

Constitutional Rights
Political Science 4210 (Spring 2016)
Tate Hall 102
Tues./Thurs. 11:00 AM -12:15 PM

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Course Description:

Some of the most contentious debates in American politics involve competing claims about individual rights guaranteed and protected by the U.S. Constitution. Public policy disputes involving equal protection, privacy, property rights, free speech, religious liberty, and criminal procedure, among a myriad of other issues, frequently give rise to important constitutional considerations.

In this class, our discussions will be oriented around two fundamental questions: What are the rights that the Constitution seeks to protect and how does it aim to do so? We will begin by considering protections for civil rights in the original Constitution and the Bill of Rights before exploring the significance of the Fourteenth Amendment, which was ratified in 1868. We will then turn our attention to modern civil rights controversies, and our primary focus will be on the Fourteenth Amendment's protections for "life, liberty, and property" and its insistence that all people be afforded the "equal protection of the laws."

Logistics:

Our class time will be split between lecture and discussion. Please complete the assigned readings before class and come prepared to offer your own questions, thoughts, and analyses. Specific reading assignments will be given at the end of class each day.

A Note on Electronic Devices:

Phones/laptops/tablets and other electronic devices are not allowed in class. If you use a computer to take notes on the readings, please print your notes and bring them to class.

Required Texts:

1. Donald P. Kommers, John E. Finn, and Gary J. Jacobsohn, *American Constitutional Law: Essays, Cases, and Comparative Notes, Vol. II: Liberty, Community, and the Bill of Rights* (Lanham, MD: Rowman & Littlefield, 2010) [KFJ]
2. Supplemental documents and cases as noted on the course outline

Course Evaluation:

- Quizzes (10%)
- Exam I (30%) – February 18
- Exam II (30%) – March 24
- Exam III (30%) – May 5

97-100 = A+	87-89 = B+	77-79 = C+	67-69 = D+	0-59 = F
94-96 = A	84-86 = B	74-76 = C	64-66 = D	
90-93 = A-	80-83 = B-	70-73 = C-	60-63 = D-	

Quizzes:

We will have unscheduled quizzes throughout the semester. These quizzes are designed to test your familiarity with the major concepts and themes for the course as well as your basic comprehension of the reading assignment for that day. If you miss a quiz for an appropriate and documented reason, that particular quiz will be dropped from your overall quiz grade.

Exams:

Please bring a Blue Book to class on exam day. We will distribute a study guide before the exam.

Accommodations for Students with Disabilities:

Please notify the professor of any disability that may affect your performance in this course. To request special academic accommodations, students must first register with the Office of Disability Services.

Academic Dishonesty:

Please do not cheat. Instances of plagiarism and other forms of cheating will result (at a minimum) in failure of the course. The following is the University’s statement on academic dishonesty:

Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Intellectual Pluralism:

Civil and respectful discussion of competing ideas is a critically important aspect of education. The following is the University's statement on intellectual pluralism:

The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the departmental chair or divisional director; the director of the [Office of Students Rights and Responsibilities](#); the [MU Equity Office](#), or equity@missouri.edu.

All students will have the opportunity to submit an anonymous evaluation of the instructor(s) at the end of the course.

COURSE OUTLINE

Unit 1: Foundations

1.1. Natural Rights, the Declaration of Independence, and the Constitution

- Declaration of Independence (KFJ, 743-744)
- U.S. Constitution, Articles I-VII and Amendments I-X (KFJ, 745-751)
- Clauses dealing with slavery in the U.S. Constitution, Art. I§2, cl. 3; Art. I§9, cl. 1; Art. IV§2, cl. 3; Art. V (KFJ, 745-750)

1.2. Civil War Amendments and Reconstruction

- U.S. Constitution, Amendments XIII, XIV, XV (KFJ, 751-752)
- Civil Rights Act (1866) (available here: <http://teachingamericanhistory.org/library/document/the-civil-rights-act-of-1866/>)

Unit 2: Federalism, the Bill of Rights, and Incorporation

2.1. The Bill of Rights and the Doctrine of Incorporation

- “The Bill of Rights, Incorporation, and Capital Punishment” (KFJ, 109-133)
- Barron v. Baltimore (1833) (KFJ, 135-136)
- The Slaughter-House Cases (1873) (KFJ, 136-144)

2.2. The Black-Frankfurter Debate about Incorporation

- Palko v. Connecticut (1937) (KFJ, 144-146)
- Adamson v. California (1947) (KFJ, 147-151)
- Rochin v. California (1952) (KFJ, 151-154)

2.3. Selective Incorporation

- Duncan v. Louisiana (1968) (KFJ, 154-159)
- District of Columbia v. Heller (2008) (KFJ, 159-173)
- McDonald v. City of Chicago (2010) (available here: <http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf>)

2.4. Lingering Questions: The Death Penalty as a Case Study

- Gregg v. Georgia (1976) (KFJ, 173-181)
- McCleskey v. Kemp (1987) (KFJ, 181-187)
- Roper v. Simmons (2005) (KFJ, 187-197)
- Kennedy v. Louisiana (2008) (KFJ, 197-207)

Unit 3: Liberty and Property

3.1. Economic Liberty

- “Liberty and Property” (KFJ, 209-228)

- *Calder v. Bull* (1798) (KFJ, 228-231)
- *Fletcher v. Peck* (1810) (KFJ, 232-234)

3.2. Property Rights and “Substantive Due Process”

- *Munn v. Illinois* (1876) (KFJ, 242-246)
- *Lochner v. New York* (1905) (KFJ, 246-251)

3.3. Economic Rights in the Modern Era

- *West Coast Hotel v. Parrish* (1937) (KFJ, 251-256)
- *Kelo v. City of New London* (2005) (KFJ, 256-265)

Unit 4: Privacy and Personhood

4.1. Fundamental Rights after 1937

- “Fundamental Rights: Privacy and Personhood” (KFJ, 267-296)
- *United States v. Carolene Products* (1938) (KFJ, 296)
- *Meyer v. Nebraska* (1923) (KFJ, 297-299)
- *Skinner v. Oklahoma* (1942) (KFJ, 299-302)

4.2. Abortion and the Due Process Clause

- *Griswold v. Connecticut* (1965) (KFJ, 302-310)
- *Roe v. Wade* (1973) (KFJ, 310-318)
- *Planned Parenthood v. Casey* (1992) (KFJ, 318-331)
- *Gonzales v. Carhart* (2007) (KFJ, 331-338)
 - Case to watch this term: *Whole Woman’s Health v. Cole* [argument date: 3.2.2016]

4.3. Negative vs. Positive Rights

- *DeShaney v. Winnebago County Department of Social Services* (1989) (KFJ, 338-343)

4.4. Sexuality and Fourteenth Amendment Liberty

- *Bowers v. Hardwick* (1986) (KFJ, 352-359)
- *Lawrence v. Texas* (2003) (KFJ, 359-369)

4.3. Interpreting Liberty in Light of History and Tradition

- *Washington v. Glucksberg* (1997) (KFJ, 376-387)

Unit 5: Freedom of Speech

5.1. Speech in Times of Crisis

- *Schenck v. United States* (1919) (KFJ, 418-420)
- *Dennis v. United States* (1951) (KFJ, 421-427)
- *Brandenburg v. Ohio* (1969) (KFJ, 428-429)
- *New York Times Co. v. United States* (1971) (KFJ, 430-435)

5.2. Fighting Words

- *Chaplinsky v. New Hampshire* (1942) (KFJ, 436-437)

5.3. Communicating with Action

- *United States v. O'Brien* (1968) (KFJ, 438-440)
- *Cohen v. California* (1971) (KFJ, 441-444)

5.4. Public Figures

- *New York Times Co. v. Sullivan* (1964) (KFJ, 445-447)
- *Snyder v. Phelps* (2011) (available here: <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>)

5.5. Offensive, Hateful, and Obscene Speech

- *Texas v. Johnson* (1989) (KFJ, 449-457)
- *R.A.V. v. City of St. Paul* (1992) (KFJ, 458-463)
- *Virginia v. Black* (2003) (available here: <https://www.law.cornell.edu/supct/html/01-1107.ZO.html>)
- *Miller v. California* (1973) (KFJ, 472-475)

Unit 6: Religious Liberty

6.1. Interpretation and the Establishment Clause

- *Everson v. Board of Education* (1947) (KFJ, 510-513)
- *Engel v. Vitale* (1962) (KFJ, 514-516)

6.2. The Search for a Standard

- *Lemon v. Kurtzman* (1971) (KFJ, 517-521)
 - Case to watch this term: *Trinity Lutheran Church v. Pauley* [not yet set for argument]
- *Wallace v. Jaffree* (1985) (KFJ, 522-526)
- *Lee v. Weisman* (1992) (KFJ, 527-538)
- *Zelman v. Simmons-Harris* (2002) (KFJ, 539-548)
- *McCreary County v. ACLU, Kentucky* (2005) (KFJ, 549-555)
- *Van Orden v. Perry* (2005) (KFJ, 556-564)

6.2. Free Exercise and the Rule of Law

- *Davis v. Beason* (1890) (KFJ, 565-568)
- *West Virginia v. Barnette* (1943) (KFJ, 569-572)
- *Sherbert v. Verner* (1963) (KFJ, 573-575)
- *Wisconsin v. Yoder* (1972) (KFJ, 576-579)
- *Employment Division v. Smith* (1990) (KFJ, 580-585)

6.3. Free Exercise after the Religious Freedom Restoration Act

- Religious Freedom Restoration Act (1993) (available here:

- http://www.justice.gov/jmd/ls/legislative_histories/pl103-141/act-pl103-141.pdf
- Boerne v. Flores (1997) (KFJ, 586-591)
- Burwell v. Hobby Lobby (2014) (available here: http://www.supremecourt.gov/opinions/13pdf/13-354_olp1.pdf)
 - Cases to watch this term: Zubik v. Burwell *and* Priests for Life v. Burwell *and* Roman Catholic Archbishop of Washington v. Burwell *and* East Texas Baptist University v. Burwell *and* Little Sisters of the Poor v. Burwell *and* Southern Nazarene University v. Burwell *and* Geneva College v. Burwell [not yet set for argument]

Unit 7: Equal Protection and Racial Discrimination

7.1. Race and Equal Protection

- “The Equal Protection Clause and Racial Discrimination,” (KFJ, 597-619)
- Stauder v. West Virginia (1880) (KFJ, 622-625)
- Plessy v. Ferguson (1896) (KFJ, 625-629)
- Brown v. Board of Education (1954) (KFJ, 629-633)

7.2. Desegregation vs. Integration

- Keyes v. School District No. 1 (1973) (KFJ, 633-639)
- Milliken v. Bradley (1974) (KFJ, 639-643)

7.3. State Action and Private Discrimination

- The Civil Rights Cases (1883) (KFJ, 643-648)
- Shelley v. Kraemer (1948) (KFJ, 648-650)
- Palmore v. Sidoti (1984) (KFJ, 650-652)

7.4. Taking Race into Account

- Regents of the University of California v. Bakke (1978) (KFJ, 652-659)
- Adarand Constructors, Inc. v. Peña (1995) (KFJ, 659-665)
- Grutter v. Bollinger (2003) (KFJ, 665-671)
- Parents Involved in Community Schools v. Seattle School District (2007) (KFJ, 671-677)
 - Case to watch this term: Fisher v. University of Texas [argued 12.9.2015]

Unit 8: Sex Discrimination and Same-Sex Marriage

8.1. The Constitution and Women’s Rights

- “Gender Discrimination and Other Claims to Equality” (KFJ, 679-700)

8.2. Sex-based Classifications and the Equal Protection Clause

- Frontiero v. Richardson (1973) (KFJ, 711-714)
- Craig v. Boren (1976) (KFJ, 714-718)
- United States v. Virginia (1996) (KFJ, 718-723)

8.3. Homosexuality, Marriage, and the Equal Protection Clause

- Romer v. Evans (1996) (KFJ, 736-741)

- United States v. Windsor (2013) (available here:
<http://www.law.cornell.edu/supct/cert/12-307>)
- Obergefell v. Hodges (2015) (available here:
http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)