

5. Civil Liberties & Mid-term 1 Review

Breakout Sessions

POLS 1101

12:40pm-1:30pm Park Hall 145

& 1:50pm-2:40pm Leconte Hall 135

SIYUAN (Siri) ZHAO

Siri.Zhao@uga.edu

Review

- **Civil liberties:** Restraints on the government (“negative rights”)
- **Civil rights:** What the government must do to protect individuals (“positive rights”).
- Civil liberties were confirmed by the Constitution, and even expanded in political (judiciary) practices.
 - **Due-process clause** (the 14th Amendment): Applied the principles of the Bill of Rights to the state level – reasonable state govt. actions
 - Therefore, it is essential to know about cases (and how the SC statement evolved) if we wish to understand civil liberties.
 - **Selective incorporation:** SC as the “actual law maker” – discretionary power on whether a particular civil liberty applies to the 14th amendment

Freedom of Expression

- **Basic principle (1st Amendment):** Unrestricted discussion of public affairs
 - However, 1) saying nothing about private restrictions on speech;
 - 2) There should be no threats to public order.
 - Clear and present danger test (**Schenck v. United States, 1919**)
 - Immediate and real threat (**Brandenburg v. Ohio, 1969**)
 - Fighting words (**Chaplinsky v. New Hampshire, 1942; Cohen vs. California, 1971**)
- **Extensions**
 - **Symbolic expression (non-verbal communication)**
 - Tinker v. Des Moines Independent County School District (1969)
 - Texas v. Johnson (1989)
 - Citizens United v. Federal Election Commission (2010)
 - **Obscenity**
 - Miller v. California (1973)
 - Jenkins v. Georgia (1974)
 - Reno v. ACLU (1997)

Freedom of Expression (cont'd)

- **Extensions**
 - **Hate speech**
 - Nationalist Socialist Party of America v. Village of Skokie (1977)
 - Matal v. Tam (2016)
 - **Freedom of the press**
 - **Prior restraint:** censorship before publication
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- **Reflection**
 - How did SC **come to** the decision (even overruling a precedent)? How did the majority (and even minority) decision **interpret** the Constitution?
 - What's the **boundary** of freedom of speech? Case-by-case reflection:
 - fighting words, hate speech (race, religion, ...), obscenity
 - public, private (Remember "freedom of speech" in law applies only to public arenas.)
 - Can you find yourself having some clear patterns in balancing freedom & order?

Freedom of Religion

- **The Establishment Clause:** **X establishing certain religions!**
 - Lemon v. Kurtzman (1971) & Lemon Test (see slides)
 - Agostini v. Felton (1997): Requires government neutrality
 - Lynch v. Donnelly (1984): Intermingling of religion and secular tradition; religious majority & minority → complexities in reality!
 - Establishment clause and school prayer (see slides)
- **The Free-exercise Clause:** **X interfering with certain religious exercises!**
 - Tension between the establishment clause & the free-exercise clause
 - **Should the government be required to grant religious exemptions from neutral laws** (e.g., drug use, marriage licensing)? → protection of FoR, or preferences to certain religions?
 - **How should courts balance religious liberty against other rights, such as LGBTQ protections or gender equality?**
 - Basic principle: **Strict scrutiny**
 - If a law imposes a burden on religious belief or conduct, it must serve a **compelling** governmental interest, be **narrowly tailored**, and employ **the least restrictive** means.

Should rights not expressly mentioned be protected?

- **Privacy**

- Griswold v. Connecticut (1965): Right to privacy is an “**implied right**” (maybe we can call it this way!) in the Bill of Rights!
- Roe v. Wade (1973): the right to **abortion**
- Lawrence v. Texas (2003): legalization of **same-sex sexual conduct**
- Obergefell v. Hodges (2015): legalization of **same-sex marriage**
- Dobbs v. Jackson Women’s Health Organization (2022): More conservative attitude toward **substantive due process rights (“implied rights”)**

- **Back to key controversies in the Constitution & Federalism**

- How should we define “liberty” under the Due Process Clause? Is it limited to historically recognized rights, or can it evolve with society?
- If courts stop protecting unenumerated rights, can legislatures adequately safeguard individual liberties?
- After Dobbs, do you think other substantive due process rights (contraception, same-sex marriage) will also face potential rollback?

The Rights of the Accused

- From **Substantive liberties (due process rights)** to **Procedural liberties**
 - Protecting fundamental rights (liberties)
 - Ensuring fair process (in arrest, prosecution, trial, appeal, ...) -> Basic respect for individuals
- **Basic concepts**
 - **Bill of attainer:** A law passed by a legislature that declares a specific person or group guilty of a crime and imposes punishment **without a trial (X)**
 - **Ex post facto law:** A law that declare an action a crime **after it has been performed** (but not illegal when it was performed). (**X**)
 - **Miranda Warnings:** The warnings that U.S. police officers are required to give to suspects before custodial interrogation (they have to do that!)
 - **Exclusionary rule:** evidence obtained in an illegal search and seizure cannot be used in trial.
 - **Good faith exception:** However, If police officers obtained the evidence **while acting in reasonable reliance on a search warrant or law they believed to be valid**, the evidence may still be admitted, even if the warrant or law is later found unconstitutional or invalid.

Midterm 1

- **Location:** Normal Lecture Hall
- **Time:** Monday 1:50-2:40 (50 minutes, class time)
 - If anyone needs A&T (DRC) accommodations, please contact them to make arrangements
 - If they need approval from instructors, please contact Dr. Nicholson, since he is responsible for this class.
- **Layout:** Multiple choices (25-30) [Scantron 882-E] & Short-answer questions (choose 4-5) [Bluebook]
- **Remember:** This is a CLOSED BOOK exam! Pay attention to integrity requirements!
- **How:** Buy bluebooks, scantrons, #2 pencils at the bookstore
 - A new bluebook and scantron for each exam is required.
- **What:** Political values – Civil liberties, all we have learned (See Review Sheet on eLC)
- **Suggestions**
 - Buy your materials earlier so no rush
 - Arrive early, settle your stuff, and calm your mind!
 - Remember my name, since you will need to place them in a pile for me to grade.

Midterm 1 Review

- **Review Sheet on eLC**
 - Combine it with **lecture slides**, as well as breakout session slides (if you find it helpful to understand basic concepts & theories)
- **Thanks to our Lead TA, Mckinley Frees!**
 - **Key items review:** <https://quizlet.com/941685878/key-terms-in-political-science-flash-cards/?i=61humc&x=1jqt>
 - **Study guide:** <https://quizlet.com/study-guides/key-terms-in-political-science-d2f0198b-e0ea-489b-8865-618807e199dd?i=61humc&x=13qt>

Next week...

Good luck in your Mid-term 1!

And, read about **Civil Rights** after the exam (if you'd like ☺).

- Feel free to email me if you have any questions!
- ENJOY YOUR WEEKEND!
- Don't forget to prepare for Monday's exam!