

Civil Liberties in America

In this seminar, we will attempt to bring together the study of public law, American Government and political theory by exploring the legal and philosophical principles underlying court decisions on civil liberties. For 2020, topics to be covered include: (1) the role of religion in public life; (2) freedom of speech and national security; (3) abortion; (4) sexual orientation; (5) racial and sex discrimination; and (6) affirmative action. Class will be conducted online, via Zoom.

Books for purchase

1. Sullivan and Feldman, *Constitutional Law* (19th ed.) (*in an effort to save you money, I have ordered the older 19th edition, rather than the newer 20th but you could buy the 20th*). *If we end up using the 20th edition, I will have to adjust pages accordingly*
2. Mill, John Stuart, *On Liberty*.

Prerequisites

Upper-division standing required. Course number may be repeated for credit when the topics vary. Prerequisite: 6 semester hours of lower-division coursework in government.

Schedule of Topics and Readings

Week One (Aug. 25): Introduction

Freedom and Choice: slippery slopes and line drawing problems.
Reading: Mill, *On Liberty*, ch. 1.

Week Two (Sept. 1): The Constitution and Separation of Church and State

The Establishment Clause: religion and public schools. *Sullivan and Feldman*, 1555, 1608 (Everson); 1612 (McCollum, Zorach); 1636-57 (Engel, Schempp, Wallace, Lee, Santa Fe, Stone, Elk Grove, Epperson, Edwards); 1483-84 (more on Wallace, Lee).
Prayer outside of school: *Sullivan and Feldman*, 1658-59 (Marsh; Town of Greece); 1692 (Thornton).

Week Three (Sep. 8): Separation of Church and State continued

Financial aid to religious institutions. *Sullivan and Feldman*, 1611-19 (Allen, Lemon, Wolman, Mueller, Aguilar, Widmar, Tilton); 1284 (Widmar); 1620-35 (Witters, Bowen, Zobrest, Rosenberger, Agostini, Mitchell, Zelman); 1330, 1557 (more on Rosenberger); 1286 (Lamb's Chapel, Good News); 1648 (Good News); 1695-97 (Mergens, Kiryas Joel); 1280 (Christian Legal Society).

Religious symbols on public property. *Sullivan and Feldman*, 1663-1687 (Lynch, Allegheny, Capitol Square, McCreary, Van Orden); 1288 (Pleasant Grove); 2019 Supp. pdf (see Canvas file) (American Legion v. American Humanist Assn.).

Week Four (Sep. 15): *The Constitution and Freedom of Religion*

The Free Exercise Clause: when do laws discriminate against the religious? *Sullivan and Feldman*, 1555, 1570 (Reynolds); 1571 (Gobitis, Barnette); 1572 (Braunfeld); 1565 (Lukumi Babalu Aye) 1689 (Locke); Trinity Lutheran Church (see Canvas file); Masterpiece Cakeshop (see Canvas file); 2020 Supp. pdf 14 (Espinoza v. Montana). The current controversy in France over Muslim dress and secular values in the public schools (no reading).

Special treatment or equal treatment of religion? *Sullivan and Feldman*, 1573-1583 (Sherbert, Thomas, Yoder, Lee, Bob Jones, Goldman, Bowen, Lyng); 1688 (more on Sherbert); 1583-98 (Smith, City of Boerne, RFRA, Gonzales); 1598 (Hobby Lobby); 1605 (Holt); 1695 (Cutter); 1596 (Hosanna-Tabor and ministerial exemption); 2020 Supp. pdf 13 (Our Lady of Guadalupe School). Military draft and conscientious objection: *Sullivan and Feldman*, (1560-62).

Week Five (Sep. 22): *Freedom of Speech*

World War One and the rise of clear and present danger doctrine: *Sullivan and Feldman*, 947-961 (Schenck, Frohwerk, Debs, Abrams, Masses).

Political Theory and Free Speech: Mill, *On Liberty*, chaps. 1-3; *Sullivan and Feldman*, 931-46 (overview); 1161-62 (content neutrality).

The ebb and flow of the clear and present danger approach from the 1920s to the present: *Sullivan and Feldman*, 961-86 (Gitlow, Whitney, Dennis, Brandenburg, Hess, Clairborne Hardware, Planned Parenthood, and terrorism).

Week Six (Sept. 29): *Freedom of Speech continued*

Symbolic speech: burning draft cards and flags, wearing armbands or nothing. *Sullivan and Feldman*, 1180-98 (O'Brien; flag burning); 1208 (Glen Theater); 1291-1304 (Tinker, Pico, Bethel, Hazelwood, Morse); 999 (Cohen).

Fighting Words, Hostile Audiences and Hate Speech: *Sullivan and Feldman*, 987-96 (Chaplinsky, (Terminiello, Feiner); 1004 (Beauharnais); 1035-39 (Skokie, college campus speech codes); 1039-57 (R.A.V., Mitchell, Virginia, Elonis); 1031 (Snyder); Matal v. Tam (see Canvas file); Iancu v. Brunetti (see 2019 Supplement pdf on Canvas).

Week Seven (Oct. 6): *Freedom of Speech continued*

Quiz (method to be determined, one hour): covers up through Week Six. Short answer in format.

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Week Eight (Oct. 13): *Obscenity; Compelled Speech*

Obscenity: *Sullivan and Feldman*, 1058-76 (Roth, Kingsley, Stanley, Miller, Paris Adult Theater, Jenkins); 1079-83 (American Booksellers); 1103-09 (Pacific, Fox).

Child Pornography and the Internet. *Sullivan and Feldman*, 1098-1102 (Ferber, Osborne); 1102 (Ashcroft); 1115-27 (Reno, Ashcroft v. ACLU); 1127-29 (Stevens); 1130-33 (Entertainment Merchants).

Freedom of Association and Compelled Speech. *Sullivan and Feldman*, 1409-11 (Hurley), 1411-12 (Rumsfeld); 1441-47 (Jaycees, Rotary Club, Boy Scouts, Rumsfeld); National Family v. Becerra (Canvas file); Janus v. American Federation (Canvas file).

Week Nine (Oct. 20): Freedom of the Press

Libel law and press responsibility: *Sullivan and Feldman*, 1007-22 (Sullivan, Curtis, Rosenbloom, Gertz, Bradstreet). Privacy and free press: *Sullivan and Feldman*, 1022-29 (Time, Cox, Florida Star, Bartnicki); 1011-12 (Alvarez).

Free Press and national security: *Sullivan and Feldman*, 1373-83 (Near, Pentagon Papers, Progressive Magazine). Free Press and fair trial: *Sullivan and Feldman*, 1385-86 (Nebraska).

Week Ten (Oct. 27): Privacy and Liberty

Abortion as a moral issue: Judith Jarvis Thompson, *A Defense of Abortion* and critical responses (Canvas)

Abortion as a legal issue: *Sullivan and Feldman*, 510-528 (Griswold, Roe, post-Roe developments); Whole Woman's Health (see Canvas file); 2020 Supp. pdf 10 (June Medical).

Week Eleven (Nov. 3): Privacy and Equality

First Paper due via submission on Canvas (ten pages): Essay format that will ask you to compare and contrast cases. Topic to be announced but will cover readings on freedom of religion and of speech.

Sexual Orientation and privacy: *Sullivan and Feldman*, 551-68 (Bowers, Romer, Lawrence). Same-sex marriage: *Sullivan and Feldman*, 572-90. Death, suicide and privacy: *Sullivan and Feldman*, 590-602 (Cruzan, Washington, Vacco). Oregon's *Death with Dignity* law.

Week Twelve (Nov. 10): Race and Discrimination

Undoing the legacy of separate but equal: *Sullivan and Feldman*, 658 (Strauder); 659-70 (Plessy, Brown I and II); 678-681(Korematsu), 674-78 (Loving, Palmore, Johnson); 683 (Yick Wo); 683-92 (discriminatory purpose versus disparate impact).

Affirmative Action: *Sullivan and Feldman*, 693-700 (Bakke); 712-24 (Grutter, Gratz); Fisher v. Univ. of Texas at Austin I and II (see Canvas file).

Week Thirteen (Nov. 17): Sex and Discrimination

Pedestals and Equality: *Sullivan and Feldman*, 760-69 (Reed, Frontiero, Craig, Miss. Univ., J.E.B); 769-85 (VMI, Geduldig, Michael M., Rostker, Caban, Parham, Nguyen); Sessions v. Morales Santana (see Canvas file).

Affirmative Action: *Sullivan and Feldman*, 789-93 (Kahn, Orr, Weinberger, Goldfarb, Wengler, Schlesinger).

[Week Fourteen (Nov. 25): No class, Thanksgiving vacation]

Week Fifteen (Dec. 1): Review.

Second Paper Due: Dec. 1 by submission on Canvas (ten pages): essay format that will ask you to compare and contrast cases and show knowledge of readings and discussions. Topic to be announced but coverage of course will be cumulative and seek to get you to analyze what principles and values might underlie key Supreme Court decisions

Course Requirements and Grading Policy

This course will be graded on the plus or minus system.

Attendance and Participation: 20% of grade

Quiz: "in class" Oct. 6: 20% of grade

First Paper (10 pages): due Nov. 3: 30% of grade

Second Paper (10 pages): due Dec. 1: 30% of grade

Office Hours and Email Contacts

Prof. Abramson (jabramson@austin.utexas.edu) Wed. and Thurs. 12:30–2 (Zoom).

Zoom Learning

Please make sure you have access to, and familiarity with the UT Zoom account, available on the Canvas page for this course.

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.

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.

Students with Disabilities

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/>

Religious Holidays

Absences for religious observances will be accommodated. By university 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.

Honor Code and Academic Honesty

The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

Plagiarism is a serious violation of academic integrity. In simplest terms, this occurs if you represent as your own work any material that was obtained from another source, regardless how or where you acquired it. For examples of plagiarism, please see http://deanofstudents.utexas.edu/sjs/scholdis_plagiarism.php

Use of Computers or Cell Phones in Class

Cell phones must be off at all times in class. Laptop computers or other communication devices may NOT be used during class except by prior permission from the professor upon request.

Emergency Evacuation

In the event of a fire or other emergency, it may be necessary to evacuate a building rapidly. Upon the activation of a fire alarm or the announcement of an emergency in a university building, all occupants of the building are required to evacuate and assemble outside. Once evacuated, no one may re-enter the building without instruction to do so from the Austin Fire Department, University of Texas at Austin Police Department, or Fire Prevention Services office.

Students should familiarize themselves with all the exit doors of each room and building they occupy at the university, and should remember that the nearest exit routes may not be the same as the way they typically enter buildings.

Students requiring assistance in evacuation shall inform their instructors in writing during the first week of class. Faculty members must then provide this information to the Fire Prevention Services office by fax (512-232-2759), with "Attn. Mr. Roosevelt Easley" written in the subject line.

Information regarding emergency evacuation routes and emergency procedures can be found at <http://www.utexas.edu/emergency>.