

Political Science 519
Winter 2012
Mr. Baum

Office: 2026 Derby Hall
Hours: Tuesday 10:30-11:30, 1:30-5:30
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CIVIL LIBERTIES IN THE COURTS

This is a course on judicial policy making in the field of civil liberties, focused on the Supreme Court. The class is intended to help you learn the skills and knowledge about civil liberties in the courts that an informed observer or participant in politics should have. More specifically, by the end of the quarter you should be able to:

1. Recognize the basic legal principles and frameworks that apply to civil liberties issues and cases. If a newspaper article refers to “a civil rights suit,” you should know what laws might provide the basis for the lawsuit. If a Supreme Court opinion says that the Court has analyzed the case with “strict scrutiny,” you should know what its use of that standard means.

2. Know the state of legal protections for major civil liberties, as defined by the Supreme Court, and to a lesser extent by lower courts and the other branches of government. When a government official sues a newspaper for libel, what is the official required to prove? Under what conditions can evidence gathered through police searches be excluded from use in criminal trials?

3. Read a court opinion or an excerpt of an opinion and identify and understand the issues and arguments in the opinion.

4. Understand the procedures involved in the Supreme Court’s handling of civil liberties (and other) cases. What routes do cases take to get to the Court? How are opinions assigned to specific justices? What does it mean when the Court remands a case to a lower court?

5. Identify possible explanations for the choices that individual justices and the Supreme Court as a whole make in civil liberties cases. For instance, why have there been changes over time in the Court’s position on the balance between freedom of speech and national security considerations?

6. Know how other courts, other branches of government, and institutions outside government shape the effects of Supreme Court decisions on civil liberties issues. What can Congress do to limit those effects, and how does Congress use its powers in practice? How do state and local governments affect the implementation of the Court’s decisions?

General Course Information

The course will begin with an introduction to the Supreme Court and a section on basic principles of legal interpretation in civil liberties. We then will examine the Court's work in four fields of civil liberties policy.

Most of the readings for the course are contained in Lee Epstein and Thomas Walker, Constitutional Law for a Changing America: Rights, Liberties, and Justice, 7th edition, which is available at the Student Book Exchange. (If you buy the book from somewhere other than SBX, make sure that you do not have an earlier edition or the book by the same authors on the non-civil liberties half of constitutional law.) The Epstein and Walker book mixes commentary with excerpts of opinions from Supreme Court decisions. The decisions included within the pages to be read fall into three categories. Those marked with an asterisk on the syllabus are in the first category, to be understood in detail. Those listed on the syllabus but not marked with an asterisk are in the second category, to be understood in general terms. Those that are not listed on the syllabus need only to be skimmed and understood as part of broader patterns in the Court's decisions. (There may be changes in categories for specific cases; I will announce any such changes in class.) I say more about how to approach different categories of cases in the study and examination guide that is posted on Carmen.

I will ask you to read the full set of opinions in one additional decision (in section 6C) and the syllabus of the Court's opinion in a few other cases. These materials are posted on Carmen. If the Court hands down an important decision during the quarter, I may add the syllabus or an excerpt from the opinions to the reading.

There are two lengthy handouts, also posted on Carmen, to read at the beginning of the course. One, "An Introduction to the Supreme Court," is designed to provide background on the Court, especially for students who have not studied the Supreme Court before. The other, "The Legal Framework of Civil Liberties Policy," discusses the general legal principles on which the Supreme Court's civil liberties decisions are based. The material in this second handout is essential, so you should read and study it carefully.

It is a very good idea to keep current in the reading. The material presented in class on each topic will be most helpful to those who are doing the reading for that topic at about the same time, because the class material is designed to tie together with the information provided in the readings. The overlap between reading and class material will be limited, so it is important to keep up with both.

There are two handouts on Carmen under "the course in general." One is a memo on "how to read a case" by Professor Julie Novkov of SUNY at Albany. You may find the memo useful if you don't have experience reading and analyzing court opinions. The other is the study and examination guide, which I mentioned earlier. This guide is intended to help you in your studying and in preparing for exams. It probably will be worth the time to read over the guide from time to time. One thing to keep in mind is that the questions listed on the guide are

intended to give you a sense of the kinds of questions that will be on the examinations; they are not a list from which actual questions will be drawn (and some of the questions on the handout aren't appropriate to this year's class, because they involve material that won't be covered this year).

The course grade will be based on three examinations. The questions on the exams will be short to medium-length essay questions. Types of questions that will be on the examinations are discussed in the study and examination guide on Carmen. There will be two midterm examinations, scheduled tentatively for January 30th (Monday of the 5th week) and February 20th (Monday of the 8th week). The final examination, in part a third midterm and in part a comprehensive final, will be held on Wednesday March 14th at 1:30. The first midterm will count for 30% of the grade, the second midterm and the final for 35%. On January 11th I'll post a quiz, which you can take whenever you like; the quiz will not be graded. The quiz is intended to give you practice in answering test questions for this class and feedback about your understanding of material in the first two sections.

I will make special arrangements for students who have to miss a test for very good reason, but you must give me a note describing the reasons that you have to miss the test and must obtain my permission to do so prior to the test. If I give you permission to miss an exam, you must get your schedule to me immediately so that I can schedule a makeup exam, and you must take the examination at the scheduled time. If you miss an examination without prior permission, ordinarily you will receive a score of zero on that examination. If you have a very good reason for missing the examination without prior permission, I will allow you to take the makeup with a penalty of five points for each day after the exam before you notified me (including the examination day itself).

Required Announcements

You are familiar with university policies on academic misconduct and accommodations for disabilities. But as you know, we are asked to restate those policies on our syllabi (with the statement on disability in a larger font). The statements are as follows:

Academic Misconduct

It is the responsibility of the Committee on Academic Misconduct to investigate or establish procedures for the investigation of all reported cases of student academic misconduct. The term "academic misconduct" includes all forms of student academic misconduct wherever committed; illustrated by, but not limited to, cases of plagiarism and dishonest practices in connection with examinations. Instructors shall report all instances of alleged academic misconduct to the committee (Faculty Rule 3335-5-487). For additional information, see the Code of Student Conduct (http://studentaffairs.osu.edu/resource_csc.asp).

Disability Services

Students with disabilities that have been certified by the Office for Disability Services will be appropriately accommodated, and should inform the instructor as soon as possible of their needs. The Office for Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307, TDD 292-0901; <http://www.ods.ohio-state.edu/>.

Succeeding in the Course

In the course I assume no prior knowledge other than a general understanding of American politics. By necessity, however, some of the material is difficult because it involves legal concepts and legal language. This is especially true of the material we take up in the second week of the course on the legal framework of civil liberties policy. Two pieces of advice:

1. **Don't panic!** Keep working with the material, and things will gradually become clear.

2. **Let me know if you need help.** I can't necessarily solve all problems, but I can give you suggestions that may assist in your working through the material. My office hours are listed at the top of the syllabus; I'll post a signup sheet each Wednesday morning for the following Tuesday, so you can come by and sign up whenever it's convenient for you. If you can't meet on Tuesdays, let me know, and we can figure out a time for another day.

The topics to be considered in the class are listed below twice, first with the readings for each topic and then with the tentative schedule of dates they will be discussed in class.

Outline of Subjects and Schedule of Readings

Note: Because the course is organized differently from the Epstein and Walker book, the readings on a particular subject sometimes begin or end in the middle of sections in the book. Where that happens, look for the point in the book where the authors move from one subject to another. Unless otherwise indicated, page numbers refer to the Epstein-Walker book.

1. Introduction to the Supreme Court

Reading: pp. 10-21

Handout: An Introduction to the Supreme Court

2. The Legal Framework of Civil Liberties Policy

A. Constitutional protections of civil liberties

Reading: pp. 67-87

Barron v. Baltimore (1833)

*McDonald v. Chicago (2010) (syllabus)

Handout: The Legal Framework of Civil Liberties Policy, pp. 1-8

B. Federal power to protect civil liberties

Reading: pp. 581-84, 700-06

South Carolina v. Katzenbach (1966)

Handout: Legal Framework, pp. 9-14

C. Government and private action

Reading: pp. 616-24

*Moose Lodge v. Irvis (1972)

Handout: Legal Framework, pp. 14-19

3. Freedom of Expression

A. General issues

Reading: pp. 223-26, 291-302

Near v. Minnesota (1931)

New York Times v. U.S. (1971)

B. National security

Reading: pp. 194-223

*Dennis v. U.S. (1951)

C. Public speech and protest

Reading: pp. 226-65

Hill v. Colorado (2000)

D. The criminal justice system

Reading: 312-17, 539-46

Richmond Newspapers v. Virginia (1980)

E. Obscenity

Reading: pp. 319-38, 358-71

Miller v. California (1973)

United States v. Williams (2008)

F. Libel

Reading: pp. 338-56

*New York Times v. Sullivan (1964)

4. Privacy

Reading: pp. 385-439

*Griswold v. Connecticut (1965)

Roe v. Wade (1973)

*Planned Parenthood v. Casey (1992)

Lawrence v. Texas (2003)

5. Equality

A. General issues

Reading: pp. 577-81, 691-97

Bush v. Gore (2000)

B. Race and voting rights

Reading: pp. 584, 697-711, 728-36

Crawford v. Marion County Election Board (2008)

C. Race and public education

Reading: 586-611

*Brown v. Board of Education (I and II) (1954/55)

Parents Involved v. Seattle School District (2007)

D. Sex discrimination

Reading: pp. 624-42

U.S. v. Virginia (1996)

E. Affirmative action

Reading: pp. 659-87

*Grutter v. Bollinger (2003)

6. Rights of Criminal Defendants

A. General issues

Reading: pp. 443-48

B. Right to counsel

Reading: pp. 519-29

Gideon v. Wainwright (1963)

C. Search and seizure

Reading: pp. 449-97

Mapp v. Ohio (1961)

*Herring v. U.S. (2009) (full opinions)

D. Self-incrimination

Reading: pp. 497-517

Miranda v. Arizona (1966)

Dickerson v. U.S. (2000) (syllabus)

E. Cruel and unusual punishment

Reading: pp. 550-70

*Gregg v. Georgia (1976)

Atkins v. Virginia (2002)

Tentative Schedule by Day

January 4		Introduction to the course
	1	Introduction to the Supreme Court
January 9	2A	Constitutional protections of civil liberties
January 11	2B	Federal power to protect civil liberties
	2C	Governmental and private action
January 18	3A	General issues in freedom of expression
	3B	National security
January 23	3C	Public speech and protest
January 25	3D	Criminal justice system
	3E	Obscenity
January 30		FIRST MIDTERM EXAMINATION
February 1	3F	Libel
February 6	4	Privacy
February 8	5A	General issues in equality
	5B	Race and voting rights

February 13	5C	Race and public education
February 15	5D	Sex discrimination
February 20	SECOND MIDTERM EXAMINATION	
February 22	5E	Affirmative action
February 27	6A	General issues in defendants' rights
	6B	Right to counsel
February 29	6C	Search and seizure
March 5	6D	Self-incrimination
March 7	6E	Cruel and unusual punishment
March 14	FINAL EXAMINATION (Wednesday at 1:30)	