaluate the strengths and weaknesses of the Genetic Information Nondiscrimination Act and propose any necessary improvements to this important law. Or, using the adversary format, imagine that a new case has been brought to the Supreme Court, one that not only deals with DNA-collecting and/or genetic databank access but that also requires the Supreme Court to re-consider its earlier decision in *Maryland v. King*. Study, analyze, and evaluate the conflicts that may arise over an individual's right to genetic privacy.

10. Sex Discrimination and Equal Pay

According to data from the U.S. Census Bureau, women who work full-time earn an average of \$0.77 for every dollar men earn. Even when one compares women and men with the same education and experience levels working the same jobs, a gap of about 8% percent remains. In the eyes of many, these differences in pay would seem to violate both fundamental American ideals of equality and fairness and such statutes as the Fair Labor Standards Act of 1938 and the Equal Pay Act of 1963.

In 2013, the Paycheck Fairness Act was proposed to the Senate, but it has repeatedly been blocked from consideration. Few deny that pay inequities exist, and defenders of the act regard it as a useful means to move in the direction of "equal pay for equal work." Still, objections to the act are many. Some opponents argue that it will not fix the problem, while others assert that the nature of the problem is not that which is assumed by those who have proposed the act. Many claim that the act will be economically harmful, that it will result in a deluge of unjustified cases of discrimination that will cost small businesses and taxpayers exorbitant amounts, and that it will lead to job loss when employers have to let go women no longer interested in lower-paying jobs. Perhaps most biting, opponents claim that defenders are not interested in the rights of women, but are instead merely using them as pawns in pursuit of partisan political goals.

Is unequal pay a result of systematic discrimination or of choices made by individual men and women across their careers? Is the issue being used by politicians to win votes in future elections, rather than in the interest of rectifying discrimination? Would the passage of an equal pay statute hurt the economy, making lives worse not only for women, but for men as well? Can a new act address any problems that were not already taken into consideration by the Equal Pay Act? What could a new act offer that earlier measures did not?

A report on this topic could be presented in the form of a new policy recommendation regarding pay inequity to a Congressional subcommittee. Alternately, your group could stage and arbitrate a debate between supporters and opponents of the Paycheck Fairness Act. In either case, be sure you address precedents, evaluate the nature and causes of inequities, and account for the future implications of your solutions.

11. Paid Prioritization and Internet Regulation

The Federal Communications Commission (FCC) is considering the allowance of paid prioritization for the Internet. With paid prioritization, companies have the option of purchasing higher-speed service from Internet Service Providers (ISPs). One can easily see the appeal of such a choice for entities that depend almost entirely on the Internet for business, such as Netflix, Google, and Amazon. While the financial benefits for such parties are indisputable, many argue that paid prioritization violates the public interest. Private e-mail, for instance, will almost certainly remain in the slow lane. Perhaps more importantly, defenders of Internet neutrality claim that the creation of levels of access would disrupt the relatively egalitarian access to and distribution of information that has long been a hallmark of the Internet and, it may be asserted, important to the education and deliberation of a democratic citizenry. Furthermore, it is unlikely that small start-up companies would be able to pay the premiums for fast service that more established ones would find acceptable, thus exacerbating imbalances between large and small businesses. So far, the courts have offered mixed responses, which means that everyone on both sides of the question remains dissatisfied.

While the conversation is taking shape in a number of different fora, the White House and Congress have been focusing on matters of regulation. Among the points of debate are the laws, statutes, and acts that provide the FCC with its authority to issue rules. The Communications Act of 1934, for example, drew primarily on Article I, Section 8, Clause 3 of the Constitution, and delineated the terms for national regulation of “interstate and foreign commerce in communication by wire and radio.” Although the Act was updated several times, notably in 1982, it was only with the 1996 Telecommunications Act that the law received the serious revisions that have defined governance during the era of the Internet. So far, the FCC has understood the Internet as an “information service,” which means that it is regulated in a particular fashion that generally serves the interests of lobbyists working for large corporations. If the Commission redefined broadband as a “telecommunications service,” regulation would proceed on terms similar to those that are used to oversee such public utilities as electricity and telephones. In other words, one way to see the issue is as a part of the debate between economic interests and the public good.

Consider the following questions, among others: Is this a matter of the FCC’s authority? Is the FCC the appropriate entity for regulation of ISPs? Does the public have a right to information, and is restriction of access to the sort of information provided by the Internet a matter of copyright protection or censorship? How have information and telecommunications services been regulated in the past, and how relevant are those precedents to media in the “information age”? Do such proposed measures as the Online Competition and Consumer Choice Act address the most pertinent issues? Is this a matter of unfair business practice, or an abuse of political power?

One option for your report would be to imagine that you are bringing a case for consideration by a U.S. Court of Appeals. Using the adversary format, decide who the plaintiffs and defendants would be, craft the strongest possible arguments for both sides, and judge the case. Alternately, craft a policy proposal for consideration within the FCC. The proposal should defend a position that would best answer to the commission’s history and goals.

12. Immigration Enforcement

For some, this nation is only possible because of an openness to immigrants. Such openness promises much to aspiring citizens and, in the eyes of many, maintains a politically healthy mix of populations. Others recognize that any myth of America’s open arms overlooks a history of discrimination regarding new immigrants. Over the past decade, a variety of factors—including fears of terrorists and heightened resentment of illegal workers during the recession—have combined to make the hot topic of immigration even hotter. U.S. Immigration and Customs Enforcement (ICE) is responsible for identifying and dealing with illegal immigrants, and while this federal agency has grown dramatically in recent years, the task of always enforcing all immigration policies everywhere is practically impossible.

Proposed statutes like the Strengthen and Fortify Enforcement (SAFE) Act are designed to ease

the burden of the ICE and related national agencies by allowing state and local legal systems more opportunities to regulate immigration infractions. For those desiring stricter immigration policies and enforcement, the SAFE Act is a model proposal, for it raises the stakes for those who enter or remain in the United States illegally. In this way, supporters claim, undocumented or poorly-documented criminals could be more easily prosecuted, jobs could be preserved for citizens due to the deportation of illegal workers, and terrorist threats could be diminished. Opponents of stricter immigration measures claim that the costs of immigration enforcement on the level the SAFE Act describes would be even more impossible to support than are extant laws. State enforcement, opponents claim, is problematic in several additional ways: families are more often divided, constitutional violations are more likely, and racial profiling is probable.

What people on both sides of the argument agree on is the need for immigration reform. While many such proposals have been brought before Congress during recent years, no substantial changes have been approved. In May, 2014, the President, who decides much about how and where the laws are enforced, acknowledged that the best way to deal with the challenges of enforcement is largely to ignore illegal residents who are not violating any other laws.

In undertaking this topic, your group will want to consider a number of questions, including the following: Are current immigration policies too lenient or too strict? What aspects of these policies are the least effective, and which place the greatest burden on those responsible for enforcement? Should states have more power to enforce immigration laws, or is immigration strictly a federal matter? Are any proposed policy changes likely to have a significant impact on any aspect of immigration enforcement efforts?

For a project on this topic, you may prepare a policy proposal for the federal or a state legislature regarding some aspect of immigration enforcement. Alternately, employ the adversary format in a treatment of the same topic: decide who the plaintiffs and defendants would be, craft the strongest possible arguments for both sides, and judge the case. You will likely find it helpful to consider some of the bills related to immigration policy currently under consideration in Congress. Here is a good site with which to begin: <https://www.govtrack.us/congress/bills/subjects/immigration/6206>.

13. Public Employee Trade Unions and the Right to Collective Bargaining

In 2011, two states, Wisconsin and Ohio, enacted laws limiting the collective bargaining power of trade unions representing state and local employees. In Wisconsin, the law withstood a recall campaign directed against several legislators who had voted for its passage. Legal challenges to the law, known as Act 10, ended in July 2014 when Wisconsin's highest court upheld the law in full.

In Ohio, the law was overturned in a statewide referendum. However, in June 2014, public unions received another blow when the U.S. Supreme Court, in a 5-4 decision, limited their right to collect fees from a certain group of non-members, home-care aides, because they are not technically full-time state employees. This decision involved a case that originated in Illinois.

The Wisconsin law prohibits collective bargaining over pensions and health coverage and requires that any salary increase for public workers above the level of inflation be approved by voters in a referendum. It also increases the percentage of their salaries public employees must contribute to their pensions and health care plans. However, the Wisconsin law did not affect the collective bargaining rights of police and firefighters. The Ohio law did, which appears to be one of the principal reasons it was overturned by the voters.

Advocates of these laws argue that state and local governments can no longer afford to pay the heavy pension and health care obligations they have incurred under collective bargaining.

They point out that these obligations are so heavy because unionized public employees pay a very small percentage of what these benefits actually cost, far less than do employees in the private sector. As a result, wages and benefits of unionized public employees currently exceed those of workers in the private sector, with most of that difference consisting of benefits. This is a burden that hard-pressed private sector workers, who make up the great majority of taxpayers, should not be forced to bear.

Opponents of these laws argue that they compromise basic rights won by workers after decades of hard struggle. They maintain that the chief reason municipalities and states face insolvency is that tax laws allow the wealthy to avoid paying their fair share of the cost of government. They often add that the real goal behind the movement to deny public workers collective bargaining rights is to destroy or at least seriously weaken the American trade union movement as a whole.

If your Capstone group chooses to investigate this problem, you should pick a specific state where the issue of public union collective bargaining is being debated or where there is a serious financial crisis (New Jersey, California, or Florida would be good candidates). If you choose the policy recommendation format, your group could take on the role of an advisory body proposing a law to a legislative committee. If you choose the adversary format—which is well suited to this topic—a good option would be to have a taxpayer group in favor of limiting public union collective bargaining oppose a trade union group defending that practice at a legislative hearing considering a law limiting the bargaining rights of public employees.

14. The Contraceptive Mandate and Conscience-Based Challenges

On March 23, 2013 President Obama signed the Patient Protection and Affordable Care Act (ACA), which was first proposed in 2010 and subsequently revised. Among other things the ACA extends federal oversight of private health insurance. The Supreme Court upheld the law as constitutional. The ACA required health insurance plans to cover a broad array of evidence-based preventative health services, including contraception, without cost-sharing. However the “contraception coverage mandate” is a source of continuing litigation. The Department of Health and Human Services, the Labor Department, and the Treasury Departments issued a rule exempting certain religious employers from the contraception coverage requirement if they met certain criteria. A “religious employer” must only be organized and operated as a non-profit organization and referred to under Code section 6033(a)(3)(A)(i) or (iii), which refers to churches, other houses of worship, their integrated auxiliaries and conventions or association of churches, as well as the exclusively religious activities of any religious order.

The mandate came under fire last Spring when the Hobby Lobby corporation, owned by David Green and family, who are devout Christians and have set up their business to mirror their religious beliefs, claimed that the Affordable Care Act's mandate that corporations offer health insurance plans that cover certain kinds of contraception is unduly burdensome to their free exercise of religion. They argued that the Religious Freedom Restoration Act (RFRA) of 1993 protects a company from complying with a government mandate that goes against the religious beliefs of the owner or owners. In June 2014, the Supreme Court ruled that Hobby Lobby can refuse to cover contraception for workers.

Your report could be presented as a question for the Congress: Should the exemption for employers’ religious beliefs in the current law be maintained, eliminated, or revised? Should clearer distinctions be made between religious organizations and private employers? Alternatively, you could imagine a new case, perhaps modeled on the Hobby Lobby one, testing the law and the conflicting values of religious freedom and access to contraception.

15. Denying Abortion Rights

Among the number of abortion restrictions passed by states in recent years is a requirement that doctors performing abortions obtain admitting privileges at a local hospital, privileges that in many cases are neither available nor needed. To many who favor abortion rights, it appears that these laws, which have passed in some form in eleven states, are a novel way of closing down abortion facilities under the pretext of protecting women’s health. These laws pose a conflict with the right to abortion established in the *Roe v. Wade* decision of 1973 and many see them as just the

latest tactic in a series of legal efforts by the anti-abortion movement to overturn the decision or to deny that right.

Last year, there were forty-three new laws restricting abortion, the most ever except for 2011 when an unprecedented ninety-two such laws passed. Much of this is the handiwork of Americans United for Life. “A lot of people assume Roe is untouchable, and we disagree,” explains Kristi Stone Hamrick, a publicist for Americans United for Life. “We have a template of legislation that will roll back Roe.” See: <http://www.progressive.org/anti-abortion-forces-on-march#sthash.h4JLXMBI.dpuf>

Americans United for Life is the anti-abortion movement’s generator of “model” state legislation. Founded in 1971, Americans United for Life has been busy creating anti-choice bills—forty in total—that are now overwhelming statehouses across the country. Anti-abortion Republicans are flexing their legislative muscle, turning their electoral gains into reactionary laws, particularly against women’s reproductive access.

Already, more than a dozen clinics have been closed in Texas as a result of that state’s admitting-privileges law, and at least one closed in Tennessee. Pro-choice groups say clinics in Oklahoma, Louisiana and Wisconsin face the same fate if new laws there are permitted to take effect. Three of Alabama’s five clinics, and the last remaining clinic in Mississippi, would have been shut down if not for court decisions this month that stopped an admitting-privileges law from going into effect. Recently, a state district court judge declined to block an Oklahoma abortion clinic shutdown law, which has impaired access to safe, legal abortion services across the region.

The Center for Reproductive Rights claims that “reproductive freedom is both a fundamental constitutional right and a human right that the government is obligated to respect, protect and fulfill.” (<http://www.reproductiverights.org/>)

Using the policy format, research the current policy position of the Justice Department on the issue, decide if you think it should remain as it is, be changed, or replaced by a new one. Or, using the adversary format, imagine a case in federal court testing the constitutionality of such a state law, argue both sides, then render a decision and support it.

16. Climate Change and the Law: Who Pays for the Cleanup?

The likelihood that human-caused climate change will lead to more violent weather and increased coastal erosion will force Americans to reconsider who should pay to clean up the mess wrought by the burning of fossil fuels. For most of American history, major storms were considered acts of God; the normal response to such acts was for insurance companies to finance rebuilding efforts. More recently, the Federal Government has played a major role in reconstruction, primarily through the Federal Emergency Management Agency (FEMA).

Climate change, however, alters that calculation. While we may not be able to attribute a specific storm to human-caused climate change (although a growing number of scientists believe we can) virtually all climatologists agree that in future decades we will confront increasingly extreme weather in the form of heat waves, intense precipitation events, and more powerful hurricanes. The paradoxical combination of floods and droughts will damage rural communities, farms, and livelihoods, while storm surges fueled by higher sea levels threaten large coastal cities.

Massive storms, however, are not the sole concern for communities confronting climate change. It is likely that sea-level rise associated with global warming will hasten beach erosion in low-lying areas such as Florida, New Jersey, and Cape Cod, leading to what the environmental philosopher Rob Nixon has dubbed “the slow violence” of ecological damage. But whether the damage comes from a cataclysmic event such as Hurricanes Sandy and Katrina or the gradual decline of a precious resource, the issue remains the same: Who should pay?

A recent court case touches on what is likely to be an expanding area of legislation and litigation over the costs of climate change. In *Illinois Farmers Insurance Company v. Metro Water Reclamation District of Greater Chicago*, insurance companies argued that the City of Chicago and its

neighboring communities failed to prepare for storm damages they should have foreseen that climate change would produce and should therefore cover the costs of rebuilding homes destroyed by a massive rain event. The plaintiffs eventually dropped their suit, but according to scholars at the Center of Climate Change Law at Columbia University School of Law, “we will see more and more” such cases in the future. (See *Christian Science Monitor* <http://www.csmonitor.com/Environment/Latest-News-Wires/2014/0517/Climate-change-lawsuits-filed-against-some-200-US-communities>)

For this Capstone topic you should consider possible responses to the contentious question of who should pay for damage caused by climate change. To do so, you will have to address matters of science, including the difference between a “natural disaster” and one caused by climate change. More specifically, you will need to address public policy and questions of basic fairness. Questions you might consider include: Should homeowners be allowed to rebuild along vulnerable beaches? Should communities that do not take proper steps to mitigate the effects of climate change be held liable for property damages? Should we place limitations on agricultural activity in regions expected to experience increased drought? Should cities and towns be expected to pay for new sewer systems to handle more powerful floods and storms? Do the owners of power plants and automobile manufacturers share liability for damage attributable to the release of CO₂?

Here is a link to an article on rising seas, coastal erosion, and property rights:

<http://papers.risingsea.net/takings.html>

Here is another to a 2009 court case in Florida that concerns coastal erosion and property rights: <http://online.wsj.com/articles/SB125981177975774187>

SUMMARY

We have presented you with a detailed syllabus designed to serve as a guideline for the Capstone Project. Remember, these pages are only a *syllabus*, nothing more. You are not expected simply to read this document and be able to go off and produce a Capstone report. Your team faculty are to serve as your ultimate directors. Each team may have slightly different expectations and may set slightly different guidelines to follow. In any case, your faculty are there to *guide* you through this venture in an attempt to make the Capstone a productive and profitable learning experience.

If you are feeling slightly overwhelmed at this point, relax. It may be helpful to take a moment to consider that the entire Capstone procedure can be condensed into four tasks:

1. State a problem.
2. Gather the pertinent facts about this problem, being careful to examine all sides of the issue.
3. Based on these facts, formulate a decision or recommendation.
4. Determine the implications of your recommendation.