

**POLITICAL SCIENCE 519N
THE COURTS AND CIVIL LIBERTIES
COURSE # 16262-1
MR. CHARLES SMITH
WINTER, 2003**

I. Introduction

*For a Commonwealth without lawes is like a ship without rigging and steerage.
--The Book of the General Lawes and Libertyes Concerning the Inhabitants of the
Massachusetts (1648)*

*It is emphatically the province and duty of the judicial department to say what the law is.
--Chief Justice John Marshall, Marbury v. Madison (1803).*

*Such is the unity of all history that anyone who endeavours to tell a piece of it must feel that his
first sentence tears a seamless web. . . . The web must be rent; but as we rend it, we may watch the
whence and wither of a few of the severed and raveling threads which have been making a pattern
too large for any man's eye.
--Pollock and Maitland (1968), The History of English Law Before the Time of Edward I*

What *are* civil liberties? How do they compare with civil rights? What has been the process by which Americans have gained certain protections against actions taken by the state and other Americans? While the U.S. Constitution spells out certain rights held by Americans, all Americans have not always held these rights. Additionally, not all of the rights that protect Americans are listed in the Constitution. The purpose of this course is to introduce students to the realm of civil liberties. Hopefully by the end of the term students will have a better appreciation of the complexities inherent in both the interpretation and application of certain key constitutional protections.

II. Contact and Meeting Information

Instructor: Charles Smith 2031 Derby Hall
Phone: 614-292-1426 (office)
Messages: 614-292-2880 (dept. office)
E-mail: csmith31@columbus.rr.com (Subject: 519)

Office Hours: Tues./Thurs. 1:00 to 2:00 P.M. and by appointment

Class Meetings: Mon. and Weds., 7:30 to 9:18 P.M. in Room 80, Derby Hall

III. Required Readings

Gregg Ivers, *American Constitutional Law: Civil Rights and Liberties* (vol. 2) (Boston: Houghton Mifflin, 2002). One copy of this text has been placed on closed reserve at the main library. In addition, for those requiring general background knowledge concerning American government, a 101 text has also been placed on closed reserve.

IV. Student Responsibilities and Course Grading

Formal Course Requirements

First Midterm Examination: 25% of course grade

The first examination will be held in class on Wednesday, February 5, and will cover the first three weeks of lectures and readings.

Second Midterm Examination: 30% of course grade

The second examination will be held in class on Wednesday, February 26, and will cover weeks 5 – 7 of lectures and readings.

Final Examination: 30% of course grade

The final examination will be held on Monday, March 17, at 7:30 P.M. and will cover only those readings and material presented in class since the second examination. The final IS NOT comprehensive. Please refrain from wearing hats during exams.

Case Briefs: 15% of course grade

Students are required to prepare briefs of selected cases (identified below). Four times during the quarter the instructor will collect briefs for certain cases. Each brief can receive a maximum of 5 points. See below for the requirements for the briefs. For more information on briefing cases, refer to the course handout on “Briefing Cases.”

Graduating Seniors

Students expecting to graduate at the end of autumn quarter must inform the instructor of this as soon as possible so arrangements can be made for the graduating senior final.

Grading Scale

A 94% and above	B- 80 – 83%	D 65 – 69%
A- 90 - 93%	C+ 77 – 79%	D- 60 – 64%
B+ 87 - 89%	C 74 – 76%	E 59% and below
B 84 - 86%	C- 70 – 73%	

Policy on missed exams and late briefs

Exams: Exceptions due to emergency situations are inevitable, but, in general, a student who misses an exam will receive a grade of zero. If you must miss an exam, please contact the instructor *as soon as possible* **prior** to the scheduled test time; and, if the excuse is justified (such as in cases of illness or family/personal emergencies), a make-up exam will be scheduled. Please see the instructor immediately upon return to establish the time and location of the make-up exam. Make-up examinations **must** be completed within 5 days following the absence. Make-up exams are given at the discretion of the instructor.

Briefs: Briefs will be collected at random and a score of “0” will be assigned to any student who fails to hand in a brief. Briefs will be collected **in class**. Briefs submitted via email will not be accepted.

Policy on attendance

Although attendance may not be taken regularly, it is expected that students will attend each class session and be prepared to discuss the assigned readings.

Policy on participation

While grades will not be assigned specifically for participation, it is hoped that students will make an effort to provide informed contributions to class discussions.

V. Academic Integrity

All of the work you do in this course is expected to be your own. Any cases of cheating or plagiarism will be handled according to university policy. Any questions on what constitutes plagiarism should be directed to the instructor.

VI. Students with Disabilities

If you have any documented condition, such as a physical, psychiatric/emotional, medical, or learning disability, which will make it difficult for you to carry out the work as outlined in this syllabus, or which will require extra time for exams, please notify the instructor or Wayne DeYoung, 2140 Derby Hall (292-2880), during the first week of the course.

VII. Readings

The decisions to be read can be divided into three categories. Those marked with (A) on the syllabus are to be briefed and understood in detail. Those identified by (B) are to be read and understood in general terms. Those marked with (C) need only be skimmed and understood as part of a general line of case development. Cases that are located in the text but not mentioned in the syllabus fall into the last category and are meant to aid in the understanding of judicial development in particular constitutional areas. Cases marked with an * will be handed out in class and are to be treated as (C) cases.

VIII. Course Schedule – All dates are tentative; the schedule may be modified as needed. Please be mindful of examination dates. Class time affords a perfect opportunity to ask questions, and you are encouraged to take advantage of it. The instructor is also available for assistance during office hours and at any other mutually agreeable time.

Important Dates

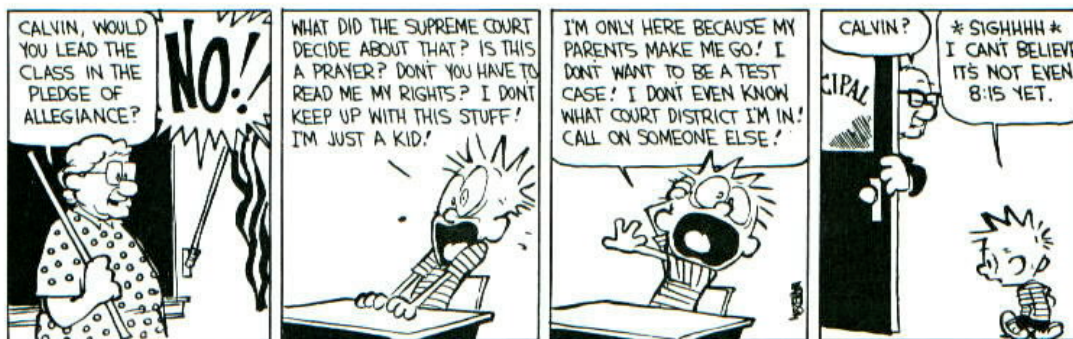
January 24 (Friday) – Last day to drop course without permission

February 5 (Wednesday) – First Examination

February 21 (Friday) – Last day to drop course without petitioning

February 26 (Wednesday) – Second Examination

March 17 – Final Examination at 7:30 P.M.

**Schedule:****Monday, January 6—Introduction**

There is no power above them, to control any of their decisions. There is no authority that can remove them, and they cannot be controlled by the laws of the legislature. In short, they are

independent of the people, the legislature, and of every power under heaven. Men placed in this situation will generally soon find themselves independent of heaven itself.

--Brutus (Anti-Federalist Essay XV, 20 March 1788)

The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. ...[T]he judiciary is beyond comparison the weakest of the three departments of power.

--Alexander Hamilton, *Federalist* 78

What are civil liberties? What are civil rights?

Structure of the federal courts

How cases arrive at the U.S. Supreme Court

The issue of *justiciability*

Wednesday, January 8—Constitutional Sources of Civil Rights and Liberties

There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-oriented society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.

--Justice John M. Harlan (I), writing for the Supreme Court in *Jacobson v. Massachusetts* (1905)

Read: Ivers, Chapters 1 and 2

- *Furman v. Georgia* (1972)
- *Griswold v. Connecticut* (1965)

Monday, January 13—Briefing Cases

Read: “Case Analysis” handout

Ivers, Appendix 2 (pp. 742-3)

- *Furman v. Georgia* (1972)—(A)

Wednesday, January 15—The Rights Revolution

A bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inference.

--Thomas Jefferson, Letter to James Madison 20 December 1787

Read: Ivers, Chapter 3

- *Barron v. Baltimore* (1833)—(B)
- *The Slaughterhouse Cases* (1873)—(B)
- *Gitlow v. New York* (1925)—(C)

Monday, January 20—No Class

Wednesday, January 22—Expressive Freedom and the First Amendment

Freedom to speak and write about public questions is as important to the life of our government as is the heart to the human body. In fact, this privilege is the heart of our government. If that heart be weakened, the result is debilitation; if it be stilled, the result is death

--Justice Hugo Black, *Milk Wagon Drivers Union v. Meadowmoor Dairies* (1941)

Read: Ivers, Chapter 4

- *Schenck v. United States* (1919)—(B)
- *Dennis v. United States* (1951)—(C)
- *Texas v. Johnson* (1989)—(A)
- *Hill v. Colorado* (2000)—(B)
- *R.A.V. v. City of St. Paul* (1992)—(B)
- *Virginia v. Black* (VA Supreme Court, 2002)--handout

Monday, January 27—Freedom of Expression Continued – Obscenity and Association

What shocks me may be sustenance for my neighbor. What causes one person to boil up in rage over one pamphlet or movie may reflect only his neurosis, not shared by others.

--Justice William O. Douglas, dissenting in *Miller v. California* (1973).

- *Roth v. United States* (1957)—(C)
- *Miller v. California* (1973)—(B)
- *Reno v. ACLU* (1997)—(C)
- *Federal Communications Commission v. Pacifica* (1978)—(B)
- *George Carlin's "7 Words You Can't Say on Television"*
- *Boy Scouts of America v. Dale* (2000)—(A)

WARNING!!! Today's lecture contains language of a frank and explicit sexual nature. Viewer discretion is advised.

Wednesday, January 29—Freedom of the Press

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.

--Sir William Blackstone, *Commentaries on the Laws of England* (1766), vol. 4, 151-52.

Read: Ivers, Chapter 5

- *Near v. Minnesota* (1931)—(B)
- *New York Times Co. v. United States* (1971)—(A)
- *New York Times v. Sullivan* (1964)—(B)
- *Gertz v. Welch* (1974)—(C)
- *Hustler Magazine v. Falwell* (1988)—(C)

Monday, February 3—TBA**Wednesday, February 5—First Examination**

Monday, February 10—Religious Liberty and Church-State Relations, Part I

The “Establishment” Clause

In attempting to articulate the scope of the two Religion Clauses, the Court’s opinions reflect the limitations inherent in formulating general principles on a case-by-case basis. The considerable internal inconsistency in the opinions of the Court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles. . . .

--Chief Justice Warren Burger, writing for the Court in *Walz v. Tax Commission* (1971)

Read: Ivers, Chapter 6 (pages 225 – 292)

- *Everson v. Board of Education* (1947)—(C)
- *Engel v. Vitale* (1962)—(C)
- *Lemon v. Kurtzman* (1971)—(A)
- *Wallace v. Jaffree* (1985)—(C)
- *Zelman v. Simmons-Harris* (2002)—handout

Wednesday, February 12—Religious Liberty and Church-State Relations, Part II

The “Free Exercise” Clause

[O]ne of the mandates of the First Amendment is to promote a viable, pluralistic society and to keep government neutral, not only between sects, but also between believers and nonbelievers.

--Justice William O. Douglas, dissenting in *Waltz v. Tax Commission* (1970)

Read: Ivers, Chapter 6 (pages 292 – 322)

- *Employment Division of Oregon v. Smith* (1990)—(A)
- *Lamb’s Chapel v. Center Moriches School Dist.* (1993)—(B)
- *Church of Lukumi Babalu Aye v. City of Hialeah* (1993)—(B)
- *City of Boerne v. Flores* (1997)—(C)
- *Watchtower Bible and Tract Society v. Stratton* (2002)—handout

Monday, February 17—The Right to Privacy

. . . [T]here is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portions of a person’s life and conduct which affects only himself, or if it also affects others, only with their free, voluntary and undeceived consent and participation.

--John Stuart Mill, *On Liberty* (1859)

Read: Ivers, Chapter 10

- *Griswold v. Connecticut* (1965)—(B)
- *Loving v. Virginia* (1967)—(C)
- *Roe v. Wade* (1973)—(B)
- *Planned Parenthood v. Casey* (1992)—(A)
- *Stenberg v. Carhart* (2000)—(A)
- *Bowers v. Hardwick* (1987)—(C)
- *Washington v. Glucksberg* (1997)—(C)

Wednesday, February 19—Equal Protection and Anti-discrimination

Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights all are equal before the law.

--Justice John M. Harlan (I), dissenting in *Plessy v. Ferguson* (1896)

The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.

--Justice Sandra Day O'Connor, writing for the Court in *Adarand Constructors, Inc. v. Peña* (1995)

Read: Ivers, Chapter 11

- *Dred Scott v. Sandford* (1857)—(B)
- *The Civil Rights Cases* (1883)—(A)
- *Plessy v. Ferguson* (1896)—(B)
- *Brown I* (1954)—(A)
- *Brown II* (1955)—(B)
- *Swann v. Charlotte-Mecklenburg* (1971)—(C)
- *United States v. Virginia* (1996)—(B)

Monday, February 24—TBA**Wednesday, February 26— Second Examination****Monday, March 3— Juveniles and Civil Liberties**

Under our Constitution, the condition of being a boy does not justify a kangaroo court.

--Justice Abe Fortas, writing for the Court in *In re Gault* (1967).

- *Board of Education v. Earls* (2002)—handout
- *Sierra v. Board of Education* (2002)—handout
- *Vernonia School Dist. v. Acton* (1995)—(B) (page 349)

**Wednesday, March 5—The Constitution and Criminal Justice, Part I
Search and Seizure**

We could, of course, facilitate the process of administering justice to those who violate criminal laws by ignoring . . . the entire Bill of Rights—but it is the very purpose of the Bill of Rights to identify values that may not be sacrificed to expediency. In a just society those who govern, as well as those who are governed, must obey the law.

--Justice John Paul Stevens, dissenting in *U.S. v. Leon* (1984)

Read: Ivers, Chapter 7

- *Olmstead v. United States* (1928)—(C)
- *Mapp v. Ohio* (1961)—(A)
- *Terry v. Ohio* (1968)—(B)
- *Vernonia School Dist. v. Acton* (1995)—(B)
- *New Jersey v. Powell* (2002)—handout

**Monday, March 10—The Constitution and Criminal Justice, Part II
Legal Representation, Confessions, and Fair Trials**

That the terms of a penal statute . . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

--Justice George Sutherland, writing for the Court in *Connally v. General Construction Co.* (1926)

Read: Ivers, Chapter 8

- *Gideon v. Wainwright* (1963)—(B)
- *Miranda v. Arizona* (1966)—(B)
- *Batson v. Kentucky* (1986)—(C)
- *JEB v. Alabama ex rel T.B.* (1994)—(C)
- *Dickerson v. United States* (2000)—(A)

Also read:

- *Sheppard v. Maxwell* (1966)—(C) (page 187)
- *Nebraska Press Association v. Stuart* (1976)—(C) (page 191)

Wednesday, March 12—Guest Speaker—Mr. Pete Chimbidis

Final Examination— Monday, March 17 at 7:30 P.M.

Instructions for Writing Legal Briefs

Law and pre-law students craft legal briefs as an exercise to aid in locating key information in a court decision. Briefs also serve as valuable study aids and assist in class discussions of key court rulings. For these reasons, you are asked to write a series of legal briefs for cases identified by (A) in the syllabus above. Four times during the quarter the instructor will collect your briefs for certain cases and assign a score of 1 to 5 points. The briefs are assigned in lieu of a long research paper.

There are many ways of crafting a legal brief, but, since these briefs serve **you**, they should be written in a manner that makes sense to you and fits with your method of studying. The briefs, though, **must** contain several key elements of the opinion under examination. For a list of those elements, refer to the handout titled “Case Analysis” prepared by the instructor. You have been provided with two different examples of how briefs are prepared. Your instructor has created one in the “Briefing Cases” handout. The second is located in Appendix 2 (pages 742-43) of the Ivers text. Gregg Ivers prepared a sample brief based on the U.S. Supreme Court ruling in *Lochner v. New York* (1905). Unfortunately, he neglected to give you the actual opinion of the case, so you have only his word as to what the facts, legal questions, etc. were. To assist you in making use of Ivers’ brief, you can read the Court’s decision in *Lochner* at the following website:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=198&page=45>

Format for the briefs

- Please **do not** place your name on the briefs—**use only the last 6 digits of your social security number.**
 - Briefs must be typed, using standard 12-point font and one-inch margins.
 - Briefs must be double-spaced.
 - Briefs can be printed double-sided; if single-sided, please staple the pages.
 - **Cover pages must not be used.** They waste paper and serve no purpose.
 - At the top-left corner of the first page should appear the following:
 - Social Security Number (last 6 digits)
 - Political Science 519
 - Title of the case
 - Please be mindful of spelling, grammar, and punctuation.
 - Titles of cases referenced in the brief must either be underlined or italicized.
- At least one point will be deducted from your score for a lapse in any of the requirements listed above.**

Court-related Websites

FindLaw Supreme Court Opinions
<http://www.findlaw.com/casecode/supreme.html>

FindLaw Supreme Court Center
http://supreme.lp.findlaw.com/supreme_court/resources.html

The Oyez Project of Northwestern University
<http://oyez.nwu.edu/>

Legal History Resources
<http://www.law.utexas.edu/rare/legalhis.htm>

U.S. Judicial Branch Resources
<http://www.loc.gov/global/judiciary.html>

Law.com Supreme Court Monitor
http://www.law.com/us_supreme_ct/

Federal Judiciary Links
<http://www.uscourts.gov/allinks.html>

Federal Judicial Biography Database
http://air.fjc.gov/history/judges_frm.html

Federal Court Locator
<http://vls.law.vill.edu/Locator/fedcourt.html>

On the Docket—Northwestern University
<http://www.medill.northwestern.edu/docket/>

American Bar Association's Law Link
<http://www.abanet.org/lawlink/home.html>

Law Dictionaries On the Web

A Dictionary of Law 1893-- dictionary and compendium of American and English jurisprudence, first published in 1893.
<http://www.numismaticrareuscoin.com/nbn/defs.html>

FindLaw Dictionary-- searchable database of legal terms.
<http://dictionary.lp.findlaw.com/>

Jurisdictionary - useful facts about the words and the rules that lawyers use.
<http://www.jurisdictionary.com/>

law.com: Law Dictionary - searchable database of legal terms.
<http://dictionary.law.com/lookup2.asp>

Statement of Student Responsibility*
Political Science 519N
Winter, 2003

I state that I have read and understand the requirements as outlined in the syllabus for this course. I understand that 500-level courses are taught at a pace that requires considerable work and I am prepared to complete the assignments as required and take responsibility should I fail to comply with the guidelines for the course. I agree to abide by the Code of Student Conduct and understand that failure to do so will result in university academic misconduct proceedings.

I understand that if I need assistance with materials throughout the term the instructor is available to guide me, but that ultimately I am responsible for my own work and for notifying the instructor if I do have problems.

Signature Date

Print Name: _____ Hometown: _____

Year in School: _____ Major/Minor: _____

E-mail Address: _____ Phone #: _____

Pre-Law? (circle one) Yes No

Prior PoliSci/Govt Courses (H.S. and College): _____

Prior Political Experience: _____

Reason for Taking Course: _____

Course Expectations: _____

Special Considerations (i.e., disability, graduating senior): _____

Interesting Tidbit About Myself: _____

* Please complete and return to the instructor in class on Wednesday, January 8.