

Spring 2009

Civil Liberties and Rights PSCI 4771

University of Colorado

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Office Hours: Tuesday and Thursday 3:30-5
(also by appointment)

Course Objectives

The main purpose of this course is to introduce you to classical and contemporary theories of civil rights and civil liberties and to examine the role of the Supreme Court in defining the fundamental rights and liberties of citizens in the United States such as affirmative action, religion in schools, freedom of speech, pornography and abortion. In our system of separated powers, it is the duty of the Supreme Court to be the final arbiter in balancing the rights of the individual against the common good. We will examine the inherent tension in supporting individual rights when such individual rights conflict with the will of the democratic majority. By the end of the course, rather than having memorized dozens of Supreme Court cases (though we will be reading many of them), you should be able to think critically about the logical foundations of the cases and the historical development of the justification for including civil rights and liberties in a constitution.

By the end of the semester you should have:

- investigated the theoretical foundations of civil rights and liberties, and the historical development of their application in the United States.
- developed a deeper understanding of the intersection between law and politics.
- improved your critical thinking skills.
- engaged in several critical analyses of important theoretical assumptions, claims, and arguments in particular aspects of civil rights or civil liberties.

Course Requirements

You are required to come to every class day, *prepared by the reading for discussion*. We will spend a great deal of time discussing these issues in a seminar format, which means that everyone is expected to have done all the reading and each person is responsible for sharing their unique understanding of the topics. Each person's contribution is highly valued and necessary for a successful seminar. For this reason, 25% of your grade will be composed of a combination of attendance, homework assignments and class participation. You can miss two classes without any consequences for your grade. If you have to miss more than two classes for any reason, then your attendance grade will suffer, regardless of the reason for missing class.

There are two exams, (one in class and one out of class), the first one worth 10 % of your grade, the second one worth 20% of your grade and there will be one 12-15 page research paper (25%) and an oral presentation of this paper, which is worth 5%. There is a written assignment due at the end of four weeks that is worth 15% of your grade. These papers, assignments and exams and their respective topics will be discussed during the course of the semester.

There are many resources on the website (<http://sobek.colorado.edu/~bairdv/>) that can be used in preparing exams and the final paper. There are files with grading criteria, example midterms and final papers and presentations of various hypothetical outlines for your final paper.

You are expected to keep a copy of your work in case something is lost. **Incompletes are strongly discouraged by the College and are only given for non-academic reasons.**

The Rules

Please email me or come by my office at any time to discuss issues with the class. I am usually there and I usually answer emails from students within minutes of receiving them. I genuinely look forward to discussing issues in the class with students. I encourage you to use email or office visits for any issues related to the class. On the other hand, I do not check voice mail.

In this class, we will be dealing with a great number of sensitive issues. I encourage feedback on my teaching style and the materials, both anonymously by email and otherwise, for any reason at any time, as long as it is respectful. Along those same lines, I always encourage students to disagree with anything I say at any time, again, as long as it is respectful. I expect all students to treat each other with respect as well. If I feel that you have treated me or any other student with disrespect, I will ask you to meet me in my office. If you continue at any other time to treat me or other students with disrespect, I will ask you to leave the classroom. Potentially, this kind of behavior could result in being dropped from the class. If you have any questions about my policies, or the University's policy regarding classroom behavior, do not hesitate to bring it up in class or talk to me about it in my office. The University's general Code of Conduct can be found at the following website: <http://www.colorado.edu/studentaffairs/judicialaffairs/code.html> and its code of conduct guidelines for the classroom can be found at the following website: <http://www.colorado.edu/facultyaffairs/deskref/part13.html#Classroom Behavior Policy And Procedures>

Religious Observation

Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. See full details at http://www.colorado.edu/policies/fac_relig.html

Sexual Harassment

I am required by law to report to university officials any sexual harassment that I observe or that is reported to me. The university's sexual harassment policy can be found at the following website: <http://www.cusys.edu/~policies/Personnel/sexharass.html>

Academic Honesty

All the work you do in this course is expected to be your own. Absolutely no cheating or plagiarism (using someone else's words or ideas without proper citation) will be tolerated. Any time that you consult outside sources, you **MUST** cite those sources. If you consult outside sources without citation, even if you are not citing the sources directly, this constitutes cheating. Failure to put quotation marks around direct quotations constitutes plagiarism and will always result in an F for the class. Misattribution of sources (citing certain quotations or ideas as coming from a source other than the one that they come from) will result in a lower grade. Any cases of cheating or plagiarism

will be reported to the Office of the Dean of Students. **If you violate the Honors Code, you will fail the course.** Please review the University's policy regarding academic integrity:
<http://www.colorado.edu/policies/acadinteg.html>

Disabilities Accommodation

The Americans with Disabilities Act of 1990 (ADA) provides protection from illegal discrimination for qualified individuals with disabilities. Students requesting instructional accommodations due to disabilities must arrange for such accommodation. Please review the University's services for such accommodations: <http://www.colorado.edu/sacs/disabilityservices/index.html>

Required Texts

Epstein, Lee and Thomas Walker. *Constitutional Law for a Changing America: Rights, Liberties and Justice*, 6th ed. Congressional Quarterly.

Course Outline

Note: Page numbers are listed next to cases that you should know very well. You should be familiar with other cases in the reading as we will discuss them in class, but you should read the listed cases several times. It is expected that you should have read all the reading by Tuesday and the reading assignment for Thursday is to read the assignment again.

Week	Topics	Assignments
Week 1	Introduction to the Supreme Court and Decision Making; Statements of Summary, Interpretation, Causation, Normative, Falsifiability	Chapters 1, 2 and 3 (skim) Second day of class: quiz on the syllabus
Week 2	Religious Exercise I	99-138 (Cantwell, Sherbert, Yoder, Hialeah, Smith, Boerne)
Week 3	Religious Exercise II	First exam on statement assumptions: January 27th in class.
Week 4	Religious Establishment: The Lemon Test	138-160, 167-185 (Everson, Lemon, Zelman, Edwards)

Course Outline, continued

Week 5	Blaine Amendments	<p>Reading: example of final paper: Article on Blaine Amendments (on website).</p> <p>Three page assignment due in class, answering the question:</p> <p>In what manner and to what extent are the Blaine Amendments constitutional?</p> <p>Bring copy to class.</p>
Week 6	Freedom of Speech: War Time	<p>210-244 (Schenck, Abrams, Gitlow, Dennis, Brandenburg)</p> <p>Discussion of final paper</p>
Week 7	Freedom of Speech: Symbolic Speech	<p>244-268 (O'Brien, Tinker and Texas v Johnson, Chaplinsky, Cohen)</p>
Week 8	The Balancing Act	<p>268-295; 307-312, 319-326, 365-372 (Hill, RAV, Wisconsin v Mitchell; Rumsfeld, Boy Scouts v Dale, Pentagon Papers, Ashcroft)</p> <p>Paper topics and bibliography due March 19th in class.</p>
Week 10	Privacy: The Early Years	<p>412-433 (Griswold, Roe) 452-460 (Bowers, Lawrence, Cruzan)</p>
Week 11	Second exam	<p>Exam question: In what manner and to what extent is the underlying logic in <i>Lawrence</i> consistent with the underlying logic in <i>Griswold</i>?</p>
Week 12	Equal Protection: Historical Context	<p>626-642 (Scott (on website) Plessy, Sweatt, Brown)</p>
Week 13	State action	<p>647- 660 (Loving, Shelley, Burton, Moose Lodge)</p>
Week 14	Gender Discrimination	<p>660-684 (Reed, Frontiero, Craig, Virginia)</p>

Course Outline, continued

Week 15	Other Forms of Discrimination	687-706 (Romer, Rodriguez, Saenz)
Week 16	Final Paper Presentations	Oral presentations Each student will give a three minute oral presentation on their final paper, laying out the basic arguments and counterarguments in their analysis.

Last day to turn in draft of final paper to get early comments: April 20th; 5:00pm by email.

Final paper Due: Monday, May 4th, 5:00 pm, by email

Civil Liberties Paper Assignment

Pick any topic within the area of civil liberties or civil rights. Here is a list of topics.

Criminal Justice	HIV/AIDS	Racial Equality
Death Penalty	Immigrants Rights	Religious Liberty
Disability Rights	Int'l Civil Liberties	Reproductive Rights
Drug Policy	Lesbian & Gay Rights	Rights of the Poor
Free Speech	National Security	Student Rights
Women's Rights	Prisons	Voting Rights
Safe and Free: Patriot Act	Privacy & Technology	

Then, do research on Lexis Nexus. Go to the CU Library website → Find articles → Lexis Nexus (Academic) → Legal. You should use your law review articles to come up with a more specific topic and argument within your topic. Responding to arguments in these law review articles is an essential part of the paper. Never treat arguments in law reviews as if they are true. Generally, that means that you cannot end a paragraph with a quotation from these articles – you must always evaluate them. They are going to cite court cases as evidence – use those citations as clues about which cases are likely to be relevant for your argument. Do you agree or disagree with their interpretation of the logic in the case? Is there an alternative interpretation? Take a stand on the most persuasive interpretation. Then, think about what consequences that has for your main argument. **You must have two outside sources, including legal articles and amicus briefs.**

Your argument will most likely deal with whether something in particular –a hypothetical policy or law or future Supreme Court decision or scenario would be consistent with the constitution and the Supreme Court's precedent in this area.

Every paper starts out as follows.

I.A.1 Your first sentence is your argument. ____ is inconsistent/consistent with ____.

I.A You may need to spend the first paragraph defining terms (probably terms just used in your thesis statement or statement of argument). You might also spend the first paragraph summarizing the kind of evidence or arguments will be used to defend your argument. Alternatively, you may need to spend the first paragraph listing the potential counterarguments that you will need to consider. Take care to avoid causal statements, normative statements and all irrelevant statements.

Pretend that you are a lawyer who is about to make this argument in front of the Supreme Court. Only use evidence that you believe would be relevant for Supreme Court justices. They don't care what you think about your topic. They don't care about your values. They care about making legal arguments when it comes down to writing an opinion in the case – help prepare the reader (a Supreme Court justice) to write a majority opinion on this case. Try to use evidence that might persuade a justice that you think may be unsympathetic to your argument – prove to them why they are wrong about what they think is consistent with previous Supreme Court decisions. Your other goal is to teach them that looking at these cases more closely, they will reach your conclusion. Remember not to pick argument for which there is no other side to the argument. You must pick an argument for which there exists a counterargument. **The grade of your paper is directly correlated with the strength of your counterarguments and your ability to refute good strong counterarguments.**

There are several potential outlines that could emanate from an argument.

Potential Paper Outline 1: You could outline your entire paper around counterarguments.

Section Heading 1

II.A. Counterargument 1

II.B. Refutation of Counterargument 1

Section Heading 2

III.A. Counterargument 2

III.B. Refutation of Counterargument 1

And so on...

Potential Paper Outline 2: Or you may need to lay out arguments before you lay out counterarguments:

Section Heading 1

II.A. Argument 1

II.B. Counterargument 1

II.C. Refutation of Counterargument 1

Section Heading 2

III.A. Argument 2

III.B. Counterargument 2

III.C. Refutation of Counterargument 2

And so on.

Potential Paper Outline 3: Or, if your arguments need some space, you may need to outline your arguments first and then outline your counterarguments and then the refutations.

Section Heading 1

II. Argument 1

Section Heading 2

III. Argument 2

Section Heading 3

IV. Counterargument 1

Section Heading 4

V. Counterargument 2

Section Heading 5

VI. Refutation of Counterargument 1

Section Heading 6

VII. Refutation of Counterargument 2

This class has been designated a critical thinking class. For this reason, the enrollment is capped at 25 students and there is a heavy writing, reading and critical thinking requirement. The purpose of this class is to use the context of the Supreme Court's treatment of civil liberties and civil rights to engage in critical legal analysis. Every paper and exam will require you to engage in legal interpretive analysis in which you will make an argument about the underlying logical implications of Supreme Court opinions. In other words, you will be making non-obvious and insightful arguments about what the justices mean with the particular words they choose in their opinions. Instead of noticing what is on the surface, you will be evaluating the underlying logical implications of what they are saying. Noticing something non-obvious and insightful will require you to read the relevant readings anywhere from 10 to 25 times.

These are extremely difficult assignments and you likely have no experience with this kind of analysis. I have identified certain pitfalls in engaging in legal interpretive analysis. One is that students tend to summarize factual information in their papers – saying obvious facts about the case for which there is no counterargument. Another is that students tend to allow their own ideological biases (normative arguments) into the analysis. Another pitfall is that students tend to engage in unsubstantiated causal analysis. To allow students to overcome these pitfalls, there will be a test early in the semester in which students will be required to differentiate among the various kinds of statements (10% of your grade). We will also be having weekly one page written assignments in which every student will be required to identify some statement or set of statements from the reading and offer two alternative (logically distinguishable) interpretations of that text. **These assignments will continue until every student in the class is able to engage in interpretive analysis successfully.** Until every student is able to do this assignment successfully, these weekly assignments will be a part of your participation grade. Afterwards, coming to class prepared is all that you will need to do to get a perfect grade in participation (25% of your grade). **You get two free days of being absent, regardless of the reason, and no more than that, regardless of the reason. The only exception I make is religious holidays that are set out in advance.** In other words, death in the family, and car accidents are part of your two day free absences. You can miss up to four classes and still receive an A for participation.

In the third week, there is a three page paper due, counting for 15% of your grade. This paper can be thought of as the first midterm exam. The second midterm exam (5-7 pages) is due in the eleventh week and is worth 20% of your grade. The last paper is due at the end of the semester (10-12 pages) and will be worth 25% of your grade. An oral presentation of this paper (about three minutes) will be worth 5% of your grade. This paper has the same requirements as the midterm except that you will use at least two outside sources (such as law review articles) in this paper.

The requirement of these papers is to engage in interpretive analysis in which you make an argument, and then evaluate and refute counterarguments. If your paper has normative or causal arguments or simply summarizes information from the cases, **then you will not receive any credit for your paper.** If your paper has an argument based on interpretive analysis but does not consider and refute counterarguments, then the highest grade you can expect is a D. If you plagiarize, I will turn in the evidence to the Honors Council and you will receive an F for the entire class. **I read drafts of papers that are handed in ahead of time.** I have explicit grading criteria, as well as many examples of successful papers on my website: <http://sobek.colorado.edu/~bairdv/teaching>