

POS 472
CONSTITUTIONAL LAW II
T/TH 1:40-2:55
ANTH 340

Professor Valerie Hoekstra
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Course Description:

This course examines how the United States Supreme Court has interpreted the guarantees in the Bill of Rights and the Fourteenth Amendment. We begin the semester by examining how Supreme Court justices make decisions, where their power comes from, and the constraints on that power. Next, we begin our examination of the various amendments, beginning with the First Amendment and issues such as speech, religion, obscenity, and freedom of the press. In the second section, we will look at the rights of the accused. Specifically, we will examine issues regarding the limits of police powers to investigate and collect evidence, and the procedural rights of defendants in trials. The section on defendant's rights concludes with a section on capital punishment. Next, we will also examine the Constitutional foundations of a right to privacy, including the specific issues of reproductive freedoms and the "right to die." Finally, we will look at issues involving civil rights including racial and gender discrimination and remedies for that discrimination including affirmative action policies. Throughout the semester, we will also pay attention to how current government policies to curb the threat of terrorism have raised many issues regarding the scope of individual rights and liberties.

We will examine how courts have historically interpreted the constitution with regards to these issues, how these issues have changed over time, and how the Court has/will deal with emerging issues in these areas. Though our primary emphasis is on the Court's interpretation, we will also consider how other political and legal actors have helped to shape the scope of these Constitutional guarantees.

Our class meetings will be interactive, and therefore preparation for each class meeting and attendance are very important. Learning how to read Court decisions is a skill. It can be challenging at first, but becomes much easier over time. You should come to class with the assigned cases briefed and be prepared to discuss the cases in class. In addition, it is important that you keep informed about current controversies and issues that relate to civil rights and liberties as these will also become part of our classroom discussion.

Required Text:

1. Epstein and Walker. 2004. *Constitutional Law for a Changing America: Rights, Liberties and Justice*. 5th ed. CQ Press; Washington, D.C.

New copies of the textbook will include an access code to the publisher's online case archive. That code is attached to the inside cover of the book. Those of you who purchased a used textbook can purchase access to the online case archive from the publisher at the following

location: (<http://www.cqpress.com/product/CLCA-Online-Case-Archive.html>) . You will need to have access to some cases that are either not included in the text book or that have been decided by the Supreme Court since the book was published. Those cases are indicated with an asterisk (*). The online archive can be found at: <http://clca.cqpress.com/>.

Course Grading: Your grade in this class will be assigned according to the following:

1. Class attendance and participation in discussion (25 percent). You are expected to attend class prepared to discuss the readings with your fellow classmates. During our class sessions, we will also discuss how Court decisions relate to current controversies, so you should be prepared to extend the readings to new situations. In addition, you will each be assigned a case for which you are expected to serve as discussion leader. On the dates where you are the assigned discussion leader, you will be required to be fully prepared to present the case, pose questions for class discussion, as well as answer class questions. You will also prepare a brief of the case for the class which you will email to me at least 24 hours in advance. I will make copies of these briefs to distribute in class.

2. Exams (25 percent each). There are three exams each worth 25 percent of your grade. The exams will be in essay format. Please bring a large blue book with you to class on the day of exams. They are not cumulative—they cover only the material from the date of the previous exam.

If you are unable to take an exam due to illness or other emergency, you need to contact professor Hoekstra as soon as possible to make other arrangements. You may be asked to document your illness or emergency. I will not allow students to take the exam on another date for purposes of convenience.

Your final grade will be based on the following:

100=	A+	86-89=B+	76-79=C+	63-69=D
94-99=	A	83-85=B	73-75=C	<63=E
90-93=	A-	80-82=B-	70-72=C-	

Policy on Disabilities: If you have any disability or condition that might affect your ability to complete the required assignments, please see me during the first week of class so that we can make alternative arrangements.

Topics and Reading Assignments: The cases listed below are in the Epstein and Walker (2004) text or in the online case archive (*) unless otherwise noted. Even if it is not specifically required, you are encouraged to read the material in the text that introduces and summarizes each of the topics and cases. It can be very useful to your understanding of the specific cases as well as in providing “contextual” information such as important events that may or may not be influencing the Court’s decisions. In addition, for those of you who are interested in exploring a specific topic in greater detail, I encourage you to read the additional cases that are included in the online case archive. As with the cases in the textbook, the online archive includes edited versions of Supreme Court decisions. These can be valuable sources of additional information.

However, only the cases listed below on the syllabus are required reading.

Date	Topic and Reading Assignment
T 1-18	I. Introduction
TH 1-20	A. The Supreme Court and the Constitution E&W: Section I (pp.1-10) B. Brief History of the Court E&W: (Appendix 4, pp. 854-855)
T 1-25	C. Judicial Decision Making E&W: Chapter 1 (all) 2. History of the Court and Models of Judicial Decision Making D. Sources and Limits on Judicial Power <i>Marbury v. Madison</i> (1803)
TH 1-27	3. Application of the Bill of Rights to Federal and State Governments A. The Fifth Amendment <i>Barron v. Baltimore</i> (1833) B. The Fourteenth Amendment <i>Hurtado v. California</i> (1884) <i>Palko v. Connecticut</i> (1937) C. The “Preferred Freedoms” Doctrine <i>*United States v. Carolene Products</i> (1938)
T 2-1	4. The First Amendment: A. Free Exercise of Religion <i>Cantwell v. Connecticut</i> (1940) <i>Sherbert v. Verner</i> (1963) <i>Employment Division, Dep’t of Human Resources of OR v. Smith</i> (1990)
TH 2-3	B. Establishment of Religion <i>Everson v. Board of Education</i> (1947) <i>Lemon v. Kurtzman</i> (1971) <i>Lee v. Weisman</i> (1992)
T 2-8	<i>Edwards v. Aguillard</i> (1987) <i>Zelman v. Simmons-Harris</i> (2002) <i>*Locke v. Davey</i> (2004)
TH 2-10	C. Freedom of Speech, Assembly, and Association 1. Decisions during times of crisis <i>Schenck v. United States</i> (1919) <i>Gitlow v. New York</i> (1925) <i>Dennis v. United States</i> (1951) <i>Brandenburg v. Ohio</i> (1969)

- T 2-15 2. Regulating Expression: Content and Contexts**
United States v. O'Brien (1968)
Tinker v. Des Moines (1969)
Texas v. Johnson (1989)
- TH 2-17** *Hill v. Colorado* (2000)
Boy Scouts of America v. Dale (2000)
R.A.V. v. City of St. Paul, Minnesota (1992)
- T 2-22 D. Censorship and Freedom of the Press**
 1. Prior Restraint on the Media
Near v. Minnesota (1931)
New York Times v. United States (1971)
- TH 2-24 E. Obscenity**
Reno v. American Civil Liberties Union (1997)
Ashcroft v. Free Speech Coalition (2002)
- T 3-1 Midterm Exam #1**
- TH 3-3 F. The Right to Privacy**
 A. Reproductive Freedoms
Griswold v. Connecticut (1965)
Roe v. Wade (1973)
Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)
 **Stenberg v. Carhart* (2004)
- T 3-8 B. Private Activities and the Application of Griswold**
Bowers v. Hardwick (1986)
Lawrence v. Texas (2003)
Cruzan v. Director, Missouri, Department of Health (1990)
- TH 3-10 4. The Fourth Amendment:**
A. Limits on Police Power to Investigate and Collect Evidence
Illinois v. Gates (1983)
Katz v. United States (1967)
Ferguson v. City of Charleston (2001)
- Spring Break-March 13-18**
- T 3-22 B. Enforcing the Fourth Amendment: The Exclusionary Rule**
Mapp v. Ohio (1961)
United States v. Leon (1984)

- TH 3-24 5. The Fifth Amendment and Self Incrimination**
Escobedo v. Illinois (1964)
Miranda v. Arizona (1966)
**Spano v. New York* (1959)
**Brewer v. Williams* (1977)
- T 3-29 6. The Sixth Amendment**
A. The Right to Counsel
Powell v. Alabama (1932)
Gideon v. Wainwright (1963)
- TH 3/31 6. The Sixth Amendment**
B. The Right to a Fair Trial
Batson v. Kentucky (1986)
Sheppard v. Maxwell (1966)
Richmond Newspapers v. Virginia (1980)
**Blakely v. Washington* (2004)
- T 4-5 7. The Eighth Amendment & Capital Punishment**
Gregg v. Georgia (1976)
Atkins v. Virginia (2002)
Ewing v. California (2003)
- TH 4-7 Midterm Exam #2**
- T 4-12 CIVIL RIGHTS**
8. Racial Discrimination
Plessy v. Ferguson (1896)
Sweatt v. Painter (1950)
- TH 4-14** *Brown v. Board of Education I* (1954)
Brown v. Board of Education II (1955)
Swann v. Charlotte-Mecklenburg Board of Education (1971)
- T 4-19** *Shelley v. Kramer* (1948)
Burton v. Wilmington Parking Authority (1961)
Moose Lodge No. 107 v. Irvis (1972)
- TH 4-21 9. Sex Discrimination**
**Bradwell v. Illinois* (1873)
Reed v. Reed (1971)
Frontiero v. Richardson (1973)
Craig v. Boren (1976)
- T 4-26 10. Other Forms of Discrimination**
Romer v. Evans (1996)
San Antonio Ind. School District v. Rodriguez (1973)
Saenz v. Roe (1999)

TH 4-28 11. Affirmative Action

Regents of the University of California v. Bakke (1978)

Johnson v. Transportation Agency of Santa Clara County, CA (1987)

City of Richmond v. J.A. Croson Co (1989)

T 5-3 *Adarand Constructors, Inc. v. Peña* (1995)

Grutter v. Bollinger (2003)

Final Exam Thursday May 3 12:20-2:10