CIVIL RIGHTS & LIBERTIES – POLS 3321  
Department of Political Science  
University of Texas at El Paso  
T/Th, 4:30-5:50pm; College of Business 301  
Syllabus – Spring 2014

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Office Hours: Th - 2pm-4pm or by appointment

**Course Description (from Undergraduate Catalog):**

A study of the limitations on governmental power in the United States, with primary emphasis on civil and political rights. Prerequisites: POLS 2310 and POLS 2311; and either POLS 2312 or junior standing.

**Course Overview and Objectives:**

This course focuses on the development of constitutional interpretation in certain areas of case law relating to civil rights and liberties. We will utilize a case book approach commonly used in a constitutional law class in law school, although we will make use of additional readings as well. This portion of the class will use the Socratic Method. In addition to learning about constitutional law in general, this approach is designed to expose students to judicial cases in order to understand the legal analyses employed by the Supreme Court within different political contexts.

**Texts:**


**Grading:**

The final course grade is based entirely upon performance on the exams and case brief as stated below:

- Student’s highest exam grade: 25%
- Student’s next-highest exam grade: 25%
- Student’s lowest exam grade: 20%
- Socratic Method/Class Participation: 20%
- Case Brief: 10%

**Policies:**

The student who chooses not to attend class does so at their own peril. While attendance will not be formally recorded, your grade will most certainly drop if you do not attend. If you are not in attendance when I call on you in class, you will receive a zero for the day. This will be explained in depth in class.
Information for the students will be communicated in two ways 1. In class; 2. Through email. The only email address I will use to contact you is your official “utep.edu” account. This means as a requirement of this course you will need to regularly check this account if you do not already. “I did not receive notification,” is not a valid excuse.

For this class I will be banning laptops in the classroom. Recent studies have shown that students who use laptops in the classroom have lower grades (on average) than their peers who do not. While laptops can facilitate good note taking, I have found their use, not unlike cell phones, to be distracting to the student using them. Furthermore, computers can also prove distracting to other students.

**Grading Scale:**
The following numerical averages translate into final course grades:

<table>
<thead>
<tr>
<th>Score</th>
<th>Grade</th>
<th>GPA</th>
</tr>
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<tbody>
<tr>
<td>90</td>
<td>A</td>
<td>4.0</td>
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<tr>
<td>80-89</td>
<td>B</td>
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<tr>
<td>70-79</td>
<td>C</td>
<td>2.0</td>
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<tr>
<td>60-69</td>
<td>D</td>
<td>1.0</td>
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<tr>
<td>&lt;60</td>
<td>F</td>
<td>0.0</td>
</tr>
</tbody>
</table>

**Exams:**
The three exams will consist of 15 multiple choice questions (worth 30% of the exam) and two of three LONG essays (worth 70% of the exam). The essays will involve large themes covered in class and will be apparent if you are in attendance and pay attention. Much of the material on the exams is delivered in class; however, some material from the readings not covered in class is tested on the exams as well. YOU MUST BRING A BLUE BOOK TO EACH EXAM OR I WILL NOT ALLOW YOU TO TAKE IT.

- Test 1: February 18
- Test 2: March 25
- Test 3: May 13, 4:00pm

**Make-Up Exams:**
It is completely the student’s responsibility to take the exams when they are scheduled. As a general rule, make-up exams will not be allowed; thus, a missed exam counts as a zero (0) toward the final course grade. Notwithstanding, at the instructor’s sole discretion make-ups will be permitted, but only the gravest of reasons will be accepted, if documented in writing by the proper authority. Even if there is an acceptable reason for missing the regularly scheduled exam, permission to take a make-up will be granted only if the student provides the professor with prompt and proper notification; that is, the student must inform the professor of the reason for missing the exam with proper documentation before the exam takes place, and the reason must be acceptable to the instructor. If a make-up is permitted, both the format and questions can, and likely will, be different from the regularly scheduled exam.
**Academic Honesty and Integrity:**

Per UTEP policy: The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the Handbook of Operating Procedures (HOP) and available in the Office of the Dean of Students and the homepage of The Dean of Students at www.utep.edu/dos, may result in sanctions ranging from disciplinary probation, to failing a grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

**Special Needs:**

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to cass@utep.edu, or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at www.sa.utep.edu/cass. CASS’ Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.

**Case Briefs:**

Each student is responsible for writing 1 case brief. When your case is discussed in class, you must answer questions about the case you have briefed (and this will also count for class participation). Case briefs not submitted in a timely manner and not discussed in class will be assigned a grade of zero (which will count double considering the discussion will be graded twice). A list of cases available for briefing, instructions and requirements for the briefs, due dates, and a sample case brief, follow this Syllabus.

**University Writing Center:**

The University Writing Center is a useful tool each of you should take advantage of in the course of writing this paper. While I do not require you to go, I can say definitively that your paper will be improved following a consultation with the staff. The staff sees students through
appointments or walk-ins, though appointments are preferred. For more information and the registration form go http://academics.utep.edu/Default.aspx?tabid=47508

**Class Schedule:**
We meet every Tuesday and Thursday from 4:30-5:50pm during the semester, with the exception of the following dates during which *class is cancelled*:

March 10-14 Spring Break
April 3, 8, Professor attending Midwest Political Science Association meeting

**Schedule of Assignments:**

All references are to the Fisher casebook, unless provided otherwise. A case or reading denoted by *signifies that it is not found in any of the assigned books, and alternate references are supplied; a reading denoted by ** signifies that it can be found on my website.

**I. The Supreme Court, Judicial Power & Review, and the Role of the Supreme Court in Social Policy (Jan 21-28)**

- The Constitution of the United States, Appendix 1
- Constitutional Politics, p. 3
- Mechanical Jurisprudence, pp. 3-4
- Litigation as a Political Process, pp. 4-7
- Judge as Lawmaker, pp. 17-19
- Judge as Administrator, p. 20
- Independent State Action, pp. 20-22
- Who Has the Last Word?, pp. 22-24
- Walter F. Murphy, Who Shall Interpret?, pp. 29-31
- The Doctrine of Judicial Review, p. 33
- Framers’ Intent, p. 36-38
- Threshold Requirements, p. 75
- Cases and Controversies, pp. 75-79
- Standing to Sue, pp. 81-85
- Mootness, pp. 94-96
- Ripeness, pp. 97-99
- Political Questions, pp. 101-104
- The Writ of Certiorari, pp. 143-146
- From Oral Argument to Decision, pp. 147-154
- Unanimity and Dissent, pp. 155-159
- Sources of Judicial Review Authority, pp. 33-38
- Federalist No. 78, pp. 38-39
- The Road to Marbury, pp. 39-44
  *Marbury v. Madison* (1803) pp. 44
- Jurisdiction: Original and Appellate, p. 142
- Constraints on Judicial Review, pp. 54-60
- The Carolene Footnote, p. 788 (box)
II. Incorporation of the Bill of Rights (Jan 30 – Feb 4)
Nationalization of the Bill of Rights, p. 388
The Incorporation Doctrine, pp. 389
*Barron v. Baltimore, 32 U.S. 242 (1833)
Slaughter-House Cases (1873), pp. 424
*Adamson v. California (1947) 332 U.S. 46 (1947_  
http://www.law.cornell.edu/supremecourt/text/332/46
Duncan v. Louisiana (1968), pp. 650
Table 8.2: Incorporation of Bill of Rights, pp. 390-391
The Incorporation Doctrine: Testimony by Justice Rehnquist, pp. 392-393

III. Freedom of Speech (Feb 6 – 13)
Free Speech in a Democratic Society, p. 443
Free Speech and National Security, pp. 443-447
Schenck v. United States (1919), pp. 448
Abrams v. United States (1919), pp. 449
Gitlow v. New York (1925), pp. 450
Dennis v. United States (1951), pp. 454
Brandenburg v. Ohio (1969), pp 456
Holder v. Humanitarian Law Project (2010), pp 458
Associational Rights, pp. 462-465
Regulation of Speech, pp. 465-473
Cohen v. California (1971), pp. 474
Morse v. Frederick (2007), pp. 481
Forms of Speech, pp. 483-487
Synder v. Phelps (2011), pp. 489
Conclusions, pp. 501

Exam 1 (Feb 18)

IV. Racial Discrimination (Feb 20 – Mar 20)
Racial Discrimination; Slavery, pp. 771-775
Dred Scott v. Sandford (1857), pp. 775
Lincoln’s Critique of Dred Scott, pp. 28-29
**Mississippi Historical Society: “A Declaration Of The Immediate Causes Which Induce And Justify The Secession Of The State Of Mississippi From The Federal Union.” January 1861
http://avalon.law.yale.edu/19th_century/csa_missec.asp
Civil War Amendments, pp. 778-782
Slaughter-House Cases (1873), pp. 424
Civil Rights Cases (1883), pp. 782
Plessy v. Ferguson (1896), pp. 784
*Strauder v. West Virginia, 100 U.S. 303 (1880)
*Yick Wo v. Hopkins, 118 U.S. 356 (1886)
School Desegregation, pp. 787-795
Review: The Carolene Footnote, p. 788 (box)
*Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938)
*Sweatt v. Painter, 339 U.S. 629 (1950)
Government’s Brief in Brown, 795-796
Brown v. Board of Education I (1954), pp. 796
Bolling v. Sharpe (1954), pp. 799
Brown v. Board of Education II (1955), pp. 800
Cooper v. Aaron (1958), pp. 801
*Griffin v. School Board of Prince Edward Co., 377 U.S. 218 (1964)
http://www.law.cornell.edu/supremecourt/text/375/391
*Green v. County School Board of New Kent County, 391 U.S. 430 (1968)
*Freeman v. Pitts, 503 U.S. 467 (1992)
Desegregating Other Activities, pp. 810-814
Shelley v. Kraemer (1948), pp. 814
Congress Interprets the Commerce Clause, pp. 816-817
Heart of Atlanta Motel v. United States (1964), pp.817
Employment and Affirmative Action, pp. 819-828
Regents of the University of California v. Bakke (1978), pp. 829
Grutter v. Bollinger (2003), pp. 839
Conclusions, pp. 841

Exam 2 - March 25

V. Gender Issues (Mar 27 – Apr 17)
The Struggle for Women’s Rights, pp. 845-850
Bradwell v. State (1873), pp. 832
Congress Responds to Bradwell; Equal Pay Act of 1963; Civil Rights Act of 1964, pp. 834-838
Contemporary Gender Issues, pp. 856-864
*Goeseart v. Cleary, 335 U.S. 464 (1948)
*Reed v. Reed, 404 U.S. 71 (1971)
Frontiero v. Richardson (1973), pp. 864
Craig v. Boren (1976), pp. 866
Personnel Administrator of Massachusetts v. Feeney (1979), pp. 870
Michael M. v. Sonoma County Superior Court (1981), pp. 869
*Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974)
Automobile Workers v. Johnson Controls (1991), pp. 874
Senate Debates Women in Combat, pp. 877-878

VI. Privacy Rights (Apr 22 – May 8)
Dimensions of Privacy, pp. 907-911
Buck v. Bell (1927), pp. 911
*Skinner v. Oklahoma, 316 U.S. 535 (1942)
*Loving v. Virginia, 388 U.S. 1 (1967)
Substantive Due Process, pp. 428-432
Lochner v. New York (1905), pp. 432
West Coast Hotel Co. v. Parrish (1937), pp. 437
Use of Contraceptives, pp. 914-916
Griswold v. Connecticut (1965), pp. 916
Reproductive Freedom, pp. 918-927
Roe v. Wade (1973), pp. 927
Akron v. Akron Center for Reproductive Health (1983), pp. 934
Planned Parenthood v. Casey (1992), pp. 936
Gonzales v. Carhart (2007), pp. 941
Ruth Bader Ginsburg on Abortion, p. 126 (box)
The Right to Die, pp. 944
Cruzan v. Director, Missouri Dept of Health (1990), pp. 947
Vacco v. Quill (1997), pp. 933
Gay Rights, pp. 951-955
Lawrence v. Texas (2003), pp. 958
http://www.supremecourt.gov/opinions/12pdf/12-144_8ok0.pdf
http://www.law.cornell.edu/supremecourt/text/12-307
Defining the Limits of Privacy, pp. 960-962
Financial Privacy Act of 1978: Congressional Debate, pp. 962-964
The Right to Privacy: The Bork Hearings, pp. 964-967
Conclusions, pp. 967

Exam 3 - May 13
Case Brief Information

As mentioned earlier, each student is responsible to brief a case during the semester. The assignment in its entirety entails writing said brief, turning it in on the day the case is discussed, and leading the discussion of the case, as well as answering questions based upon the brief. Do NOT use any additional sources for your case brief. All the information you need is in the Fisher case book. I have included a sample brief at the end of this document and that format should be adopted without modification. You case brief is due in class when it is discussed. Since this class is fluid, I cannot put a hard date on when it is due. The only way to know is to come to class daily and rely upon friends in the course.

You will have until Thursday the 30th of January to email me your top three choices for cases to brief. You may choose no more than one case from any section. I will then assign the cases formally. If you do not email me preferences I will assign you a case. It will be unchangeable.

Cases:

Incorporation of the Bill of Rights

Slaughter-House Cases (1873)
Duncan v. Louisiana (1968)

Freedom of Speech

Schenck v. United States (1919)
Abrams v. United States (1919)
Gitlow v. New York (1925)
Dennis v. United States (1951)
Brandenburg v. Ohio (1969)
Cohen v. California (1971)
Morse v. Frederick (2007)
Synder v. Phelps (2011)

Racial Discrimination

Dred Scott v. Sandford (1857)
Slaughter-House Cases (1873)
Civil Rights Cases (1883)
Plessy v. Ferguson (1896)
Brown v. Board of Education I (1954)
Bolling v. Sharpe (1954)
Brown v. Board of Education II (1955)
Cooper v. Aaron (1958)
Swann v. Charlotte-Mecklenburg Board of Education (1971)
Shelley v. Kraemer (1948)
Heart of Atlanta Motel v. United States (1964)
Regents of the University of California v. Bakke (1978)

Gender Issues

Bradwell v. State (1873)
Frontiero v. Richardson (1973)
Craig v. Boren (1976)
Personnel Administrator of Massachusetts v. Feeney (1979)
Michael M. v. Sonoma County Superior Court (1981)
Automobile Workers v. Johnson Controls (1991)

Privacy Rights

Buck v. Bell (1927)
Stanley v. Georgia (1969)
Lochner v. New York (1905)
West Coast Hotel Co. v. Parrish (1937)
Griswold v. Connecticut (1965)
Roe v. Wade (1973)
Akron v. Akron Center for Reproductive Health (1983)
Planned Parenthood v. Casey (1992)
Gonzales v. Carhart (2007)
Cruzan v. Director, Missouri Dept of Health (1990)
Vacco v. Quill (1997)
Marbury v. Madison  
5 U.S. 137 (1803)  
CJ Marshall, majority opinion

Facts: President Adams, following an electoral loss, appointed Marbury, among other, to a federal judicial post called the DC Justice of the Peace. The appointments were approved by the lame duck Senate, signed by the President, sealed, but failed to be delivered, which was the duty of then Sec. of State, John Marshall. After taking office and being sworn in, President Jefferson refused to deliver the appointments. Marbury, whom was denied his appointment, filed suit in the Supreme Court of the United States requesting a writ of mandamus, which would order President Jefferson to deliver the appointments.

Issues: Is Marbury entitled to his appointment? If Marbury is entitled to his post, is there a legal remedy available? If so, is a writ of mandamus from the Supreme Court proper?

Holding: Yes. Yes. No.

Rationale: The judicial office Marbury seeks was correctly appointed, approved, signed and sealed. The neglect of its delivery is simple a ministerial failure, and should not prevent Marbury from his appointment which was conducted as required by law. Furthermore, Marbury does have a legal means to secure his appointment by law, and that is a writ of mandamus. However, the act which gave the Supreme Court the authority to issue writs of mandamus with original jurisdiction (The Judiciary Act of 1789) runs afoul of the US Constitution. The Constitution spells out specifically in what types of case the Supreme Court has original jurisdiction in, and to augment this list, the Constitution would have to be amended. Therefore, Marshall develops a syllogism: 1) The Constitution is the supreme law of the land, 2) § 13 of the Judiciary Act contradicts the Constitution, 3) Thus, § 13 is unconstitutional. Therefore, the method by which Marbury attempted to use is ruled null and void. The important portion of this decision does not concern Marbury and his appointment, but instead that the Supreme Court asserted their power to engage in judicial review over the other branches of government.

Other Opinions: None

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