

POL3020: US CONSTITUTION AND CIVIL LIBERTIES LAW

Dr. Rosco Williamson
Fall 2021

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Course Materials

- Lee Epstein and Thomas J Walker (2018), *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, 10th ed. (CQ Press)
- Raymond Wacks (2014), *Philosophy of Law: A Very Short Introduction*, 2nd ed. (Oxford University Press)

Course Learning Outcomes

After taking this course, you will be able to:

- Describe how constitutional law functions within the US legal and political systems
- Identify and summarize key cases of US constitutional law
- Evaluate how US constitutional law has identified and protected key civil liberties and civil rights
- Explain the evolution of key civil liberties and civil rights as currently practiced
- Analyze the function of constitutional law in a variety of contemporary issue areas and its role in the future of the US legal and political systems

Course Objectives

The United States Constitution is considered one of the most successful legal documents in the history of the world. The course, however, is not about the Constitution as it was originally written, but about the Amendments to it. It is in these 27 Amendments that we find the limitations on the government created in the main body of the Constitution: what we have come to call civil liberties (what I can do) and civil rights (what the government must do). It is these, more than the structure of the government itself, that we have come to think of as uniquely “American” and have spawned numerous imitators worldwide.

This leads us very quickly to three tasks for this course. First, we want to understand why these particular rights and liberties have come to be seen as essential to the United States’ legal and political systems and how have they taken the form they have. For example, anyone who studied US history would not be surprised that “privacy” is considered an important individual right, but why has it taken the form it has and how did we get here given that the word “privacy” is not to be found in the Constitution at all. An essential place to look for these answers are within the cases decided by the US Supreme Court. Second, we want to evaluate these outcomes, processes, and decisions using, in particular, legal and political tools. Third, we want to try to understand what trends emerge and what they tell us about the US legal and political systems.

At a minimum, constitutional law should be an effective, efficient, and useful means of protecting individual rights and liberties, while still permitting the government to serve essential public goods. To that end, a better understanding of the nature, content, and limits of constitutional law will serve to make our society more just, more secure, and a place where each human being can best realize her or his own potential.

Program Learning Outcomes – Political Science

PLO 3: You will be able to understand and critically assess the processes, theories, and outcomes of political institutions and political behavior.

- Case summaries and briefs
- Exams

PLO 7: You will be able to construct and evaluate analytical, comprehensive arguments.

- Case summaries and briefs
- Exams

Course Grading

The following is the breakdown of how the final grade will be determined:

20%	Exam #1
20%	Exam #2
20%	Final Exam
20%	Case summaries and Briefs
20%	Attendance and Participation

The final exam will be cumulative (though focused more heavily on the Civil Rights portion of the course).

Attendance and Participation

Attendance is very important in a core course since this is a discussion class. Attendance is 10% of the total grade and will be calculated in the following manner:

# of classes missed	Attendance grade
0-1	10
2	9
3	8
4	6
5	4
6	2
7	1
8	0
9	dropped from course

Participation is a subjective measure of the how involved in class discussions a student is. Quantity does not impress me as much as quality – the student who just talks to be heard better have something that adds to the discussion. However, everyone should participate and 10% of the total grade will be a subjective judgment of how well you added to class discussions. **Warning: as in a law school class, I will call on people during class to answer questions, so be prepared!!! Yahoo!!!**

Case Summaries

There are several of the US Supreme Court cases listed in the schedule of readings below. Each student will turn in a one-page case summary for that particular case on the day it is scheduled to be read. The professor will provide a template (and in some cases other information) that the brief should follow. These will be due before class on Canvas.

Briefs

There will be several assigned briefs in this class. These are due when they are due. No late briefs will be accepted. Essentially, in a brief you will be asked to apply the principles and laws learned in the course to specific world events given by the instructor.

I encourage you to **work together in groups**, even though every person's work must be their own. Some people will catch things others will miss – you can help each other more than I can help you sometimes. Make sure *you* understand the briefs before you turn them in.

The more I get the impression that the class is not reading the material as it should, the more briefs will be given. Save yourself more work down the road by doing the reading and coming to class prepared to discuss it.

OFFICIAL INFORMATION

Final Examination Policy

Successful completion of this class requires taking the final examination **on its scheduled day**. No requests for early examinations or alternative days will be approved.

PLNU Copyright Policy

Point Loma Nazarene University, as a non-profit educational institution, is entitled by law to use materials protected by the US Copyright Act for classroom education. Any use of those materials outside the class may violate the law.

PLNU Academic Honesty Policy

Students should demonstrate academic honesty by doing original work and by giving appropriate credit to the ideas of others. Academic dishonesty is the act of presenting information, ideas, and/or concepts as one's own when in reality they are the results of another person's creativity and effort. A faculty member who believes a situation involving academic dishonesty has been detected may assign a failing grade for that assignment or examination, or, depending on the seriousness of the offense, for the course. Faculty should follow and students may appeal using the procedure in the university Catalog. See [Academic Policies](#) for definitions of kinds of academic dishonesty and for further policy information.

PLNU Academic Accommodations Policy

PLNU is committed to providing equal opportunity for participation in all its programs, services, and activities. Students with disabilities may request course-related accommodations by contacting the Educational Access Center (EAC), located in the Bond Academic Center (EAC@pointloma.edu or 619-849-2486). Once a student's eligibility for an accommodation has been determined, the EAC will issue an academic accommodation plan ("AP") to all faculty who teach courses in which the student is enrolled each semester.

PLNU highly recommends that students speak with their professors during the first two weeks of each semester/term about the implementation of their AP in that particular course and/or if they do not wish to utilize some or all of the elements of their AP in that course.

Students who need accommodations for a disability should contact the EAC as early as possible (i.e., ideally before the beginning of the semester) to assure appropriate accommodations can be provided. It is the student's responsibility to make the first contact with the EAC.

PLNU Attendance and Participation Policy

Regular and punctual attendance at all class sessions is considered essential to optimum academic achievement. If the student is absent for more than 10 percent of class sessions, the faculty member will issue a written warning of de-enrollment. If the absences exceed 20 percent, the student may be de-enrolled without notice until the university drop date or, after that date, receive the appropriate grade for their work and participation.

Use of Technology

In order to be successful in the online environment, you'll need to meet the minimum technology and system requirements; please refer to the [Technology and System Requirements](#) information. Additionally, students are required to have headphone speakers compatible with their computer available to use. If a student is in need of technological resources please contact student-tech-request@pointloma.edu. Problems with technology do not relieve you of the responsibility of participating, turning in your assignments, or completing your class work.

Course Credit Hour Information

In the interest of providing sufficient time to accomplish the stated Course Learning Outcomes, this class meets the PLNU credit hour policy for a 4 unit class delivered over 15 weeks. It is anticipated that students will spend a minimum of 37.5 participation hours per credit hour on their coursework. For this course, students will spend an estimated 150 total hours meeting the course learning outcomes (roughly 10 hours per week, including class sessions). The time estimations are provided in the Canvas modules.

State Authorization

State authorization is a formal determination by a state that Point Loma Nazarene University is approved to conduct activities regulated by that state. In certain states outside California, Point Loma Nazarene University is not authorized to enroll online (distance education) students. If a student moves to another state after admission to the program and/or enrollment in an online course, continuation within the program and/or course will depend on whether Point Loma Nazarene University is authorized to offer distance education courses in that state. It is the student's responsibility to notify the institution of any change in his or her physical location. Refer to the map on [State Authorization](#) to view which states allow online (distance education) outside of California.

PLNU Mission To Teach – To Shape – To Send

Point Loma Nazarene University exists to provide higher education in a vital Christian community where minds are engaged and challenged, character is modelled and formed, and service is an expression of faith. Being of Wesleyan heritage, we strive to be a learning community where grace is foundational, truth is pursued, and holiness is a way of life.

CONSTITUTIONAL LAW – SCHEDULE OF READINGS

***Always check Canvas in case there are additional or altered readings!!!

- Bulleted items are cases for which summaries will be due that day

PART I: HOW LAW WORKS IN THE US

SECTION A: PHILOSOPHY OF LAW

8/31 Introduction

- 9/1 Natural Law Raymond Wacks (2004), *Philosophy of Law*: pp. 1-33
- 9/3 Positivism and Dworkin Raymond Wacks (2004), *Philosophy of Law*: pp. 33-64
- 9/5 NO CLASS

SECTION B: THE US JUDICIAL SYSTEM

- 9/8 How Does the Supreme Court Work? Epstein, pp. 1-20
- 9/10 How Does the Supreme Court Make Decisions? Epstein, pp. 20-41
- 9/13 Judicial Review Epstein, pp. 43-63
- 9/15 Incorporation Epstein, pp. 65-85

PART II: CIVIL LIBERTIES

SECTION A: THE FIRST AMENDMENT: RELIGION

- 9/17 The Free Exercise of Religion Epstein, pp. 87-111
- Cantwell v Connecticut (1940)
 - Wisconsin v Yoder (1972)
- 9/20 The Smith Test and Beyond Epstein, pp. 111-26
- Employment Division v Smith (1990)
- 9/22 The Establishment of Religion Epstein, pp. 126-45
- Everson v Board of Education (1947)
 - Lemon v Kurtzman (1971)
- 9/24 Applying the Lemon Test Epstein, pp. 145-64
- Edwards v Aguillard (1987)
- 9/27 Prayer in Schools and Religious Symbols Epstein, pp. 164-82
- Van Orden v Perry (2005)

SECTION B: THE FIRST AMENDMENT: SPEECH

9/29 Free Speech Tests

- Schenck v United States (1919)
- Gitlow v New York (1925)

Epstein, pp. 183-202

10/1 Symbolic Speech and the Preservation of Order

- Texas v Johnson (1989)
- Cohen v California (1971)

Epstein, pp. 202-24

10/4 Hate Speech and Speech in Schools

- Tinker v Des Moines Independent Community School District (1969)

Epstein, pp. 224-42

10/6 Freedom of Association

- West Virginia State Board of Education v Barnette (1943)
- Boy Scouts of America v Dale (2000)

Epstein, pp. 264-77

10/8 MID-TERM EXAM #1

SECTION C: THE FIRST AMENDMENT: THE PRESS

10/11 Freedom of the Press

Epstein, pp. 280-300

- Near v Minnesota (1931)

10/13 Press Rights and Libel

Epstein, pp. 300-21

- New York Times v Sullivan (1964)

SECTION D: THE FIRST AMENDMENT: BOUNDARIES

10/15 Obscenity

Epstein, pp. 321-46

- Roth v United States (1957)

SECTION E: THE SECOND AMENDMENT

10/18 Violence and the Right to Bear Arms

Epstein, pp. 346-63

- District of Columbia v Heller (2008)

SECTION F: PRIVACY

10/20 The Right to Privacy

Epstein, pp. 365-86

- Griswold v Connecticut (1965)
- Roe v Wade (1973)

10/22 NO CLASS

10/25 Abortion after Roe and Sexual Activity

Epstein, pp. 386-406

- Planned Parenthood of Southeastern Pennsylvania v Casey (1992)
- Lawrence v Texas (2003)

10/27 Privacy in Other Areas

Epstein, pp. 407-25

- Obergefell v Hodges (2015)

PART III: THE RIGHTS OF THE CRIMINALLY ACCUSED

SECTION A: THE FOURTH AMENDMENT

10/29 The Fourth Amendment

Epstein, pp. 427-43

11/1 Searches

Epstein, pp. 443-62

- Terry v Ohio (1968)

11/3 The Exclusionary Rule

Epstein, pp. 462-77

SECTION B: THE FIFTH AMENDMENT

11/5 The Fifth Amendment and Trials

Epstein, pp. 478-508

- Miranda v Arizona (1966)
- Gideon v Wainwright (1963)

SECTION C: THE EIGHTH AMENDMENT

11/8 The Death Penalty

Epstein, pp. 527-52

- Gregg v Georgia (1976)

11/10 MID-TERM EXAM #2

PART IV: CIVIL RIGHTS

SECTION A: DEVELOPMENT OF CIVIL RIGHTS

11/12 What Are Civil Rights?

Epstein, pp. 555-72

- Plessy v Ferguson (1896)

11/15 Brown and School Desegregation

Epstein, pp. 572-85

- Brown v Board of Education (I) (1954)
- Swann v Charlotte-Mecklenburg Board of Education (1971)

11/17 The State Action Requirement

Epstein, pp. 585-600

SECTION B: DISCRIMINATION

11/19 Race Discrimination

Epstein, pp. 601-10

- Loving v Virginia (1967)

11/22 Affirmative Action

Epstein, pp. 610-30

- Regents of the University of California v Bakke (1978)
- Fisher v University of Texas (2016)

11/24 NO CLASS

11/26 NO CLASS

11/29 Gender Discrimination

Epstein, pp. 630-50

- Craig v Boren (1976)

12/1 Other Forms of Discrimination

Epstein, pp. 650-67

- San Antonio Independent School District v Rodriguez (1973)

SECTION C: VOTING RIGHTS

12/3 Voting Rights

Epstein, pp. 669-92

12/6 Campaign Finance

Epstein, pp. 692-705

- Citizens United v FEC (2010)

12/8 Political Representation

Epstein, pp. 705-19

12/10 So What?

FINAL EXAM: MONDAY, December 13, 10:30 – 1:00

OUTLINE OF THE COURSE

I. How Law Works in the US

A. Philosophy of Law

1. Natural Law
2. Positivism and Dworkin

B. The US Judicial System

1. How Does the Supreme Court Work?
2. How Does the Supreme Court Make Decisions?
3. Judicial Review
4. Incorporation

II. Civil Liberties

A. The First Amendment

1. Religion
 - a. Free Exercise: Earl Tests
 - b. Free Exercise: The Smith Test and Beyond
 - c. Establishment: Early Tests
 - d. Establishment: Applying the Lemon Test
 - e. Establishment: Prayer in Schools and Religious Symbols
2. Speech
 - a. Free Speech Tests
 - b. Symbolic Speech and the Preservation of Order
 - c. Hate Speech and Speech in Schools
 - d. Freedom of Association
3. Press
 - a. Prior Restraint
 - b. Press Rights
4. Boundaries
 - a. Libel
 - b. Obscenity
 - c. Violence

B. The Second Amendment

C. Privacy

1. Establishing the Right to Privacy
2. Abortion
3. Privacy in Other Areas

III. The Rights of the Criminally Accused

A. The Fourth Amendment

1. Police Work and the Rights of the Accused
2. Searches
3. The Exclusionary Rule

B. The Fifth Amendment

C. The Eighth Amendment

IV. Civil Rights

A. Development of Civil Rights

1. The Fourteenth and Fifteenth Amendments
2. Brown and School Desegregation
3. The State Action Requirement

B. Discrimination

1. Race
2. Gender
3. Other Forms

C. Voting Rights

1. One Person, One Vote
2. Campaign Finance
3. Political Representation

	Monday	Wednesday	Friday
1 WHAT IS LAW?	8/31 (Tues): Introduction	9/1: Natural Law Wacks, pp. 1-33	9/3: Positivism and Dworkin Wacks, pp. 33-64
2 THE US SUPREME COURT	9/6 NO CLASS	9/8: How does the Supreme Court Work? pp. 1-20	9/10: How Does the Supreme Court Make Decisions? pp.20-41
3 THE US JUDICIAL SYSTEM	9/13: Judicial Review pp.43-63	9/15: Incorporation pp. 65-85	9/17: The Free Exercise of Religion pp. 87-111
4 FREEDOM OF RELIGION	9/20: The Smith Test and Beyond pp. 111-26	9/22: The Establishment of Religion pp. 126-45	9/24: Applying the Lemon Test pp. 145-64
5 FREEDOM OF SPEECH	9/27: Prayer in Schools and Christmas Displays pp. 164-82	9/29: Free Speech Tests pp. 183-202	10/1: Symbolic Speech and the Preservation of Order pp. 202-24
6 EXAM WEEK	10/4: Hate Speech and Speech in Schools pp. 224-42	10/6: Freedom of Association pp. 264-77	10/8: EXAM #1
7 FREEDOM OF THE PRESS	10/11: Freedom of the Press pp. 280-300	10/13: Press Rights and Libel pp. 300-21	10/15: Obscenity pp. 321-46
8 RIGHT TO BEAR ARMS	10/18: Violence and the Right to Bear Arms pp. 346-63	10/20: The Right to Privacy pp. 365-86	10/22 NO CLASS
9 RIGHT TO PRIVACY	10/25 Abortion after Roe pp. 386-406	10/27: Privacy in Other Areas pp. 407-25	10/29: The 4 th Amendment pp. 427-43
10 RIGHTS OF THE CRIMINALLY ACCUSED	11/1: Searches pp. 443-62	11/3: The Exclusionary Rule pp. 462-77	11/5: The 5 th Amendment and Trials pp. 478-508
11 OTHER EXAM WEEK	11/8: The Death Penalty pp. 527-52	11/10: EXAM #2	11/12: What Are Civil Rights? pp. 555-72
12 RACE DISCRIMINATION	11/15: Brown and School Desegregation pp. 572-85	11/17: The State Action Requirement pp. 585-600	11/19: Race Discrimination pp. 601-10
13 AFFIRMATIVE ACTION	11/22 Affirmative Action pp. 610-30	11/24 NO CLASS	11/26 NO CLASS
14 OTHER FORMS OF DISCRIMINATION	11/29: Gender Discrimination pp. 630-50	12/1: Other Forms of Discrimination pp. 650-67	12/3 Voting Rights pp. 669-92
15 ELECTIONS	12/6: Campaign Finance pp. 692-705	12/8: Political Representation pp. 705-19	12/10: So What?

