

Political Science 519
Winter 2008
Mr. Baum

Office: 2026 Derby Hall
Hours: Wednesday 10:30-11:50, 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, focusing almost entirely 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. Understand 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 based on 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 processes 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. Understand how other bodies of government and institutions outside government shape the effects of Supreme Court decisions on civil liberties issues. What can Congress do to limit the effects of Supreme Court decisions, and how does Congress use its powers in practice? How do state and local governments affect the implementation of the Court’s decisions?

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, 6th 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 authors' book on the other 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 a general line of case development. (There may be changes in categories for specific cases; I will announce any such changes in class.) I will say more about how to approach different categories of cases in class and in a study guide that is intended to help in working with the class material and preparing for exams.

I will ask you to read the syllabi for several additional decisions. (Syllabi are the summaries of decisions that the Supreme Court's Clerk prepares.) These decisions, also listed on the syllabus, are in the second category of cases. I have posted the syllabi on our Carmen site.

There are two lengthy handouts, 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. Over the course of the quarter, I will post additional handouts on Carmen to help in your reading and study.

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.

The course grade will be based on three examinations. There will be two midterm examinations, scheduled tentatively for January 24th (Thursday of the 4th week) and February 19th (Tuesday of the 8th week). The final examination, in part a third midterm and in part a comprehensive final, will be held on Monday March 10th at 7:30 a.m. The first midterm will count for 30% of the grade, the second midterm and the final for 35%. There will also be a quiz on January 15th. The quiz, intended to give you feedback about your understanding of material in the first two sections, will not be graded.

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).

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 Honesty: I expect all of the work you do in this course to be your own. No dishonest practices on the examinations or in the course will be acceptable, and any suspected cases of dishonesty will be reported to the university committee on academic misconduct and handled according to university policy.

Disability: If you need an accommodation based on the impact of a disability, you should contact me to arrange an appointment as soon as possible. At the appointment we can discuss the course format, anticipate your needs, and explore potential accommodations. I rely on the Office for Disability Services for assistance in verifying the need for accommodations and developing accommodation strategies. If you have not previously contacted the Office for Disability Services, I encourage you to do so.

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.

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. 10-22

Handout: An Introduction to the Supreme Court

2. The Legal Framework of Civil Liberties Policy

A. Constitutional protections of civil liberties

Reading: pp. 71-92

Barron v. Baltimore (1833)

*Duncan v. Louisiana (1968)

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

B. Federal power to protect civil liberties

Reading: pp. 622-24, 750-55

South Carolina v. Katzenbach (1966)

Handout: Legal Framework, pp. 9-14

C. Government and private action

Reading: pp. 651-60

*Moose Lodge v. Irvis (1972)

Handout: Legal Framework, pp. 14-19

3. Freedom of Expression

A. General issues

Reading: pp. 244-46 (and table on 242), 314-25

Near v. Minnesota (1931)

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

B. National security

Reading: pp. 210-39

*Dennis v. U.S. (1951)

C. Public speech and protest

Reading: pp. 246-86

Texas v. Johnson (1989)

Hill v. Colorado (2000)

D. Libel

Reading: pp. 380-401

*New York Times v. Sullivan (1964)

Gertz v. Welch (1974)

E. Obscenity

Reading: pp. 347-80

*Miller v. California (1973)

Ashcroft v. Free Speech Coalition (2002)

F. The criminal justice system

Reading: 338-45, 570-78

Richmond Newspapers v. Virginia (1980)

4. Privacy

Reading: pp. 412-70

*Griswold v. Connecticut (1965)

Roe v. Wade (1973)

*Planned Parenthood v. Casey (1992)

Lawrence v. Texas (2003)

Gonzales v. Oregon (2006) (syllabus)

5. Equality

A. General issues

Reading: pp. 617-22, 694-701, 739-48

San Antonio v. Rodriguez (1973)

*Bush v. Gore (2000)

B. Race and public education

Reading: 626-47

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

Parents Involved v. Seattle School District (2007) (syllabus)

C. Race and voting rights

Reading: pp. 624-25, 748-55, 777-85
Miller v. Johnson (1995)

D. Sex discrimination

Reading: pp. 660-86
U.S. v. Virginia (1996)

E. Affirmative action

Reading: pp. 706-35
Adarand Constructors v. Peña (1995)
*Grutter v. Bollinger (2003)

6. Rights of Criminal Defendants

A. General issues

Reading: pp. 475-80

B. Search and seizure

Reading: pp. 481-526
*Mapp v. Ohio (1961)
*U.S. v. Leon (1984)
Hudson v. Michigan (2006)

C. Self-incrimination

Reading: pp. 526-47
*Miranda v. Arizona (1966)
*Dickerson v. United States (2000) (syllabus)

D. Right to counsel

Reading: pp. 549-60
Gideon v. Wainwright (1963)

E. Cruel and unusual punishment

Reading: pp. 581-602
*Gregg v. Georgia (1976)
Roper v. Simmons (2005) (syllabus)

F. Terrorism and criminal justice

Reading: pp. 605-13
Hamdi v. Rumsfeld (2004)

Rasul v. Bush (2004) (syllabus)
 Hamdan v. Rumsfeld (2006) (syllabus)

Tentative Schedule by Day

January 3		Introduction to the course
	1	Introduction to the Supreme Court
January 8	2A	Constitutional protections of civil liberties
January 10	2B	Federal power to protect civil liberties
	2C	Governmental and private action
January 15		Practice quiz
	3A	General issues in freedom of expression
January 17	3B	National security
January 22	3C	Public speech and protest
January 24		FIRST MIDTERM
January 29	3D	Libel
January 31	3E	Obscenity
	3F	Criminal justice system
February 5	4	Privacy
February 7	5A	General issues in equality
	5B	Race and public education
February 12	5B	Race and public education (cont.)
	5C	Race and voting rights
February 14	5D	Sex discrimination
	5E	Affirmative action
February 19		SECOND MIDTERM
February 21	6A	General issues in defendants' rights
	6B	Search and seizure

February 26	6B 6C	Search and seizure (cont.) Self-incrimination
February 28	6C 6D	Self-incrimination (cont.) Right to counsel
March 4	6E	Cruel and unusual punishment
March 6	6F	Terrorism and criminal justice
March 10		FINAL EXAMINATION (7:30 a.m.)