SYLLABUS

U.S. CONSTITUTIONAL LAW AND POLITICS II – CIVIL LIBERTIES (PSC 2215)
Spring Semester, 2015
Tuesdays/Thursdays: 2:20 PM – 3:35 PM
2020 K Street, Room 26

INSTRUCTOR:
Dr. Steven L. Snell

OFFICE:
Monroe Hall, Room 462
Office Hours: Tuesdays: 4:00 PM – 5:00 PM

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COURSE DESCRIPTION:
The course is designed to introduce students to the study of civil liberties as protected by the Constitution of the United States. The emphasis will be upon those rights incorporated into the Bill of Rights and made applicable to the states through the Fourteenth Amendment. Specifically, the course will examine freedom of speech and freedom of the press – as well as freedom of freedom of thought, belief, and association. In addition, the course will address the right to privacy, the rights of those accused of crimes, and the rights and protections secured under the two clauses of the First Amendment relating to religious liberty – the Establishment Clause and the Free Exercise Clause.

TEXTS:
The casebook for this class will be CONSTITUTIONAL LAW: CIVIL LIBERTIES AND INDIVIDUAL RIGHTS (William Cohen, David J. Danelski, & David A. Yalof eds., sixth edition, New York: Foundation Press, 2007). In addition, CIVIL RIGHTS STORIES (Myriam E. Gilles & Risa L. Goluboff eds., New York: Foundation Press/Thomson-West, 2008) offers historical background for the cases discussed in class. Both should be available in the campus bookstore. I will also ask that the bookstore order MODERN CONSTITUTIONAL THEORY: A READER (5th edition, John H. Garvey, T. Alexandra Aleinikoff, & Daniel A. Farber editors, New York: Thomson/West, 2004) – and request that the Reserve Desk at the library order two copies to place on reserve. Most of the cases discussed in class are reprinted (in excerpts) in the casebook. (The casebook contains a “Table of Cases” on pages xxxi-xxxv, arranged in alphabetical order, in which you can locate cases listed in the syllabus.) Those that are not included in the casebook are marked with an asterisk and are available online through either Lexis or
Westlaw. The “Supplemental Readings” listed in the syllabus may be found on reserve in the library, via the on-line service Hein Online, or on Blackboard. The materials listed as “Additional Readings” will not be assigned for class, but may be useful for students’ research projects.

**LEARNING OUTCOMES:**

The purpose of the course is:

1) to give students an understanding of the manner in which the Constitution of the United States protects civil liberties;
2) to introduce students to the common-law system of adjudication and to the methods by which judges interpret case-law, statutory law, and the text of the Constitution;
3) to allow students to hone their skills in research, analytical reasoning, and writing both through reading case-law, the text of the U.S. Constitution, and secondary sources in the field of legal theory and by completing an original research paper on a Constitutional-Law topic in the field of civil liberties.

**GRADING:**

The grade for the course will be based upon a take-home final examination and a research paper – both of which are due at the end of the semester. The examination and the paper will each count 50% toward the grade for the class. Deductions in grade will be made for work that is not completed on time – unless the reason for the delay is documented and deemed valid by University or Departmental policies.

Students will have five days in which to complete the take-home final examination; the maximum page-limit for the examination is 20 double-spaced typed pages. The examination will be available on the first day of the exam period.

With regard to the research paper, students are free to select their own topics in the field of Constitutional Law/civil liberties. The paper can be in the form of a traditional term paper – or written as a “case note” or “comment” of the type that law students submit to law reviews. (I will describe both formats in class.) The deadlines are as follows: A one-paragraph description of the paper topic is due by Week/Session 5. An outline of the research paper is due by Week/Session 10. The paper is due on the Wednesday after the last Wednesday on which the class meets. Any student is free to change topics after submitting her/his paper topics in Week 5 – so long as she/he notifies me and submits a new one-paragraph summary.

My office hours are 2:30 PM to 4:00 PM on Wednesdays in Monroe Hall, Room 426. If you are not available to meet with me then, please let me know before or after class (or by e-mail), and we can arrange a mutually convenient time to talk about paper-topics or the class-readings.
While the grade for the class will be determined by the examination and the paper, I will take participation in class discussion into consideration in raising students’ grades.

CLASS POLICIES:
Students should notify me by the second week of classes in the event that they need to be absent from class for religious observances. If absence from class for religious observances occurs one of the days on which a written assignment is due, the student should notify me in advance so that we can arrange another time for delivering the written assignment. I am free to talk with students in during my office hours (or by telephone at a pre-arranged time for a teleconference) regarding a lecture missed during an absence for religious observances, illness, or family emergency.

Students requiring an accommodation for a disability pursuant to the Americans with Disabilities Act, applicable local law, or standing University policy should contact the Disability Support Services Office at (202) 994-8250 to establish eligibility and to coordinate reasonable accommodations.

ACADEMIC INTEGRITY:
As with all course-work at this institution, the G.W. Code of Academic Integrity applies to this course.

WEEK 1
INTRODUCTION
While much scholarly attention has focused upon the “Great Compromise” – under which the small states received equal representation in the Senate while representation in the House of Representatives was to be in proportion to population – the most hotly contested issue at the Constitutional Convention of 1787 was the structure of the federal judiciary. Unable to reach agreement on the composition and jurisdiction of the federal courts, the delegates deferred the decision, vesting the power to do so Congress. Anti-federalists feared the concentration of power in the national government, and in particular that a system of national courts would displace the state-court systems – and with them the cherished protections of rights provided by the common law. In particular, the Anti-federalists contended that federal courts would not be geographically convenient – and more importantly that there were insufficient guarantees in the text of the Constitution to protect the right of trial by jury and to prevent appellate courts from reviewing jury’s findings of fact de novo. When the Constitution was placed before the various states’ ratifying conventions, the, many skeptical delegates insisted upon a Bill of Rights as a precondition for their votes in favor of ratification.

The first session will also address a number of practical issues that will be helpful in approaching the reading of case-law, such as the common law’s doctrine of stare decisis, the scope of appellate review, the importance of procedural posture, and the significance
of concurring and dissenting opinions. This session will also include a lesson in how to brief a case.

WEEK 2
THE CONSTITUTION AND JUDICIAL REVIEW
Inspired by the state ratifying conventions, the first Congress set about drafting the Bill of Rights in an effort to provide protection for civil liberties for which no explicit provisions had been made in the Constitution as originally drafted and adopted. Even with the adoption of the first ten amendments – the Bill of Rights – the Constitution did not expressly provide for judicial review. Moreover, the Constitution did not make the rights enumerated in the first ten amendments expressly binding on the states as well as the federal government. This session will examine Chief Justice John Marshall’s opinion in Marbury v. Madison – establishing the Supreme Court’s power of judicial review – as well as the drafting of the Fourteenth Amendment, which provides that no state may “deprive any person of life liberty or property, without due process of law; nor deny any person within its jurisdiction of the equal protection of the laws”.

Readings:
Casebook: Chapter 1 (pages 1-18)
*Marbury v. Madison, 5 U.S. 137 (1803)
Casebook: Chapter 2 (pages 19-22)
United States v. Carolene Products, 304 U.S. 144 (1938) [Footnote 4 at pp. 152-153]

Supplemental Readings:

Additional Readings:
Modern Constitutional Theory: A Reader (John H. Garvey, T. Alexandra Aleinikoff, & Daniel A. Farber (New York: Thomson/West, 2004), pages 195-268
WEEK 3

FREEDOM OF THOUGHT, BELIEF, AND ASSOCIATION – AND THE RIGHT TO SILENCE
While the First Amendment provides for the right of free speech, the right to one’s religious practices, and the “right of the people to peaceably assemble”, there is no express guarantee of the rights of thought, belief, and association. Nonetheless, these rights are necessary in order for one to exercise one’s enumerated First-Amendment rights – and thus are penumbral to the Bill of Rights and the Fourteenth Amendment. This session examines these penumbral rights.

Readings:
Casebook: Chapter 2 (pages 22-43); Chapter 3 (pages 43-50); Chapter 15 (pages 535-566); Chapter 16 (pages 573-581)

American Communications Association v. Doud, 339 U.S. 382 (1950)
Minersville School District v. Gobitis, 310 U.S. 1010 (1940)
West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)
N.A.A.C.P. v. Alabama, 357 U.S. 449 (1968)
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 83 (1963)

Supplemental Readings:

Additional Readings:

WEEK 4

FREEDOM OF SPEECH
In this introduction to the First Amendment’s Free Speech Clause, the readings examine the concepts of “public forum”, “symbolic speech”, and obscenity.

Readings:
Casebook Chapter 6 (pages 131-167; 183-201); Chapter 8 (pages 273-309), Chapter 11 (pages 359-366; 369-372; 375-377; 385-401)

Public forum

Symbolic speech
Stromberg v. California, 283 U.S. 359 (1931)

Obscenity
Miller v. California, 413 U.S. 15 (1973)

Supplemental Readings:

Additional Readings:
Karl N. Llewellyn, Some Realism about Realism – Responding to Dean Pound, 44 Harvard Law Review 1222 (1930-31)

WEEK 5
FREEDOM OF SPEECH
Despite the First Amendment’s guarantee of the right of free speech, that right is not without limits. This session probes the boundaries of free speech, examining the degree to which speech is constitutionally protected in several controversial contexts, including advocacy of violation of law, incitement of violence and threats to public order, “fighting words”, and “offensive speech”.
Readings:
Casebook: Chapter 5 (pages 79-130); Chapter 6 (pages 201-209); Chapter 12 (pages 413-451)
Masses Publishing Co. v. Patten, 244 Fed. 535 (S.D.N.Y., 1917)
Schenk v. United States, 249 U.S. 47 (1919)
Abrams v. United States, 250 U.S. 616 (1919)
Gitlow v. People of New York, 268 U.S. 662 (1925)
Whitney v. California, 234 U.S. 357 (1927)
Dennis v. United States, 341 U.S. 494 (1951)
Feiner v. New York, 340 U.S. 315 (1951) [Casebook pages 201-209]
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)
WEEK 6
FREEDOM OF THE PRESS
In 1735, a colonial New York jury acquitted journalist John Peter Zenger, who had been arrested on a charge of seditious libel for publishing pamphlets critical of the colonial governor. The First Amendment provides that “Congress shall make no law…abridging the freedom…of the press”. This session explores the freedom of the press in relation to prior restraint, defamation, privacy, and compulsory disclosure of news sources.

Readings:
Casebook: Chapter 6 (pages 173-177); Chapter 13 (pages 452-498); Chapter 16 (pages 581-592)
Beauharnais v. Illinois, 343 U.S. 250 (1952)
Near v. Minnesota, 283 U.S. 697 (1931)
Branzburg v. Hayes, 408 U.S. 665 (1972)

Additional Readings:
Ronald Dworkin, Law as Interpretation, 60 Texas Law Review 527 (1981-82)

WEEK 7
RELIGION: THE FREE EXERCISE CLAUSE
Two clauses of the First Amendment address religion. The first of these provides that “Congress shall make no law respecting an establishment of religion”; the second provides that Congress shall not prohibit the “free exercise” of religion. Both clauses are binding on the states via the Fourteenth Amendment. In this first session on religious liberties, the readings address scope of the Free Exercise Clause, including accommodation of religious practice in the workplace, in education, and in prisons.

Readings:
Casebook Chapter 17 (pages 593-659)
WEEK 8

RELIGION: THE ESTABLISHMENT CLAUSE
In this second session on religious liberties, the focus shifts to the Establishment Clause, addressing religious speech and displays on public property, religion in public schools, and public aid to private religiously-affiliated schools.

Readings:
Casebook: Chapter 19 (pages 675-718; 754-806)

*Religious displays on public property
*Lemon v. Kurtzman, 403 U.S. 602 (1971)
McCreary County, Kentucky v. American Civil Liberties Union of Kentucky, 545 U.S. 844 (2005) [Casebook page 778]
Van Orden v. Perry, 545 U.S. 677 (2005) [Casebook page 793]

Prayer in School
Engel v. Vitale, 370 U.S. 421 (1962) [Casebook page 675]
School District of Abington Township, 374 U.S. 83 (1963) [Casebook page 680]

Religion in the Public School Curriculum
Epperson v. Arkansas, 393 U.S. 97 (1968) [Casebook page 719]
Edwards v. Aguillard, 482 U.S. 578 [Casebook page 727]

Religious Speech on Public School Property
Good News Club v. Milford Central School, 533 U.S. 98 (2001) [Casebook page 737]

Aid to Church-Related Schools
Agostini v. Felton, 521 U.S. 203 (1997) [Casebook page 754]
Zelman v. Simmons-Harris, 536 U.S. 122 (2002) [Casebook page 763]

WEEK 9

PRIVACY
This session addresses the Supreme Court’s recognition of penumbral rights to privacy in the context of birth control, abortion, and sexual relations.

Readings:
Casebook: Chapter 22 (pages 880-974)

Griswold v. Connecticut, 381 U.S. 479 (1965)
Roe v. Wade, 410 U.S. 113 (1973)

Additional Readings:


WEEK 10

RIGHTS OF THE CRIMINALLY ACCUSED

This session examines the common-law origins of the privilege against self-incrimination - and will address the prohibition of unreasonable search and seizure (including wiretapping) and the right to counsel embodied respectively in the Fourth and Fifth Amendments of the Constitution.

Readings:

Casebook: Chapter 21 (pages 808-879) including:
Olmstead v. United States, 277 U.S. 438 (1928)
Kyllo v. United States, 533 U.S. 27 (2001)
Schmerber v. California, 384 U.S. 757 (1966)
*Gideon v. Wainwright, 372 U.S. 335 (1963)

Additional readings:


Stanley Fish, Wrong Again, 62 Texas Law Review 299 (1983-84)

WEEK 11

RACIAL EQUALITY

This session examines equal protection in the context of state action, including education, interracial marriage, and affirmative action.

Readings:
Casebook: Chapter 24 (pages 1000-1085)

Plessy v. Ferguson, 163 U.S. 537 (1896)
Brown v. Board of Education I (1954)
Korematsu v. United States, 323 U.S. 214 (1944)
Loving v. Virginia, 388 U.S. 1 (1967)

Supplemental Readings:


Additional Readings:

WEEK 12

RACIAL EQUALITY
In this session, the focus moves beyond state action to cases involving private racial discrimination, examining the level of state activity necessary to bring private action within the ambit of protection offered by the Constitution and the Civil Rights Act of 1964.

Readings:
Casebook: Chapter 28 (pages 1027-1030)
*Civil Rights Cases, 190 U.S. 3 (1883)
*Shelley v. Kraemer, 334 U.S. 1 (1948)
*Moose Lodge No. 7 v. Irvis, 407 U.S. 163 (1972)

Supplemental Readings:

Additional Readings:
The Civil Rights Act of 1964, 78 Stat. 241 (1964)

WEEK 13

GENDER EQUALITY

While the Equal Rights Amendment - intended to prevent discrimination on the basis of gender – was passed by Congress in 1972, the time-limit for ratification by the requisite 38 states passed with only 35 states voting to ratify it. In the absence of an explicit amendment prohibiting gender-discrimination, the session examines other Constitutional provisions – notably the Equal Protection Clause of the Fifth and Fourteenth Amendments – upon which the Supreme Court has relied in protecting the rights of those denied equal opportunities on account of gender.

Readings:
Casebook: Chapter 25 (pages 1106-1152) including:
Reed v. Reed, 404 U.S. 71 (1971)
Frontiero v. Richardson, 411 U.S. 677 (1973)
Craig v. Boren, 429 U.S. 190 (1976)

Supplemental Readings: