POL SCI 412: Civil Rights and Civil Liberties
Spring 2013
MW 2:00 – 3:15pm END 107

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“It is emphatically the province and duty of the judicial department to say what the law is.”
John Marshall for the Court, Marbury v. Madison, 1 Cranch 137 (1804), at 177.

This course is designed to familiarize you, the dutiful student, with Supreme Court policy making in the form of the Court’s written opinions. The Supreme Court, the highest judicial institution in the United States, makes decisions that affect the lives of people all over the country. In this course, I hope to promote an understanding and appreciation of the profound influence the Supreme Court has on life as we know and love it today, as well as to convey the very political nature of this institution. All too often, we Americans subscribe to the myth which surrounds this highest of legal institutions, shrouding it in the “cult of the robe,” placing its justices above politics and above the “humanness” of humanity. However true that may be in theory, since the creation of the High Court was indeed a means to check popular control of government, it is not true in reality. Politics plays an everyday role in the functioning of the Supreme Court, evidenced by the occasional ruckus surrounding a Supreme Court nomination, or picketing outside the Court over an unpopular opinion, or political mobilization over a Constitutional amendment to overrule a Court decision. Politics is present on the Court, both in the outside forces that hope to influence it, and in the internally-held policy preferences of its justices. Even the Constitution is not without controversy, as it is an extremely vaguely written document, able to be convincingly construed in any number of ways. Hence the many conflicting opinions written by the justices themselves, charged to make sense of our forefathers’ legacy.

In this course, you will read many opinions written by these Supreme Court justices, both the majority opinions and the accompanying disagreements (dissents and concurrences). This task will seem daunting at first, almost like learning a foreign language, but by the end of the semester, you’ll be a pro!

REQUIRED TEXT
Epstein, Lee and Thomas G. Walker. 2013. Constitutional Law for a Changing America: Rights, Liberties, and Justice. 8th ed. Washington, DC: Congressional Quarterly Press. (An earlier edition may be acceptable, but it is up to you to be sure you’re completing the correct reading assignments.)

ALSO REQUIRED

This course is a “D2L Course.” This means that there is a companion website to the course on UWM’s D2L server. You are absolutely required to take any actions necessary to secure access to this website as important information will be found there. We will use the site to discuss issues (and you are expected to contribute!), to exchange briefs and other information, and to supplement what we’ll do in class. As it is the year 2014, I fully expect that you will access the site early and often. Do not be afraid of the technology – embrace it!! You may direct all questions regarding the performance of D2L to the University Help Desk (229-4040).

A CAVEAT

One note before addressing course requirements and required readings: you will be expected to behave professionally in this class. That is to say, you will be expected to arrive on time and to attend all meetings. You will be prepared for each class and actively participate in discussion. I will not tolerate disruptive behavior, including, but not limited to, reading newspapers, conversing during lectures, insulting classmates or the instructor, leaving early, or eating lunch. I also will not tolerate students who do not put forth every effort. Late work will not be accepted nor will make-up exams be given (unless there is a major and substantiated complication which prevents completion of which I am aware immediately and prior to the scheduled examination. The determination about whether or it is “major and substantiated” will be made solely at the discretion of the instructor.) I know all the excuses, so please do not test me. Do note that full documentation of illness or death in the family is necessary for excused absences and extensions/make-ups. In addition and to repeat, I require notification BEFORE the missed assignment/exam unless that is impossible due to documented emergency. Sincerely-held religious beliefs are exempt from the documentation policy, though I still require advance notification of absence/conflict with a religious observance. When in doubt, pick up the phone and CALL ME.

ACADEMIC INTEGRITY

No form of academic dishonesty will be tolerated in this class. Anyone found guilty of cheating or plagiarism or of any other violation of academic integrity will be assigned an automatic grade of F IN THE COURSE and will be prosecuted to the fullest extent through University channels. Notes on plagiarism can be found here http://www.indiana.edu/~wts/pamphlets/plagiarism.shtml and here http://www.uwm.edu/Libraries/guides/style/plagiarism.html. UWM’s policy can be found here: http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm. Be sure you know the definition and know how to avoid it. To be sure that you do, your first course assignment is to take and pass the plagiarism quiz at https://www.indiana.edu/~istd/test.html. The D2L course site will not fully open to
you until you’ve submitted a screenshot of your successful quiz completion. As you may have already noticed, I am absolutely serious about this policy. It is indeed plagiarism to copy the justices’ words without citation or attribution or to copy the summary of a decision found on any of the various websites that provide them. We will notice the plagiarism and you will fail the course. Consider this your ONLY warning.

SPECIAL NEEDS

Any students with special needs due to a physical or learning disability should see me as soon as possible. Every effort will be made to accommodate your needs.

WORK LOAD

This is a three-credit course, and as such you should average about nine hours of work per week to achieve the learning goals of this course. Obviously, you will work more in some weeks than in others, but you should average about nine work hours per week.

OTHER UNIVERSITY POLICIES

Other University guidelines (including policies on sexual harassment, grade appeals, incompletes, and military call-ups) can be found here: http://www4.uwm.edu/secu/SyllabusLinks.pdf.

COURSE REQUIREMENTS AND GRADING

In an effort to spread out the material in response to past student comments, evaluation in this course will include three examinations. Each of these exams will be short answer in nature (e.g., a set of hypothetical cases to which you’ll apply Supreme Court precedent). We will spend time in class discussing the design of the exams.

[12 points for exam one; 16 points for exam two; 22 points for exam three (the Final)]

In addition to these three exams, you will be expected to brief eight (8) cases over the course of the semester, and will be ready to contribute to the presentation of each brief as called upon to do so. You will be placed in one of ten groups, each of which will be responsible for briefing a set of cases spaced throughout the term. All of the members must hand in a complete and unique brief (by 11:59pm on the day it was covered, via D2L – it will be considered late and hence not accepted (without documentation and prior notice, as discussed above) if dropped any time after that or if dropped in a format that is unreadable, so don’t forget and be sure to use .doc, .docx, or .pdf file formats!).

Using the Socratic method, I will draw from briefers’ (and, occasionally, other members of the class’s, as noted below) knowledge of the case in presenting it in class. Note that it is NOT acceptable to use the Court’s syllabus or another website that summarizes the case as part of your brief. Copying anything from any source (including Supreme Court opinions themselves) without attribution is plagiarism. (See above for the consequences of plagiarism.) Several cases will be covered each day. The rest of the class will be also responsible for those cases presented by other groups, and it is
suggested that you brief them all yourself as a study tool. Indeed, I may call on students outside the briefing groups in seeking out the facts or holding or a discussion of a dissent or concurrence of one of the day’s cases. Copies of a solid brief (written by me) will be placed on the D2L site for your use in studying, sometime after the case is covered in class and before the next exam. Grades will be given for each brief, but the Teaching Assistant will be more lenient in the beginning as you become accustomed to the skill. **You can only receive AT BEST half credit for a brief you do not help present, so attend class on the days on which your groups’ case will be discussed and be prepared to contribute to its presentation.** Note that either absence or a failure to be prepared when called on with both result in a half-credit deduction.

[5 points each for 40 points total]

You may have noticed that the points here mentioned total 90 points. The remaining 10 points (since the course is worth a total of 100 points) are assigned to “participation,” which includes attendance, class participation on non-briefing days (both orally and on D2L), and level of preparation on briefing days. Do not take these five points lightly, as it could easily make the difference between an A and a B (or a D and an F, depending on the situation in which you find yourself!). In order that I may fully measure this participation, assigned seats will be given during the second week of classes and attendance will be taken daily. **Do note that there is a very large and significant correlation between class attendance and class success!**

**GRADING SCALE**

The grading scale is as follows*:

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<th>Points</th>
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<td>100 – 93</td>
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<td>92 – 90</td>
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* The instructor reserves the right to curve grades, should the need present itself.

**COURSE SCHEDULE**

The following is a list of topics to be covered at each class meeting and the readings (cases usually), which should be completed in order to fully participate in class that day. You should read the material entitled “Readings for next time” before the next session. All readings are from Epstein and Walker
unless otherwise indicated. The cases listed under each day are those that will be covered that day. This means you must read those cases before the class day on which they will be covered. (Skim any cases that are in Epstein and Walker but are not being covered in class.) Some cases will be covered solely by me, as noted. Some of these cases are in your casebook, while others are not. For those that are not, I suggest you either go to the library and read the case from the United States Reports (KF101 .US1x), utilize LEXIS-NEXIS which is available to you through the UWM Libraries Home Page (http://www.uwm.edu/Libraries/databases/), or find the case on Findlaw.com or via Google Scholar.

All briefing groups are expected to read the entire opinion including dissents and concurrences, not just the excerpted version found in the Epstein-Walker text. In addition, any direct quotes must be cited to the United States Reports, the official reporter of the U.S. Supreme Court. (LEXIS provides the U.S. Reports page number within the opinion after one asterisk; e.g., [*123] is page 123 in the U.S. Reports. http://www.findlaw.com/casecode/supreme.html (FindLaw and Google Scholar also provide the U.S. citation, in FindLaw, embedded in the opinion in brackets in blue and in Google, on the side of the opinion and embedded within it with an asterisk.) Everyone else in the class should read at least the Epstein-Walker excerpt when available, and the majority opinion when not available, scanning the separate opinions to discern the justices’ reason for disagreement. Remember, you too may be called on for any given case. (Note that many of the cases NOT covered by the text ARE excerpted on the book’s companion website.)

While I give specific days on which certain topics will be covered, there is certainly flexibility in the schedule should the class find that a certain topic is particularly interesting, or the instructor finds that a given topic has not been satisfactorily addressed within the lecture or presentations for which it is scheduled. We’re trying to cover the waterfront in civil rights and civil liberties here, but there is only so much we can do in one semester. With that in mind, we have the following schedule for this term:

**WED, Jan 22:** Introduction – Syllabus, The Supreme Court

**Reading for next time:** The Constitution of the United States (Appendix 1 773-784); The Living Constitution (3-9); Chapter 1 (Understanding the Supreme Court); Chapter 3 (Incorporation of the Bill of Rights)

**MON, Jan 27:** General Introduction to the Constitution of the United States and Supreme Court Decision Making; Incorporation – Making the Bill of Rights Apply to the States

**Reading for next time:** Chapter 2 (The Judiciary: Institutional Powers and Constraints); Briefing Cases (D2L CONTENT)

**WED, Jan 29:** The Judiciary: Institutional Powers and Constraints; Briefing Cases

**Reading for next time:** Approaching Civil Liberties (89-92); Chapter 5 (Freedom of Speech, Assembly, and Association)
MON, FEB 3: The First Amendment – Freedom of Speech and Association

Cases I’ll Cover:


Cases You’ll Cover:


WED, FEB 5: Free Speech, cont.

Cases You’ll Cover:

GROUP 4: Tinker v. Des Moines, 393 U.S. 503 (1969) Student Symbolic Speech

Case I’ll Cover: Morse v. Frederick, 551 U.S. 393 (2007) Student speech

MON, FEB 10: Free Speech, cont.

Cases You’ll Cover:


Reading for next time: Chapter 7 (The Boundaries of Free Expression (Obscenity), pp. 343-362), Chapter 8 (The First Amendment and the Internet)
WED, FEB 12: Speech, cont. and Obscenity

Cases You’ll Cover:


Obscenity

**GROUP 2:** Roth v. U.S., 354 U.S. 476 (1957) Obscenity

MON, FEB 17: Obscenity, cont.

Cases You’ll Cover:

**GROUP 3:** Miller v. California, 413 U.S. 15 (1973) Obscenity
**GROUP 5:** Reno v. ACLU, 521 U.S. 844 (1997) Obscenity (internet)

*Reading for next time:* Chapter 7 (The Boundaries of Free Expression (Libel), pp. 327-343)

WED, FEB 19: Obscenity, cont. and Libel

Cases You’ll Cover:

**GROUP 7:** Near v. Minnesota, 283 U.S. 697 (1931) Libel


*Reading for next time:* Chapter 6 (Freedom of the Press)

MON, FEB 24: Libel, cont. and Free Press

Cases You’ll Cover:

**GROUP 9:** Gertz v. Welch, 418 U.S. 323 (1974) Libel
**GROUP 10:** Hustler v. Falwell, 485 U.S. 46 (1988) Libel
Free Press, cont.

Cases You’ll Cover:

**GROUP 2:** Branzburg v. Hayes, 408 U.S. 665 (1972) Free Press

*Review for Exam #1*

*Reading for March 5:* Chapter 10 (The Right to Privacy)

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**MON, MARCH 3:** Examination #1 (Free Speech and Supreme Court Decision Making)

**WED, MARCH 5:** Privacy

Cases You’ll Cover:

**GROUP 5:** Buck v. Bell, 274 U.S. 200 (1927) Involuntary sterilization
**GROUP 6:** Griswold v. Connecticut, 381 U.S. 479 (1965) Birth control
**GROUP 7:** Roe v. Wade 410 U.S. 113, (1973) Abortion (Note: Concurrences are attached to Doe v. Bolton, 410 U.S. 179 (1973) – You need to include them.)


**MON, MARCH 10** Privacy, cont.

Cases You’ll Cover:

**GROUP 9:** Cruzan v. Director, Missouri Dept of Health, 497 U.S. 261 (1990) Right to die
**GROUP 10:** Washington v. Glucksberg, 521 U.S. 702 (1997) Right to die
**GROUP 1:** Lawrence v. Texas, 539 U.S. 558 (2003) Homosexual sodomy


*Reading for next class:* Chapter 4 (Religion: Exercise and Establishment)
WED, MARCH 12: Freend Exercise

Cases You’ll Cover:


MON, MARCH 17, WED MARCH 19 NO CLASS – SPRING BREAK!

MON, MARCH 24: Free Exercise, cont., Establishment

Cases You’ll Cover:


Cases I’ll Cover: Lemon v. Kurtzman 403 U.S. 602 (1971) and progeny; Sebelius v. Hobby Lobby, TBD (2014)

WED, MARCH 26: Establishment, cont.

Cases You’ll Cover:

GROUP 8: Van Orden v. Perry, 545 U.S. 677 (2005) Public displays


Reading for next time: The Criminal Justice System and Constitutional Rights pp. 459-463, Chapter 11 (Investigations and Evidence (Searches and Seizures), pp 464-492)
MONDAY, MARCH 31:  Search and Seizure

Cases You’ll Cover:

**GROUP 2:** Mapp v. Ohio, 367 U.S. 643 (1961) Exclusionary rule  
**GROUP 3:** New Jersey v. T.L.O., 469 U.S. 325 (1985) School search  
**GROUP 4:** California v. Greenwood, 486 U.S. 35 (1988) Garbage search


**Reading for next time:** Continue with Chapter 11, Investigations and Evidence (Arrests and the Fourth Amendment, Self-Incrimination, 492-539)

WED, APRIL 2:  Search and Seizure, cont. and Self-incrimination

Cases You’ll Cover:

**GROUP 5:** Atwater et al. v. City of Lago Vista, 532 U.S. 318 (2001) Search incident to arrest for misdemeanor  
**GROUP 6:** United States v. Antoine Jones, 565 U.S. ___ (2012) GPS devices


Self-Incrimination:

**GROUP 7:** Escobedo v. Illinois, 378 U.S. 478 (1964) Attorney  
**GROUP 8:** Miranda v. Arizona, 384 U.S. 436 (1966) Warnings

MON, APRIL 7:  Self-incrimination, cont.

Cases You’ll Cover:

**GROUP 9:** Rhode Island v. Innis, 446 U.S. 291 (1980) Interrogation  
**GROUP 10:** Illinois v. Perkins, 496 U.S. 292 (1990) Interrogation  
**GROUP 1:** Dickerson v. United States, 530 U.S. 428 (2000) Miranda

Review for Exam #2  
**Reading for April 14:**  Chapter 12 (Attorneys, Trials, and Punishments)

WED, APRIL 9:  Examination #2 (Religion, Privacy, Search & Seizure, Self-Incrimination)
Cases You’ll Cover:

**GROUP 2:** Gideon v. Wainwright, 372 U.S. 355 (1963) Right to Atty
**GROUP 3:** Batson v. Kentucky, 476 U.S. 79 (1986) Fair Trial
**GROUP 4:** Gregg v. Georgia, 428 U.S. 153 (1976) Death Penalty

**WED, APRIL 16:** Death Penalty, cont.

Cases You’ll Cover:

**GROUP 5:** McClesky v. Kemp, 481 U.S. 279 (1987) Death Penalty
**GROUP 7:** Roper v. Simmons, 543 U.S. 551 (2005) Death Penalty


**Reading for next time:** Civil Rights and the Constitution pp. 603-610, Chapter 13 Discrimination (Race): pp. 611-651.

**MON, APRIL 21:** Racial Discrimination

Cases You’ll Cover:

**GROUP 8:** Plessy v. Ferguson, 163 U.S. 537 (1896) Separate but equal
**GROUP 9:** Sweatt v. Painter, 339 U.S. 629 (1950) Separate but equal

**WED, APRIL 23:** Racial Discrimination, cont.

Cases You’ll Cover:

**GROUP 1:** Loving v. Virginia, 388 U.S. 1 (1967) Marriage
**GROUP 2:** Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) Busing

**Reading for next time:** Chapter 13 Discrimination (Sex): pp. 652-671.
MON, APRIL 28:  Sex Discrimination

Cases You’ll Cover:

**GROUP 5:** Bradwell v. Illinois, 83 U.S. 130 (1873) Law practice
**GROUP 6:** Reed v. Reed, 404 U.S. 71 (1971) Estates
**GROUP 7:** Frontiero v. Richardson, 411 U.S. 677 (1973) Dependents
**GROUP 8:** Craig v. Boren, 429 U.S. 190 (1976) Drinking age

WED, APRIL 30:  Sex Discrimination, cont.

**GROUP 9:** Orr v. Orr, 440 U.S. 268 (1979) Alimony
**Group 1:** Mississippi University for Women v. Hogan, 458 U.S. 718 (1982) Nursing school
**Group 2:** United States v. Virginia, 518 U.S. 515 (1996) VMI


MON, MAY 5:  Discrimination and Affirmative Action

**Group 3:** Romer v. Evans, 517 U.S. 620 (1996) Sexual orientation discrimination


Reading for next time:  Chapter 14 (Voting and Representation)

WED, MAY 7  Voting and Elections

**Group 7:** Bush v. Gore, 531 U.S. 98 (2000)
**Group 8:** SC v. Katzenbach, 383 U.S. 301 (1966)
**Group 9:** Crawford v. Marion County Election Board, 553 U.S. 181 (2008)
**Group 10:** Citizens United v. FEC, 558 U.S. 310 (2010)

Case I’ll cover:  Shelby County v. Holder, 570 U.S. ___ (2013)

Catch up & Review for Final

**FINAL EXAMINATION (CRIMINAL PROCEDURE, DISCRIMINATION & VOTING):**
**TUESDAY, MAY 13, 12:30-2:30 PM**