

CIVIL LIBERTIES AND CIVIL RIGHTS

POLS 30068-01
TTH 2:00-3:15
Fall 2021
DeBartolo Hall 209

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Jenkins and Nanovic Hall 2040A
Office Hours: T 12:15-1:45, Th 3:30-5

Introduction

“...every valuable end of Government is best answered by the enlightened confidence of the people; and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority...”

--George Washington, First Annual Message to Congress

This course explores topics in American constitutional law related to civil liberties and civil rights. Students will participate in Socratic method discussions, class debates, and moot court exercises, in which students play the role of lawyers and justices arguing a Supreme Court case. Through these activities, students will explore the social and political struggles that have shaped freedom and equality in the United States, including debates over protest, religious freedom, gun control, abortion, criminal justice, race, gender, and sexual orientation.

Learning objectives: After completing the course students should be able to:

- Demonstrate a basic understanding of civil liberties and civil rights controversies.
- Analyze and critically evaluate legal reasoning related to civil liberties and civil rights.
- Present legal arguments in both written and verbal form.
- Develop their own views on civil liberties and civil rights.

Course Materials

- Brettschneider, Corey. 2013. *Civil Rights and Liberties: Cases and Readings in Constitutional Law and American Democracy*. New York: Wolters Kluwer.
- Additional readings provided on Sakai.

Student Responsibilities and Grades

Final grades for the course will be based on six factors:

- 5%: Active participation in class discussions
- 10%: Performance in Socratic Discussions
- 15%: Quizzes
- 25%: 1st Moot Court Exercise (15%: Paper, 10%: Oral Arguments)
- 25%: 2nd Moot Court Exercise (15%: Paper, 10%: Oral Arguments)
- 20%: Final Exam

The participation grade will be based on the quantity and quality of participation in class discussion. Students who make a substantial contribution to class discussion at least once a week (not including Socratic participation) should receive a perfect participation grade. (Attendance alone does not count as participation.) At the beginning of each class, I will randomly select two

or three students to engage in a Socratic discussion, during which I will question the students about the reading. Students participating in the Socratic discussion will be expected to have a strong knowledge of the day's reading. Any student not prepared to discuss the reading may pass; absent students will automatically pass. Passing will negatively affect the Socratic grade.

Quizzes and the final exam will consist of multiple-choice, fill-in-the-blank, and short-answer questions focused on legal rules and standards (not names, dates, or case facts). All quizzes and the final exam will be cumulative (i.e., they will cover all material discussed to that point).

All papers must be double-spaced, 12-point Times New Roman font, with 1-inch margins, and submitted as Microsoft Word documents. Paragraphs must be indented and must not be separated by a blank line. Papers must follow a standard citation format (e.g., Chicago, APA, etc.). Written material will be evaluated based on the originality of the research project, writing quality, organizational structure, logical clarity, and a demonstrated understanding of course material. All papers should be emailed to the teaching assistant; written material should not be submitted in hard copy. Written material submitted within 24 hours after a deadline will be accepted with a 10% grade reduction. Written material will not be accepted more than 24 hours after a deadline.

Teaching Assistant: The TA for the course is Michael Polito (mpolito@nd.edu).

Academic Honesty Statement: Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor (<https://honorcode.nd.edu/>) and abide by its pledge: "As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty." To be clear, the use of any material from any source must be clearly and appropriately cited in all course work.

Disability Services: Any student who feels that he/she may need accommodations in order to meet the requirements of this course due to presence of a disability should contact the instructor to make appropriate arrangements.

Support for Student Mental Health: Care and Wellness Consultants provide support and resources to students who are experiencing stressful or difficult situations. Through Care and Wellness Consultants, students can be referred to the University Counseling Center (for cost-free and confidential psychological and psychiatric services from licensed professionals), University Health Services (which provides primary care, psychiatric services, case management, and a pharmacy), and the McDonald Center for Student Well Being (for problems with sleep, stress, and substance use). Visit care.nd.edu for more information. If you are experiencing any personal or health issues that may interfere with your work in this class, please notify me as soon as possible. Remember, the sooner you come to see me, the more I can do to help you.

Attendance Policy: Students are expected to attend all classes. Absences will not automatically affect student grades, but missing quizzes and Socratic discussions will negatively affect student grades. Missed quizzes and Socratic discussions can only be redressed if caused by an excused absence as defined by Section 3.1.3 of the Undergraduate Academic Code. For details on excused absences, see <https://facultyhandbook.nd.edu>. To be clear, difficulties related to travel plans will not excuse missing quizzes or Socratic discussions.

Course grading scale:

A: 93-100, A-: 90-92, B+: 87-89, B: 83-86, B-: 80-82, C+: 77-79, C: 73-76, C-: 70-72, D: 60-70, F: below 60

Privacy Practices in This Course

This course is a community built on trust; in order to create the most effective learning experience, our interactions, discussions, and course activities must remain private and free from external intrusion. As members of this course community, we have obligations to each other to preserve privacy and cultivate fearless inquiry. We are also obliged to respect the individual dignity of all and to refrain from actions that diminish others' ability to learn. Please note the following course principles:

Using learning materials

Course materials (videos, assignments, problem sets, etc) are for use in this course only. You may not upload them to external sites, share with students outside of this course, or post them for public commentary without my written permission.

Sharing student information

Our materials and activities may provoke argument or spirited discussion; some of us may volunteer sensitive personal information. Do not share others' personal information on sensitive topics outside of our course community. Student work, discussion comments, and all other forms of student information related to this course are private.

Sharing course information with others

Sharing private information about our course community (including discussions, activities, presentations, student work, etc.) with others for the purpose of inviting external attention, intrusion, ridicule, or harassment is an egregious breach of trust.

Violating these principles will be handled according to the College of Arts & Letters Academic Honor Code.

Weekly Schedule

Tues., Aug. 24: Introduction (xxv-xxxix)

Introduction to Civil Rights and Liberties
Introduction to the Constitution and the Supreme Court

Thurs., Aug. 26: Economic Substantive Due Process (pp. 49-58, 499-507, 511-526)

Ronald Dworkin, *Freedom's Law: The Moral Reading of the Constitution*
Economic Substantive Due Process
John Locke, *Second Treatise of Government*
Lochner v. New York (1905)
Adkins v. Children's Hospital (1923)
West Coast Hotel v. Parrish (1937)

Tues., Aug. 31: The Right to Bear Arms and Originalism (Sakai, pp. 5-12, 16-24, 92-98)

United States v. Miller (1939)

Originalism

Antonin Scalia, "Originalism: The Lesser Evil"

District of Columbia v. Heller (2008)

Thurs., Sept. 2: Proceduralism and Racial Discrimination (pp. 33-43, 677-685, 43-44, Sakai)

John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review*, ch. 4

Plessy v. Ferguson (1896)

United States v. Carolene Products (1938)

Korematsu v. United States (1944)

Tues., Sept. 7: Racial Segregation (pp. 686-693)

Brown v. Board of Education I (1954)

Brown v. Board of Education II (1955)

Loving v. Virginia (1967)

Quiz #1 (Economic Due Process, 2nd Amendment, 14th Amendment)

Thurs., Sept. 9: Sex Discrimination, part 1 (pp. 808-820)

Reed v. Reed (1971)

Frontiero v. Richardson (1973)

Geduldig v. Aiello (1974)

Craig v. Boren (1976)

Tues., Sept. 14: Sex Discrimination, part 2 (pp. 820-837)

Califano v. Webster (1977)

Orr v. Orr (1979)

Michael M. v. Superior Court of Sonoma County (1981)

Rostker v. Goldberg (1981)

United States v. Virginia (1996)

Thurs., Sept. 16: Affirmative Action (pp. 711-717, 725-736)

Regents of the University of California v. Bakke (1978)

Adarand Constructors v. Peña (1995)

Grutter v. Bollinger (2003)

Gratz v. Bollinger (2003)

Tues., Sept. 21: School Desegregation (pp. 737-746)

Parents Involved in Community Schools v. Seattle School Dist. No. 1 (2007)

Thurs., Sept. 23: Sexual Orientation (pp. 849-854, Sakai)

Romer v. Evans (1996)

Obergefell v. Hodges (2015)

Sept. 28 & 30, Oct. 5 & 7: First Moot Court

Tues., Oct. 12: Free Exercise and Accommodation, part 1 (Sakai, pp. 335, 341-353)

Exemptions and Strict Scrutiny

Braunfeld v. Brown (1961)

Sherbert v. Verner (1963)

Wisconsin v. Yoder (1972)

Thurs., Oct. 14: Free Exercise and Accommodation, part 2 (pp. 354-356, 366-386)

United States v. Lee (1982)

Free Exercise Cases: From Strict Scrutiny to Rational Review

Employment Division v. Smith (1990)

Church of Lukumi Babalu Aye, Inc v. City of Hialeah (1993)

Oct. 19 & Oct. 21: Fall Break

Tues., Oct. 26: Establishment and Public Funding (pp. 426-431, 436-439, 474-477)

Everson v. Board of Education (1947)

Lemon v. Kurtzman (1971)

Locke v. Davey (2004)

Quiz #2 (Sex Discrimination, Affirmative Action, 1st Amendment, & Free Exercise)

Thurs., Oct. 28: Prayer and Religious Symbols (pp. 433-436, 440-443, 451-462, 478-490)

Marsh v. Chambers (1983)

County of Allegheny v. ACLU (1989)

Lee v. Weisman (1992)

Van Orden v. Perry (2005)

McCreary County v. ACLU of Kentucky (2005)

Tues., Nov. 2: Free Speech and Incitement, part 1 (pp. 136-157, 164-166)

Schenck v. United States (1919)

Abrams v. United States (1919)

Whitney v. California (1927)

Dennis v. United States (1951)

Brandenburg v. United States (1969)

Thurs., Nov. 4: Voting Rights (pp. 767-779)

Baker v. Carr (1962)

Reynolds v. Sims (1964)

Shaw v. Reno (1993)

Rucho v. Common Cause (2019)

Tues., Nov. 9: The Right to Privacy and Abortion (pp. 565-582, 598-604, 13-15)

Griswold v. Connecticut (1965)

Roe v. Wade (1973)

Planned Parenthood v. Casey (1992)

Thurs., Nov. 11: Sodomy and Suicide (pp. 587-591, 605-612, 621-628, 854-856, Sakai)

Bowers v. Hardwick (1986)

Lawrence v. Texas (2003)

Cruzan v. Director, Missouri Dept. of Health (1990)

Tues., Nov. 16: Criminal Rights and the Exclusionary Rule (Sakai)

Mapp v. Ohio (1961)

United States v. Leon (1984)

Hudson v. Michigan (2006)

Quiz #3 (Establishment Clause, Substantive Due Process, and Privacy)

Thurs., Nov. 18: Criminal Rights and Self-Incrimination (Sakai)

Escobedo v. Illinois (1964)

Miranda v. Arizona (1966)

Nov. 23 & 30, Dec. 2, & 7: Second Moot Court

Fri., Dec. 10, 10:30 a.m.-12:30 p.m.: Final Exam