

GOVT-232 Constitutional Law II

Spring 2010 – Professor Michael Kessler

M/W 10:15-11:30 Walsh 492

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Graduate Teaching Assistant: Mr. Christopher Radcliffe--cwr9@georgetown.edu

Course Goals & Description

This course covers the origins, protections, and jurisprudence about the individual liberties of citizens enshrined in the Constitution and the limits on governmental power over citizens. Our focus will be on the First, Second, Fifth, Ninth, and Fourteenth Amendments (religion clauses, free speech, association, due process, and equal protection).

Attention will be paid to the development of theories of individual liberties at the founding and in Constitutional jurisprudence, including more recent debates in the Court and scholarly literature. Special attention will be paid to the role of the Court and lower courts in Constitutional interpretation, including various methods of interpretation.

In the first part of the course, we will track the evolution of Court doctrine about individual liberties, through a variety of cases. In the latter part of the course, we will examine modern doctrine within particular areas like freedom of speech, race discrimination, gun control, freedom of religion, and freedom of the press.

Texts & Readings

All readings will be available in Randy Barnett, *Constitutional Law : Cases in Context* (Aspen 2008). A limited number of handouts will also be prepared and distributed.

Readings will encompass about 60-70 pages of material per week (every 2 class sessions). The material is not overly lengthy and extremely well-edited in the case reader. That said, it is complex and requires your careful attention.

Assignments & Expectations of Students

- You should strive to achieve the **ideals of a liberal arts education**: free and candid exchange of ideas, rigorous critique of claims, and toleration for considering variant positions.
- **Thoughtful reading** of the texts/cases in preparation for the class is expected and essential.
- **Participation in class** is worth 10% of your grade. Students are expected to be ‘ready’ to participate at each moment, including ‘being called upon’ and to discuss and analyze the arguments of particular cases. A limited number of ‘passes’ can be taken in case you are

not able to make a full contribution to that day's discussion. I will take note of students who do well, poorly, or are not adequately prepared for class. To receive the full 10% credit for class participation, students do not need to answer questions correctly in all circumstances; rather, the credit will be received when it is clear that a good faith attempt has been made by the student to read and comprehend the material and the student can ask questions about it and recite important points/facts/issues, even if they may on occasion not be perfectly correct in their understanding of a particular case or issue. If it is clear that students did not make a good faith effort to read and understand material, and do not make a good faith effort to participate in class (either in passing when directly asked a question or in never voluntarily contributing on their own), then they will receive reduced or no credit for class participation.

- You may use your **Laptop Computers** in class for note-taking, for looking up relevant items on the web related to class issues, and for referring to related class readings. All other uses of laptops during class time are unacceptable.
- Students must adhere to the principles of conduct set forth in the Georgetown University **Undergraduate Honor System**. Details may be found at <http://gervaseprograms.georgetown.edu/honor/system/> Any sign of violations, including plagiarism, dishonesty, or cheating will be referred to the Honor Council and your Dean(s).
- **Attend the class sessions.** If you have a legitimate excuse, I need to know it (by email). Otherwise, be there. Legitimate excuses include illness, family situation, or other events or responsibilities that may occasionally draw you away from a regular class meeting. To be legitimate, I need to know about it beforehand, or it may be deemed legitimate if I receive a notice from your dean, in the case of more serious issues.
- Attendance will be recorded at each class.
- You may only sign yourself in on the attendance sheet, which will be in the front of the classroom. Signing in another person constitutes a violation of academic honesty.
- **Excused absences** *do not* yield a grade penalty, although I reserve the right to impose reasonable "make-up" meetings or assignments to ensure that the covered material is satisfactorily understood.
- You will be penalized for more than 1 **unexcused absence**. Penalties for unexcused absences are as follows:
 - 0-1 no penalty
 - 2-3 1 grade step down (e.g. a B reduced to a B-)
 - 4 2 grade steps down (e.g. a B+ reduced to a B-)
 - 5 3 grade steps down (e.g. a B+ reduced to a C+)
 - 6 or more unexcused absences will constitute a failure to complete the requirements of the course satisfactorily.
- There will be a **midterm and final exam**. The exams will be in-class, essay format, and limited open book. You will be able to bring in all assigned materials, your notes, and any outlines that you have personally participated in preparing.
- The midterm is worth 30% of your grade. The final is worth 60% of your grade.

Office Hours

My office is located in the Berkley Center, 3307 M Street NW, Suite 200.

Tuesday from 2:30-3:30 pm.

Wednesday from 2:00-3:00 pm.

I am available at times outside of this time by appointment, which may be scheduled by email.

Graduate Teaching Assistant

The Graduate Teaching Assistant is Mr. Christopher Radcliffe. He may be reached at cwr9@georgetown.edu. Mr. Radcliffe will hold office hours by appointment and at regular times to be announced. Mr. Radcliffe will also schedule review and discussion sections to meet at mutually convenient times as student interest and need warrants.

Schedule

Class #	Date	Chapter(s)	Assignment #	Length	Subject
1	Jan. 13	Introduction to the class			
2	Jan. 20	1	1 3 4*	34	PART I: THE EVOLUTION OF CON LAW <i>The Founding Era:</i> Natural Rights and the Declaration The Origins of the Bill of Rights *page 49-50 of Madison's Bank Speech
3	Jan. 25	1 2	6 7 1* 2** 5	31	Fundamental Principles v. Expressed Constraints The Aliens and Sedition Acts of 1798 <i>The Marshall Court:</i> *Introduction on p. 95 only **skip <i>Martin v. Hunter's Lessee</i> The Bill of Rights
4	Jan. 27	3	1* 2 3	57	<i>The Taney Court:</i> *Introduction on p. 95 only Fugitive Slave Clause & Enforcement Power in Congress Citizenship & The Missouri Compromise
5	Feb. 1	5	1	33	<i>The Reconstruction Era:</i> The 13 th and 14 th Amendments The Privileges or Immunities Clause
6	Feb. 3	5	2	30	Limiting the 14 th Amendment I
7	Feb. 8	5	3	14	Limiting the 14 th Amendment II
8	Feb. 10	6	1* 2 4	31	<i>The Progressive Era:</i> *Introduction on pp. 355-56 only The Due Process Clause
9	Feb. 17	7 8	1* 2 3	27	<i>The New Deal Court:</i> *Introduction on pp. 431-32 only The Due Process Clause (skip <i>Nebbia/West Coast Hotel</i>) <i>The Warren Court:</i> Economic Liberties

10	Feb. 22	8	1	28	PART II: EQUALITY <i>The Warren Court:</i> The Equal Protection Clause The Due Process Clause of the 5 th Amendment Racial Classifications Applying “Equally”
11	Feb. 24	14	1	32	<i>The Equal Protection Clause:</i> Racial Discrimination & Strict Scrutiny
12	Mar. 1	14	2 3	33	Racial Discrimination & Strict Scrutiny (continued) Sex Discrimination & Intermediate Scrutiny
13	Mar. 3	Midterm Examination in class			
14	Mar. 15	14	4	18	Other Discrimination & “Heightened” Rational Basis Scrutiny
15	Mar. 17	8	4 6*	33	PART III: LIBERTY <i>Unenumerated Rights:</i> The Right of Privacy <i>Mapp, Griswold & Roe</i> *There is no assignment 5 in this chapter
16	Mar. 22	15	1	25	Protecting Rights Deeply Rooted in Tradition & History <i>Bowers, Glucksberg & Troxel</i>
17	Mar. 24	15	2	26	Protecting Liberty I <i>Casey, Glucksberg & Carhart</i>
18	Mar. 29	15	3	20	Protecting Liberty II <i>Lawrence & Raich</i>
19	Mar. 31	6	5	15	<i>The Progressive Era Court</i> The First Amendment Wrongful Speech
20	Apr. 7	16	1	16	<i>Freedom of Speech & Press</i> What is Speech? I Conduct as Speech
21	Apr. 12	16	2 S-2	28 + 7	What is Speech? II Campaign Finance Regulations
22	Apr. 14	16	3 5 6	45	What is Abridgement? “Obscene” and Sexually Explicit Speech Commercial Speech
23	Apr. 19	17	1 2 3	29	<i>Freedom of Association:</i> Compulsory Disclosure of Membership Compulsory Expression Compulsory Association
24	Apr. 21	18	1	20	<i>The Free Exercise of Religion:</i> Belief v. Conduct Generally Applicable Laws Impeding Free Exercise
25	Apr. 26	19	1	24	<i>No Establishment of Religion:</i> Government “Entanglement” with Religion Government “Endorsement” of Religion
26	Apr. 28	19	2	21	Government “Purpose” to Advance Religion
27	May 3	20	1 S-5	6 + 42	The Right to Bear Arms <i>Heller</i>

PLEASE NOTE: The final exam will be scheduled by the University Registrar.