

POLS/LSJ 360 Winter 2010
United States Courts and Civil Liberties

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Office hours and location: Tues, Thurs 6:00 – 7:00 pm
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SAV 166
T, Th
7:00 pm – 9:20 pm

This is a course on civil rights and civil liberties in the American constitutional system. The primary goal of the class is to help students understand how legal and political processes have shaped protections for civil rights and civil liberties in the United States.

The course emphasizes a couple of core themes. First, the Supreme Court is described as a political institution, or one in which justices make decisions to allocate goods and resources. While justices announce their decisions in the language of the law, which partly serves to mask the political nature of what they are doing, it is important to recognize that they are nonetheless making decisions that are political in nature. Second, the importance of the Constitution as a foundational document is emphasized but so too is the fact that *interpretations* of the Constitution change over time. Overall, we will discover that the constitutional protections given to core rights have changed over time and remain the subject of continuous negotiation.

The course does not attempt to cover all the individual rights protected in our constitutional system. The course is designed for students with an interest in American political and legal institutions, legal processes, American political history, or the role of courts in society. No prior knowledge of constitutional law is presumed.

TEXT. David O'Brien, *Constitutional Law and Politics Volume Two: Civil Rights and Civil Liberties*, 7th Edition. ISBN 978-0-393-93039-9. Available at the University Bookstore and numerous sources online.

The course website is staff.washington.edu/swg2. The website will have information about the course and links to study questions, as well as other course related materials.

GRADING: Grading for this course will be based on two writing assignments, a midterm, a final, and class participation – each of these are discussed in more detail below.

Grading scale: Grading for all assignments will be on a 100 point scale with 60 points the lowest passing grade. There is a page linked to the course website that explains how the points between 60 and 100 correspond to the UW 4 point grade scale. Your final grade will be calculated based on the percentages below.

1 st Written Assignment	10%	Due April 15, beginning of class
Midterm	26%	April 29 in class
2 nd Written Assignment	20%	Due May 27, beginning of class
Final	34%	June 10, 7:00 – 9:20 Sav 166
Class participation	10%	

Writing assignments: Each assignment will ask you to write one or two analytic essays on assigned topics. You will be asked to construct and explain constitutional arguments using your own words. Clear and effective writing will be essential for receiving a good grade. The total length of the first assignment will be three pages and the second assignment will be six pages. Writing assignments must be turned in at the beginning of class when they are due. Only hard copies will be accepted.

Exams: The exams will test your knowledge of the assigned cases and related constitutional controversies and your understanding of constitutional processes and concepts. Exams will consist of short answer and short essay questions. The final exam is cumulative in the sense that it will require knowledge of major concepts discussed throughout the course.

Class participation. The class participation grade will be based on your constructive participation in class. There will be many opportunities for class participation, in a variety of forms including during office hours. Class time will be split between lecture and discussion. At any time, please feel free to ask questions. Your questions can prove vital to your own and your classmates' understanding and will contribute to productive discussions.

OFFICE HOURS AND EMAIL. My office hours are Tuesday and Thursday from 6:00 pm – 7:00 pm in Gowen 111. I am also available by appointment. Email sent between the hours of 9:00 AM and 5:00 PM Monday – Friday will generally receive a response during that time period. Email sent after 5:00 PM will most likely receive a response the next day. In periods immediately before an exam, I will announce additional email availability.

PREPARING FOR CLASS. The readings for the class consist mostly of excerpts from judicial opinions in Supreme Court cases. Because judges write in the peculiar legitimating language of the law, these opinions can be difficult to understand. Judges do not write opinions in order to explain the issues in a case clearly. They are not trying to write so that a college student can study for an exam. They write opinions in an attempt to justify their rulings to the audience of specialists most interested in a case. They are producing arguments in favor of a particular outcome, not attempting to create an objective record of their reasoning in the case. Judges will sometimes deliberately obscure important issues in a case, offer misleading justifications, and omit very important facts or considerations.

As a result you will need to read between the lines to develop an adequate understanding of the cases. You will need to read each case several times, over a period of several days, before you will understand it. For most students, it takes considerable time and practice to learn to read and understand cases effectively. Reading should get easier as the term progresses. To help you prepare for class and exams, you should take the time to answer study questions and write briefs as you read the cases.

Study questions. Several sets of study questions will be made available on the course website during the quarter. The study questions are designed to help you as you read

cases by drawing attention to some important aspects of the cases and readings. The study questions will help you to prepare for the exams. You should ask in class when you are not sure how to answer one of the study questions. Study questions may appear on exams in modified form.

Briefs. A brief is a short (about one page) written summary of a court case. I strongly recommend that you create a brief for each of the assigned cases during the quarter. Simply reading through the cases will not be sufficient to focus your mind on the most important elements of the case. Taking the time to create a written analysis of each case in your own words will help you to understand and remember the material. Your briefs may also be useful to you if you continue to study law after this class. There is no universally accepted format for a brief. You can decide on your own format. A few samples are posted on the course website.

I advise against using a highlighting pen. They are usually counter-productive when reading, analyzing, and trying to remember Supreme Court cases. I also advise against purchasing ready-made briefs of cases. Such products vary considerably in quality and will distract you with information about portions of a case that are not covered in the text or the course.

ACADEMIC CONDUCT. The University of Washington's Student Conduct code will be enforced, including the policy on plagiarism. The entire policy can be found at [http://www.polisci.washington.edu/Dept and Univ Policies.pdf](http://www.polisci.washington.edu/Dept_and_Univ_Policies.pdf).

GRADE DISPUTES: If you have questions or concerns about the grade you received on an assignment or exam, we can discuss it. If you would like to contest the grade, we will follow the procedure outlined here:

I will discuss with you at your request any grades that I have given on assignments and exams. For assignments and exams, I will do my best to communicate the parameters of graded assignments and exams, and I encourage you to ask questions about these parameters. If you feel I have made an error, we will attempt to resolve the issue through the following procedure. Please note that I will only discuss issues with grading in the 7 days after the paper or exam has been handed back:

1. Wait a minimum of 24 hours after receiving your grade to contact me.
2. Put in writing the reasons why you are dissatisfied with your grade.
3. Bring your exam and your writing statement to my office hours and we will discuss the grade.
4. If I am convinced that your concerns are warranted I will re-read your assignment or exam.

5. If we are unable to come to a resolution, I will give your assignment or exam to another instructor to read.

DISABLED STUDENTS. If you would like to request accommodations due to a disability, please contact Disabled Student Services, 448 Schmitz Hall, 543-8924 (V/TDD). If you have a letter from Disabled Student Services indicating you require accommodations, please present the letter to me as soon as possible so that I can make necessary arrangements.

READING SCHEDULE/COURSE OUTLINE. You should complete each set of readings before the class meeting for the date listed on the schedule. The schedule indicates whether the reading is in the O'Brien textbook or whether there are materials posted on the course website.

I will try to stay on this schedule, but will make adjustments if necessary. Adjustments in the readings schedule will be announced in class. The dates of exams will not change.

- March 30 Part One: Introduction to the Court and Constitutional Politics
O'Brien: 1-21
The U.S. Constitution
- April 1 **NO CLASS – use online lecture, access from website**
Judicial power, Jurisdiction, and Court Procedure
O'Brien: 23-27, 103-127, 175-190
Video on Supreme Court (website)
A SCOTUS Case in Plain English (website)
- April 6 Constitutional Interpretation
O'Brien: 66-87, 91-95
First assignment handed out
- April 8 Incorporation of the Bill of Rights
O'Brien: 324-341, 655-664
Barron v. Baltimore (1833)
West Virginia v. Barnette (1943)
- April 13 Part Two: Freedom of Speech
O'Brien: 386-447
Schenck v. United States (1919)
Gitlow v New York (1925)
Dennis v United States (1951)
Brandenburg v. Ohio (1969)
- April 15 ***First paper due at beginning of class***
Offensive speech, Hate Speech
O'Brien: 501-516, 520-543
Cohen v. California (1971)
Federal Communications Commission v. Pacifica (1978)
RAV v. St. Paul (1992)
Wisconsin v. Mitchell (1993)
Virginia v. Black (2003)
- April 20 Funded speech and corporate speech
Rust v. Sullivan (1991)
Citizens United (website)

- April 22 Part Three: Freedom From and of Religion
 O'Brien: 709-717, 718-727, 735-758
Everson v. Board of Education Ewing Township (1947)
Engel v. Vitale (1962)
Abington School District v. Schempp (1963)
Lemon v. Kurtzman (1971)
- April 27 Free Exercise of Religion
 O'Brien: 819-825, 828-852
Scherbert v. Verner (1963)
Wisconsin v. Yoder (1972)
Employment Division, Department of Human Resources of Oregon v. Smith (1990)
Church of Lukumi Babalu Aye v. City of Hialeach (1993)
- April 29 **Midterm in class**
- May 4 Part Four: Equal Protect of the Laws: Race Discrimination
 O'Brien: 1334-1360, 1371-1388
Civil Rights Cases of 1883
Plessy v Ferguson (1896)
Shelley v Kramer (1948)
Second paper handed out
- May 6 Attacking Racial Segregation in the Courts
 O'Brien: 1388-1416
Brown v Board of Education I (1954)
Bolling v Sharpe (1954)
Brown v Board of Education II (1955)
- May 11 Attacking Racial Segregation in the Courts, continued
 O'Brien: 1416-1434, 1440-1453
Cooper v Aaron (1958)
Swann v Charlotte Mecklenburg Board of Ed. (1971)
Milliken v Bradley (1974)
Freeman v Pitts (1992)
Parents Involved v Seattle School District #1 (2007)
- May 13 Part Five: Equal Protection of the Laws – Sex Discrimination
 Deciding on Level of Scrutiny
 O'Brien: 1513-1529
Frontiero v Richardson (1973)
Craig v Boren (1976)
- May 18 Intermediate Scrutiny: Applications
 O'Brien: 1529-1548

Michael M. v Sonoma County (1981)
United States v Virginia (1996)

- May 20 Part Six: Privacy, the Right to Be Left Alone, and their Limits
 O'Brien: 1232-1248, 357-368
 Buck v Bell (1927)
 Griswold v Connecticut (1965)
- May 25 Privacy and abortion
 O'Brien: 1249-1262
 Roe v Wade (1973)
- May 27 **No class**
- June 1 Electronic surveillance – readings TBA
- June 3 Electronic surveillance – readings TBA
- June 10 Final exam