

Professor: Daniel Levin  
Office: OSH 210D  
Phone: 801-587-9096  
Email: [daniel.levin\[at\]utah.edu](mailto:daniel.levin[at]utah.edu)  
<http://content.csbs.utah.edu/~dlevin/>

Office Hours:  
Tues: 2-3 pm  
Thur: 10:45-11:45am  
or by appointment

## Political Science 5212: Civil Rights and Civil Liberties

Spring 2014, Tues/Thurs, 9-10-10:30 am, SFEBB 5160B

### Course Objectives

The primary purpose of constitutional law is to balance individuals' rights with the powers necessary to properly govern a democratic society. American constitutional law is often divided into two different areas of study. The first focuses on the institutional powers and limitations of the branches and departments of American government; this area is presented in POLS 5211: Constitutional Law. In this course, we will examine how individuals' civil rights and civil liberties limit those governmental powers, including the majority's ability to establish moral and social rules and standards of behavior for others and to discriminate against minority groups and women. Over the past two centuries, the Supreme Court has provided authoritative definitions of Americans' civil rights and civil liberties. In this course, we will examine the Court's responses to increasingly complex questions regarding the balance between the rights of individuals against expanding forms of governmental and private power. We will examine how the Court has interpreted Americans' constitutional rights of free speech, press, association, religious exercise, and privacy, scrutinized government establishment of religion, and defined those civil rights protected against discrimination on the basis of race and gender. We will not have time to consider the protections provided to defendants in criminal trials or those facing punishment after conviction.

### Required Materials

We will be using Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America Vol. II: Rights, Liberties, and Justice* (CQ Press, 8th Ed., 2013), hereafter *CLCA*. Epstein and Walker also produce a website with edited cases that we will be using to supplement the cases in the book (henceforth **Archive**). As the book is brand new, all books should include a subscription to that archive. Additional readings are available through Canvas, as are abridged Powerpoint presentations and study sheets which will aid you in preparing for class and studying for the exams. **Please bring the casebook and print outs of relevant web cases to each class.**

Because we will be focusing our discussions on the development of constitutional doctrine, **you are required to read the assigned cases and other readings before the class session for which they are assigned.** Case names are those cases we will discuss fully in class, however, you are just as responsible for reading other assigned materials. You will find that it is in your best interest to carefully outline and "brief" each of the cases before the class meeting so that we may begin our discussions informed and ready. A guide to briefing cases is attached to the syllabus. Much of our work in class will involve the case method, and **I reserve the right to call upon any of you to explain the ruling in any assigned case at any time.**

### Course Requirements and Methods of Evaluation

Participation is required; it includes both contributions to class discussion and attendance. I will circulate a seating chart during our second meeting. **The use of laptop computers and cellphones during class is strictly prohibited.** For an explanation of this policy, please see [here](#). **Attendance is mandatory; students will be permitted four unexcused absences before lack of attendance harms their grades** (with excused absences counted towards that number, but also beyond it).

**Clickers and Participation Grade:** We will be using an electronic response system (clickers) in this class. At the beginning of class on 12 days during the semester, there will be a brief unannounced quiz on the assigned readings; each of the five quiz questions will be worth .2 points with each quiz yielding a high score of 1 point and a maximum of 10 points, providing you with the possibility of receiving 100% of the points even if you

miss two quizzes. Your participation grade (20% of total) will be composed of two factors weighted equally: your cumulative score on those pop quizzes and your attendance and willingness to engage in discussion. During class, I will regularly present you with hypothetical or actual cases and ask you to choose, via clicker, among several options as to which is the best solution to the problem presented by the hypothetical as a way to begin our discussion. Register your clickers as soon as possible; instructions are on Canvas.

Written assignments include two in-class exams. Both will include multiple choice and short answer; the final will cover only that material covered since the midterm. **Important: the week before the midterm, you must bring two large blue books, without your name or any other marking. I will be redistributing these blue books with the midterm and final exams.** During the course of the semester, I will provide you with a series of **hypothetical cases** for which you will be required to write three "**decision memoranda.**" Each assignment will be made for a period of one week; at the end of the week, the assignment will be turned out and you may only submit the new assignment assigned for the next week. The purpose of these assignments is to improve your writing and analytical skills; I will grade on the basis of writing and analysis as well as your command of course content. **A sheet detailing the proper form of these memoranda is attached to the syllabus.** While your first, second, and third memoranda must be submitted by the dates listed on the syllabus, the due date for each specific memorandum will be listed on the assignment itself.

**Your grade will be computed as follows:**

<b>Participation</b>	20%	<b>Date or Date Due</b>
<b>Memorandum 1</b>	10%	Must be received by <b>February 20</b> (assigned/due on rotating basis)
<b>Memorandum 2</b>	15%	Must be received by <b>March 27</b> (assigned/due on rotating basis)
<b>Memorandum 3</b>	15%	Must be received by <b>April 22</b> (assigned/due on rotating basis)
<b>Midterm Exam</b>	20%	<b>March 6</b>
<b>Final Exam</b>	20%	<b>Monday April 28, 8:30-10:00 am</b>

**Policy on Late Papers, Unsubmitted Work and Incompletes:** Papers will be accepted until 5 pm on the date due. Late papers will lose one stepped grade (i.e. B+ → B) if submitted within a week of date due; papers will not be accepted after a week. Failure to complete any assignment will result in failure of the course. A grade of Incomplete is only available in cases of documented emergency or medical condition. **Memorandum must be submitted both in hard copy and through Canvas.** To encourage multiple drafts and proper proofreading, **all submissions must have a marked, edited print version of an earlier draft stapled to the final draft.**

**Academic Misconduct:** All quotes must be cited as such and include a clear reference to the work from which they were drawn; they will otherwise be treated as plagiarism. All use of materials other than course materials must be accompanied by full citations. All work in this course is assigned as individual work; working as groups or teams is strongly discouraged (and may be treated as cheating), as is all but the most casual assistance from others; this includes parents, spouses and other family members. **Any form of academic dishonesty will result in a failing grade for the course and other disciplinary action, up to expulsion from the University.**

**Americans with Disabilities Act Notice:** Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

**Accommodation of Sincerely Held Beliefs:** I will work with students who require schedule changes due to religious or other significant obligations. I will not consider requests based on course content. Because modern American politics includes many debates over race, sexuality, obscenity, religious practice and belief, and political ideology, any class that did not address such issues would be substantially limited. Students are required to attend all classes and to read all assignments. All assignments and lectures are related to our subject matter, and I do not include gratuitously salacious material. If you have any objection to the frank and open discussion of any of the topics above, including the use of adult language when appropriate to subject matter, please drop the class.

### **Schedule of Readings and Assignments**

*The following schedule is approximate and subject to both additions and deletions.*

#### **Jan 7 - Introductory Meeting**

**CLCA:** Chap. 1-2 (read during first few weeks)

#### **Jan 9, 14, 16 - Due Process and State Action, Chap. 3; Chap. 13, pp. 643-651**

**CLCA:** *Barron v. Baltimore*; *Palko v. CT*; *Shelley v. Kramer*, *Burton v. Wilmington Parking Authority*; *Moose Lodge No. 107 v. Irvis*.

**Archive:** *Yick Wo v. Hopkins*; *The Civil Rights Cases*

**Canvas:** [\*First Unitarian Church v. Salt Lake City\*](#)

#### **Jan 21, 23 - Free Exercise of Religion, Chap. 4, pp. 93-128; pp. 191-195.**

**CLCA:** *WI v. Yoder*; *Employment Division v. Smith*; *City of Boerne v. Flores*; *Hosanna-Tabor v. E.E.O.C.*

**Archive:** *U.S. v. Ballard*; *Church of Lukumi Babalu Aye v. Hialeah*; *Locke v. Davey*

#### **Jan 28, 30 - State Aid to Religion and Religious Education, Chap. 4, pp. 128-162.**

**CLCA:** *Everson v. Bd of Ed*; *Lemon v. Kurtzman*; *Agostini v. Felton*; *Zelman v. Simmons-Harris*.

**Archive:** *Arizona Christian School Tuition Organization v. Winn*

#### **Feb 4, 6 - Prayer and Religious Instruction in Public Schools, Chap. 4, pp. 162-184.**

**CLCA:** *Engel v. Vitale*; *Edwards v. Aguillard*; *Abington v. Schemp*; *Lee v. Weisman*

**Archive:** *Zorach v. Clausen*; *Epperson v. AR*, *Santa Fe Independent S.D. v. Doe*

#### **Feb. 11, 13 - Public Religion, Chap. 4, pp. 184-191**

**CLCA:** *Van Orden v. Perry*

**Archive:** *Lynch v. Donnelly*, *County of Allegheny v. ACLU*; *McCreary County v. ACLU*; *Pleasant Grove v. Sumnum*

**Canvas:** [\*American Atheists v. Duncan\*](#)

#### **Feb 18, 20 - Free Speech and its Dangers, Chap. 5, pp. 197-229.**

**CLCA:** *Schenck v. U.S.*; *Abrams v. U.S.*; *Gitlow v. NY*; *Dennis v. US*; *Brandenburg v. OH*.

**Archive:** *Thomas v. Collins*; *Holder v. Humanitarian Law Project*

**February 20 - You must have submitted your first memorandum by this date.**

**Feb 25, 27 – Symbolic Speech, Fighting Words, and Hate Speech**, Chap. 5, pp. 230-263

**CLCA:** *U.S. v. O'Brien*; *TX v. Johnson*; *Chaplinsky v. NH*; *Cohen v. CA*; *Hill v. CO*; *R.A.V. v. St. Paul*; *Snyder v. Phelps*

**Archive:** *Virginia v. Black*

**Canvas:** *Wisconsin v. Mitchell*

**February 27 – You must submit two large blue books WITHOUT your name on them (use Post-It if submitting outside of class).**

### **March 6 - Midterm Exam**

**March 4, 18 - Academic Speech and Commercial Speech**, Chap. 5, pp. 264-291.

**CLCA:** *Tinker v. Des Moines*; *Morse v. Frederick*; *WV v. Barnette*, *Rumsfeld v. Forum*; *Bates v. State Bar*; *Central Hudson v. Public Service Comm.*

**Archive:** *Board of Regents v. Southworth*

**Canvas:** [\*Utah Licensed Beverage Association v. Leavitt\*](#)

### **March 9-15- Spring Break**

**March 20, 25 - Pornography, Obscenity and Indecency**, Chap. 7, 343-369; Chap. 8.

**CLCA:** *Roth v. U.S.*; *Miller v. CA*; *New York v. Ferber*; *Brown v. Entertainment Merchants Association*; *Ashcroft v. Free Speech Coalition*; *Reno v. ACLU*; *U.S. v. Williams*

**Archive:** *FCC v. Pacifica*; *U.S. v. Stevens*

**March 27 - You must have submitted your second memorandum by this date.**

**March 27, April 1 - The Right to Privacy and Reproductive Rights**, Chap. 10, pp. 397-433

**CLCA:** *Griswold v. CT*; *Roe v. Wade*; *Planned Parenthood v. Casey*

**Archive:** *Meyer v. Nebraska*; *Gonzales v. Carhart*; *Ferguson v. City of Charleston*

**April 3, 8, 10 - Race in the Constitution**, Chap. 13, pp. 603-641.

**CLCA:** *Plessy v. Ferguson*; *Sweatt v. Painter*, *Brown v. Bd of Education I & II*; *Swann v. Charlotte Mecklenburg Bd of Education*; *Parents Involved v. Seattle S.D. #1*; *Loving v. VA*

**Archive:** *Scott v. Sandford*, *Fisher v. University of Texas at Austin*

**Canvas:** “White House Pushes for Weighing Race in Admissions”

**April 15, 17 - Gender**, Chap. 13, pp. 652-671.

**CLCA:** *Reed v. Reed*; *Craig v. Boren*; *U.S. v. VA*

**Archive:** *Bradwell v. Illinois*; *Michael M. v. Superior Court*

**April 22 - Sexuality**, pp. 433-444, 671-677

**CLCA:** *Lawrence v. Texas*; *Romer v. Evans*

**Archive:** *United States v. Windsor*

**Canvas:** *Kitchen v. Herbert*

**April 22 - You must have submitted your third memorandum by this date.**

**Final Exam – Monday April 28, 8:30-10:00 am**

## Instructions on Memoranda

Over the course of the semester, you must write three memoranda concerning hypothetical cases which I will furnish to you with every topic, generally one a week. You have a choice among the memoranda which I distribute, but must submit memoranda before the dates given on the syllabus. Please remember to submit the memoranda both through Canvas and in hard copy. The hard copy must have an earlier printed draft stapled to its back. In writing the memoranda, you should follow these guidelines:

### 1) Organization

- a) Each memoranda will have four sections. You may use subheadings to distinguish sections. These sections are: facts, constitutional question(s), decision (a very brief announcement of the rule of law that resolves one of the constitutional questions above), and reasoning. Prose is required throughout; do not use bullet points.
- b) Briefly (in one or two paragraphs) recount the significant facts.
- c) Describe the constitutional questions that the case presents. Use only two or three sentences for each question. You may wish to number these questions for easy reference later on. Arrange your questions, and answers, so that they logically follow each other; in some cases, how you answer one question will determine how the others are properly answered.
- d) Answer each of these constitutional questions in several sentences, providing a very brief summary of the reasoning resolving each of these questions. You will first announce your decision, and then, in the final section, justify it (see below).
- e) Justify your answers by providing the central point of your argument ( “The President’s decision to disregard the War Powers Act is clearly unconstitutional because of Congress’s power to make laws governing the Armed Forces.”) Then review the history of precedents which back up your argument (In *Smith v. Jones*, the Supreme Court found that Congress cannot delegate its law making responsibilities to the President. In that case, it said ‘blah, blah.’”) Then demonstrate why this precedent provides the proper rule, or why another does not (“As in *Smith*, the President does not rely on a specific statute . . . Unlike *Johnson v. Miller*, the act is not pursuant to a treaty obligation”). Then move on to the next issue.

### 2) Approach.

- a) Assume that you are a law clerk, arguing before your judicial employer about how a case should turn out. Your reasoning justifying the decision is the most important part of your work. You are NOT the judge, and certainly are not the entire Supreme Court, so do not create new law previously unknown to the constitutional jurisprudence of the United States.
- b) While you are encouraged to have fun with the cases, please do not add facts or make up precedents. Cuteness is its own punishment.

### 3) Format

- a) Papers must be typed, three to five pages, double-spaced, with one inch margin all around. Do NOT exceed five pages. Use black ink and a twelve point (ten characters per inch) or larger font; Times New Roman or CG Times are preferred. Violators will be forced to purchase new bifocals for the instructor.

b) Your writing must be grammatically correct, with proper usage and attention to style. You must write in language that your reader will easily understand to argue persuasively. **Proofreading is required**; a poorly executed and careless paper displays the author's disrespect for both the reader. **You cannot properly edit or proofread on a computer screen; edit at least two printed drafts before submitting your paper.**

#### 4) Notes on Proper Style

a) Avoid long quotes. "Block quote" any quotation longer than two full lines in a separate paragraph that is indented and single spaced. Do not place quotation marks at either end of a block quote, but do include citation in parentheses at the end.

b) Capitalize proper nouns, ie. Congress, First Amendment. Do not capitalize adjectives, ie. congressional, constitutional. The President has presidential powers.

c) Be aware of the differences between possessives and plurals. "It is" is properly abbreviated "it's," whereas "its" indicates the third person gender neutral possessive. Otherwise, an apostrophe indicates a plural, not a possessive.

d) Use words properly. "Since" does not mean "because." "Impact" is not a verb unless describing a hammer striking. If something affects something else, it has an effect.

e) Punctuation belonging to a quote belongs inside of the quotation marks. You do not need a comma before all quotations, although it may be appropriate in particular instances (see Strunk and White). The use of ellipses (...) to begin or end a quote is discouraged. If you are using parenthetical citation, end the quote, insert the parenthetical citation, and finish with a period. If you are using footnotes, use the period, end quotations marks, then footnote.

e) Simple writing is powerful writing. Avoid flowery prose and limit your use of adjectives. Thesaurus abusers and creative writers will be required to enter a twelve step program. Refrain from beginning sentences with subjunctive clauses, it shows a lack of confidence in your argument. A big mistake is made by using passive voice. It is never important (or interesting) to begin a sentence by stating "It is important (or interesting) to note ..."

f) The ultimate authority for all rules of style is William Strunk, Jr. and E.B. White's *The Elements of Style* (MacMillan, any edition). Refer to it often while revising your own work. It will serve you well. The *MLA Handbook* and the *University of Chicago Manual of Style* are also excellent resources for grammatical and stylistic usage.

g) **You must provide a citation when referring to or quoting from a case. All quotes must include a page number.** If the case or the quote is in the assigned materials, you may simply indicate such, with the page number, in parentheses, e.g. (*Abrams*, 286). If you use cases other than those assigned, you will often see a series of numbers and initials following case names; these are references to legal reporters, the most important of which is the U.S. Reports, issued by the government. The first number indicates the volume, the initials in the middle indicate the reporter, the second number indicates the first page on which the case is found, and the year of the decision is included in parentheses. *Marbury v. Madison*, 5 U.S. 137 (1803) is found on p. 137 of the fifth volume of the U.S. Reports. If a case is not in the text, useful web versions of cases, such as Findlaw, Cornell Law Information Institute or Justia all provide such page numbers in the case; **there is no excuse for a quote without proper citation and pagination.** **Case names should be in either *italics* or underlined**, with *italics* preferred. On second use, you may simply use the first party's name, unless it is the government of the United States or a state (there are too many cases involving these parties); use the second party's name in such cases.

## HOW TO BRIEF A CASE

**DECIDE ON A FORMAT AND STICK TO IT:** Structure is essential to a good brief. It enables you to arrange systematically the related arguments that are scattered throughout most cases, thus making them manageable and understandable. While there are an unlimited number of formats, it is best to find one that suits your needs and stick to it. A brief should contain the following:

### TITLE AND VENUE

**CONCISE RULE OF LAW:** A statement of the general principle of law that the case illustrates. Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is the rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

**FACTS:** A synopsis of only the essential facts of the case which directly bear on to the issue. The facts entry should be a short statement of the events that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the facts will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion. The facts entry should seldom be longer than five sentences.

**ISSUE:** A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a yes or no answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question. The major problem presented in discerning what is the issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as obiter dictum or merely dictum. While dicta may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks who wants what and then goes on to ask why did that party succeed or fail in getting it. Once this is determined, the "why" should be turned into a question. Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny.

**HOLDING AND DECISION:** This section should succinctly explain the rationale of the court in arriving at its decision. In summarizing the reasoning of the court, you should include an application of the general rule or rules of law to the specific facts of the case. You should also address the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case. You may wish to put this portion of the brief in outline form and use very brief quotations.

**CONCURRING AND DISSENTING OPINIONS:** Note the major objections to, and qualifications placed on, the court's opinion. What are the key points of difference? Do you agree with the criticisms expressed? You should very briefly outline the reasoning in the dissents and concurrences.

**EFFECT ON PRECEDENTS AND LATER CASES:** You should relate how the rule of law discernible from this case compares with that derived from earlier and later cases. Where does this case fit in the series of cases which has shaped the relevant portion of the law?