

POL 312 – CONSTITUTIONAL LAW II: CIVIL LIBERTIES - Spring 2012

Kutztown University of Pennsylvania

3.0 credit hours 3:00-4:20 P.M. MW – Graduate Center 2

COURSE GUIDE

Professor: Glenn W. Richardson Jr.
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Office Hours: 11:05-11:35 MWF; 2:15-2:45 MW; 4:30-5:45 W; 2:15-3:00 T (hours subject to change as announced)
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OVERVIEW:

For more than two centuries, the ideals of liberty and equality have stood at the center of American political life. In his brief address at Gettysburg, Abraham Lincoln tells of a nation, “conceived in liberty and dedicated to the proposition that all men are created equal.” For Lincoln, the fate of the nation, then amidst a great civil war, would turn upon “a new birth of freedom” that would insure that “government of the people, by the people, and for the people shall not perish from the earth.” Whether that vision has been fulfilled is today a matter of some contention. For most of the century following the Civil War, America was two nations, one black, one white, separate and unequal. A series of momentous legal, political, and social changes during the second half of the 20th century brought the nation closer to Lincoln’s vision than it had ever been. Yet as the 21st century unfolds, the struggle for true equality continues.

So, too, some see liberty imperiled in a post-9/11 America still gripped by fear of terrorism. Critics charge that the United States, first, under the Bush administration, then under President Obama, has responded to terrorism by curbing constitutionally protected liberties. Such conflicts have been common in times of war, and civil liberties have historically been among war’s many casualties. Our times have proven no different. What is different this time is that the technology and legal basis for intrusion upon civil liberties has never been greater. This combination of law and technology has brought us to a point where what we read, write, and, in some ways even what we think, can be readily monitored by the government and private corporations. In short, the fight for freedom has seldom been more pointed.

The focus of this course is the evolution of American civil liberties and civil rights. Grounded in the guarantees of the Bill of Rights and the Fourteenth Amendment to the Constitution, our rights and liberties are largely a function of the decisions of the United States Supreme Court, and the ways it has interpreted founding principles in the face of profound challenges and changing times. We will trace the development of constitutional law on issues such as: the right to worship and believe as one chooses; the right to be free from government imposing religion on citizens; the right to speak freely; the right to associate with those one chooses; the right to publish and communicate; the right to be free from unreasonable searches and seizures; the right to a fair trial; and the right to be free from discrimination. We will also consider a right with profound implications that does not appear anywhere in the Constitution, but that the Supreme Court has held is so essential to ordered liberty that it must be recognized: the right to privacy. At the same time, our rights are not unlimited. We will explore the areas where the Court has held that the exercise of one’s rights crosses the boundaries of permissible conduct: when, for instance, speech and press become obscenity, libel or threats to national security; when the free exercise of religion or right against unreasonable search and seizure must give way to what the Court has seen as the government’s compelling interest in prosecuting the war on drugs; and when efforts to overcome a legacy of discrimination in the past become reverse discrimination in the present.

COURSE OBJECTIVES:

- * Learn the current status of evolving constitutional law pertaining to essential civil liberties and rights of the American people, demonstrated by objective examination and effective participation in various class assignments.
- * Develop basic analytical and communications skills appropriate to the study of constitutional law and legal reasoning as demonstrated by effective participation in class discussions and various class assignments.
- * Consider in some detail specific theoretical approaches to critical issues of constitutional rights, as demonstrated by objective examination and effective performance in various class assignments.
- * Encourage students to *apply* the theories and concepts of the academic study of constitutional law to the current political and legal environment as demonstrated by effective contributions to class discussions and performance on class assignments.
- * Help students develop their ability to work productively and at a high level with others in a group environment as demonstrated by effective participation and performance in Supreme Court simulations in class.

COURSE REQUIREMENTS:

Several in-class quizzes, participation in class discussions and activities and two written mock Supreme Court opinions.

GRADING:

Grades will be awarded in terms of the percentage of total points each student earns.

Grading Scale:

90-100 = A
 80-89 = B
 70-79 = C
 60-69 = D
 < 60 = F

ASSIGNMENTS:

NOTE: ALL ASSIGNMENTS ARE SUBJECT TO CHANGE AS ANNOUNCED IN CLASS.

***** Please be sure to back-up all of your computer files. Do not turn in your only copy of any assignments. *****

Assignment	Due Date	Points
Quiz I	Monday, February 6	5

Assignment	Due Date	Points
Quiz II	Monday, February 13	5
Quiz III	Monday, February 20	5
Quiz IV	Wednesday, February 29	10
Quiz V	Wednesday, March 7	20
Mock Supreme Court Opinion I	Wednesday, March 28	5
Quiz VI	Wednesday, March 28	5
Quiz VII	Monday, April 9	5
Quiz VIII	Wednesday, April 18	10
Final Exam	Friday, May 11	5
In-class assignments/participation	January 23-May 2	10
Mock Supreme Court Opinion II	May 2	20
Optional Journal/Portfolio	Wednesday, May 2	10
TOTAL	January 23-May 11	100

In-Class Quizzes and Final Exam (5 or 10 points each)

There are eight in-class quizzes and a final exam scheduled for this class. Quizzes and the final may consist of a combination of multiple-choice and short answer questions. The material will be drawn directly from the class readings, discussions, lectures, and current events pertaining to civil liberties, civil rights, and the United States Supreme Court as discussed in class and as reported in the *New York Times*. Quiz items will be designed to allow you to demonstrate your deep and detailed mastery of class materials. ***You must bring your own scantron forms to class. Failure to do so will result in a 10-percent penalty and your quiz will not be returned before the end of the semester.*** The instructor reserves the right to correct any erroneously scored items or improperly recorded scores with correct values; *under no circumstances will any misscored items be counted as correct after quizzes have been returned to students if any erasure marks appear on the item in question.* Exams may be administered via D2L at the instructor's discretion.

Mock Supreme Court Opinion I and II (25 points each)

Each student is required to prepare two typewritten mock Supreme Court opinions presenting their holding and reasoning on a case that is currently before the United States Supreme Court to be assigned by the instructor during the semester. Opinions must address the major competing claims at issue in the case as presented in the written briefs submitted the Court by the litigants and the amicus curiae briefs of interested parties. The first date is Wednesday, March 7. The second date (involving a different case) will be the final day of regular classes, Wednesday, May 2.

In-class Assignments/Participation

Over the course of the semester, 20 points will be awarded for class participation and completion of various in-class assignments. Students who earn all 20 points will also earn a two-point bonus toward their final grade.

Optional Journal/Portfolio

Students can complete a journal/portfolio of entries pertaining to constitutional law, civil liberties and civil rights, based on events and experiences that occur during this semester. Journal/portfolios should consist of copies of articles from the *New York Times* relevant to concepts in the readings, lectures and other course activities; and typewritten responses of approximately one to two double-spaced pages to each article. Journals will be evaluated in terms of their ability to *integrate and extend class concepts in depth and detail*. As a general rule, portfolios comprised of two-page entries score higher than those comprised of one-page entries. Each portfolio must include at least seven entries. Up to two entries may relate to conversations or experiences students have had relevant to the course materials. Portfolios should be neat and well organized; unprofessional work will be marked lower. Up to 10 points toward the final grade may be earned from this assignment. Optional journal/portfolios are due in class on Wednesday, May 2.

Make-up Assignments

There will be **no** make-up assignments for unexcused absences. Acceptable excuses (medical or personal emergencies and university-related business) must be provided to the instructor **before** the assignment is due and **in writing** to be considered. Students who are unable to complete an assignment for legitimate reasons that do not qualify as excused under college guidelines, and who notify the instructor **before** the assignment is due, may, at the discretion of the instructor, turn in late assignments for partial credit.

NOTE: *Make-up tests and assignments will not be returned before the end of the semester. Make-up tests and assignments may differ from those given in class in terms of both content and form.*

Penalties for Late Assignments

Assignments turned in on the day they are due but after assignments were collected in class will face a five-percent penalty. Each additional late day will accrue an additional ten percent deduction. Electronic submission of assignments will not be accepted except at the discretion of and by the invitation of the instructor.

NOTE: *If a student misses an exam or assignment due date, late assignment penalties apply for each day the student fails to notify the instructor and discuss a make-up exam or submission of late work.*

ELECTRONIC COMMUNICATION:

If you wish to send a message to me personally, you must address it to my e-mail address (richards@kutztown.edu). *Please include a recognizable subject line.* Doing so allows me to instantly recognize your message as important and distinguishes it from the many messages from strange e-mail addresses that arrive on a daily basis, and facilitates a prompt response from me. If you send me an e-mail message and do not receive a prompt response, please do not hesitate to send a follow-up. You might want to try a different subject line in case the previous subject tripped the spam filter. While I try to answer each e-mail, it can be easy to accidentally overlook any particular message, and on occasion messages may be improperly screened by spam filters, etc. *Please note that electronic submission of assignments is not acceptable except at the discretion of the instructor.*

A web page has also been set up for this class. Important course information will be posted there along with links to other relevant web sites. The URL is:

<http://faculty.kutztown.edu/richards/312/312.html>

This course uses Desire 2 Learn. A D2L student tutorial is available online at http://www.kutztown.edu/academics/lt/lrc/KU_D2L_Student_Orientation/index.html.

CLASSROOM ETIQUETTE

Students are expected to observe all rules of proper classroom conduct. In order to insure an appropriate environment conducive to learning there are three rules governing behavior in the classroom that you must be aware of:

- Unauthorized use of electronic devices of any kind is ***not*** permitted in class. Students found “surfing,” “texting,” “sexting,” “facebooking” or otherwise engaged in electronic communication of any kind may be asked to leave the classroom and may be penalized by having points taken away from the total number of points they have earned in the course. Students with special needs should discuss accommodations with the instructor.
- Please refrain from talking, eating, leaving your cell phone ringers on, or other disruptive activity during class. Even one or two conversations quickly create distractions for other students and the instructor.
- Please do not leave class early. If you must do so, tell the instructor before hand and arrange to sit near the door so your exit will be less noticeable.

Serious or repeated violations of these rules may result in a request that the offending individual(s) leave the classroom. Grading penalties (up to a half-letter grade for first-time offenders and a full letter-grade for recidivists) may be imposed at the discretion of the instructor.

POLICY ON ACADEMIC ETHICS AND HONESTY

If a student has plagiarized or cheated in a course, the instructor may (in consultation with the Department Chairperson and the Dean) impose sanctions upon the student up to and including dismissal from the course with a grade of “F”. The student forfeits all privileges of withdrawal from the course.

Plagiarism is stealing and passing off (the ideas, words, work, themes, reports, drawings, laboratory notes, computer programs or other products of another) as one’s own. In short, it is using a created production without crediting the source. The surest way to avoid plagiarism is to provide proper citation to all works quoted directly or otherwise indirectly borrowed from. Proper citations include the title, date, and author of the work. If you are not familiar with the formatting of bibliographic citations, please consult a writer’s style guide or manual. An excellent online guide to citation can be found on the internet at:

http://www.chicagomanualofstyle.org/tools_citationguide.html

Cheating includes (but is not limited to) providing or receiving unauthorized assistance during exams, an attempt by one or more students to use unauthorized information in the taking of an exam; or to knowingly assist another student in obtaining or using unauthorized materials. Further specific delineation of academically dishonest behavior and Kutztown University’s academic dishonesty policies can be found in the student handbook *The Key 2011-2012* (pp. 51-61) available online at <http://thekey.kutztown.edu/>. If you have any doubts as to whether particular behavior would amount to cheating, please ask the instructor for clarification. Ignorance of the rules is not a valid defense.

CLASS MEETINGS:

Class meetings will be comprised of introductory and concluding comments from the instructor, lectures, video presentations, questions and discussions involving the whole class, and vigorous participation by students.

This format places some limits upon formal presentation by the instructor in order to maximize student engagement with the material. One requirement for this format to prove successful is that each student must come to each class prepared. That involves reading, studying, analyzing and often re-reading and re-analyzing materials before class. Inadequate preparation will virtually assure that much of what is said in the class, both by students and by the instructor, will make little sense.

You must also try to resist the temptation to discount the comments of your fellow students. The course is designed to give students the opportunity to articulate key concepts and criticisms. Many, if not most, of the important statements made in the class will be made by students. It is essential that you give the utmost respect to your classmates.

Also, keep in mind that in no case should any of the comments in the class be taken or directed personally. A college classroom is perhaps the singular place in our society where people gather for the purpose of giving deliberate and reasoned consideration to a wide range of views, including many of great controversy. Indeed, I encourage you to present views you may not necessarily agree with in order to explore and develop relevant themes or issues.

TEXTBOOKS:

There is one required textbook for this course:

Epstein, Lee, and Thomas G. Walker. *Constitutional Law for a Changing America: Rights, Liberties and Justice* (7th Edition). Washington, DC: CQ Press, 2010.

Books are available at the KU Bookstore in the Student Union Building.

NEWSPAPER:

Students are also responsible for reading *The New York Times* for stories pertaining to civil liberties, civil rights and the United States Supreme Court.

READING AND ASSIGNMENT SCHEDULE

Week One: January 23-27

THE SUPREME COURT INTRODUCTION PART I:

POL 312 Course Syllabus.

"The Living Constitution." (pp. 3-9 in Epstein and Walker)

"Understanding the U.S. Supreme Court." (Ch. 1 in Epstein and Walker)

Week Two: January 30-February 3

THE SUPREME COURT INTRODUCTION PART II:

"The Judiciary: Institutional Powers and Constraints" (Ch. 2 in Epstein and Walker)

Marbury v. Madison (1803)

Ex Parte McCordle (1869)

Week Three: February 6-10

QUIZ I: Monday, February 6

THE FOURTEENTH AMENDMENT AND SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

"Incorporation of the Bill of Rights." (Ch. 3 in Epstein and Walker)

Barron v. Baltimore (1833)

The Slaughterhouse Cases (1873)

Hurtado v. California (1884)

Chicago, Burlington & Quincy Railroad v. Chicago (1897)

Twining v. New Jersey (1908)

Gitlow v. New York (1925)

Palko v. Connecticut (1937)

Duncan v. Louisiana (1968)

Week Four: February 13-17

QUIZ II: Monday, February 13

FREEDOM OF RELIGION: FREE EXERCISE

"Religion: Exercise and Establishment." (Ch. 4 in Epstein and Walker)

Reynolds v. United States (1879)

Cantwell v. Connecticut (1940)

Minersville School District v. Gubitis (1940)

West Virginia Board of Education v. Barnette (1943)
Braunfeld v. Brown (1961)
Sherbert v. Verner (1963)
Wisconsin v. Yoder (1972)
Bob Jones University v. United States (1983)
[United States v. Lee](#) (1982)
Goldman v. Weinberger (1986)
O'Lone v. Shabazz (1987)
Employment Division v. Smith (1990)
Church of the Lukumi Babalu Aye v. City of Hialeah (1993)
City of Boerne v. Flores (1997)
Cutter v. Wilkinson (2005)
Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal (2006)
[Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez](#) (2010)

Week Five: February 20-24

QUIZ III: Monday, February 20

FREEDOM OF RELIGION: ESTABLISHMENT

Everson v. Board of Education (1947)
[Board of Education v. Allen](#) (1968)
Walz v. Tax Commission of the City of New York (1970)
[Lemon v. Kurtzman](#) (1971)
Aguilar v. Felton (1985)
Agostini v. Felton (1997)
Zelman v. Simmons-Harris (2002)
Illinois ex rel. McCollum v. Board of Education (1948)
Zorach v. Clauson (1952)
Widmar v. Vincent (1981)
Rosenberger v. University of Virginia (1995)
Epperson v. Arkansas (1968)
Edwards v. Aguillard (1987)
Engle v. Vitale (1962)
Abington School District v. Schempp (1963)
Wallace v. Jaffree (1985)
Lee v. Weisman (1992)
Santa Fe Independent School District v. Doe (2000)
Lynch v. Donnelly (1984)
County of Allegheny v. ACLU (1989)
Capital Square Review Board v. Pinette (1995)
McCreary County, Kentucky v. American Civil Liberties Union of Kentucky (2005)
Van Orden v. Perry (2005)

Week Six: February 27-March 2

FREEDOM OF SPEECH AND EXPRESSION I

“Freedom of Speech, Assembly and Association.” (Ch. 5 in Epstein and Walker)

Speech

Schenck v. United States (1919)
Abrams v. United States (1919)
Gitlow v. New York (1925)
United States v. Carolene Products (1938)
Thomas v. Collins (1945)
Dennis v. United States (1951)
Brandenburg v. Ohio (1969)

Symbolic Speech

United States v. O'Brien (1968)
Texas v. Johnson (1989)

Public Forums

Chaplinsky v. New Hampshire (1942)
Cohen v. California (1971)
Hill v. Colorado (2000)
Snyder v. Phelps (2011)

QUIZ IV: Wednesday, February 29**Week Seven: March 5-9**

FREEDOM OF SPEECH AND EXPRESSION II

Hate Speech

National Socialist Party v. Skokie (1977)
R.A.V. v. City of St. Paul, Minnesota (1992)
Wisconsin v. Mitchell (1993)
Virginia v. Black (2003)

Student Speech

Tinker v. Des Moines (1969)
Morse v. Frederick (2007)

Commercial Speech

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. (1976)
Central Hudson Gas and Electric Corporation v. Public Service Commission of New York (1980)

Freedom of Association

Boy Scouts of America v. Dale (2000)

QUIZ V: Wednesday, March 7**SPRING BREAK**

**BEGINS 8:00 A.M, MONDAY, MARCH 12;
ENDS 8:00 A.M. MONDAY, MARCH 19**

Week Eight: March 19-23

FREEDOM OF THE PRESS

“Freedom of the Press.” (Ch. 6 in Epstein and Walker)

Prior Restraint

Near v. Minnesota (1931)
New York Times v. United States (1971)
Hazelwood School District v. Kuhlmeier (1988)

Government Control of Press Content

Cox Broadcasting v. Cohn (1975)
Miami Herald v. Tornillo (1974)

Broadcast Media

Red Lion Broadcasting v. FCC (1969)
Federal Communications Commission v. Pacifica (1978)

The Media and Special Rights

Branzburg v. Hayes (1972)
Houchins v. KQED (1978)

Week Nine: March 26-30

LIMITS ON FREEDOM

“The Boundaries of Free Expression: Obscenity and Libel.” (Ch. 7 in Epstein and Walker)

“The First Amendment and New Media.” (Ch. 8 in Epstein and Walker)

“The Right to Keep and Bear Arms.” (Ch. 9 in Epstein and Walker)

Obscenity

Roth v. United States (1957)
Jacobellis v. Ohio (1964)
Memoirs v. Massachusetts (1966)
Miller v. California (1973)
New York v. Ferber (1982)
American Booksellers Association, Inc. v. Hudnut (1986)
[United States v. Stevens](#) (2010)
[Brown v. Entertainment Merchants Association](#) (2011)

Libel

New York Times v. Sullivan (1964)
Butts v. Curtis Publishing Co. (1967)

Gertz v. Welch (1974)
Hustler Magazine v. Falwell (1988)

Child Porn and the Internet

Reno v. American Civil Liberties Union (1997)
Ashcroft v. ACLU [I] (2002)
Ashcroft v. Free Speech Coalition (2002)
United States v. Williams (2008)

The Right to Bear Arms

United States v. Miller (1939)
District of Columbia v. Heller (2008)
McDonald v. City of Chicago, Illinois (2010)

QUIZ VI: Wednesday, March 28

Mock Supreme Court Opinion I Due

Week Ten: April 2-6

PRIVACY

“The Right to Privacy.” (Ch. 9 in Epstein and Walker)

Lochner v. New York (1905)
Griswold v. Connecticut (1965)
Roe v. Wade (1973)
Akron v. Akron Center for Reproductive Health (1983)
Webster v. Reproductive Health Services (1989)
Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)
Stenberg v. Carhart (2000)
Gonzalez v. Carhart (2007)
Katz v. United States (1967)
Stanley v. Georgia (1969)
Bowers v. Hardwick (1986)
Lawrence v. Texas (2003)

Week Eleven: April 9-13

QUIZ VII: Monday, April 9

DISCRIMINATION AND EQUAL PROTECTION OF THE LAW

“Civil Rights and the Constitution.” (pp. 619-27 in Epstein and Walker)

“Discrimination.” (Ch. 13 in Epstein and Walker)

Racial Discrimination

Dred Scott v. Sanford (1857)
Slaughterhouse Cases (1873)
Civil Rights Cases (1883)

Plessy v. Ferguson (1896)
Missouri ex rel. Gaines v. Canada (1938)
Sweatt v. Painter (1950)
Brown v. Board of Education (1954)
Brown v. Board of Education (1955)
Swann v. Charlotte Mecklenburg Board of Education (1971)
Parents Involved in Community Schools v. Seattle School District No. 1; Meredith v. Jefferson County Board of Education (2007)
Board of Education of Oklahoma City Public Schools v. Dowell (1991)
Loving v. Virginia (1967)
Shelley v. Kramer (1948)
Burton v. Wilmington Parking Authority (1961)
Moose Lodge No. 107 v. Irvis (1972)

Week Twelve: April 16-20

DISCRIMINATION II

Sex Discrimination

Bradwell v. Illinois (1873)
Minor v. Happersett (1875)
Muller v. Oregon (1908)
Goesaert v. Cleary (1948)
Reed v. Reed (1971)
Frontiero v. Richardson (1973)
Craig v. Boren (1976)
Mississippi University for Women v. Hogan (1982)
United States v. Virginia (1996)
Michael M. v. Superior Court of Sonoma County (1981)
Rostker v. Goldberg (1981)

QUIZ VIII: Wednesday, April 18

Week Fourteen: April 23-27

DISCRIMINATION III

Sexual Orientation Discrimination

Romer v. Evans (1996)

Economic Discrimination

City of New York v. Miln (1837)
Shapiro v. Thompson (1965)
San Antonio Independent School District v. Rodriguez (1973)
Saenz v. Roe (1999)

Discrimination Against Aliens

Yick Wo v. Hopkins (1886)
Graham v. Richardson (1971)

Nyquist v. Mauclet (1977)
Foley v. Connelie (1978)
Plyler v. Doe (1982)

Affirmative Action and Reverse Discrimination

Regents of the University of California v. Bakke (1978)
United Steel Workers of America v. Weber (1979)
United States v. Paradise (1987)
Fullilove v. Klutznick (1980)
City of Richmond v. J.A. Croson Co. (1989)
Metro Broadcasting v. Federal Communication Commission (1990)
Adarand Constructors, Inc. v. Peña (1995)
Gratz v. Bollinger (2003)
Grutter v. Bollinger (2003)
Ricci v. DeStefano (2009)

VOTING AND REPRESENTATION

“Voting and Representation.” (Ch. 14 in Epstein and Walker)

Bush v. Gore (2000)

Racial Restrictions on Voting

Newberry v. United States (1921)
Grovey v. Townsend (1935)
United States v. Classic (1941)
Smith v. Allwright (1944)
Louisiana v. United States (1965)
South Carolina v. Katzenbach (1966)

Property Restrictions on Voting

Kramer v. Union Free School District (1969)
Breedlove v. Suttles (1937)
Harper v. Virginia Board of Elections (1966)

Party Restrictions on Voting (Primary Elections)

California Democratic Party v. Jones (2000)

Representation, Apportionment and Equality

Colegrove v. Green (1946)
Baker v. Carr (1962)
Wesberry v. Sanders (1964)
Reynolds v. Sims (1964)
Karcher v. Daggett (1983)
Mahan v. Howell (1973)
Shaw v. Reno (1993)
Miller v. Johnson (1995)

Money as Speech

Buckley v. Valeo (1976)

Colorado Republican Federal Campaign Committee v. Federal Election Commission (1996)

McConnell v. Federal Election Commission (2003)

Federal Election Commission v. Wisconsin Right to Life (2007)

Citizens United v. Federal Election Commission (2010)

Optional Assignment Due: Wednesday, April 27

Mock Supreme Court Opinion II Due: Wednesday April 27

Week Fifteen: May 2-6

Final Exam: Friday, May 6

PLEASE NOTE: *If a class examination is scheduled or a class assignment due on a day when classes are cancelled, the exam will be given or the assignment will be due on the next day classes do meet.*