

Political Science 519  
Winter 2001  
Mr. Baum

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Hours: Mon 3:45 - 4:45, Thurs 10:30 - 12:00  
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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, 4th edition, which is available at the Student Book Exchange. (The 4th edition is fairly new; 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 also are two 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 will be useful 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 12th (Friday of the second week). There will be two midterm examinations, scheduled tentatively for February 2nd (Friday of the 4th week) and February 23rd (Friday 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 9:30. Graduating seniors will have their final examination on Monday March 5th at 10:30. 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.

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.

#### 1. Introduction to the Supreme Court

Reading: pp. 10-20  
Handout: An Introduction to the Supreme Court

#### 2. The Legal Framework of Civil Liberties Policy

##### A. Constitutional protections of civil liberties

Reading: pp. 71-93  
Barron v. Baltimore (1833)  
\*Duncan v. Louisiana (1968)  
Handout: The Legal Framework of Civil Liberties, pp. 1-9

##### B. Federal power to protect civil liberties

Reading: pp. 624-26, 756-61  
South Carolina v. Katzenbach (1966)  
Handout: Legal Framework, pp. 9-15

##### C. Government and private action

Reading: pp. 660-68  
Burton v. Wilmington Parking Authority (1961)  
\*Moose Lodge v. Irvis (1972)  
Handout: Legal Framework, pp. 15-21

### 3. Freedom of Expression

- A. General issues
  - Reading: pp. 241-43, 310-25
  - Near v. Minnesota (1931)
  - \*New York Times v. U.S. (1971)
- B. National security
  - Reading: pp. 208-39
  - \*Dennis v. U.S. (1951)
- C. Public speech and protest
  - Reading: pp. 243-80
  - Texas v. Johnson (1989)
  - Hill v. Colorado (2000)
- D. The criminal justice system
  - Reading: 340-46, 580-88
  - Richmond Newspapers v. Virginia (1980)
- E. Obscenity
  - Reading: pp. 348-78
  - \*Miller v. California (1973)
  - Reno v. ACLU (1997)
- F. Libel
  - Reading: pp. 378-401
  - \*New York Times v. Sullivan (1964)
  - Gertz v. Welch (1974)
- G. Political money
  - Reading: pp. 286-91
  - \*Buckley v. Valeo (1976)

### 4. Privacy

- Reading: pp. 412-74, 502-07
- \*Griswold v. Connecticut (1965)
- \*Roe v. Wade (1973)
- \*Planned Parenthood v. Casey (1992)
- Vernonia School District v. Acton (1995)

### 5. Equality

- A. General issues
  - Reading: pp. 620-23, 704-11
  - San Antonio v. Rodriguez (1973)
  - Bush v. Gore (2000)

- B. Race and public education
  - Reading: 628-55
  - \*Brown v. Board of Education (I and II)
 (1954/55)
- C. Race and voting rights
  - Reading: pp. 750-63, 782-93
  - Miller v. Johnson (1995)
- D. Sex discrimination
  - Reading: pp. 669-94
  - U.S. v. Virginia (1996)
- E. Affirmative action
  - Reading: pp. 718-47
  - \*Regents v. Bakke (1978)
  - \*Adarand Constructors v. Pena (1995)

## 6. Rights of Criminal Defendants

- A. General issues
  - Reading: pp. 479-84
- B. Search and seizure
  - Reading: pp. 485-531
  - Terry v. Ohio (1968)
  - \*Mapp v. Ohio (1961)
  - \*U.S. v. Leon (1984)
- C. Self-incrimination
  - Reading: pp. 531-54
  - \*Miranda v. Arizona (1966)
  - \*Dickerson v. United States (2000)
- D. Right to counsel
  - Reading: pp. 556-67
  - Gideon v. Wainwright (1963)
- E. Cruel and unusual punishment
  - Reading: pp. 590-612
  - \*Gregg v. Georgia (1976)
  - \*McCleskey v. Kemp (1987)

**Tentative Schedule by Day**

January 3	1	Introduction to the Supreme Court
January 5 liberties	2A	Constitutional protections of civil
January 8	2B	Federal power to protect civil liberties
January 10	2C	Governmental and private action
January 12		QUIZ
January 17	3A	General issues in freedom of expression
January 19	3B	National security
January 22	3C	Public speech and protest
January 24	3D	Criminal justice system
January 26	3E	Obscenity
January 29	3F	Libel
January 31	3G	Political money
February 2		FIRST MIDTERM
February 5	4	Privacy
February 7	4	Privacy (cont.)
February 9	5A	General issues in equality
February 12	5B	Race and public education
February 14	5B	Race and public education (cont.)
February 16	5C	Race and voting rights
February 19	5D	Gender discrimination
February 21	5E	Affirmative action
February 23		SECOND MIDTERM
February 26	6A	General issues in defendants' rights
	6B	Search and seizure
February 28	6B	Search and seizure (cont.)

March 2	6C	Self-incrimination
March 5	6D	Right to counsel
March 7	6E	Cruel and unusual punishment
March 9	6E	Cruel and unusual punishment (cont.)
March 14		FINAL EXAMINATION (9:30)