This course examines controversies over civil rights and liberties within constitutional politics. Primary attention is given to the Bill of Rights, rival interpretations of those guarantees, and the role of the Supreme Court in the on-going debate over civil rights and liberties.

For instance, should the Ku Klux Klan have the 1st Amendment right of “free speech” to burn a cross in public? Should Christian Scientist parents have the 1st Amendment right of the “free exercise of religion” to withhold medical care from their children? Should Mormon men have the 1st Amendment right to the “free exercise of religion” in order to have multiple wives? Should UIR students from New Jersey have the 4th Amendment’s guarantee against “unreasonable searches and seizures” to be kept from randomly being every third car stopped by police at sobriety checkpoints along I-95 in Virginia? Are sobriety checkpoints on highways that check every third (fourth, fifth, etc.) car even constitutional, given that the selection process is purely random? Can the police or armed forces be permitted to ignore the 5th Amendment’s guarantee of “due process” and the 8th Amendment’s prohibition against inflicting “cruel and unusual punishment” in torturing suspected Al Qaeda suspects to coerce confessions and obtain national security information? Can the U.S. military keep Taliban members held in Guantanamo Bay from having both access to attorneys and “a speedy and public trial by an impartial jury,” despite the 6th Amendment’s guarantee of both? Does a terminally ill patient with severe depression and/or unremitting pain have a “right of privacy” that allows them access to physician-assisted suicide? Do the Boy Scouts, a private organization, have the right to exclude gay men as Scout Masters? Or does that violate the 14th Amendment’s right for everyone to enjoy the same “privileges or immunities” as citizens of the United States with “equal protection” under the laws? These are just a sample of the kinds of questions we will be asking and answering this semester.

Books:


Grading & Assignments:

Mid-Term Exam (25%),
Moot Court (15%),
Class Preparation: Case Reviews (15%)
Class Participation: “The 10th Justice” (15%)
Final Exam (30%)

Class Preparation: Case Reviews (15% of overall grade, 10 total assignments – 1.5% each)

Every Tuesday starting January 14 you are required to turn in a 2-3 page, single-space review for each of that week’s assigned cases. Each review will consist of the case’s name, year, leading constitutional question/conflict, the final vote, a one or two sentence encapsulation of the Court’s ruling, what your vote in the case would have been had you been the 10th Justice on the Court, and a one or two sentence explanation of your vote. For the format of your reviews, see the end of this syllabus. The reviews will be mini-versions of your more comprehensive case briefs (see O’Brien’s Appendix B, pp. 1561-1564, on how and why to brief cases) and will help you significantly when you prepare for both the mid-term and final exams.
You will receive a grade of either a “√” (1.5 points) or a “√-” (1 point). The case reviews must be turned in at the end of class on Tuesday (not emailed afterwards). Absolutely no review will be accepted after class is over. There are twelve total weeks of cases. You may skip submitting two week’s case reviews over the course of the semester without penalty. Try to save these skips for emergencies. If you don’t do all ten reviews, you lose all fifteen points.

Class Participation: “The 10th Justice” (15% of overall grade)

A major portion of your grade will be determined by your participation in class. All students are expected to come to every class ready with questions and comments from the assigned cases and relevant current events. The participation component of your final grade is substantial (15%). Though I rarely, if ever, take a formal roll, I know who is present and who is absent for each class period.

After the initial lecture part of each meeting, the class will become a mock Supreme Court and re-argue the assigned cases with every student becoming the “10th Justice.” Based on your case reviews, you will register a vote with either the majority or minority opinion in a case and then defend your vote. Bring your briefs of each individual case, along with your 2-3 page review, to class with you so that you can reference them during the course of debate.

Moot Court: (15% of overall grade)

A moot court is a mock trial, in which two sets of lawyers argue their respective cases before a judge, jury, or (in our class) nine Supreme Court Justices. We will discuss this exercise at length prior to the week of April 1-4. Preview the cases we’ll argue, though, and begin to think about which role (Attorney or Justice) you’ll want to play.


Honor Code: Every assignment and exam must be submitted with your signature next to the full written pledge:

“I pledge that I have neither received nor given unauthorized assistance during the completion of this work.”

Grades

"Abandon hope, all 'ye who have become accustomed to grade inflation."

Everyone begins the class with zero (0) points. Through class participation, case reviews, papers, exams, and debates, you earn points over the course of the semester. The number of points you earn determines the grade you receive. Many aspects of life are similar in this regard. For job interviews, sales appointments, court cases or graduate school applications, individuals do not begin with the assumption that the job is theirs, that a company will automatically buy their product, that the court favors their side of the case, or that they will be granted admission to the school of their choice. On the contrary, one has to earn whatever he or she desires. Similarly, you have to earn your grade in this class. D/F is representative of work that is poor/incomplete; C, average; B, above-average; and A, extraordinary and rare.

Scoring:

A= 100-95  A-= 94-93  B+= 92-90
B= 89-85  B-= 84-83  C+= 82-80
C= 79-75  C-= 74-73  D+= 72-70
D= 69-65  D-= 64-63  F= 62-0
READING ASSIGNMENTS:

January 9: Intro. to the Supreme Court, Judicial Review, and the Constitutional Basis for Civil Rights and Liberties

Abraham, Justices, Presidents, and Senators (hereafter JP&S), skim, pp. 1-8, 17-52

January 14: Substantive Due Process, Economic Rights & Capitalism, and Constitutional Double Standards

Abraham, JP&S, skim, pp. 9-16, 61-70


January 21: Nationalization of the Bill of Rights and Substantive Due Process Revisited

Abraham, JP&S, skim, pp. 117-155

January 23: Judicial Approaches to the 1st Amendment: The Problem of Drawing Lines


January 28: The 1st Amendment: Definitional Balancing & Constitutionally Protected Speech – Pornography, Erotica, Fighting Words and Other Offensive Speech

Abraham, JP&S, skim, pp. 189-222

February 4: (Tuesday) The 1st Amendment: Definitional Balancing and Constitutionally Protected Speech – Libel and Commercial Advertising


February 4: **movie “The Insider” (MRC, 6:45 p.m.) **

February 6: (Thursday) Freedom of the Press and the Doctrine of No Prior Restraint


February 11: (Tuesday) Symbolic Speech, Speech-Plus Conduct, and the Freedom of Association


February 13: (Thursday) Freedom From and of Religion: The (Dis)Establishment Clause


February 18: (Tuesday) Freedom From and of Religion: The (Dis)Establishment Clause

February 20: Freedom From and of Religion: The Free Exercise of Religion  
(Thursday)  

http://oyez.nwu.edu/cases/cases.cgi?case_id=683&page=abstract

-- FEBRUARY 25 MID-TERM EXAM First Half: Multiple Choice, True/False, I.D.’s  
(Tuesday)  
-- FEBRUARY 27 MID-TERM EXAM Second Half: Long Essays  
(Thursday)  
Spring Break

March 11: The 4th Amendment Guarantee Against Unreasonable Searches and Seizures  
(Tuesday)  

March 13: The 4th Amendment: The Special Problems of Automobiles in a Mobile Society  
(Thursday)  

March 18: The 4th Amendment: Other Governmental Searches in the Administrative State  
(Tuesday)  

March 18: ** movie “PBS’s Frontline: The Case for Innocence” (MRC, 6:45 p.m.) **  
(Tuesday)  
http://www.pbs.org/wbgh/pages/frontline/shows/case/

March 20: The 4th Amendment: The Exclusionary Rule,  
(Thursday)  

http://oyez.org/cases/cases.cgi?command=show&case_id=1493&page=abstract
March 25: The 5th Amendment Guarantee Against Self-Incrimination
(Tuesday)

March 25: ** movie “The Star Chamber” (MRC, 6:45 p.m.) **
(Tuesday)

March 27: The 6th Amendment: Rights to Counsel, a Fair Trial, and Other Procedural Guarantees
(Thursday)


(Thursday) http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=6th&navy=case&no=02a0170p

April 8: The 8th Amendment: Cruel and Unusual Punishment
(Tuesday)

April 8: ** movie “Dead Man Walking” (MRC, 6:45 p.m.) **
(Tuesday)

April 10: The Right of Privacy
(Thursday)

April 15: The 14th Amendment & the Quest for Equality: Racial Discrimination, State Action, and Education (Tuesday)


April 15: ** movie “Mississippi Burning” (MRC, 6:45 p.m.) **

April 17: Affirmative Action; Reverse Discrimination; Gender Discrimination, Discrimination Against Gays and Lesbians, and Mental Illness and Retardation (Thursday)


-- FINAL EXAM

THERE AND BACK AGAIN:

THE END
Each review will consist of the case’s name, year, leading constitutional question/conflict, the final vote, what your vote in the case would have been, and a one or two sentence encapsulation of the Court’s ruling.

1. **Fletcher v. Peck** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote: 6-1
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)

   Explanation of your vote: 1-2 sentences

2. **Dartmouth College v. Woodward** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)

   Explanation of your vote: 1-2 sentences

3. **Charles River Bridge v. Warren Bridge** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)

   Explanation of your vote: 1-2 sentences

4. **Slaughterhouse Cases** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences
5. **Munn v. Illinois** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)
   Explanation of your vote: 1-2 sentences

6. **Lochner v. New York** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)
   Explanation of your vote: 1-2 sentences

7. **West Coast Hotel v. Parrish** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)
   Explanation of your vote: 1-2 sentences

8. **Nollan v. California Coastal Commission** (Year)
   Leading Constitutional Question/Conflict:

   Court’s Vote:
   Court’s ruling: 1-2 sentences

   Your vote: (with majority or minority)
   Explanation of your vote: 1-2 sentences