

**AMERICAN CONSTITUTIONAL  
DEVELOPMENT II  
CIVIL RIGHTS AND CIVIL LIBERTIES  
DR.ALAN SAGER**

**HOME    COURSE INFO    ASSIGNMENTS    SYLLABUS FALL 2023  
BRIEFING CASES    VIDEO    RESOURCES    FROM THE MEDIA**

## Home

GOV320N    M-W 2:30-4:00 pm

Burdine 112

Welcome to Dr. Alan Sager's Fall 2023 Course

American Constitutional Development: Rights and Liberties

[Course Overview](#) | [Course Goals](#) | [Requirements](#) | [Grading](#) | [Office Hours](#) |  
[Suggestions](#)

Course Website: <http://sites.la.utexas.edu/amcondev2/>

### About Dr.Sager

I look forward to teaching and working with you this semester. In case you do not know me, I have a law degree from Michigan (I am not a wolverine) and a Ph.D. in Political Science from Northwestern. I also have a B.S. in Chemical Engineering from Tufts University.

I have done many things in my life including practicing law, teaching, being in the political polling and consulting business, running for public office, being currently in businesses that operate in 3 states, and working on the staff of Chief Justice Warren Burger. I taught at U.T. from 1969-74 before winning a Judicial Fellowship on the staff of Chief Justice Burger. During my first stint here I taught Black Politics in America, Law and Society, Basic Statistics, and Computer Modelling in Social Science. I stayed on in D.C. for a couple of years and then we spent 3 years in California.

My family and I came back to Austin in 1981. I began teaching again in 1990 after setting up a business that now has around 225 employees in 3 states. I am now in my 33rd year as a half time lecturer in the Government Department.

In the Spring of 2013 I won the Harry Ransom Award for Teaching Excellence, my 4th teaching award as a lecturer. I continue teaching because I love doing it. I love teaching and learning about the Constitution, the law, judicial process, and politics.

### Overview

This course focuses on the development of American Constitutional law in the areas of civil rights and civil liberties, focusing mainly on the Bill of Rights and the 13th, 14th and 15th Amendments.

Most of the assignments involve reading and analyzing edited Supreme Court cases, often with several opinions including Justice's concurring and dissenting with the Opinion of the Court. These opinions not only reveal what the Constitution says about the issues at hand, they also reveal how justices think and reason. We will pay close attention to the theories of interpretation embedded, often to the point of being purposely hidden, in all of these opinions. We will also look at the social, moral, philosophical and political contexts at the time the cases were decided to help us more fully understand the case and the law.

Search this website ...

### Course Info

Email: [amsag@utexas.edu](mailto:amsag@utexas.edu)  
or [class@alansager.com](mailto:class@alansager.com)

### Current News & Opinion

Fall Semester 2019

Below are some relevant media pieces from 2017 and earlier. Current pieces are now on the page entitled "From The Media"

Read these articles at your leisure unless specifically assigned for class or an exam. They are materials about current political and social issues that touch directly or indirectly cases that will be covered in class as we go through the semester.

1. What is free speech. Throughout the semester we will be delving into this question. This is an article about a student's comments at TCU and the university's comment. Note that private schools are not necessarily covered under the 1st and 14 Amendments ([click here](#))
2. What other forms of marriage may be allowed under the 14th Amendment after

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[Back to top ↑](#)

valuable to participants who have many different reasons for studying civil rights and civil liberties.

1. As citizens, we all need to have a general idea about our rights and liberties and the role of the Constitution in protecting them. We need to know and understand when a government is encroaching on our rights and as well as when we are encroaching on someone else's rights.
2. As students of government, we need to know the role of the Declaration of Independence and the Constitution in structuring American political, social and moral life.
3. As lifelong students we need to keep expanding our reading, reasoning and interpreting skills. We have moved from an industrial to a knowledge based society where these skills become ever more important.
4. For students who are intending to go to law school or thinking about law school, this course can give you a sense of what law school will be and help you get "a running start." Among other things, we will focus on making powerful relevant logical arguments on all side of the issues we cover in class. which is what a good lawyer should be able to do and open to doing. The essay part of exams requires making arguments on all sides.
5. For students who are intending to teach, this course will help you in a myriad number of ways from being able to teach a better civics course to knowing something about your rights and responsibilities as a teacher as well as those of your students.
6. Being able to use their expanded and more powerful thinking skills, many of my former students have gone on to great jobs in government and business and a number went on to create their own businesses.

### Course Goals (promises)

There are four major goals for this course:

1. *To identify the major historical themes and controversies about our Constitution in the areas of civil rights and civil liberties*
2. *To better understand Constitutionalism and our Constitution; what our Constitution is and is not and how or even whether it has changed and developed over the past 230 plus years.*
3. *To develop a high level of skill in reading, briefing and understanding Supreme Court opinions, with special attention on what questions to ask when reading an opinion. Part of this skill includes being able to see and understand the point of view of the person writing an opinion.*
4. *To raise participants' "cultural literacy" in Constitutional Law and American Constitutional Development such as knowing the Chief Justices and some of the important Associate Justices, knowing seminal cases in particular periods of American history and learning the language of civil rights and civil liberties.*
5. Perhaps, as important as the above, to learn to think clearly, to see many different sides of all issues, to make cogent arguments on both or many different sides of the issues we will cover and to expand our critical thinking skills.

**To fulfill these goals, some of the questions we will attempt to answer include:**

1. *What is a Constitution supposed to do and who is supposed to interpret it?*
2. *From where did our Constitution come and does that even matter today?*
3. *What differences, if any, have existed among the justices as to what the Constitution means?*
4. *How do various justices go about interpreting the Constitution? What*

- accounts for their differences? In other words, what are the various theories of constitutional interpretation?
5. What impact does the Court and Constitution have on American society?
  6. What are the most important civil liberties issues today and what might they be tomorrow?

We will also be constantly searching for the unspoken or assumed premises of the justices and even ourselves as we study these materials. Bringing such premises to light will sharpen and enhance our analytical skills and ability to create distinctions. Being able to see and create distinctions is the basic building block of learning and most efficient way to expand our understanding of the world around us.

#### **What is required of students in the course:**

- A. Keep up with reading and briefing for each class regardless of whether the class is ahead or behind on assignments.
- B. Know the cases assigned for briefing **before coming to class. This means being able to recite the basic facts, the main issue or two and the holding from memory or brief notes.**
- C. Display a willingness to actively participant in the class.
- D. Create within yourself a willingness to go beyond any self imposed academic limits.

#### **Course Requirements and Grading**

1. 3 hours exams approximately 65%(40% objective,60% essay)
  2. 2 short papers 3-4 pages approximately 20%(a brief of a recent Supreme case 9% and a paper which explores aspects of that case in more detail 11%)
  3. Class attendance, participation and perhaps some short quizzes on assigned supplementary reading or movies 15%. Quizzes may become part of hour exam grade.
- Grades are awarded on the plus minus system.

#### **Office Hours and Location**

My Wednesday office hours will be after class at the Cactus Cafe in the Union. (In case Cafe is unavailable, office hours will move to some beer joint near Drag or San Jacinto). We will go from 4:15 on to ??? Some weeks based on student preferences may be on Mondays.

Before class I will hold office hours from approximately 1:30-2:30 p.m. I maybe able to arrive earlier if requested to do so. If you wish to meet me before class either drop in or send me an email you are coming or both. I will hold these office hours across from Burdine in the Littlefield cafe area. Other times on Monday and Wednesday are available by appointment. There will be 2 teaching assistants in this course. Names and office hours will be supplied at the first class.

#### **Who Should Not Take This Course?**

Anyone prone to putting everything off until the exam and not being willing to keep up with daily assignment—that is an unrepentant and unchangeable **PROCRASTINATORS**.

#### **How Can Students Make This Course Easier?**

Spend all the time necessary in the first few weeks to do excellent briefs and put together a study group.

**Prizes**

It is my custom to award prizes for the best paper for each assignment, the best scores on each exam and the highest average for the semester. For the highest individual exam scores the prize is a U.S. Supreme Court coffee mug. For the highest semester average , the prize is an engraved plaque with a gavel and the Supreme Court seal. You also receive a specially signed copy of Clarence Thomas's autobiography, My Grandfather's Son. There are also other prizes, e.g., for most improvement from one exam to another.

**Study Groups** Students have found that study groups of from 4 to 8 or so classmates are extremely helpful in mastering this course. Many of my former students have told me they developed life long friends as a result of their study group. Study groups are great places to exchange information, get notes if you miss class, as well as enhance your level of understanding of the class materials. I will begin helping create them on the first day of class.

1. Note: 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/> Please let me know what accommodations are needed as early in the semester as possible
2. **Every student must follow all rules related to current Covid situation in class and in all campus buildings at all times.**
3. **Students are encouraged to participate in documented daily symptom screening.** This means that each class day in which on-campus activities occur, students must upload certification from the symptom tracking app and confirm that they completed their symptom screening for that day to Canvas. Students should not upload the results of that screening, just the certificate that they completed it. If the symptom tracking app recommends that the student isolate rather than coming to class, then students must not return to class until cleared by a medical professional.
4. Information regarding safety protocols with and without symptoms can be [found here](#).
5. **Sharing of Course Materials is Prohibited:** No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am well aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.
6. **Class Recordings:** Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.
7. Again: **COVID Caveats:** To help keep everyone at UT and in our community safe, it is critical that students report COVID-19 symptoms

and testing, regardless of test results, to [University Health Services](#), and faculty and staff report to the [HealthPoint Occupational Health Program](#) (OHP) as soon as possible. Please see this [link](#) to understand what needs to be reported. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this [University Health Services link](#).

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## **Assignments**

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### **American Constitutional Development:Rights and Liberties**

*Fall 2023*

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#### ***List of Daily Assignments***

#### **Read These Instructions Carefully First**

Note: Cases for this class are assigned from 4 sources: the main textbook, the cases on the website, electronic supplement for the textbook, and a few cases that are not in the textbook or the supplement. **Cases that should be briefed before class are so noted** ([click here for instructions how to brief](#))

1. Each day there will be from 1-5 main cases to brief. There will be additional cases assigned which will be handled in one of two ways. Dr. Sager will discuss these cases in the context of the assigned cases or he will expect the class to discuss them as hypothetical fact situations in light of the theory, rules, doctrines etc. of the assigned cases. Those cases that Dr. Sager will discuss in detail are noted as "Dr. Sager to discuss" Cases listed with no notation to "brief" or Dr. Sager, will be covered as the hypotheticals and you will be told which ones you need to know something about for the exams.
2. Cases listed by name with the word "Brief" after them, e.g. Hurtado v. California assigned in class 2 , means to write a brief for that case and bring it class.
3. Cases listed by name with "S" and a number can be found in that chapter of the supplementary cases. Access to them come with the purchase of the book or can be purchased separately. You should have information in your book as to how to get on the website. Again if you buy a used book, you can purchase the supplement separately. The cases in the textbook and on the supplement website are edited versions of cases, usually without footnotes. You can always find the full text of the case on the web if it raises your interest or you don't have access to that assigned case. Supplement cases are usually edited down to a couple of pages.
4. Cases listed by name that are not in the textbook or supplement are denoted by NIB. I did link a short excerpt from the first NIB case, Calder v. Bull. Except for Calder, you do not need to brief or peruse them before class. However, the full opinion versions can be found on the Findlaw website which is linked on the Resource Page Also you can just search the web by case name and find the full text or summaries on other websites.
5. If the case is noted to be discussed by Dr. Sager, you do not need to brief the case before class. Normally these are cases that have issues similar to those cases briefed for the day. Sometimes they are discussed for their historical significance. Other times they have a slightly different fact situation or a slightly different interpretation of the Constitution than the main

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Back to top ↑

- day. For Dr. Sager, a few of these cases are no longer in the canon of civil liberties cases for reasons that are hard to fathom.
6. Case are assigned for various reasons. Most are assigned because they are considered part of the Civil Liberties canon, an agreed upon case list created by "experts" for civil liberties courses. Some are assigned mainly because there is just a memorable phrase or idea in them you should know . Others are assigned to illustrate different points of view among the justices. Still others are assigned because they form a foundation for future cases which may not show up for 40 years or more . Still others are assigned because they are eventually overruled or they overrule previous cases we have covered. Cases are covered almost exclusively in historical order so you can see the ebb and flow, the expansion and contraction, the creation and destruction of various constitutional doctrines and interpretations.
  7. You will be provided a list of the cases for which you are responsible prior to each exam. For most of the exams, this list will mainly be the cases you were assigned to brief.
  8. While it may seem like there are lot of cases to know, you will see there are a small set of recurring issues with slightly different fact patterns. Since the Court is often split on most of these issues you should know which justices generally take which side.
  9. In a civil liberties or civil rights case almost every case has the same basic form: the case starts in one of two ways. 1) An individual claims that some law or activity of federal, state or local government violates a claimed civil right or liberty or privilege and immunity under the Bill of Rights or the 13th, 14th or 15th amendments , 2) The government claims it can do something and the individual answers that it can't because what the government wants to do infringes on that individual's civil right or liberty under the Bill of Rights or the 13th, 14th or 15th amendments. Almost every case then involves an individual versus the federal government or state government or an entity created by the state or federal government. It is usually named, that way, e.g. Hurtado v. California or Barron v. Baltimore There are a few cases where another entity of government is the surrogate for an individual., e.g the very first case, Calder v. Bull seems to be two individuals suing each other. In fact, one side really represents the position of the state. For instance, Calder v. Bull really is Calder v. Connecticut. The Slaughterhouse cases are really suits against the state of Louisiana. All of this will be pointed out as it occurs.
  10. Cases colored purple are assigned to the class for briefing. Those colored black Dr. Sager will discuss and present the brief. **For some cases Dr. Sager is covering there is a supplemental assignment such as reading a brief on the case or reading a part of the case and so on.**
  10. n the assignment page there are links to materials prepared by Dr. Sager to help summarize some sets of cases, cases that have something similar about them and end up at the Supreme Court in a fairly compact time period. These will help you answer some of the questions below.
    - II When reading the cases, you should think about the cases several ways.
      1. What are the facts and holding of the case. What are the various answers to fill in the brief.
      2. How does this case relate to the other cases, issues, theories, constitutional doctrines we have covered so far
      - 3.What are the views of the various justices on these issues.
      4. What are the larger political issues, political theories, constitutional and democratic values, and interpretive issues raised and answered by this case.
      5. What generalizations can you make, if any, as to how an historical Court, say the Warren Court, decides cases in terms of some of the dimensions of analysis, e.g., liberal/conservative, activist/restraintist, originalist/nonoriginalist, expanding rights/limiting rights, pro-government/anti-government and so on.
      6. What does this case or set of cases, tell us about how the Court or individual justices might resolve some of the larger civil rights and civil liberties issue we will be facing in the future. We know, among others, some of the privacy issues, due process and equal protection issues now and perhaps we can hypothesize about those that will be coming in

the future.

For instance, the courts are now beginning to have to deal with privacy issues with regard to others finding out what is on your mobile phone. Courts will soon be dealing with facial recognition issues and gene modification issue. European courts are beginning to deal with your right to remove your history, a history you may or may not have provided to places on the internet. How about an equal right to get on a shuttle to some distant planet to save your family DNA against some scourge on earth. As we go through the course, feel free to contribute the future issues you see.

**Check the website regularly for changes. Normally the changes will be a couple of weeks in advance.**

As we get later into the semester, mostly after the 2nd exam, I will be assigning students to read briefs rather than edited cases. These briefs were prepared by students usually because the case had not yet made it to the latest revision of the textbook.

By then you should be able to get all you need from the brief to understand the case, the test used by the Court, the arguments for each side based on all of our past case analysis, and have a good idea about how most of the current justices voted in the case. In many cases we will be looking for what moved a "swing justice." We will be watching justices like these throughout the semester.

Note: The 3 assigned supplementary books will require students to read maybe 20 pages per week

early in the semester

**Class 1 Monday August 21**

**Course Overview**

If you have never studied much about the Court, read Epstein and Walker pp 1-40 to reacquaint yourself with the Supreme Court as an institution and with terms relevant to its operation. Read this over the next two weeks or so if you are not familiar with the Supreme Court and how it functions and fits into the large scheme of our governmental institutions.

**The Bill of Rights and the 14th Amendment In 18th and 19th Century America.**

Begin reading Arnn book.

**Read or reread The Declaration of Independence and the Preamble to the Constitution**

The Pre Marshall Courts

**Calder v. Bull NIB** Dr. Sager to discuss. (In this case, The Court was trying to decide if Connecticut legislature violated the Constitution. Court held for state of Connecticut). **For Class Read a couple of paragraphs from two of the opinions linked below.** What are they arguing about. Both agree that the Connecticut legislature acted constitutionally.

([click here](#))

**Some questions to consider.** (We will spend much of the semester answering some of these questions)

**What is a "right"? Who has "rights"? What are inalienable "rights"? What is the source of the "rights" of all Americans? What is the first line of protection for your rights?**

**What is "liberty"? What are "civil liberties"? What are the the rights to "life, liberty and happiness" as well as "life, liberty and property?"**

**Barron v. Baltimore Brief** Facts are simple: Barron says city of Baltimore caused his wharf to become worthless because of various public works projects. He claims this is a taking of property without compensation contrary to 5th amendment For the 3 page text of the case ([click here](#)). If you have a problem doing the brief from my facts and the short opinion, sample briefs for cases assigned today and Wednesday appear at the bottom of the syllabus page. Try to do these without the samples first. These briefs can assist you if you have any questions about how to brief. Links appear on Syllabus page. Also there is a discussion of the briefing form for this course on the Syllabus page.

**Did The Bill of Rights Apply To the States?**

Some other questions to consider in relation to this and perhaps several other

cases.

Does Barron mean that citizen's property as of 1833 do not have any protections against actions of their state and local governments?

Can you think of a situation where Marshall might have said a citizen's property is protected?

Can you think of an interpretation of the 5th amendment that would support Plaintiff's claim?

Where did the state and local governments get the power to affect a citizen's property?

What does this case tell us about Marshall's view of federalism?

What are the rights which are the one such that "they are endowed by their creator with certain unalienable rights?"

No matter what these rights are, do they or should they affect the meaning of the later adopted Constitution?

Some advice for Students from some well known professors with diverse points of view from a variety of universities: ([click here](#))

George Orwell v. Robert Reich([click here](#))

Begin reading The Founder's Key by Larry Arnn. what is relationship between Declaration of Independence and Constitution. When was the United States founded according to him. Is the Constitution "a relic."

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## **Class 2 Wednesday, August 23**

Orwell quotes not gotten to at first class. ([Click here](#))

**The Bill of Rights and the 14th Amendment In 19th Century America**

**What Did the Post Civil War Amendments Do and what were they meant to do?**

**Movie Lincoln** is important to understanding these.

Dr. Sager will include a few comments on the movie.

**The Slaughterhouse Cases -Brief** ([Click here for sample brief](#))

**Bradwell v. Illinois** Dr. Sager to Discuss Read Bradley quote from case ([click here](#))

**What is required to file a suit under the 14th or legislation enacted under it.**

**The Civil Rights Cases** Dr Sager to discuss([click here for quotes and framework](#))

**What was the meaning of "due process" and did 14th Amendment incorporate Bill of Rights**

**Hurtado v. California** Brief

**Walker v. Sauvinet** NIB study from brief ([click here](#))

**What is or was the meaning of "equal protection"?**

**Yick Wo v. Hopkins** Brief ([Click here for 4 page version of case](#).)

**Plessy v. Ferguson** Brief

**Williams v. Miss(1898) and Strauder v. West Virginia(1880)**Dr. Sager to Discuss NIB

**Questions to consider:**

Did Yick Wo win because he was Chinese or because he was a businessman?

What standard did the Supreme Court apply in Plessy for judging whether an unconstitutional discrimination had taken place?

Was that the same or a different standard than in Yick Wo?

What was the social science argument used by the majority in Plessy?

Should social science or even physical science be a basis for a Supreme Court opinions?

Which of the cases assigned today for briefing are based on "originalist" arguments?

What does "due process" really mean? How do you know that? **Read** Professor Graglia's short op. ed. from the Wall Street Journal in 2005 entitled "The Death of Due Process." This op. ed. could be found now in the Congressional Record ([click here](#)) Also below Professor Graglia's piece in the Congressional Record is a Charles Krauthammer column analyzing the medical marijuana case, Gonzales v. Reich. In this case Scalia and Thomas were on opposite sides. Krauthammer shows why they differed in terms of how they interpret the Constitution and also shows how inadequate and shallow press coverage is of Supreme Court cases using this case as the example. Note the general point of the article, the shallowness of much

of our dialogue today and the need to get outside of how you see the world. Dr. Sager Daily Texan controversy in 2001 ([click here](#))

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### **Class 3**

#### **Monday August 28**

The Bill of Rights and the 14th Amendment In Late 19th Century America:

The Religion Clauses – be sure you know these short phrases in 1st Amendment

**Reynolds v. U.S.** Dr. Sager to Discuss Supp

**Bradfield v. Roberts** Dr. Sager to discuss Supp

Questions to consider for class. What is the purpose of the religion clauses in the 1st amendment?

What are the definitions of the terms in these clauses?

Have these clauses fulfilled whatever purpose they seem to have had? This is a question we will consider throughout the semester.

The Bill of Rights and the 14th Amendment In Early 20th Century America

Roots of “Substantive” Due Process

**Lochner v. New York** Brief Supp ([click here for copy if you don't yet have supplement](#))

**Meyer v. Nebraska** Dr. Sager to discuss Supp.

**Pierce v. Society of Sisters** Dr. Sager to discuss Supp For relevant quotes ([click here](#))

Free Speech: The Search for Standards

**Schenk v U.S.** Brief

**Abrams v. U.S.** Brief

**Gitlow v. New York** Brief

**Whitney v. California** Dr. Sager to discuss S 5

**Stromberg v. California** Dr. Sager to discuss S 5

Questions to consider for briefs

Is there such a thing called “substantive due process” or is it the proverbial “oxymoron?”

What is the difference between laws about “freedom of speech” and laws about “speech”?

Is there a difference with regard the 1st Amendment?

Why protect either in the first place?

What is the difference between the tests used in Schenk, Abrams and Gitlow?

Study Basic Van Geel table ([click here](#))

Begin reading the Ramaswamy book. Are all the persons who allege their rights are being violated victims? Are really the Nacirema?

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### **Class 4**

#### **Wed August 30**

Civil Rights and Civil Liberties in the early and mid 20th Century

Free Press and Freedom of Association

**Near v. Minnesota** Brief

**DeJonge v. Oregon** Dr. Sager to discuss S 5

Rights of the Accused and Convicted (Dr. Sager to discuss all of these except Powell v. Ala. which is in text and needs to be briefed)

([Click here for brief chart comparing these cases](#))

**Twining v. New Jersey** Dr. Sager to discuss

**Weeks v. U.S.** Brief S 10

**Olmstead v. U.S.** Dr. Sager to discuss S 10

**Powell v. Alabama** Brief

**Brown v. Mississippi** Dr. Sager to discuss S 10

**Betts v. Brady** Dr. Sager to discuss S 11

**Wolf v. Colorado** S 10 (Van Geel analysis of Weeks as precedent)

for Wolf – [click here](#))

### The Incorporation Arguments Revisited

#### Palko v. Connecticut Brief

**Adamson v. California** Read Dr. Sager's Brief([click here](#)) then

outline the arguments between Frankfurter and Black in this case.

For their full opinions [click here](#))

#### Rochin v. California S 10

For various formulations of the meaning of due process, [click here](#).

#### Some questions to consider for this class

What is the meaning of the words in the various formulations of “due process?”

What are the arguments for and against incorporation and how do they relate to Justice Miller's interpretation of the 14th in *Slaughterhouse*? If you apply part of the Bill of Rights to the states through the due process clause, is the meaning of say the 5th amendment stricture against self-incrimination the same for both the federal and state governments? Does freedom of the press have different meanings at different times in our history? Alternately, how does technology affect the way freedom of the press is interpreted?

#### Brief discussion of the Spielberg Movie Lincoln

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### Class 5

#### Wednesday September 6

### Civil Rights and Civil Liberties in the early and mid 20th Century

#### Fundamental Rights Analysis

**Buck v. Bell** Dr. Sager to discuss NIB

**Skinner v. Oklahoma** Dr. Sager to discuss NIB

#### The Second Amendment

**U.S. v. Miller** Brief S 8

#### Preferred Freedoms and *Carolene Products*: Footnote 4 in *Carolene*

**U.S. v. Carolene Products** Dr. Sager to Discuss Case in Supp. Read and know famous footnote 4([click here](#))

#### Voting Discrimination and Voting Rights

**Smith v. Allwright** Brief Supp 14

([Click here for Dr. Sager's summary of White Primary](#)

#### Cases)

**Colegrove v. Green** Dr. Sager to discuss

Some questions to consider for today's cases.

What is a fundamental right?

How does it differ from a right or a civil right?

Is there a hierarchy of rights protected in the Constitution and if so what is it?

While *Buck v. Bell* is not good law today, might it come back as good law when the government runs the health care system?

What questions about the 2nd Amendment are not answered in *U.S. v. Miller*? Can you think of at least 4.

What is the “political thicket” and why should or should not a court be involved in the “political thicket” according to Frankfurter. Are there any cases not in a “political thicket?”

Read Bartlette's 2007 piece from the Wall Street Journal entitled “Whitewash” What relevance, if any, does this article and these white primary cases have today? ([Click here](#)) What does this article say about the current cancel culture. Recall that in Vivek's book he talks about the great moral philosopher David Hume being cancelled for a footnote in one of his many brilliant books on philosophy. This appears at the end of the chapter on the Civil War.

**Paper #1, A brief of a recent Supreme Court case on Civil Rights or Civil Liberties is the assignment. Brief will be due Monday October 4th To find your assigned case and more discussion of assignment ([click here](#))**

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### **Class 6 Monday September 11**

**Civil Rights and Civil Liberties in the early and mid 20th Century**

Free Speech at Mid Century-Protected and Unprotected classes of speech

**Thornhill v. Alabama Dr.Sager to discuss Supp**

**Cantwell v. Connecticut** Brief

**Chaplinsky v. New Hampshire** Brief

**West Virginia Board of Ed v. Barnette** Brief

**Dennis v. United States** Brief from summary here([click here](#))

What is "speech" for the purposes of these cases and what is the practice of "religion" for these cases?

What can we now say about the meaning of the 1st Amendment with some certainty.

**Civil Rights and Civil Liberties in the early and mid 20th Century**

Civil Liberties in War Time and Equal Protection

**Korematsu v. U.S.** Brief ([click here for court opinion](#)) Read only Majority, Murphy and

Jackson opinions, (skip Frankfurter concurrence and Roberts dissent)

Some preliminary and early models and charts

Tests ([click here](#))

Interpretation ([click here](#))

**We will discuss first 3 chapters of Ramaswamy book focusing on Chapter 3. The Constitutional War**

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### **Class 7 Wednesday September 13**

**50 word or less summary of the facts of your assigned case due at beginning of class. 1 copy only.**

**Civil Rights and Civil Liberties in the early and mid 20th Century**

The Development of Equal Protection: Attacking Equal In "Separate But Equal"

**McLaurin v. Oklahoma** Dr. Sager to discuss. This and related cases are fully discussed in the movie

"Simple Justice."

**Sweatt v. Painter** Brief

**Establishment of Religion**

**Everson v. Board of Education** Brief

Read and study Justice Douglas's statement in a related case([click here](#))

**The Warren Court Legal Revolution 1954-1969**

**The Beginnings of the idea of Privacy**

**Poe v. Ullman** Read and Summarize Harlan dissent([click here](#)) S Monday

Questions for today's cases

What is the rule and test for Justice Black as to whether an activity is an "establishment of religion."

What is "religion" for Black.

Can you explain the difference in approach to civil liberties Justice Jackson takes in Dennis vs. his approach in Korematsu and Barnette.

**Equal Protection**

**Brown v. Board of Education I and II**(Brief)

**Bolling v. Sharp** Dr. Sager to discuss

**Finish viewing film "Simple Justice" before this class. We will discuss in class as we discuss Brown. This movie is on the first exam.**

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### **Class 8 Monday September 18**

**The Warren Court Legal Revolution 1954-1969**

Procedural Due Process: Rights of the Accused and Convicted

**Mapp v. Ohio** Brief

**Gideon v. Wainwright** Brief

**Escobedo v. Illinois Brief**

**Miranda v. Arizona Brief**

**Katz v. U.S. Dr. Sager to discuss**

**Terry v. Ohio Brief**

**Religion**

**Sherbet v. Verner Brief**

**Schempp v. Abington Township Brief**

**Engel v. Vitale** Dr. Sager to discuss S 4

**Will take questions and comments in class about the Spielberg film**

**"Lincoln." This will be on Exam 1**

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### **Class 9 Wednesday September 20**

#### **The Warren Court Legal Revolution 1954-1969**

**Speech, Association, Libel, Obscenity, Conduct**

**NAACP v. Alabama Supp** Dr. Sager to discuss

**Roth v. U.S. Brief**

**Jacobellis v. Ohio** Supp Dr. Sager to discuss 8 most famous words in the opinion

**NYT v. Sullivan Brief**

**U.S. v. O'Brien Brief**

**Brandenburg v. Ohio Brief**

**Tinker v. Des Moines Brief**

Madison Federalist 51 Angels quote in full ([click here](#))

**Where are we now with regard to the Declaration of Independence as it relates to the Constitution.**

**We will spend a few minutes discussing the Arnn book which will be on Exam 1.**

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### **Class 10 Monday September 25th**

Exam 1 The cases that will be covered will be posted a week in advance

Movies: Lincoln, Simple Justice

Books: Arnn and any parts of Ramaswamy and Kull discussed in class

### **Class 11**

#### **Wednesday Wednesday September 27**

#### **The Warren Court Legal Revolution 1954-1969**

**Freedom of the Press**

**Red Lion Broadcasting v. FCC S 6 Dr. Sager to discuss**

Fundamental Rights Analysis and Equal Protection

**Loving v. Virginia Brief**

**Griswold v. Connecticut Brief**

**Stanley v. Georgia S 9 Dr. Sager to discuss**

Incorporation and protecting African Americans in South

**Duncan v. Louisiana Brief**

Dr. Sager will discuss what are called The Sit-In cases arising from protests that began before the Freedom Riders and continued after them. Also look at the following article on Emmett Till's lynching which occurred when Dr. Sager was in high school in the Chicago area. ([click here](#))

( The film **Freedom Riders**, now available on Youtube, should be viewed by Class 12.

Best version for this class <https://www.pbs.org/video/american-experience-freedom-riders/>

## Class 12 Monday October 2

The Warren Court Legal Revolution 1954-1969

Voting Rights

Baker v. Carr Dr. Sager to discuss

Reynolds v. Simms [Brief](#)

South Carolina v . Katzenbach Dr. Sager to discuss

The Burger Court: Was There A Counter Revolution?

Due Process Tests

Cleburne v. Cleburne Living [Brief](#)

8th Amendment and Death Penalty

Gregg v. Georgia [Brief](#)

Establishment of Religion

Lemon v Kurzman [Brief](#)

Wallace v. Jaffree Dr. Sager to discuss S 4

Free Exercise of Religion

Wisconsin v. Yoder [Brief](#)

What are the tests used in these cases to determine if there is a violation of the 8th Amendment(Gregg), Establishment ClauseMonday(Lemon), Free Exercise Clause(Yoder) Also do Yoder and Lemon follow their historical precedents, Everson, Reynolds v. U.S., and Bradfield v. Roberts.

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## Class 13 Wednesday October 4

The Burger Court: Was There A Counter Revolution?

Freedom of Speech

Cohen v. California [Brief](#)

Hustler Mag v Falwell [Brief](#)

Miller v. California [Brief](#)

Gertz v. Welch NIB Dr. Sager to discuss

Buckley v. Valeo Dr. Sager to discuss

New York v. Ferber [Brief](#)

**Notes and Questions for Class**

What is the new distinction created in Buckley?

Cohen should take 10 minutes to brief. With Roth as the precedent, which Van gel box does Miller fit into and what was narrowed or expanded?

What are the various tests used in each of the above cases if the Court approaches the issue with a test.

What do these and other cases we have covered have to do with, if at all, Bourgeoisie values?

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## Class 14 Monday October 9

For the beginning of this class read the following article from a conservative blog called The Federalist. Be prepared to argue both sides of the Mr. Davidson's premise.([click here](#)) Where in his article does he discuss the Declaration of Independence and how does his argument fit with Larry Arnn's.

The Burger Court: Was There A Counter Revolutions?

Commercial Speech

Va. Bd. of Pharmacy v. Va. Citizen's Council [Supp](#)

Bates v. Arizona Bar [Brief](#)

Central Hudson G and E v. PSC [Brief](#)

Equal Protection

Swann v. Charlotte Mecklenburg [Brief](#)

Milliken v. Bradley Dr. Sager to discuss S 12

Bakke v. Board of Regents [Brief](#)

Here is the statute being interpreted in Swann:

**Civil Rights Act Statute in Swann**

Section 2000c(b) defines "desegregation" as it is used in Title IV:

“Desegregation” means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance. Section 2000c-6, authorizing the Attorney General to institute federal suits, contains the following proviso: nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standard.

Is the decision consistent or inconsistent with the statute?

What are the various positions in Bakke and what is the rule going forward in affirmative action cases.

#### **Freedom of Association**

##### **Roberts v. Jaycees Brief S 5**

What is the statute being subjected to constitutional scrutiny. What test is Brennan using? What is O'Connor's disagreement with Brennan's test? Why isn't case in textbook any more? Why didn't Brennan who assigned

the opinion since he was senior Justice in the majority, assign it to a woman who agreed on the outcome? (He was the senior Justice in the majority since Burger and Blackmun recused themselves, Why do you think they did this?)

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#### **Class 15**

##### **Wednesday October 11**

**Begin reading The Color Blind Constitution and we will discuss at the beginning of class in light of Bakke**

The Burger Court: Was There A Counter Revolution?

Gender Discrimination

##### **Reed v. Reed Brief**

**Frontiero v. Richardson Dr. Sager to discuss S 12**

**Craig v. Boren Brief**

**Rostiker v. Goldberg Dr. Sager to discuss S12**

**Michael M. v. Superior Court Dr. Sager to discuss S12**

**Miss Univ for Women v. Hogan Dr. Sager to discuss S 12**

**Other Equal Protections Issues**

**San Antonio ISD v. Rodriguez Brief**

**Plyler v. Doe Brief (Student Brief1)(Student Brief 2)**

Notes and questions for class:

What are the various tests used in there gender discrimination cases so far? What assumptions are being made about gender in these gender discrimination cases?

**Privacy and Fundamental Rights**

**Roe v. Wade Brief**

**Bowers v. Hardwick Supp 9 Dr. Sager to discuss**

Where do particular parts of the Roe opinion come from? e.g. trimester system, state interest, mother's interest, precedents, etc.

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#### **Class 16 Monday October 16**

##### **The Rehnquist Court: How Conservative? 1986-200**

**Fundamental Rights**

**Cruzan v. Mo. Dept of Health Brief**

**Planned Parenthood v. Casey Brief**

**Stenberg v. Carhart** Dr. Sager to discuss S 9

**Lawrence v. Texas** Brief

**Washington v. Glucksberg** Dr. Sager to discuss S 9

8th Amendment and Death Penalty

**McCleskey v. Kemp** Dr. Sager to discuss S 11

**Atkins v. Virginia** Brief (student brief1)(student brief 2)

**Ewing v. California** Dr. Sager to discuss S 11

**Roper v. Simmons** Brief S 11

#### Equal Protection

Notes and questions: Based on the cases we have read in class, how does the Burger Court differ from the Warren Court? What is the equal protection test in San Antonio ISD and Plyler? What are the evolving 8th amendment standards used in the Rehnquist Court death penalty jurisprudence? What is their source? Do you agree or disagree? While I have given you some student briefs in Atkins for reference purpose it is important to understand the structure of the opinion and the arguments made in the majority and dissent to fully comprehend current 8th Amendment jurisprudence.

**It is always advisable when you brief a case to compare it to earlier cases in the area. Begin with a Van gel comparison. I will expect you did that when I call upon you in class.**

**At this point in the semester, we are looking at each case to see where it fits with previous cases and what potential issues it will give rise to in the future.**

You may want to compare the underlying assumptions of various justices in Roe and Casey to the point of view of Asheleen Menchaca Bagnulo, an Assistant Professor of Political Science at Texas State, as she recounts her miscarriage. Some of her other writings include, Conservatives Should Care About Institutional Racism, The Problem of Character: Why Conservatives Must Reject Trump, and The Paradox of Title IX: Fighting Sexual Assault on Campus. <https://www.thepublicdiscourse.com/2021/10/78274/>

**Class 17 Wednesday October 18**

**The Rehnquist Court: How Conservative**

#### Equal Protection

#### Affirmative Action

**City of Richmond v. Croson** Brief S 12 For case ([click here](#))

**Adarand Contractors v. Pena** Dr. Sager to discuss

**Grutter v. Bollinger** Brief using this edited opinion ([click here](#))

What is the relationship between a claim that the 14th Amendment now makes the Constitution color blind and affirmative action.

#### Education/Race

**U.S. v. Fordice** Supp Dr. Sager to discuss S12

**Freeman v. Pitts** Supp Dr. Sager to discuss S12

**Missouri v. Jenkins** (Brief Thomas excerpts only) ([click here for excerpts](#))

**Holder v. Hall** (read only a paragraph of Thomas dissent [click here](#))

For an interesting view of Clarence Thomas see Created Equal: 12 Quotes from Clarence Thomas ([click here](#)). This is practically a biographical summary with 12 of his quotes embedded. These are not from judicial opinions.

What is the criteria to determine if affirmative actions violated the 14th Amendment?

Has that changed since Bakke? Should we treat the areas

of education and commerce different? Does the Court? How does Thomas's concurrence in Jenkins fit with Burger's opinion in Swann? Jenkins is actually part of a long series

of cases involving many issues including de jure segregation in Kansas City school district. Here one issue is about federal judges ordering a state to tax its citizens for the building and financing of a magnet school to entice white students and family who do not live in the Kansas City school districts to attend or send their children to these schools

It starts out with one of the rules federal courts developed after Brown and we see in Swann, and later limited somewhat in Milliken and Freeman. It is the notion that scope of the violation determines the scope of the remedy.

Thomas's opinion is mainly about his view of how the Court should approach school desegregation issues. He is someone who grew up in the segregated South and holds a

minority(not meant to be a pun) view on how the Court should approach this issue. What organized groups might oppose Thomas's view and why? Be on the watch for a case or two we will cover in the future which may surprise you about Thomas's view of an issue we have been discussing since early in the semester.

Should Justice Thomas be the most authoritative member of the Court on school segregation and desegregation since he is the only member of the Court who attended segregated schools?

How would argue for a against Thomas's views

**Have the book The Colorblind Constitution completed by Class 18, Will discuss during that class.**

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#### **Jefferson to Danbury Baptist Association**

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. [Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from prescribing even those occasional performances of devotion, practiced indeed by the Executive of another nation as the legal head of its church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect.] Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & your religious association assurances of my high respect & esteem.

#### **Washington Farewell Address**

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked: Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice ? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government.

Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

#### **Northwest Ordinance Section XIV**

**Art. 3.** Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

**Art. 6.** There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully

reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

DeTocqueville

Religion perceives that civil liberty affords a noble exercise to the faculties of man and that the political world is a field prepared by the Creator for the efforts of mind. Free and powerful in its own sphere, satisfied with the place reserved for it, religion never more surely establishes its empire than when it reigns in the hearts of men unsupported by aught beside its native strength. Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom.

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### Class 18 Monday October 23

Voting behavior in Burger Court ([click here](#))

**The Rehnquist Court: How Conservative?**

**Rights of the Accused and Convicted**

**National Treasury Union v. Von Raab** Dr.Sager to discuss

**Dickerson v. U.S.** Supp Dr. Sager to discuss

Establishment of Religion

**County of Allegheny v. ACLU** S 4. Dr. Sager to discuss

**Edwards v. Aguilar** Brief

**Lee v. Weisman** Dr. Sager to Discuss

**Santa Fe Independent School district v. Doe** S 4

**Zelman v. Simmons-Harris** Brief([student brief1](#))([student brief2](#))

**Van Orden v. Perry** Brief

**Board of Ed v. Village of Kiryas Joel** Dr. Sager to discuss

**Agostini v. Felton** Dr. Sager to discuss S4

Free Exercise of Religion

**Employment Divison v. Smith** Brief

**Church of the Lukumi Babalu v. City of Hialeah** Brief

**City of Boerne v. Flores** Brief

**Cutter v. Wilkinson** Dr. Sager to Discuss S 4

**Locke v. Davey** Brief ([Student brief](#))

What if anything, do the following statements from the time of our founding have to do with the above cases:

**Jefferson to Danbury Baptist Association**

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. [Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from prescribing even those occasional performances of devotion, practiced indeed by the Executive of another nation as the legal head of its church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect.] Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

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DeTocqueville

Religion perceives that civil liberty affords a noble exercise to the faculties of man and that the political world is a field prepared by the Creator for the efforts of mind. Free and powerful in its own sphere, satisfied with the place reserved for it, religion never more surely establishes its empire than when it reigns in the hearts of men unsupported by aught beside its native strength. Liberty regards religion as its companion in all its battles and its triumphs, as the cradle of its infancy and the divine source of its claims. It considers religion as the safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom.

Read, digest and analyze the following article entitled:

Poll: 71% of Americans Say Political Correctness Has Silenced Discussions Society Needs to Have, 58% Have Political Views They're Afraid to Share ([click here](#))

Note: Cato Institute which did this survey is a very libertarian organization did this survey several years ago. Fear is probably up considerably now. A recent survey showed 22% of American Jews afraid to show their identity. Are the the results of two surveys related?

#### **The Rehnquist Court: How Conservative?**

**Freedom of the Press**

**Freedom of Speech**

**Texas v. Johnson Brief**

**Hazelwood v. Kuhlmeier** Dr. Sager to discuss

**Gender**

**U.S. v. Virginia**(VMI case)Brief

**Romer v. Evans** Dr. Sager to discuss

Freedom of Association

**Hurley v. Irish American Gay Lesbians** S 5

**Boy Scouts of America v. Dale** Brief([student brief](#))

Miscellaneous Speech issues

McIntyre v. Ohio-anonymous political statements Dr. Sager to discuss

Regents v. Southworth students fees Dr. Sager to discuss

McConnell v. FEC political contributions Dr. Sager to discuss

The movie "Denial" will also be discussed. The heroine, Deborah Lipstadt, is a very liberal professor at Emory. Biden recently nominated her and she was confirmed to the position of Special Envoy for Monitoring and Combatting Anti-Semitism. She replaces a friend and fraternity brother who held position during Trump administration. Position was created during George W Bush administration. There has been some discussion over the years for the need for the position within the State Department.

#### **Class 20**

**Monday October 30th**

#### **Exam #2 In Class**

**The Color Blind Constitution will be covered on the exam as will the movies**

**Freedom Riders and Denial. The following cases will covered on the exam.**

Also be sure to know the Jefferson, Washington, NW Ordinance and Detocqueville quotes about religion along with the Douglas quote about religion linked with the 1947 Everson case assigned for the first test. This quote was assigned for Class 7. We will touch on it in Class 19 as we go through the religion cases.

#### **Class 21 Wednesday Nov 1**

**The Rehnquist Court: How Conservative**

**Freedom of Speech**

**Texas v. Johnson Brief**

**44 Liquormart v. Rhode Island** S Brief

**Regents v. Southworth** Dr. Sager to discuss

**McIntyre v. Ohio** Dr Sager to discuss NIB

**Hate Speech**

**R.A. V. v. City of St. Paul** Dr. Sager to discuss NIB

**Wisconsin v. Mitchell** Dr. Sager to discuss

**Virginia v. Black** Supp Brief([click here for case to brief](#))

**Reno v. ACLU** Brief

**Ashcroft v. Free Speech Coalition** Dr. Sager to discuss

**Hill v. Colorado** Dr. Sager to discuss

**Read carefully the statutes in R.A.V. and Black cases that is the**

**difference? Should the Constitution treat them differently?**

City of St. Paul Ordinance\*

"Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment

in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor."

#### Virginia Law

"It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a Class 6 felony.

"Any such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons."

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## Class 22 Monday November 6

### The Roberts Court: Fidelity to Law?

Equal Protection Racial Discrimination

**Parents Involved in Schools v. Seattle** (Brief)

**Ricci v. De Stefano** Dr. Sager to discuss. View Amicus brief for Kedar Bhatia a former student who is now in large N.Y. firm with Dr. Sager as counsel ([click here](#))

**Fisher v U.T** Brief(2016 case)

What is diversity in Fisher? How does it add to a college education. Compare with Yale Professor Kronman's view ([click here](#))

Other Equal Protection Issues

**Gonzales v. Carhart (Planned Parenthood)** Brief Supp ([student brief](#))

**United States v. Windsor** ([student brief 1](#)) ([student brief 2](#))

**Hollingsworth v. Perry** Supp Dr. Sager to discuss

**Obergefel v. Hodges** Brief

**The Roberts Court: Fidelity To Law?**

**2nd Amendment**

**District of Columbia v. Heller** Brief (be able to discuss the various opinions)

**McDonald v. City of Chicago** Brief from Supp ([Student brief](#))

**1 page outline of oral argument due. It is based on case you briefed earlier in semester. Oral argument mp3 and transcript can be found on the Oyez, Oyez website. Outline should contain at most a 2 sentence statement of the facts of your case. Since you have already done a full brief, this should be quite easy to do.**

**Put your name at bottom and your row and seat number at top.**

**This is the only time we will be taking the outline and reviewing it. It will be returned with comments Wednesday, November 17th. If it is not returned, it means you are right on track.**

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## Class 23 Wednesday November 8th

The Roberts Court: Fidelity To Law?

**Free Speech**

**Walker III v. Texas Division, Sons of Confederacy** Supp Brief

**Morse v. Frederick** Brief

**U.S. v. Alvarez** Dr. Sager to discuss

**Speech and Elections**

**FEC v. Wisconsin Right To Life** Supp Dr. Sager to discuss

**Davenport v. Washington Ed. Association** Dr. Sager to discuss

**Citizens United v. FEC** Dr. Sager to discuss

**Janus v. AFSCME** Brief

**Crawford v Marion County** Dr. Sager to discuss

**Obscenity, Pornography and other offensive speech**

**United States v. Stevens Supp ([student brief](#))**  
**Brown v. Entertainment Merchants Assoc Brief**  
**United States v. Williams Dr. Sager to discuss**

**Finish viewing Ben Stein Movie**

**“Expelled.”and we will briefly discuss in class. One obvious question is what is this movie really about? Another is could this movie be made today and should something like it be made?**

Class 24 Monday November 13th

**The Roberts Court: Fidelity To Law?**

**Free Speech**

**McCullen v. Coakley Dr. Sager to discuss**

**Religion and Speech**

**Christian Legal Soc.v. Martinez Supp ([student brief](#))**

**Snyder v. Phelps Brief**

**Hosanna-Tabor Evangelical Lutheran Church Brief**

**Gonzales v. O Spirita NIB Dr. Sager to discuss**

**Town of Greece v. Galloway Brief**

**Reed v. Town of Gilbert Supp Brief**

**Trinity Lutheran Church v. Comer Dr. Sager to discuss**

**Espinoza v Montana Dept.of Rev Dr. Sager to discuss**

**American Legion v American Humanist Association(brief)**

**Criminal Procedure**

**Florida v. Jardines brief**

**Maryland v. King Dr. Sager to discuss**

**Paper #2 Due in class. Up to 3 pages or 900 words, comparing the issues and arguments in oral argument in your case with the issues and arguments in the final opinion.**

**Recent Roberts Court cases**

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**Class 25 Wednesday November 15th**

**The Roberts Court: Fidelity to Law**

Old issues and some new issues related to issues we have studied throughout the semester.

For these last 2 classes we are using briefs prepared by students for studying most of the cases.

The reason is I expect by now, you can look at a set of facts and issues and then figure out what similar similar cases and issues we have already covered this semester. In addition, many of the cases are so recent they are not even in supplement

**Discrimination**

**Masterpiece Cakeshop v. Col. Dr. Sager to discuss**

**Fulton v Philadelphia (read this outstanding brief carefully([click here](#))**

**Constitutional Criminal Procedure**

**8th Amendment**

**Kennedy v. Louisiana Dr. Sager to discuss**

**Glossip v. Gross Use this brief ([student brief](#))**

**Miller v. Alabama Use this Brief ([Student brief](#))**

**Jones v. Mississippi ([use brief](#))**

**Abortion**

**June v. Whole Woman's Health([student brief](#))**

**Speech – copywrite and trademarks**

Matal v Tam Brief (use case to review viewpoint and content discrimination as outlined in this case)

**Discrimination**

**Trump v. Hawaii Dr. Sager to discuss briefly**

**Student Speech and Behavior**

**Majanoy Area School District v. B.L([student brief with some quotes from case](#))**

H.L. Mencken

“The whole aim of practical politics is to keep the populace alarmed (and hence clamorous to be led to safety) by an endless series of hobgoblins, most of them imaginary.”

**Class 26 Monday November 27th**

Recent Roberts Court cases

Abortion

Dobbs (brief)

Discrimination

Students for Fair Admissions (brief)

**Class 27 Wednesday November 29th**

**EXAM 3 in Class**

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Case list for exam will be listed here about 2 weeks before the exam

**Class 28 Monday December 4th**

End of Year Awards Dinner and Speaker at Dr. Sager's home

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**Class 28**

**Monday December 4th. 6:30 p.m.**

**Special Event Dr. Sager's home. End of Year Awards Dinner**

**6:30-8:30 Special Guest to be announced**

**AMERICAN CONSTITUTIONAL  
DEVELOPMENT II  
CIVIL RIGHTS AND CIVIL LIBERTIES**  
**DR.ALAN SAGER**

**HOME    COURSE INFO    ASSIGNMENTS    SYLLABUS FALL 2023**  
**BRIEFING CASES    VIDEO    RESOURCES    FROM THE MEDIA**

## Syllabus Fall 2023

### Required Textbooks

1. Lee Epstein and Thomas Walker. **Constitutional Law For A Changing America: Rights, Liberty and Justice** Sage Press **11th Edition** 2019(There is also a supplement with recent cases that come with this edition. The supplement also contains some older cases we will read. *If you buy a used edition, make sure you purchase the supplement.* Otherwise you will have to read the full text on the web of the assigned cases in the supplement.) There may be a new edition of the textbook in late August 2019. The 2017 edition plus supplement will work.

### Required Supplementary Books

1. Andrew Kull **The Colorblind Constitution**, Harvard University Press,1998. Despite what we may think at first, the word colorblind is not generally associated with the 14th Amendment. From one point of view, Kull explains why not and also makes an argument as why it should be.

Pages: 1 [2](#)

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[Back to top ↑](#)

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**HOME    COURSE INFO    ASSIGNMENTS    SYLLABUS FALL 2023**  
**BRIEFING CASES    VIDEO    RESOURCES    FROM THE MEDIA**

### Syllabus Fall 2023

2. Larry Arnn **The Founder's Key: The Divine and Natural Connection Between the Declaration and the Constitution and What We Risk by Losing It** Thomas Nelson, 2013 Paperback edition. The title tells you the argument by Larry Arnn, President of Hillsdale College and well known Winston Churchill scholar.

3. **Nation of Victims**, Vivek Ramaswamy Long before I knew Vivek was running for President, I came across this short book. I found many of the chapters provide interesting contexts to our course materials. Whether we agree with his positions or not, he gives us a lot to think about as we wrestle with the difficult problems related to civil liberties, rights and justice in America today. I am putting in Chapter titles and content because some chapters will be most relevant at different times during the semester.. And you can just read the entire book at one time.

Chapter 1 Underdogs v. victims

Chapter 2 The Civil War Interesting analysis of the Battle of Gettysburg and its impact on how the South then conceptualized the civil war.

Chapter 3 The Constitutional War An interesting analysis of the original and changing meaning of the 14th Amendment

Chapter 4 Race Theory CRT and a personal story that shows Vivek's ability to look at his own biases and assumptions

Chapter 5 Conservative Victimhood Also legitimate grievances

Chapter 6 Empire In Decline Interesting history about rise and fall of Rome as well as a detailed comparison of our naval power versus the naval power of China.

Chapter 7 How Victimhood Leads To National Decline He also talks about how victimhood stifles national dialogue

Chapter 8 The Need to Forgive An interesting take on this age old suggestion

Chapter 9 A Theory of Duty An erudite discussion of the various political and philosophical issues of doing justice and creating a just society. It also expands on his earlier discussion of Kantian notions of justice.

4. George Orwell **1984**. I expect everyone has read this in high school or before. Please refresh your memory or skim info about it on the web. The book itself is not assigned for this course. Some knowledge of it is required.

### Films

Much of what we learn today is from media. To expand our ability to analyze and interpret and learn from media I assign 6 feature films for this class. Films 1, 4, 5 and 6 are available on Netflix, DVD, probably Amazon and other places as noted. 2 and 3 can be found on the PBS website and other places on the web. I have noted some of those places. I have had Lincoln, Expelled and Denial fact checked and satisfied with their historical accuracy as far as can be expected from a popular film Simple Justice and Freedom Riders do not need to be fact checked since they are documentaries. Though even documentaries can be distorted by lack of inclusion of relevant information or context.

I am

confident in the accuracy of these documentaries.

Email: [amsag@mail.utexas.edu](mailto:amsag@mail.utexas.edu)**Spielberg film on the passage of the 13th Amendment:**

Though Lincoln was gone, what it took to pass the 14th Amendment, which is a cornerstone of this course, was likely not that different. Recently I saw list of the top 10 historically accurate movies. This movie was on it. I did not know most of the other ones on the list.

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[Back to top ↑](#)

2. **Simple Justice**, a PBS film based on Richard Kluger's book of the same name, about the road from Plessy to Brown v. Board of Education. The story is told through the eyes of Justice Thurgood Marshall, from his entry into law school through the final decision in Brown. We will cover several of the cases mentioned in the movie. Production values could be improved. Still it is a wonderful engaging story.

3. **Freedom Riders**, a PBS documentary about the period from the decision in Brown through the 1964 Civil Rights Act. In particular it covers a Freedom Ride through the deep south from Tennessee to New Orleans. Some of the themes are similar to those in the recent film Selma. Best version for this class <https://www.pbs.org/video/american-experience-freedom-riders/>.

As an undergraduate at Tufts University, 1958-1962 on a couple of occasions I joined by fraternity brothers in protests at the local Kresgees or 5 and Dime store. The protests were in support of the sit in protestors at segregated southern businesses. At Michigan Law school I helped organize the first Law Students Civil Rights Conference in 1963 or 64. During the Selma marches many of us paraded around the inside of the Michigan Law Quadrangle in support of the Selma marchers.

4. **Expelled**, a decade old Ben Stein documentary about political correctness in academia focusing on the biological sciences and academics who had the nerve to mention the term "Intelligent Design" in their work or bios.

5. **Denial** This is a film about a real libel trial in England, Irving v. Penguin Books While in colonial times and well into the 19th century we integrated much of the English legal system into our jurisprudence, we do not follow the English law of libel. In ours the burden of proof is on the person who claims to be injured by the words. The plaintiff must prove they are false and injurious. In the English system, the burden of proof is on the speaker, the defendant, to prove the veracity of their words. This difference in burden of proof is most interesting. We will be discussing burden of proof issues in general in relation to a number of Supreme Court doctrines. Both the acting and the "lawyering" in this case are wonderful. David Irving an English writer sues American historian, Deborah Lipstadt, for calling him a Holocaust denier in her books . Lipstadt's lawyers must prove both he was a Holocaust denier and the Holocaust existed so they must prove is also a liar. While we may consider these claims to be quite factual to the point of being self evident, proof in a court room requires a much higher level of proof than we may use in our every day life. While this case is decided by a trial court, not an appellate court, it gives you a great sense of how everyday interactions among people might well end up in the Supreme Court. Also gives you a sense of what happens before a case even gets to a Supreme Court. Lastly, it shows that many important civil liberties issues never get to a higher appellate court.

6. **Blazing Saddles**, a Mel Brooks film, also written by the late great comedian Richard Pryor. Despite its continuing popularity, is this a film that would not be made in today's Hollywood culture and our culture of political correctness? If so why? In a recent Rolling Stone readers poll of best comedies, Blazing Saddles was rated the number 1. Mel Brooks has his own interpretation of what he was trying to do in this film. What is yours. Should this film and anyone who shows it be cancelled? OK, Mel intended the movie to be about racial justice.

**The order for the films and supplementary books is as follows:**

Larry Arnn's book is applicable to many of the ideas and themes that come up throughout the semester.

A. **Civil Rights** (major emphasis in first ½ of course)

**Books:** Color Blind Constitution, Nation of Victims

**Movies:** Lincoln, Simple Justice, Freedom Riders,

B. **Freedom Speech and Thought** (major emphasis in 2<sup>nd</sup> ½ of course)

**Movies:** Expelled, Denial and Blazing Saddles

The Arnn book applies to several parts of the course as does the Ramaswamy book.

We may show the movies outside of class for those who cannot view them at home or with friends. Movie nights will be on Sundays.

In the past, one or two of the movies are shown consecutively. A short discussion will follow for those interested in such a discussion. Guests are welcome at the Sunday showings.

Each of these films can be directly related to some of the cases we read. There are also many other good films that give some context to the cases we cover. I love a little known 2009 film entitled **Amazing Grace** which is about William Wilberforce, an upper class English nobleman, who successfully campaigned to end Britain's participation in the slave trade in the early 1800's. It is also about the writing of the song which I know and will not publicly play on my fiddle.

The recent hit **Selma** is also very good about the 60's-70's civil rights era. I decided to keep **Freedom Riders** as the assigned film for this era after careful consideration of having **Selma** replace **Freedom Riders**. One of my high school friends walked across the bridge as part of the Dr. King entourage as shown in the film. I will touch on the events portrayed as we cover some cases from that era. I am sure most students have read or seen **To Kill A Mockingbird**. It relates to both issues of discrimination and criminal procedure. Some of the criminal procedure issues raised are taken up in my Judicial Process course next Spring. Lastly, **The Butler**, which is based on a real story, gives some glimpses of the development of civil rights and presidential behavior from the perspective of a White House butler. And yes notice which President treats the butler the best. How surprising?

### **How to Brief a Case**

Description of how to brief a case [\(click here\)](#)

#### **Sample Briefs**

Note: Some of these briefs may be more extensive than you will need for daily class preparation.

Click on the case for sample briefs of the following case which are assigned in the first few classes:

[\*\*Barron v. Baltimore\*\*](#), [\*\*The Slaughterhouse Cases\*\*](#), [\*\*Walker v. Sauvinet\*\*](#) and [\*\*Yick Wo v. Hopkins\*\*](#).

#### **Daily Course Assignments**

**Note: Stay up with the assignments even if the class discussion falls behind. The exams will cover everything up to the date of the exam whether we have covered it in class or not.**

Pages: [1](#) [2](#)