

Political Science 519
Winter 2006
Mr. Baum

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Hours: Tuesday 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 course is intended to help in understanding several matters:

1. The workings of the policy making process in the Supreme Court--how cases are handled and decided.
2. The value questions that the Court has addressed in several areas of civil liberties policy.
3. The general content of the policies that the Court has made on major issues in those areas and the principles of legal interpretation that structure the Court's analysis of those issues.
4. The forces that shape and explain the Court's policy choices on civil liberties issues.
5. The impact of the Court's civil liberties policies on other government institutions and on American society as a whole.

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.

The readings for the course are contained primarily in Lee Epstein and Thomas Walker, Constitutional Law for a Changing America: Rights, Liberties, and Justice, 5th edition, which is available at the Student Book Exchange. (If you've bought the book from somewhere other than SBX, make sure that you do not have an earlier edition.) 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 category 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.

There are two lengthy handouts to read early in 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, and it needs to be read and studied 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 much of the class material will be designed to build on 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 four examinations. The first is a quiz on the material in sections 1 and 2 of the course, scheduled tentatively for January 13th (Friday of the 2nd week). There will be two midterm examinations, scheduled tentatively for February 3rd (Friday of the 5th week) and February 22nd (Wednesday of the 8th week). The final examination, in part a third midterm and in part a comprehensive final, will be held on Monday March 13th at 9:30. The quiz will count as 10% of the course grade, each of the other examinations as 30%.

I will make special arrangements for students who must 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 check with me on the first class day after the examination to find out the time for the makeup examination, and you must take the examination at that time. If you miss an examination without prior permission, ordinarily you will receive a score of zero on that examination. If you have 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).

Let me add two special notes. One is obvious: 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. Second, students with disabilities that have been certified by the Office for Disability Services will be given appropriate accommodations; those students should let me know about their needs as soon as possible.

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 first two weeks on the legal framework of civil liberties policy. Two pieces of advice:

1. **Don't panic!** Keep working with the material, and things are likely to become at least reasonably 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 associated with each and then with the approximate 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. 75-97

Barron v. Baltimore (1833)

*Duncan v. Louisiana (1968)

Handout: The Legal Framework of Civil Liberties, pp. 1-10

B. Federal power to protect civil liberties

Reading: pp. 656-58, 797-802

South Carolina v. Katzenbach (1966)

Handout: Legal Framework, pp. 10-15

C. Government and private action

Reading: pp. 687-96

*Moose Lodge v. Irvis (1972)

Handout: Legal Framework, pp. 16-21

3. Freedom of Expression

A. General issues

Reading: pp. 246-50, 320-35

Near v. Minnesota (1931)

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

B. National security

Reading: pp. 214-46

*Dennis v. U.S. (1951)

C. Public speech and protest

Reading: pp. 250-88

Texas v. Johnson (1989)

Hill v. Colorado (2000)

D. The criminal justice system

Reading: 350-57, 603-10

Richmond Newspapers v. Virginia (1980)

E. Obscenity

Reading: pp. 358-95

*Miller v. California (1973)

Ashcroft v. Free Speech Coalition (2002)

F. Libel

Reading: pp. 395-417

*New York Times v. Sullivan (1964)

Gertz v. Welch (1974)

4. Privacy

Reading: pp. 429-99

*Griswold v. Connecticut (1965)

Roe v. Wade (1973)

*Planned Parenthood v. Casey (1992)

Lawrence v. Texas (2003)

5. Equality

A. General issues

Reading: pp. 651-55, 731-37, 781-91
 San Antonio v. Rodriguez (1973)
 *Bush v. Gore (2000)

B. Race and public education

Reading: 660-83
 *Brown v. Board of Education (I and II) (1954/55)

C. Race and voting rights

Reading: pp. 658-59, 791-802, 823-35
 Miller v. Johnson (1995)

D. Sex discrimination

Reading: pp. 696-723
 U.S. v. Virginia (1996)

E. Affirmative action

Reading: pp. 744-76
 Adarand Constructors v. Pena (1995)
 *Grutter v. Bollinger (2003)

6. Rights of Criminal Defendants

A. General issues

Reading: pp. 503-08

B. Search and seizure

Reading: pp. 509-55
 Terry v. Ohio (1968)
 *Mapp v. Ohio (1961)
 *U.S. v. Leon (1984)

C. Self-incrimination

Reading: pp. 555-78
 *Miranda v. Arizona (1966)
 *Dickerson v. United States (2000)

D. Right to counsel

Reading: pp. 580-92
 Gideon v. Wainwright (1963)

E. Cruel and unusual punishment

Reading: pp. 613-43

*Gregg v. Georgia (1976)

*Ewing v. California (2003)

F. Terrorism and criminal justice

Reading: handout

Tentative Schedule by Day

January 4		Introduction to the course
January 6	1	Introduction to the Supreme Court
	2A	Constitutional protections of civil liberties
January 9	2B	Federal power to protect civil liberties
January 11	2C	Governmental and private action
January 13		QUIZ
January 18	3A	General issues in freedom of expression
January 20		(To be arranged)
January 23	3B	National security
January 25	3C	Public speech and protest
January 27	3D	Criminal justice system
January 30	3E	Obscenity
February 1	3F	Libel
February 3		FIRST MIDTERM
February 6	4	Privacy
February 8	4	Privacy (cont.)
February 10	5A	General issues in equality

February 13	5B	Race and public education
February 15	5C	Race and voting rights
February 17	5D	Sex discrimination
February 20	5E	Affirmative action
February 22	SECOND MIDTERM	
February 24	6A	General issues in defendants' rights
	6B	Search and seizure
February 27	6B	Search and seizure (cont.)
March 1	6C	Self-incrimination
March 3	6D	Right to counsel
March 6	6E	Cruel and unusual punishment
March 8	6E	Cruel and unusual punishment (cont.)
March 10	6F	Terrorism and criminal justice
March 13	FINAL EXAMINATION (9:30)	