

POLS 332i: Civil Rights and Liberties, Fall 2012

Departments of Political Science
Southern Illinois University

1 Instructor Information

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Office Hours: Monday: 11:30-12:30, Thursday

11:30-1:30, and by appointment

Class Location: Parkinson 0202

Course Time: 1:00-1:50

2 Course Description and Purpose

The purpose of this course is to introduce you to civil liberties in the United States, and to investigate how social and political forces play a role in the development of legal doctrine. We will spend a majority of the semester on the First Amendment, though we will also discuss other amendments, such as the Fourth and Eighth Amendments. Special emphasis will be placed on evaluating how the United States Supreme Court defines, establishes, and protects these liberties through its interpretation of the Constitution. By the end of the course, you will have a greater understanding of the role the Bill of Rights plays in American political and social consciousness and you will emerge with a clearer picture of how Supreme Court interpretations of key provisions of the Constitution affect our political structure and social relationships.

Another primary purpose of this course is to improve your critical reading, writing, and organizational skills. Toward that end, the written assignments and exams will focus on improving proficiency in those areas. You will learn to brief Supreme Court cases, and exams will evaluate your ability to extrapolate from the cases themselves and construct arguments that demonstrate a knowledge of the concepts behind the cases. In addition, emphasis is placed on classroom participation and critical discussion of the readings.

3 Course Format

This course is largely centered on decisions of the U.S. Supreme Court. We will read summaries of issue areas, along with a handful of landmark cases from each issue area. Class will consist of a combination of lecture and discussion of the readings and the legal reasoning of the Court. In order for this format to work, it is imperative that you read the material in advance.

4 Requirements

Text

There is one required book, which the majority of our readings will come from. Other readings are posted on Desire to Learn (formerly known as Blackboard) and are noted on the course schedule.

The book is available at the bookstore, although it is available at a substantially cheaper rate online. In order to allow for shipping time, I have posted all of the first week's readings on Desire to Learn. After the first week, I expect you to have the book and bring it with you to class.

1. O'Brien, David M. 2011. *Constitutional Law and Politics: Civil Rights and Civil Liberties (Volume 2)*. 8th edition. New York: W.W. Norton. ISBN 978-0-393-93550-9

Assessment

This course is worth 100 points which are broken up over several different items

- Exams: 60 points
 - Case Briefs: 30 points
 - Attendance: 5 points
 - Participation: 5 points
1. **Exams (60 points)**—There are three exams, none of which are cumulative. The three exams will only cover material from the last exam until the current exam. Each exam is worth 20 points, which is to say two letter grades. All exams will be blue book based and can consist of short identification terms, hypothetical cases which you will be asked to decide based on the case law we have discussed in class, or essays. You should note that if you are unable to take the exam at the scheduled time, the make-up exam will be a separate research paper.
 2. **Case Briefs (30 points)**— This course does not have a research paper; instead you will brief, which is to say write a legal summary, of select cases throughout the semester. Additionally, briefing will help you better understand the cases, and make studying for the exams easier. Early in the semester I will go over the proper format for briefs as well as provide examples. All briefs must be typed and turned in as a hard copy, I do not accept briefs via e-mail. All briefs must be stapled, with your name on each page. **Late briefs will not be accepted.** Typically, there will be one brief due per week on Friday, though some weeks will not have briefs. Each brief is worth 3% of your final grade and there are eleven briefs over the course of the semester, which means you can safely skip one. If you choose, you can write eleven briefs and receive extra credit.
 3. **Attendance (5 points)**— I will take attendance at the start of every class session. If you arrive late to class, then you will not be marked present for the day. At that point it is up to you to decide whether or not you wish to attend class for that day. You can miss class for whatever reason without penalty (ie: illness, sports event, university function, an early start to Fall Break). However, after six absences your grade will be reduced by one letter grade and another letter grade for every subsequent three absences after that.
 4. **Participation (5 points)**— Class is more fun when it is not just me talking and I will accordingly call on students to provide summaries or the Court's legal reasoning from that day's assigned reading. I am aware, however, that not everyone is an outgoing person who enjoys talking. To this end, I consider active listening to be participation.

Assessment Scale

A	100-90	B	89-80	C	79-70	D	69-60	F	59 or below
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5 Course Policies

Contacting the Instructor

I am happy to help you either via e-mail or during office hours. If you come to office hours you should come prepared; bring your book and notes and read the material in advance. If you contact me via e-mail I will respond within 48 hours, though in most cases it will be less than six hours. However, in any e-mail you must identify yourself and use proper format which consists of an opening (As simple as the recipient's name), a closing (as simple as your name), and a descriptive message subject. If you do not follow that convention or if you use Internet shorthand (ie: "u" instead of "you,") I will not reply to the message. **Please do not contact me via Desire to Learn; I do not check it frequently.**

Make-up Exams and Assignments

To qualify for a make-up test a student must notify me of the absence in advance via e-mail and provide documentation. Make-up exams will be a written research paper.

Briefs are due at the beginning of the class on the date indicated in the schedule. I will not accept e-mail copies or papers placed under my door. Please make hard copies of your briefs, do not be afraid to print out multiple rough drafts and revise them before turning them in. I do not accept excuses about dogs, computers, or traffic. Be responsible.

Academic Honor Code

Students are expected to uphold the Academic Honor Code published in Southern Illinois University-Carbondale's Student Conduct Code (Section II, Article A). Plagiarism is the most serious academic offense. Violations of this code can lead to failure of the course and a hearing with the university's judicial board to suspend you from the university.

Classroom Courtesy

Classroom courtesy is an essential component of creating an effective learning environment. All students have the right to learn without unnecessary distractions. These distractions include: cell phones, talking during lectures (unless recognized by the instructor), reading newspapers, falling asleep, etc. If you need a cell phone for emergency purposes, leave it on vibrate. Entering and leaving are also significant sources of distraction. It is your responsibility to be on time and to stay for the entire period. In circumstances where you need to leave early, tell the instructor beforehand. Repeated disruptions of class will lead to a reduction in your final grade.

Most importantly, class discussions of Court decisions will include several sensitive topics which can lead to strong feelings and heated debate. Because this is a college classroom, all discussion must be respectful and scholarly. This is to say you must be respectful, in both content and tone,

of diverse opinions and not make personal or partisan attacks.

Acceptable Comments

- are respectful of diverse opinions and open to follow up questions and/or disagreement
- are related to class and/or the course material
- focus on advancing the discussion about issues related to the course and/or course material rather than personal beliefs, and
- are delivered in normal tones and a non-aggressive manner.

Unacceptable Comments

- are personal in nature. This includes attacks on a person's appearance, demeanor, or political beliefs.
- include interrupting the instructor or other students. Raise your hand and wait to be recognized.
- often use the discussion to argue for political positions and/or beliefs. If political discussions arise, they must be discussed in a scholarly way (see above).
- may include using raised tones, yelling, engaging in arguments with other students and being threatening in any manner.
- include ignoring the instructor's authority to maintain the integrity of the classroom environment.

Emergency Procedures

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on the BERT website, Department of Public Safety's website (disaster drop down) and in the Emergency Response Guidelines pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Syllabus Change Policy

This syllabus is a guide for the course and is subject to change with advanced notice. These changes may come via e-mail. Make sure to check your university supplied email regularly. You are accountable for all such communications.

6 *Tentative Course Schedule*

A few notes about reading the course schedule:

- “*O’Brien*” refers to the textbook
- Court cases can be found by looking in the case index at the back of the book. The page the text starts on is listed in bold in the index.
- “**D2L**” means that reading can be found on Desire to Learn
- Each reading is followed by a page count. For court cases I note the total page count for *all* cases in that section after the term “Cases.”
- You do not have to read the boxes that appear in text unless I specifically say so in class.
- All opinions are from the U.S. Supreme Court unless specifically noted in parenthesis following the case name.

Course Introduction

Monday August 20– Introduction to the Course

- *No readings*

Overview of the Court

Wednesday August 22– The U.S. Supreme Court: History and Procedures

- *O’Brien*: 23-38, 172-189 (32)

- **Cases: (9)** *Marbury v. Madison* (1803)

Friday August 24– The Politics of Constitutional Interpretation

- *O’Brien* 62-94 (32)

- Kennedy, Randall. 2011. “The Case for Early Retirement.” **D2L** (2)

Monday August 27– Institutional Context: The Court, the President, and Congress

- Bailey, Micheal and Forrest Maltzman. 2012. “Goldilocks and the Supreme Court: Understanding the Relationship Between the Supreme Court, the President, and the Congress.” **D2L**. (13)

- *O’Brien* 189-203 (14)

Can the Court Implement? From the Courthouse to the City Streets

Wednesday August 29– The Nationalization of the Bill of Rights **Class does not meet.**

- *O'Brien* 320-334, 394-403 (23)

Friday August 31– The Civil Rights Movement: A Historical Example of Implementation **Class does not meet.**

- Lewis, John. 1998. *Walking with the Wind: A Memoir of the Movement*. (pages: 43-47 and 335-362). **D2L** (31)

Monday September 3– NO CLASS LABOR DAY

Wednesday September 5– Nationalization and Implementation: The Caselaw (I)

Cases: (12) *Barron v. Baltimore* (1833), *The Slaughterhouse Cases* (1873 (starts on page 274)).

Friday September 7– Nationalization and Implementation: The Caselaw (II)

- **Cases: (9)** *Lochner v. New York* (1905), *Duncan v. Louisiana* (1968).

The Religion Clauses: Establishment and Free Exercise

Monday September 10: The Gradual Disestablishment of Religion (I)

- *O'Brien*: 738-758 (20)

- **Cases: (16)** *Everson v. Board of Education* (1947), *Engel v. Vitale* (1962), *Lemon v. Kurtzman* (1971)

Wednesday September 12—Establishment (II) and The Free Exercise of Religion (I)

Establishment:

-**Case: (5)** *Lee v. Weisman* (1992).

Free Exercise:

- *O'Brien* 839-845 (6)

-**Cases: (17)** *Wisconsin v. Yoder* (1972), *Employment Division of Oregon v. Smith* (1990).

Friday September 14– Free Exercise (II)

-**Cases: (15)** *Church of Lukumi Babalu Aye v. City of Hialeah* (1993), *Locke v. Davey* (2004).

The Speech Clauses

Monday September 17– Historical Background and Expression in Times of Crisis (I)

- *O'Brien* 430-440 (10)
- Stone, Geoffrey. 2005. “Perilous Times: Free Speech in Wartime: From the Seditious Act of 1798 to the War on Terrorism.” **D2L** (10)
- *O'Brien* 441-448 (7)

Wednesday September 19– Historical Background and Expression in Times of Crisis (II)

- **Cases: (13)** *Schenck v. United States* (1919), *Gitlow v. New York* (1925), *Brandenburg v. Ohio* (1969).

Friday September 21– Offensive Speech (I)

- *O'Brien*: 523-529 (6)
- **Cases:** *Chaplinsky v. New Hampshire* (1942) **D2L**, *Cohen v. California* (1971) (4), *Snyder v. Phelps* (2011) **D2L** (5)

Monday September 24– Offensive Speech (II) and Hate Speech

Offensive Speech

- **Case: (5)** *FCC v. Pacifica Foundation* (1978).

Hate Speech

- **Cases: (17)** *R.A.V. v. City of St. Paul* (1992), *Wisconsin v. Mitchell* (1993), *Virginia v. Black* (2003).

Wednesday September 26– Symbolic Speech and Freedom of Association

- *O'Brien* 672-676 (4)
- **Cases: (19)** *Texas v. Johnson* (1989), *Boy Scouts of America v. Dale* (2000).

Friday September 28– Speech in Schools

- Lane, Robert Wheeler. 1995. *Beyond the Schoolhouse Gate: Free Speech and Inclusion of Values* **6 D2L**
- **Cases: (18)** *West Virginia State Board of Education v. Barnette* (1943), *Tinker v. Des Moines* (1969), *Hazelwood School District v. Kuhlmeier* (1988) **D2L**, *Morse v. Frederick* (2007).

Monday October 1– **EXAM ONE**

First Amendment: Freedom of the Press

Wednesday October 3– Prior Restraint

- *O'Brien* 623-627, 639-642 (7)
- **Cases: (19)** *Near v. Minnesota* (1931), *New York Times v. United States* (1971), *Branzburg v. Hayes* (1972).

Friday October 5– Broadcast Media and Fair Trials

- *O'Brien* 651-656, 664-669 (10)

-**Cases: (12)** *Red Lion Inc. v. FEC* (1969), *United States v. Williams* (2008), *Globe Newspaper v. Superior Court* (1982).

Monday October 8– **NO CLASS: FALL BREAK**

Wednesday October 10– Obscenity and Pornography

- *O'Brien* 476-483 (7)

-**Cases: (19)** *Roth v. United States* (1957), *Miller v. California* (1973), *Paris Adult Theatre I v. Salaton* (1973), *New York v. Ferber* (1982).

Friday October 12– Obscenity on the Internet and Libel

Obscenity on the Internet:

-**Cases: (13)** *Reno v. ACLU* (1997), *Ashcroft v. Free Speech Coalition* (2002).

Libel:

- *O'Brien* 570-578 (8)

-**Cases (10):** *New York Times v. Sullivan* (1964), *Hustler Magazine v. Falwell* (1988)

D2L

The Right to Privacy

Monday October 15– Reproductive Freedom

- *O'Brien* 1280-1294 (14)

-**Cases: (20)** *Buck v. Bell* (1927), *Griswold v. Connecticut* (1965), *Roe v. Wade* (1973).

Wednesday October 17– Post-*Roe* Reproductive Freedom

-**Cases: (21)** *Planned Parenthood v. Casey* (1992), *Gonzales v. Carhart* (2007),

Friday October 19: Privacy and Sexual and Personal Autonomy

- *O'Brien* 1342-1351 (9)

Sexual Privacy

-**Cases: (19)** *Lawrence v. Texas* (2003), *Williams v. Alabama* (2004) (11th Circuit)

D2L.

The 14th Amendment: Equal Protection of the Laws

Monday October 22– State Racial Discrimination (I)

- *O'Brien* 1382-1406 (24)

-**Cases: (7)** *Plessy v. Ferguson* (1896), *Shelley v. Kraemer* (1948), **D2L.**

Wednesday October 24– Racial Discrimination in Education

- *O'Brien* 1438-1448 (10)

-**Cases: (15)** *Sweatt v. Painter* (1948) **D2L**, *Brown v. Board of Education I* (1954), *Brown v. Board of Education II* (1955), *Swann v. Charlotte-Mecklenburg Board of Education* (1971).

Friday October 26– Remedies to Racial Discrimination: Affirmative Action

- *O'Brien 1504-1512* (8)
- **Cases: (24)** *Regents of the University of California v. Bakke* (1978), *Adarand Constructors, Inc. v. Peña* (1995), *Grutter v. Bollinger* (2003).

Monday October 29– Gender Discrimination

- *O'Brien 1561-1565* (4)
- **Cases: (24)** *Reed v. Reed* (1971), *Frontiero v Richardson* (1973), *Craig v Boren* (1976), *Michael M. v. Superior Court* (1981), *United States v. Virginia* (1996).

Wednesday October 31– Sexual Discrimination and the Right to Marry (I)

- *O'Brien 1597-1598* (2)
- **Cases: (14)** *Loving v. Virginia* (1967) **D2L**, *Romer v. Evans*.

Friday November 2– Sexual Discrimination and the Right to Marry (II):

- **Cases: (22)** *Goodale v. Commonwealth* (2003) (Supreme Judicial Court of Massachusetts) **D2L**, *Perry v. Brown* (2012) (Ninth Circuit Court of Appeals) **D2L**

Monday November 5– **EXAM TWO**

Wednesday November 7– Voting Rights

- *Epstein and Walker “Voting Rights”* (21- includes cases) **D2L**
- **Cases:** *South Carolina v. Katzenbach* (1966), *Crawford v. Marion County Election Board* (2008), *League of United Latin American Citizens v. Perry* (2006).

Friday November 9– Political Representation

- *Epstein and Walker “Representation”* (17- includes cases) **D2L**
- **Cases:** *Baker v. Carr* (1962), *Miller v. Johnson* (1995).

Monday November 12– Regulation of Campaigns

- *Epstein and Walker “Regulation of Campaigns”* (15- includes cases) **D2L**
- **Cases:** *Buckley v. Valeo* (1976), *FEC v. Wisconsin Right to Life, Inc.* (2007), *Citizens United v. FCC* (2010) **D2L**.

The Fourth Amendment: Search and Seizure

Wednesday November 14– Search and Seizure

- *O'Brien 890-898* (8)
- **Cases: (7)** *Chimel v. California* (1969), *Illinois v. Gates* (1983) **D2L**, *Arizona v. Hicks* (1987).

Friday November 16– The Warrant Requirement and Its Exceptions

- *O'Brien: 904-913* (9)
- **Case: (5)** *Terry v. Ohio* (1968).
- *O'Brien 1022-1026* (4)
- **Cases: (17)** *Mapp v. Ohio* (1961), *U.S. v. Leon* (1984).

Monday November 19– From “Person and Papers” to Modern Technology

- *O'Brien* 991-996 (5)
- **Cases: (17)** *Olmstead v. United States* (1928), *Katz v. United States* (1967), *California v. Ciraolo* (1986), *Kyllo v. U.S.* (2001), *Safford Unified School District v. Redding* (2009) **D2L**.

Wednesday November 21– **NO CLASS THANKSGIVING BREAK**

Friday November 23– **NO CLASS THANKSGIVING BREAK**

The Fifth Amendment: Self-Incrimination

Monday November 26– The *Miranda* Warning

- *O'Brien* 1058-1073 (15)
- **Cases: (22)** *Miranda v. Arizona* (1966), *Rhode Island v. Innis* (1980), *Berghuis v. Thompkins* (2010).

The Sixth Amendment: The Right to Counsel

Wednesday November 28– Indigent Defendants Throughout History

- *O'Brien* 1136-1141, 1152-1154 (7)
- **Cases: (4)** *Powell v. Alabama* (1932), *Gideon v. Wainwright* (1963).

Friday November 30– The Right to an Impartial Jury Trial

- *O'Brien* 1164-1171 (7)
- **Cases: (8)** *Batson v. Kentucky* (1986), *Lockhart v. McCree* (1986), *Burch v. Louisiana* (1979).
- *O'Brien* 1186-1197 (11) (skim)

The Eighth Amendment: Cruel and Unusual Punishment

Monday December 3– Non-Capital Punishment: Three Strike Laws

- *O'Brien* 1201-1207 (6)
- **Cases: (4)** *Ewing v. California* (2003).

Wednesday December 5– Capital Punishment

- *O'Brien* 1212-1224 (12)
- **Cases: (19)** *Furman v. Georgia* (1972), *McCleskey v. Kemp* (1987).

Friday December 7– Limits on Capital Punishment

- **Cases: (10)** *Payne v. Tennessee* (1991), *Roper v. Simmons* (2005).

Final Exam: Thursday December 13 3:10-5:10pm in our normal classroom