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Spring 2023
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Government 357(G)

THE STRUCTURE OF INDIVIDUAL LIBERTIES

In this class we examine the ways in which the Constitution protects individual rights while accommodating the often competing claims of state, groups and communities. A chronological survey of the work of the Supreme Court would reveal that most of the judicial exploration of the issues falling under the rubric of rights has occurred in the second half of the Court's history. The one notable exception is the right to property, which, as the original debates over the Constitution reveal, was a right sufficiently important to the founders that it was provided several textually based protections. When even these were found inadequate to the task at hand, the Fourteenth Amendment eventually emerged as a bulwark of solid constitutional defense. How solid is, of course, a matter of considerable contention; the debate raging today is only the most recent incarnation of the historic contest between property rights and the regulatory authority of the state.

One of the controversial jurisprudential issues surrounding the work of the modern Court has to do with the role of the judiciary in performing as an occasional counter-majoritarian institution in defense of individual rights. If it is important to defend a right -- for example, privacy -- against the intrusive reach of the state, must all rights be so defended with equal vigilance? Is there a principled way to distinguish among rights, say between speech and the right to bear arms, such that the Court would be justified in treating them differently as far as a constitutional defense is concerned? And if a constitutionally protected right -- abortion being the most obvious example -- is withdrawn by the institution that had earlier affirmed it, is there a persuasive justification for doing so? By the end of the course students should have an informed judgment on such questions, which is to say, on the role of the Supreme Court in contemporary American politics.

Some of you may have enrolled in this course to test your aptitude for the study of law. This is not, however, a pre-professional law course. It is designed as an important part of a liberal education. Indeed, if we do our jobs right, this course in constitutional law will be nothing less than an extended commentary on the meaning of America -- at least as understood and portrayed by the Supreme Court. Our purpose is to get clear what the Court has said about the Constitution's meaning, to critically assess what the Court has held, and to identify and assess the underlying social, moral, and political theories that inform the opinions of the Supreme Court.

Texts:

Donald P. Kommers, John E. Finn, Gary J. Jacobsohn, George Thomas, and Justin Dyer. eds.,
AMERICAN CONSTITUTIONAL LAW: LIBERTY, COMMUNITY AND THE BILL OF RIGHTS
(Vol. 2, 4th ed.)

Michael Dorf., ed., CONSTITUTIONAL LAW STORIES (2nd ed.)

Additional materials (packet available at squareup.com/store/paradigmbooks)

Requirements:

One in-class exam (Feb. 16) and one written assignment (the details of which will be discussed in class) are to be given. There will also be a final exam. The exam and paper will count for 30% each of the final grade, and the final exam will be worth 40%. In addition, grades will be influenced by effective or ineffective classroom participation. Inasmuch participation is impossible if you are not present, attendance matters. To that end, students will be permitted *five* absences during the semester. Additional absences will result in an automatic loss of one grade level per absence (i.e., A to A- to B+ and so on.) During most classes students will be called upon to discuss the assigned materials. These will be the occasion for dialogue between student and professor, but in each instance when this occurs students other than the individual called upon will be invited into the discussion. In other words, I do not view this as a purely lecture course. While there will be times when I will be lecturing, much of the class time will involve class discussion among students and professor.

All students are responsible for upholding requirements for academic honesty. For the UT Honor Code, go to : <http://registrar.utexas.edu/catalogs/gi09-10/ch01/index.html>

By UT Austin policy, you must notify me of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>

Assignments:

Students are urged to prepare "briefs" of the assigned cases and to be prepared to examine critically the opinions of the Court.

I. Rights Enforcement and the Role of the Supreme Court

Jan. 10	Introduction
Jan. 12	KFJTD, 3-97, 1361-1386, 1403-1410
Jan. 17	KFJTD, 159-194 Barron v. Baltimore (199) Adamson v. California (223) McDonald v. Chicago (246)
Jan. 19	New York State Rifle & Pistol Association, Inc. v. Bruen (packet) Gregg v. Georgia (266) Glossip v. Gross (314)
Jan. 24	KFJTD, 329-354 Fletcher v. Peck (366) Charles River Bridge Company v. Warren Bridge (371) Home Building & Loan Association v. Blaisdell (378)
Jan. 26	Munn v. Illinois (385) Lochner v. New York (394) West Coast Hotel v. Parrish (403) Dorf, 299-331

II. The Right to Privacy and Personhood

Jan. 31	KFJTD, 451-493 United States v. Carolene Products (498) Meyer v. Nebraska (499) Griswold v. Connecticut (509)
Feb. 2	Roe v. Wade (523) Planned Parenthood of Southeastern Pennsylvania v. Casey (539) Dobbs v. Jackson Women's Health Organization (packet) Dorf, 333-382
Feb. 7	Moore v. East Cleveland (600) Bowers v. Hardwick (611) Lawrence v. Texas (625) Ruth Marcus, "Originalism is Bunk" (packet) Neil Gorsuch, "Why Originalism is the Best Approach to the Constitution (packet)

- Feb. 9 Obergefell v. Hodges (654)
 Michael H. v. Gerald D. (672)
 Washington v. Glucksberg (686)

III. The First Amendment: Speech

- Feb. 14 KFJTD, 703-742
 Schenck v. United States (746)
 Dennis v. United States (751)
 Brandenburg v. Ohio (764)
 Dorf, 383-408
- Feb. 16 Exam
- Feb. 21 Chaplinsky v. New Hampshire (779)
 Cohen v. California (788)
 United States v. O'Brien (783)
- Feb. 23 The Sedition Act of 1798 (802)
 New York Times Company v. Sullivan (795)
 Texas v. Johnson (803)
 R.A.V. v. City of St. Paul (822)
- Feb. 28 Snyder v. Phelps (864)
 Morse v. Frederick (832)
 Miller v. California (846)
 Brown v. Entertainment Merchants Assn. (857)

IV. The First Amendment: Religion

- Mar. 2 KFJTD, 891-929
 Everson v. Board of Education (934)
 Engel v. Vitale (942)
 Lemon v. Kurtzman (948)
- Mar. 7 McCreary County v. ACLU, Kentucky (1008)
 Wallace v. Jaffree (956)
 Lee v. Weisman (966)
 Town of Greece v. Galloway (1023)

Mar. 9 Davis v. Beason (1039)
 West Virginia v. Barnette (1045)
 Sherbert v. Verner (1053)
 Wisconsin v. Yoder (1059)
 Dorf, 409-454

SPRING BREAK

Mar. 21 Employment Division v. Smith (1067)
 Boerne v. Flores (1078)
 Burwell v. Hobby Lobby (1100)
 Kennedy v. Bremerton School District (packet)
 Dorf, 455-512

Mar. 23 Paper due
 Moot court

V. The Right to Equality: Race

Mar. 28 KFJTD, 1115-1142
 Dred Scott v. Sandford (1146)
 Strauder v. West Virginia (1152)
 Plessy v. Ferguson (1158)
 Dorf, 155-230

Apr. 4 Brown v. Board of Education (1166)
 The Civil Rights Cases (1173)
 Shelley v. Kraemer (1184)
 Palmore v. Sidoti (1188)

Apr. 6 Regents of the University of California v. Bakke (1190)
 Grutter v. Bollinger (1216)
 Fisher v. University of Texas II (1248)
 Parents Involved in Community Schools v. Seattle School District No. 1 (1226)

VI. The Right to Equality: Wealth, Gender , Age, etc.

Apr. 11 KFJTD, 1255-1284

Shapiro v. Thompson (1287)
San Antonio Independent School District v. Rodriguez (1293)
Plyler v. Doe (1300)

Apr. 13 Frontiero v. Richardson (1306)

Craig v. Boren (1312)
United States v. Virginia (1319)

Apr. 18 Foley v. Connelie (1336)

Massachusetts Board of Retirement v. Murgia (1340)
Cleburne v. Cleburne Living Center (1346)

Apr. 20 Summary and Review