UNIVERSITY OF NOTRE DAME
College of Arts and Letters

Department of Political Science

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Civil Liberties
Senior Seminar

University of Notre Dame
POLS 53002 / Spring 2018
Dr. Vincent Phillip Muñoz
Department of Political Science
University of Notre Dame

"The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people's responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness."

- Pope Benedict XVI (2011)

"A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

- James Madison, Letter to W. T. Barry (1822)

"Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositories. And to render them safe, their minds must be improved to a certain degree."

- Thomas Jefferson, *Notes on the State of Virginia* (1782)

"If a nation expects to be ignorant & free, in a state of civilisation, it expects what never was & never will be."

- Thomas Jefferson, Letter to Charles Yancey (1816)

"Conservative or liberal, we are all constitutionalists."

- Barack Obama, *The Audacity of Hope* (2006)

This course examines the American Constitution and some of the rights protected by it. We will begin by addressing the political philosophy that animated the Founders' constitutional design and the role of the judiciary within our constitutional republic. We will then discuss how the Constitution and the Supreme Court have adjudicated cases and controversies regarding fundamental issues of American politics, law, and history, including: property rights, freedom of contract, and economic liberty; family, sexual liberty, and autonomy rights; the First Amendment freedoms of speech, press, and association; and race, equal protection before the law, and diversity and inclusion. Our primary method of study will be to read, discuss, and debate landmark Supreme Court opinions.

As a seminar, our class will discussion and debate. You should come to every class prepared to participate in and contribute to an engaging conversation.

The course aims to help you:

- Think more clearly and deeply about the purpose and limits of political authority
- Participate in America's constitutional experiment as a thoughtful and informed citizen
- Understand the principles of American constitutionalism, including their philosophical basis and how those ideas and ideals have changed over time
- Better understand your own political ideas and ideals as well as viewpoints that are different from your own
- Deepen your understanding of competing understandings of the role of the judiciary within our constitutional system and methods of constitutional interpretation
- Deepen your understanding of American constitutional history and practice with a particular focus on how the Constitution protects natural and civil rights
- Understand, analyze, and evaluate legal arguments
- Engage your classmates in civil conversation about contentious legal and political issues
- Present your ideas orally

Class:	Tuesday & Thursday, 9:30-10:45am DeBartolo Hall 347
Office:	Nanovic Hall 2040c
Office Phone:	574-631-0489
Email:	vmunoz@nd.edu
Office Hours:	Tuesday: 11:00am-noon, 1:00pm-2:00pm Wednesday 8:30am-9:30am

Required Text:

Ralph Rossum and G. Alan Tarr, *American Constitutional Law: The Bill of Rights and Subsequent Amendments*, Vol. II, 10th edition (Westview Press, 2017). Please make sure you purchase the 10th edition.

Recommended Text:

Henry Abraham and Barbara Perry, *Freedom and the Court* (2003). Now in its 8th edition, any edition is acceptable but the latest edition is most up to date.

Course Requirements

Civil Liberties is designed to be an intensive participatory class. Some classes will include brief lectures, but I anticipate most of class time to be devoted to discussion. Lectures and discussion will be based on the assigned readings. When I do lecture, I encourage participation in the form of questions and comments. In order to participate effectively, you must read, take notes, and think about all assigned readings before class. I cannot over-emphasize this point. You will learn more, enjoy class more, and be able to participate more if you read the assigned materials before class. Completing reading assignments before class is the key to success in this class. As a good and informed citizen, you should also read a daily newspaper. We will often begin class with a short discussion of current events, especially those that pertain to subjects discussed in class.

Assignments		Grading Scale			
Assigned Class Participation	150 points	A	1000-930	C	779-730
General Participation	200 points	A-	929-900	C-	729-700
Midterms	300 points	B+	899-880	D+	699-680
Final	350 points	B	879-830	D	679-630
		B-	829-800	D-	629-600
		C+	799-780	F	599-000

Grade	Description	Explanatory Comments
A	Truly Exceptional	*All* work meets or exceeds the highest expectations for the course
A-	Outstanding	Superior work in *all* areas of the course
B+	Very Good	Superior work in *most* areas of the course
B	Good	Solid work across the board
B-	More than Acceptable	More than acceptable, but falls short of solid work
C+	Acceptable	Meets *all* the basic requirements and standards for the course
C	Acceptable	Meets *most* of the basic requirements and standards in several areas
C-	Acceptable	Work falls short of meeting basic standards in several areas
D	Minimally Passing	Work just over the threshold of acceptability
F	Failing	Unacceptable performance

No extra credit will be given. No exceptions.

No Incomplete Grades will be granted without remarkable circumstances and a dean's approval.

Class Attendance is expected. I prefer that hats not be worn in class.

Assigned Class Participation will be further discussed in class. You will be assigned specific cases and/or opinions and expect to lead class discussion on the material assigned to you.

General Class Participation will be based both on the quality and quantity of your participation in class and on our Sakai discussion board. Good questions count for class participation. If you don't understand something, find something confusing, want more clarification on a point, or just want to talk about something more in class, speak up and voice your concern.

Classroom Decorum: Our class will cover contentious subjects that can evoke passionate feelings. I expect all in-class comments to be expressed in a civil manner. You are certainly allowed and encouraged to disagree with the professor and your classmates, but you are expected to disagree in an agreeable manner.

Examinations: Success on examinations will require the ability to understand, compare and contrast, criticize, and analyze the concepts and details of the assigned reading, as well as the concepts and details of the class lectures and discussions. Knowledge of the assigned reading is necessary, but not sufficient for success. Class lectures and discussions will often address issues beyond the scope of the assigned reading for which students are responsible. Missed exams will be calculated as a zero. Make-up exams will not be given without prior permission of the instructor.

Cell Phones are not to be used in the classroom, including before class begins. Arrive early and talk to your classmates, review your notes, or pray for your professor. He could use it.

Laptop Computers and **Recording Devices** are not to be used in the classroom.

Academic Integrity: Academic dishonesty will not be tolerated. I shall follow and enforce strictly the university's policies regarding academic integrity.

Honor Code: Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor (http://www.nd.edu/~hnrcode/) and abide by its pledge: ***"As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty."***

Students with Disabilities will be accommodated as extensively as possible. Please talk directly with the instructor regarding any necessary arrangements.

Please Note. If you cannot make class for an important medical or family reason, please let me know ahead of time. Likewise, if you are having difficulties with an assignment, please talk to me before the assignment is due. I am frequently in my office; you are always welcome to drop by.

Tentative Class/Readings Schedule

Specific assignments will be given in class. This is a tentative schedule. It is likely to change.
* indicates that the reading is available on Sakai

INTRODUCTION: THE ENDS OF AMERICAN CONSTITUTIONALISM (Jan.16, 18)

The Declaration of Independence
1784 New Hampshire Bill of Rights*
Theophilus Parsons, "The Essex Result" (1778)*
The Constitution of the United States of America. In Rossum & Tarr, pp. 835-47
Dan Himmelfarb, "The Constitutional Relevance of the Second Sentence of the Declaration of Independence," *Yale Law Journal* (1990)*
Herbert Storing, "The Constitution and the Bill of Rights" in *Toward a More Perfect Union**

Recommended Readings:
Martin Luther King, Jr., "Letter from a Birmingham Jail"*
Ralph Rossum, *"The Federalist's* Understanding of the Constitution as a Bill of Rights" in *Saving the Revolution*, ed. Charles R. Kesler (1987)
Robert Goldwin, "'To Introduce the Great Work': Congressman Madison Takes the Floor," Chapter 5 in *From Parchment to Power* (AEI Press, 1997)

I. ECONOMIC LIBERTY AND PROPERTY RIGHTS

The Contract Clause (Jan. 23, 25)

Marshall's Expansion of the Contract Clause
Vanhorne's Lessee v. Dorrance (1795)*
Fletcher v. Peck (1810)*
Dartmouth College v. Woodward (1819)*

The Decline of the Contract Clause
Charles River Bridge Company v. Warren Bridge Company (1837)*
Stone v. Mississippi (1880)*
Home Building and Loan Association v. Blaisdell (1934)*

January 25, 2018 – Supplemental Lecture - Attendance Expected
Debate on Sex, Morality, and the Constitution -- 11:00am, Nanovic Hall Room 1030
Thomas West (Hillsdale College) and Alexander Tsesis (Loyola University Chicago Law School)

February 1, 2018 – Supplemental Lecture - Attendance Expected
"The End of Religious Freedom? Challenges from the Right, Left, and Around the Globe"
4:00pm – Nanovic Hall Room 1050
Daniel Mark, Chairman of the United States Commission on International Religious Freedom

Economic Regulation and Substantive Due Process (Jan. 30, Feb. 1)

Incorporation and the 14th Amendment
Barron v. Baltimore (1833)
The Slaughterhouse Cases (1873)

Economic Regulation and the Rise Substantive Due Process
Munn v. Illinois (1877)
Lochner v. New York (1905)

Economic Regulation and the Decline of Economic Substantive Due Process
West Coast Hotel Company v. Parrish (1937)
United States v. Carolene Products Company (1938)
Williamson v. Lee Optical Company (1955)
Wickard v. Filburn (1942)*

The Takings Clause (Feb. 6, 8)

What Constitutes Public Use?
Berman v. Parker (1954)*
Hawaii Housing Authority v. Midkiff (1984)*
Kelo v. City of New London (2005)
Horne v. Department of Agriculture (2015)

What Constitutes a Taking?
Nollan v. California Coastal Commission (1987)
Lucas v. South Carolina Coastal Council (1992)
Koontz v. St. Johns River Water Management District (2013)

Part I Recommended Readings:
Thomas West, *The Political Theory of the Founding* (Cambridge University Press, 2017), Part III, especially Chapters 14-16.
John Ely, "*The Marshall Court and Property Rights: A Reappraisal*," 33 *J. Marshall L. Rev*. 1023 (2000)
Morris Cohen, "Property and Sovereignty," *Cornell LQ* 13 (1927-28), especially sects. III and IV
Walter Rauschenbusch, "The Socializing of Property," Part IV, chap. 3 of *Christianizing the Social Order* (1912)

II. THE FAMILY, SEXUAL LIBERTY, AND AUTONOMY

The Family (Feb. 13)
Reynolds v. United States (1879)*
Meyer v. Nebraska (1923)*
Pierce v. Society of Sisters (1925)*
Buck v. Bell (1927)*

Abortion (Feb. 15, 20)
Griswold v. Connecticut (1965)
Roe v. Wade (1973)
Michael H. v. Gerald D (1989)*
Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)
Gonzales v. Carhart (2007)

February 21, 2018 – Supplemental Lecture - Attendance Encouraged
"Words Fitly Spoken: Lincoln and Ellison as Writers of Social Responsibility"
3:30pm – 720 Corbett Family Hall
Lucas Morel – Washington & Lee University

Homosexuality and Same-Sex Marriage (Feb. 22)
Bowers v. Hardwick (1986)*
Lawrence v. Texas (2003)
Obergefell v. Hodges (2015)

A Right to Die? (Feb. 27)
Cruzan v. Director, Missouri Department of Health (1990)
Washington v. Glucksberg (1997)
Vacco v. Quill (1997)

Part II Recommended Readings:
Ken Kersch, "The Right to Privacy," in *The Bill of Rights in Modern America After 200 Years*, eds. Bodenhamer and Ely (Indiana University Press, 2008)*
Ryan Anderson, "Antidiscrimination Law: Why Sexual Orientation Is Not Like Race," Chapter 6 in *Truth Overruled*
Ryan Anderson, "Judicial Tyranny," Chapter 3 in *Truth Overruled*
Stephen Macedo, "John Roberts' Gay Marriage Dissent is Wrong About Polygamy—and the Constitution," *Slate*, June 30, 2015*
Stephen Macdeo, "But Was the Court's Ruling on Marriage Democratic?" *The American Prospect*, June 29, 2015*

MARCH 1 – MIDTERM EXAMINATION

III. FIRST AMENDMENT FREEDOMS

Freedom of Speech and Expression (March 6, 8, 20, 22)

First Amendment Standards
Schenk v. United States (1919)
Gitlow v. New York (1925)
Dennis v. United States (1951)
Brandenburg v. Ohio (1969)

The Regulation of Speech
Texas v. Johnson (1989)
R.A.V. v. City of St. Paul (1992)
Hill v. Colorado (2000)*
McCullen v. Coakley (2014)

State Sponsored and Governmental Speech
West Virginia v. Barnette (1943)*
Rosenburger v. University of Virginia (1995) (case is at p. 318)
Walker v. Texas Division, Sons of Confederate War Veterans, Inc. (2015)

Unprotected Speech?
Chaplinsky v. New Hampshire (1942)*
Miller v. California (1973)*
Brown v. Entertainment Merchants Association (2011)

Political Speech
Buckly v. Valeo (1976)*
Citizens United (2010)

Freedom of the Press (March 27)

Restraints on the Press
Near v. Minnesota (1931)
New York Times Co. v. United States (1971)
Memorandum Opinion and Order, FCC (1987)

Libel
New York Times v. Sullivan (1964)

Freedom of Association (March 29)
NAACP v. Alabama (1958)*
Roberts v. United States Jaycees (1984)*
Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston (1995)*
Boy Scouts of America v. Dale (2000)*

IV. EQUALITY & THE FOURTHEENTH AMENDMENT

Equal Protection, Racial Discrimination, and Desegregation (April 3, 5)
Plessy v. Ferguson (1896)
Brown v. Board of Education (1954)
Bolling v. Sharpe (1954)
Brown v. Board of Education (1955)
Swan v. Charlotte-Mecklenburg Board of Education (1971)
United States v. Fordice (1992)
Missouri v. Jenkins (1995)

Anti-Discrimination Law (April 10, 12)
Shelly v. Kramer (1948)
Moose Lodge No. 107 v. Irvis (1972)
1964 Civil Rights Act – Library of Congress summary - https://www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html
Heart of Atlanta Motel, Inc. United States (1964)*
Robert Bork, "Civil Rights—A Challenge," *The New Republic*, August 31, 1963, pp. 21-24
"Civil Rights—A Reply," editors, *The New Republic*, August 31, 1963, p. 24
The Civil Rights Act of 1991
Ricci v. DeStefino (2009)

Nondiscrimination, Freedom of Association, and Liberty Not to Contract? (April 17)
Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018)*
Richard A. Epstein, "Freedom of Association and Antidiscrimination Law: An Imperfect Reconciliation," 2016
Andrew Koppleman, "Richard Epstein's Imperfect Understanding of Antidiscrimination Law," (2016)
Richard Epstein, "How Classical Liberal Principles Address Cultural, Social, and Economic Issues: Richard Epstein's Reply" (2016)

April 18, 2018 – Supplemental Lecture - Attendance Encouraged
"The Oath and the Office: A Guide to the Constitution for Future Presidents"
3:30pm – 720 Corbett Family Hall
Corey Brettschneider , Brown University

Association, Diversity, Inclusion and the University (April 19, 24)

Inclusive Universities?
"Conflict on Campus: Religious Liberty v. Gay Rights"*
Christian Legal Society v. Martinez (2010)*
Harvard College, Policy on Single-Gender Social Organizations (December 2017)*
Harvard President's Statement on Single-Gender Social Organizations (December 2017)*
Harry Lewis, "Harvard's Nondiscrimination Hypocrisy," *The Washington Post*, April 21, 2017*

Affirmative Action
Regents of the University of California v. Bakke (1978)*
City of Richmond v. J.A. Croson Co. (1989)
Adarand Constructors, Inc. v. Pena (1995)
Grutter v. Bollinger (2003)

Sex Discrimination (April 26)
Frontiero v. Richardson (1973)
United States v. Virginia (1996)
Rostker v. Goldberg (1981)

May 1 – Conclusion

FINAL EXAMINATION