POLS 347B - Constitutional Law–Civil Rights and Civil Liberties

SYLLABUS: Summer 2015

CLASS MEETS: AH – 3113; 10:00 – 11:40 MTWTH (July 6 – Aug., 14)

INSTRUCTOR: Kimberley Fletcher

EMAIL: kfletcher@mail.sdsu.edu

OFFICE HOURS: Wednesday 11:45 – 2:00 and by appointment in NH 102

COURSE DESCRIPTION: Madisonian democracy establishes a government of majority rule with minority rights. In this system of government it is the Supreme Court who determines where democratic control ends and minority rights begin. The central purpose of this course therefore is to analyze the role of the Court in setting the boundary between the two.

As you will discover, this is a problem-based approach to United States civil liberties law. Individual rights and civil liberties are an integral part of American political culture. This can give them a kind of enduring and ageless quality, but it would be a mistake to assume this to be the case. While the US Constitution has remained largely unchanged for the last 222 years, its application to political debates and cases has fluctuated quite widely, depending on who is speaking and when.

This course is structured in a way to help you make sense of this continued negotiation over “core principles” of our Constitution by familiarizing you with some of the most influential Supreme Court cases. We will be considering these cases in light of their political and historical context, as the essence of this course is that Constitutional interpretation is not an objective science. At the end of class, you should be able to do three things:

1) Explain how protections for civil rights and liberties in the United States have changed over time.

2) Analytically discuss how important debates over civil rights and liberties have been shaped by their political and historical context.

3) Evaluate the attempts made by judges to bring neutrality and legal coherence to their rulings.

Student Learning Objectives:
This class is intended to help students think critically about concepts like democracy, the rule of law, activism, justice, and representative government. Students will define, explain, and illustrate by utilizing various theories of public law and contemporary US Supreme Court decision-making. Students will be able to address the origins, evolution,
justifications, institutions, processes, and the effects of law on the political system and vice versa. By semester’s end you will be able to observe courts in action and evaluate judicial decision-making in light of doctrinal development. You will also be able to articulate society’s role on the legal system and the impact it has on the evolution of law over time. Students will also hone skills in critical thinking, close reading of texts, verbal and written communications, organize and integrate ideas, and problem-solve. Students will demonstrate the ability to write formal argumentative essays that communicate descriptive analysis, frame and support a concise argument, make logical assumptions, derive sound conclusions, and display college-level use of language, grammar, and rhetorical structure.

COURSE REQUIREMENTS:

Participation (30%): Participation will be assessed on your ability to interact and participate in classroom discussion and activities. I am not looking for quantity, but quality. This portion of the grade will not be based on the number of times you speak, but on the reasoned opinions, responses, and arguments you make during class. I reserve the right to call upon students at random and if readings are not being done I reserve the right to give pop quizzes. Each student will have a baseline grade of C.

2 Exams (35% each): There will be two exams during the semester. If you require extra time for exams please provide documentation at the beginning of the semester.

Grading: Any assignment turned in late must have an excuse from the Dean of Academic Affairs. Otherwise, grades will be graded down by 1/3 a letter grade for each day it is late. For example, if a paper or exam is turned in and is an A paper, but was 3 days late, the paper or exam will be given a B, no exceptions.

Below is a guide to how your exams will be graded:

A  Outstanding in every aspect.
A - Very strong performance with a few shortcomings including spelling, dates, opinion authors, or incorrect court case names
B + Solid Performance, with some special virtues
B  Solid Performance
B - Solid overall, but a few notable weaknesses
C + Average, with a few good points
C  Average
C - Average, with some major problems
D + Generally bad, but with a few glimmers of knowledge
D  Generally bad
D -  Overall bad, but a hint of knowledge from the course
F  - Did not follow instructions, no significant information from the course and/or no attempt

IF you wish to dispute a grade, it must be done in writing within 48 hours of receiving the assignment back. It must address what you are questioning and why you feel your
answer/paper is deserving of higher grade. IF you want to dispute a grade please let me know and I will supply you with a handout listing the correct format to use.

Break down of course requirements:
1. Participation: 30%
2. 2 Exams  70% (35% for each exam)  
  100%

All grades may be appealed; however, these appeals must be based on solid arguments about the quality of your work. I will not consider requests for grade changes based on undocumented personal or medical issues or the possible implications of a low grade for your financial aid. Any missed assignments will be penalized 1/3 of a letter grade for every day they are late, including weekends. This means if you are ill, please go to the University Health Center for documentation of such, even if you would not otherwise do so. Additionally, no extra credit will be offered in order to raise your grade.

ASSISTANCE: If you are having any difficulties with the course material or assignments, I encourage you to come and talk to me. I will be available during office hours (see above) and by appointment. Also, if you are not facing any problems but would like to talk about the course, please feel free to make an appointment with me.

PLAGIARISM AND FABRICATION: Any plagiarized work as well as any work containing fabricated information represented as true can result in a grade of “0.” This policy pertains to both oral and written assignments. Do not assume that plagiarism or fabrication will go undetected. For written assignments, you must (1) understand the information you have found in your own research and then (2) state that information in your own way, using your own words, rather than someone else's. Copying the wording of another writer verbatim or nearly verbatim, except for brief attributed quotations, does not constitute original work. Similarly, following someone else's original writing thought-for-thought, even if you change the wording, does not constitute original work. Please be aware that a plagiarized or fabricated paper will probably be identified as such by your instructor, which can result in a grade of “F” for the course and possible disciplinary action by the University. If you have any questions regarding this very important issue, please ask your instructor.

The lectures, classroom activities, and all materials associated with this class and developed by the instructor are copyrighted in the name of Professor Fletcher on this date (Lecture, Summer 2015).

EMAIL RESPONSES: For my part, I am committed as your instructor to responding to your questions or concerns as soon as is reasonably practical, however I will stop responding to emails by 9:00 pm and won’t respond to emails before 9 am. So please plan accordingly. Unless there is some sort of unavoidable situation (such as a power outage or a trip out of town), I will normally check for email messages each day and will respond promptly. You can expect ample feedback and individualized coaching regarding your written assignments. I expect you to commit yourself to diligent and enthusiastic involvement in this course, and I commit myself to the same. With respect to
NETIQUETTE, make sure to **use correct grammar, address the recipient and include a description of why you are emailing.** Please **DO NOT** email me through blackboard. I do not receive these emails and will therefore be unable to respond to you.

**REQUIRED TEXT:**
*There is only ONE (1) required Text:*


*Not required for purchase BUT you are responsible for reading the chapters assigned:*


In the course schedule below, I have indicated which chapter(s) and page numbers of the casebook are applicable and any additional chapters (GGW) will be available on blackboard. Some of these files are quite long. You are responsible for printing them yourself (or for reading them on screen), so be sure to plan accordingly.

I expect each reading assignment to be completed before the appropriate class period.

**USEFUL WEB SITES:**


**Course Outline: (Subject to change if we fall behind)**

**Week 1:**

*Mon.*, Introduction to the Class  
- Syllabi  
- Course Expectations  
- What are civil rights and civil liberties and why are they important?  
- What is the tension between law and popular will?  
- The How, Why, And What to Briefing and Citing Court Cases: 1647-1650  
  - The Constitution: 1-21  
  - Limits on Judicial Power, Jurisdiction, and Court Procedure; 23-27, 100-126, 172-202  
  - Constitutional Interpretation: 62-79, 81-94
Section 1: Introduction to the Court and Constitutional Politics

Tues.:
• Incorporation of the Bill of Rights and the Changing Role of the Court: 320-341
  • Barron v. Baltimore (1833)
  • West Virginia v. Barnette (1943)

Section 2: Free Speech

Wed.:
• Political Speech-early restrictions: 441-447
  • Schenck v. United States (1919)
  • Gitlow v. New York (1925)

Thurs.:
• Offensive Speech, Hate Speech, Funded Speech: 523-528, 566-571.
  • Dennis v. United States (1951)
  • Brandenburg v. Ohio (1969)
  • Cohen v. California (1971)

Week 2:
Mon.:
• Federal Communications Commission v. Pacifica (1978)
• Wisconsin v. Mitchell (1993)

Tues.:
• Rust v. Sullivan (1991)

Wed.:
After you read the assigned cases for today, start to consider the following question:
What is the conservative position on the freedom of speech?
• Citizens United v. FEC (2010)

Thurs.:
• EXAM PREP

Week 3:
Mon.:
EXAM 1
Section 3: Freedom to and from Religion

Tues.:  
- Introduction: 729-736  
- The (Dis)Establishment of Religion: 738-749  
- Everson v. Board of Education of Ewing Township (1947)  
- Engel v. Vitale (1962)

Wed.:  
- Lemon v. Kurtzman (1971)  
- Free Exercise of Religion: 839-844  
- Sherbert v. Verner (1963)

Thurs.:  
- Wisconsin v. Yoder (1972)  
- Employment Division, Department of Human Resources of Oregon v. Smith (1990)

Section 4: Equal Protection: Race Discrimination

Week 4:  

Mon.:  
The period from 1954 to 1973 witnessed a remarkable expansion of constitutional rights and liberties in the United States. Some questions to consider: Why did this expansion take place when it did? In what ways did it fall short?  
- Constitutional Failure, Reconstruction: 1382-1391, 1392-1406  
- Civil Rights Cases of 1883  
- Plessy v. Ferguson (1896)  
- Shelley v. Kramer (1948)

Tues.:  
- Attacking Racial Segregation in the Courts: 1438-1448  
- Brown v. Board of Education I (1954)  
- Bolling v. Sharpe (1954)  
- Brown v. Board of Education II (1955)  
- Cooper v. Aaron (1958)


Wed.:  
- Swann v. Charlotte Mecklenburg Board of Ed. (1971)  
Thurs.,
- EXAM PREP

Week 5:
Mon.,
EXAM 2

Section 5: Equal Protection: Sex Discrimination

Tues.,
After FDR’s and LBJ’s Democratic Party dominated American politics for more than thirty years, the country took a right turn, beginning with Richard Nixon’s election in 1968, picking up steam with the “Reagan revolution” of 1980, and reaching its peak (or nadir?) during the era of Bill Clinton, Newt Gingrich, and George W. Bush. To what extent was this rightward electoral turn mirrored by a rightward constitutional turn? And, more generally, when the country turns right, does the Constitution/Judges turn with it?
- Deciding on the Level of Scrutiny: 1561-1563
- *Frontiero v. Richardson* (1973)

Wed.,
- Intermediate Scrutiny: Applications:

Section 6: Privacy

Thurs.,
Preliminary Steps: 1284-1294
- Privacy and Abortion: 1297-11301, 1314-1318, 1319-1320
- *Buck v. Bell* (1927)
- *Roe v. Wade* (1973)

In class - *Hulk Hogan v. Gawker*

Week 6:
Mon.,
Around the same time that the Rehnquist Court was extending the Fourteenth Amendment to cover discrimination against gays and lesbians, it was also tweaking its approach to discrimination against women.
- Discrimination Against Gays and Lesbians: 1592-1596, 1597-1598
- *Bowers v. Hardwick* (1986) – found online
• Lawrence v. Texas (2003)
• Obergefell v. Hodges (2015) - online

Section 7: Vying for Power: Watergate and Beyond

Tues.:
Congress versus the Presidency in the Age of Watergate: 623-624
• United States v. Nixon (1974) – Online
• GGW Chapter 9, pp. 830-837, 841-855

Wed.:
• The Development of Law: The USA Patriot Act of 2001, Wiretaps, and the Foreign Intelligence Surveillance Court: 1018-1021
• President Bush at War: GGW Chapter 11, pp. 1007-1029
  • Detainee Cases (no assigned reading – overview of cases in lecture)

Youtube: Closing Guantanamo (59mins)

Thurs.:
LAST DAY OF CLASS
• We end our class by considering the “next big issue” in constitutional law
  • Drone Warfare
  • ACLU v. NSA 128 S. Ct. 1334 (2008)
  • Dennis Kucinich et al., v. Barack Obama (2011), Civil Action No. 11-1096 (RBW) – online
  • Bruce Ackerman, Obama’s Unconstitutional War, March 31, 2011.

http://www.foreignpolicy.com/articles/2011/03/24/obama_s_unconstitutional_war
Drone Warfare