

PO- 508, Spring 2014
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Office hours: Wednesdays 1:00-3:00 and by appointment

Civil Liberties

In this class we will collaboratively investigate constitutionalism and liberty in the United States. We will focus on issues such as property, speech, religion, privacy, and discrimination. We will examine the Court's role in defining and protecting rights, and study how our understandings of rights and liberties have developed over time. We will also consider some very recent cases and contemporary controversies. Our primary materials will be Supreme Court decisions but our focus is on the big picture and political questions. This is a political science class about law rather than a law class. We are more concerned with the political, institutional and policy implications of cases than about legal doctrine for its own sake. We will mix reading cases with reading analysis of cases. These analyses include legal commentary and rigorous political science analysis of the Court.

This is definitely not a lecture course. Some of the time we will help each other make sense of cases and readings together with me expecting you to be able to answer guiding questions when called upon. Other times I will ask for your opinions and arguments about readings and themes. Your participation in this class is essential, you will not be able to sit and passively absorb lectures.

Readings and Discussion:

The reading list comprises Supreme Court decisions, other primary documents, and scholarly readings. There are two assigned books for the class (below). One is primarily a compendium of case excerpts. Most of the cases we read are found in this book. Those that are not are on Blackboard. In addition to including cases, the book contains textbook like materials to go with the cases. In a few instances I've specifically assigned these parts of chapters, but for the most part, you are on your own. You should read them to get a sense of the bigger picture (I'm not going to lecture about textbook type stuff in class) and you are all capable of using these parts of the book (which surround the cases) independently.

The number of pages of reading will be relatively light for a 500 class. This is because I expect you to do the reading very carefully. Court opinions require special attention to detail and a focus on the exact words, nuances, and distinctions. I will expect you to operate with a high

level of intellectual precision and rigor in class and on assignments. With all this said, I reserve the right to add or subtract readings once we see how things are going.

I expect you to come to class prepared to answer questions, evince understanding, and speak intelligently about the day's materials. This means everything from leading the class through the basics of a Court decision to synthesizing multiple cases to identify themes and trends.

I hope that you will all be eager to participate and prepared to do so. Nevertheless, as an incentive to be prepared and as a way to make sure everyone gets heard, I will call on people who are less eager to participate. While I will call on people involuntarily, this is not meant to embarrass or punish anyone. I know some are more comfortable speaking than others and that we all draw blanks from time to time. I also know at some point in the term all of you will get buried with other things. I will give you one free exemption where you can privately tell me before class that you are not ready to go that day and I will call on you. **More importantly, if you are less comfortable talking in class, please let me know and we can figure out how to help.**

Books for Purchase:

There are two books for purchase. All of the remaining readings will be on Blackboard in folders for each day/week.

The required books are

Gillman, Graber and Whittington, *American Constitutionalism, Volume II*, Oxford University Press

The Lanahan Readings in Civil Liberties, Third Edition

Assignments: The final grade for the course will be based on your participation in class and your performance on assignments and exams.

There will be one long exam in class towards the end of the semester. This is the only exam. There is no final.

Earlier in the semester we will have in class simulations of two cases currently in front of the Court. Each of you will participate a moot court simulation for one of the two cases as either a lawyer or a justice. One concerns the Massachusetts abortion clinic buffer zone and free speech and the other concerns free exercise of religion and the contraceptives mandate in the affordable care act.

Before the simulation you will all write a very short background brief on your case. For main part of the assignment, Lawyers will also submit their own briefs before the in class simulation in which they lay out their case. Justices will write opinions after our oral arguments.

Your other assignment is a substantial (approximately 20 pages) political science style research paper which addresses an interesting question about one of the Supreme Court's recent civil liberties cases. You may work alone or with a partner. The paper is open as to methods (historical analysis, survey, experiment.....) and we will read and discuss some papers which may give you ideas about questions and approaches. This is a substantial assignment and cannot be done well in one or two weeks.

Your grade for the course will be based on your performance on the above assignments, as well as your preparedness for and participation in class.

- **Participation and every day excellence 14%**
- Exam 28%
- Final Paper 30%
- Simulation 28%

Grades for Written Work and Exams: For written work, the A range will comprise only work which features strikingly original thinking and/or argumentation, expressed in clear, cogent, error-free writing. Only students that go well beyond class materials and discussions (in thought, not extra research) will be considered for an A grade. Papers and examinations in the B range exhibit mastery of the course materials and discussions, expressed in clear, cogent, error-free writing. Papers and examinations in the C range exhibit inadequate understanding of the course materials and discussions and/or deficient, error-plagued writing. Papers and examinations in the D range exhibit wholly inadequate understanding of the course materials combined with deficient, error-plagued writing. Hopefully the D range and worse will not be an

issue. Pluses, minuses, or flat grades within any of these ranges reflect the instructors' judgment of the merits of the paper or examination relative to other papers in the same range. All late assignments will be reduced 1/3 of a grade for every day they are late. Students may appeal grades they feel they received in error but we reserve the right to increase or decrease their grade upon reconsideration.

Some students think that work starts out at "A" level and only moves into other grade ranges because there are things wrong with it. This is mistaken. Perfectly good work without obvious flaws is quietly likely not "A" work. This is true for class participation too. You don't start with an A and only go backwards if you repeatedly ditch class or don't do the readings. High participation grades are earned by distinguishing yourself (especially with quality rather than quantity) just like on written assignments. In both cases As are for exceptional work.

I am willing to give As when deserved but I am also willing to use the other parts of the grading spectrum to make sure that those whose work is truly outstanding truly stand out.

Other Practical Matters:

Email: The most efficient way to reach me is via email. No promises, but I'll try to respond quickly. If you write and don't hear back in 24 hours, please write again.

Office Hours: My official office hours are listed at the top of the syllabus, but I aim to be around and as accessible as possible. If you cannot make it to the scheduled office hours, email with some times that work for you. **I'd rather you come to office hour and say you don't understand a reading before class, than to sit through class without contributing or learning because you didn't understand the reading.**

Note – Readings and cases marked “**CB**” are in the casebook. Those marked “**L**” are in the Lanahan Readings book and followed by a number that corresponds to their number in the book (e.g. L4). Everything else is on Blackboard (some are marked BB some may not be)

1. 1/27 Introduction: “It’s a Free Country”

- a. Mary Ann Glendon (1991), *Rights Talk*, **Chapter 1**
- b. CB Chapter 1
- c. The Declaration of Independence (CB)
- d. Dan Himmelfarb, “The Constitutional Relevance of the Second Sentence of the Declaration of Independence,” *Yale Law Journal*, October, 1990
- e. Julie Novkov. Intro to Briefing a Case:
<http://www.albany.edu/~jn293713/profession/caseguid.htm>
- f. An Introduction to Cases
 - i. Hill vs. Colorado (2000) CB
- g. The Constitution – Preamble, Articles I-VII, and First 10 Amendments CB
- h. CB 81-97
- i. Federalist 78 **L1**
- j. Marbury v. Madison (1803) **Read BlackBoard Version** (Even if you’ve read it before)

2. 2/3 Economic Rights From the Early Days Through the Present

- a. Barron v. Baltimore (1833) CB
- b. Mugler v. Kansas (1887) CB
- c. Holden v Hardy (1898) CB
- d. Lochner v. NY (1905) CB
- e. Hamilton L5
- f. Meyer v. Nebraska (1923)
- g. Philip Hamburger, “A Tale of Two Paradigms: Judicial Review & Judicial Duty,” *George Washington L. Rev.* 78 (2010): 1162
- h. Penn Central Transportation Co. v. New York (1978) CB
- i. Lucas v. South Carolina Coast Council (1992) CB
- j. Kelo v. City of New London (2005) CB ALL

3. 2/10 Substantive Due Process, the Rise of the Modern Court, and Democracy

- a. CB 357-366, 383-386

- b. Buck v. Bell (1927)
- c. CB 479-488, 490-492, 495-496
- d. US v. Carolene Products (1938) (especially footnote 4) CB
- e. McCloskey L6
- f. Palko v. Connecticut (1937) BB
- g. Williamson v. Lee Optical (1955) BB
- h. Reynolds v. Simms (1964) CB
- i. Harper v. Board of Elections (1966) CB
- j. Richardson v. Ramirez (1974) CB
- k. Crawford v. Marion County Election Board (2008) CB
- l. Shelby County v. Holder (2013) BB
- m. Nathaniel Persily, Charles Stewart and Stephen Ansolabehere, "Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act," Working Paper

4. 2/19 Privacy and Judicial Review

- a. Jacobson v. Massachusetts (1905)
- b. Cortner L7
- c. Griswold v. Connecticut (1965) CB
- d. Lochner v. NY (reread)
- e. Roe v. Wade (1973) CB
- f. Short Selections about judging
 - i. Brennan L2
 - ii. Scalia L3
 - iii. Breyer L4
- g. CB 654-656
- h. Planned Parenthood of SE Pennsylvania v. Casey (1992) CB
- i. Jeffrey Toobin (2007), The Nine, Chapters 3-4
- j. Ginsberg L31
- k. Brandon Bartels and Dianna Mutz, Explaining Processes of Institutional Opinion Leadership, *The Journal of Politics*, 2009
- l. Rosen L35

5. 2/24 The First Amendment and Modern Free Speech

- a. CB 121-122, 174-178, 418-422
- b. Schenck v. US (1919) CB
- c. CB 538-544
- d. West Virginia v. Barnette (1943) CB
- e. Dennis v. US (1951) CB
- f. US v. O'Brien (1968) CB

- g. Brandenburg v. Ohio (1969) CB
- h. CB 794-796
- i. Tinker v. Des Moines (1969) BB
- j. Texas v. Johnson (1988) CB
- k. Emerson L9
- l. Chaplinsky v. NH (1942) CB
- m. Cohen v. California (1971) CB
- n. RAV v. St. Paul (1992) BB
- o. Kent Greenawalt, "Hate Speech and Fighting Words," *The Lanahan Readings in Civil Rights and Civil Liberties* (David O'brien ed.)
- p. Snyder v. Phelps (2011) CB
- q. Citizens United v. FEC (2010) CB

6. 3/3 Free Exercise of Religion SHORT BACKGROUND PAPERS DUE FOR FIRST MOOT COURT – YOU WILL HAVE TO READ TODAY’S CASES BEFORE WRITING PAPERS, ESPECIALLY FOR SEBELIUS V. HOBBY LOBBY

- a. CB 46-49, 117-118, 169-170, 409-410
- b. Reynolds v. US (1878) CB
- c. Braunfield v. Brown (1961) BB
- d. Sherbert v. Verner (1963) CB
- e. Bellah et. al. L1
- f. Huntger L14
- g. CB 649-650
- h. Wisconsin v. Yoder (1972) CB
- i. Employment Division v. Smith (1990)
- j. CB 776-778.
- k. Boerne v. Flores (1997) CB
- l. CB 922-923

7. 3/17 In class Moot Court - McCullen vs. Coakley AND Sebelius v. Hobby Lobby - Lawyers Briefs Due Prior Sunday 8:00 PM. Justices’ Opinions Due Thursday night at 11:59 PM

8. 3/24 Religion – Non –Establishment
- a. CB 41-44, 114-117
 - b. Everson v. Board of Education (1947) CB
 - c. Lemon v. Kurtzman (1971) BB
 - d. Edwards v. Aguillard (1987) CB
 - e. Mueller v. Allen (1983) CB

- f. Agostini v. Felton (1997) CB
- g. Zelman v. Simmons Harris (2002) CB
- h. Allegheny County v. ACLU (1989) BB
- i. Lee v. Weisman (1992) CB
- j. Valerie Hokstra, "The Supreme Court and Local Public Opinion," *American Political Science Review*, 2000

9. 3/31 Racial Equality and Freedom of the Press

- a. CB 184-186
- b. Dred Scott v. Sanford (1857) CB
- c. Plessy v. Ferguson (1896) CB
- d. CB 577-590 (be sure to read Korematsu v. US like you would read a case)
- e. Sweatt v. Painter (1950) BB
- f. Brown v. Board of Education I (1954) CB
- g. Adam Liptak, "From 19th Century View, Desegregation is a Test," *The New York Times*, 11/9/2009
- h. Klugler L28
- i. Klarman L34
- j. Civil Rights Cases (1873) CB
- k. Shelley v. Kraemer (1948) CB
- l. Moose Lodge No. 107 v. Irvis (1972) CB
- m. New York Times v. Sullivan (1964) CB
- n. New York Times v. United States (1971) CB
- o. Branzburg v. Hayes (1972) BB

10. 4/7 Equality Continued

- a. CB 704-709
- b. Craig v. Boren (1976) BB
- c. San Antonio Independent School District v. Rodriguez (1973) CB
- d. Plyler v. Doe (1982) CB
- e. Massachusetts Retirement Board v. Murgia (1976) BB
- f. Regents of the University of California v. Bakke (1978) CB
- g. CB 839-840, 995-998
- h. Grutter v. Bollinger (2003) BB
- i. Shaw v. Reno (1992) CB
- j. Bush v Gore (2000) CB

- k. David Broockman and Daniel M. Butler. 2011. "Do Politicians Racially Discriminate Against Constituents? A Field Experiment on State Legislators." *American Journal of Political Science*

11. 4/14 Equality and Same Sex Marriage – Plus some review time (and a bonus case)
 - a. Loving v. Virginia (1968) BB
 - b. Bowers v. Hardwick (1986) CB
 - c. Romer v. Evans (1990) CB
 - d. Lawrence v. Texas (2003) CB
 - e. Dworkin L32
 - f. Boy Scouts of America v. Dale (2000) CB
 - g. Goodridge v. Department of Public Health (Massachusetts Supreme Court) CB ALL
 - h. DOMA and States debate marriage CB 942-948
 - i. Mary Talbot, "A Risky Proposal: Is it Too Soon to Petition the Court on Gay Marriage," *The New Yorker*, January 18, 2010.
 - j. U.S. V Windsor (2013)
 - k. Collins and Skover L12
 - l. Katherine Krimmel, Jeff Lax, Justin Phillips, "Gay Rights in Congress: Public Opinion and (Mis)Representation" – Working Paper
12. 4/24 One big in class exam – in lieu of final
13. 4/28 Oral Arguments from Exam and Research Paper Workshop

Final Papers Due via email at Time Final Exam Would Begin if we had one scheduled

