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Office: 107 Zulauf Hall
Hours: TuTh 1-1:50 and 4:50-5:30

Political Science (POLS) 411
Constitutional Law II
DU 459 TuTh 3:30-4:45
NIU Fall 2014

Liberty, Privacy, and Equality in Constitutional Law

Course Description

The 14th Amendment to the U.S. Constitution guarantees that we cannot be deprived of “life, liberty, or property without due process of law” and mandates “equal protection of the laws.” In this course, we will learn how the U.S. Supreme Court has defined the liberty and equality referenced in these constitutional clauses.

In the first part of the course, we will read major U.S. Supreme Court cases that give substantive meaning to the term “liberty” and to an implied fundamental right of privacy. These cases read a “liberty to contract” into and then out of the 14th Amendment’s due process clause and expand, retract, and redirect a “right to privacy” the Court discovers in this clause and several Bill of Rights amendments.

In the second part of the course, we will focus on major U.S. Supreme Court cases defining what “equal protection of the laws” means with respect to laws that treat races and genders differently.

Course Requirements

Your grade in this course will be based on class participation, two take-home midterms, and an in-class final. ***Class participation will determine a substantial portion of your grade (40%) and is further described on the next page.*** The midterms and final will consist of hypothetical fact-patterns that I will ask you to analyze using the cases we are reading. Take-home midterm answers should be six pages in length, double-spaced, with 12 point type. If you want, the first midterm answer can be jointly authored with one other person from this class. The final is open-book, open-note.

All readings are on e-reserves accessed through a link on blackboard. If you want, you can purchase a casebook online that covers most of the readings: Geoffrey R. Stone, et al., *Constitutional Law* (5th or 6th edition) (New York: Aspen Publishing, 2005, 2009). No outside reading or research is required.

Exam Schedule

September 16	Midterm #1 (15%)	Take-home, can be jointly authored; six pages; <i>due following Tues., Sept. 23rd</i> , at beginning of class
October 21	Midterm #2 (20%)	Take-home; must be your own work; six pages; <i>due following Tues., Oct. 28th</i> , at beginning of class
December 9	Final (25%)	In-class; open book, open note; but no sharing of materials or discussion during exam; <i>Tues. 4-5:50 p.m.</i> <i>Please bring your own blue books.</i>
Participation	(40%)	See next two sections for further explanation

Briefing Cases, the Socratic Method, and Class Participation

We will read and discuss many judicial opinions in this course. I will teach you how to read these cases so that you can extract their constitutionally relevant aspects. This specialized form of note-taking is called “briefing cases.”

In class, I will ask you questions about the cases and other assigned materials you have read. Your case briefs will be essential to answering these questions. This questioning approach to teaching is called the Socratic Method, the teaching style most commonly used in law schools.

Every day that we meet I will select several of you from our seating chart to answer questions about our readings. If you are here and prepared to answer those questions, you will receive credit for participating in class discussion that day. If you are absent or unprepared, you will receive no credit that day.

Oral Argument and Class Participation

Periodically, some of you will have the opportunity to act as lawyers, arguing constitutional cases before a judicial appellate panel composed of your fellow students.

Counsel will consist of opposing teams of two to three lawyers each. Judges will have the opportunity to question counsel before voting on the case. Counsel and judges may use majority, concurring, and dissenting opinions as well as briefs filed by the parties and recordings of their oral arguments in the cases to re-create the arguments and questions that occurred before the U.S. Supreme Court. Each attorney will have 3-5 minutes to make his or her argument.

Lawyers will receive extra credit for participating in oral arguments; judicial questioning will contribute significantly to your participation grade.

Serving as a Witness or Juror in NIU Law School Mock Trials

There may be an opportunity for you to serve as a witness or juror in mock trials that function as final exams for students of NIU law school's courses in trial advocacy. The availability of this opportunity will depend on the needs of the law school faculty who teach these courses and on how many public law students wish to serve as witnesses or jurors.

I encourage all of you to serve as a witness or juror and will give you extra credit for serving and even for observing these mock trials – an opportunity that should be available to everyone.

Other Opportunities to Earn Extra Credit

At various points during the semester, I may announce other opportunities to receive extra credit. These opportunities may include participating in and writing about various law-related activities organized by the Pre-law Society and/or law school.

Other Course Requirements

Please do not...

- ask for extensions on turning in your midterms. Midterms will be graded down one third of a grade per day that they are late.
- ask to take make-up exams or an incomplete in the course unless you have a very, very compelling reason to do so.

Definitely do not...

- engage in “academic misconduct,” defined by the NIU *Student Judicial Code* as the “receipt or transmission of unauthorized aid on assignments or examinations, plagiarism, unauthorized use of examination materials, or other forms of dishonesty in academic matters.”

Department of Political Science Announcements

Statement Concerning Students with Disabilities

Northern Illinois University is committed to providing an accessible educational environment in collaboration with the Disability Resource Center. Any student requiring an academic accommodation due to a disability should let his or her faculty member know as soon as possible. Students who need academic accommodations based on the impact of a disability will be encouraged to contact the Disability Resource Center if they have not done so already. The Disability Resource Center is located in the 4th floor of the Health Services Building, and can be reached at 815-753-1303 [v], 815-753-3000 [TTY] or email at drc@niu.edu

Undergraduate Writing Awards

The Department of Political Science recognizes, on an annual basis, outstanding undergraduate papers written in conjunction with 300-400 level political science courses or directed studies, such as independent studies or honors theses. Winners are expected to attend the Department's spring graduation ceremony where they will receive a certificate and a check for \$100.00. No more than two papers may be submitted by a student. There is no requirement as to the length of papers submitted for the award. Often the Department awards prizes for both an outstanding short paper and an outstanding long paper. The number and types of award is dependent upon the papers submitted for consideration in any given year. Authors do not have to be political science majors or have a particular class standing. Only papers written in the previous calendar year are considered for the award. However, papers completed in the current spring semester are eligible for the following year's competition even if the student has graduated. Papers can be submitted by students or faculty and must be supplied in triplicate to the undergraduate secretary. All copies must have two cover pages – one with the student's name and one without the student's name. Papers are not to be stapled or bound. Instead, please use paper clips. Papers are generally due in March and notice of call for papers and submission deadlines will be published on the Department's Facebook page. You may also contact the department for information at 753-1015.

Department of Political Science Web Site

Undergraduates are encouraged to consult the Department of Political Science web site on a regular basis. This up-to-date, central source of information will assist students in contacting faculty and staff, reviewing course requirements and syllabi, exploring graduate study, researching career options, tracking department events, and accessing important details related to undergraduate programs and activities. To reach the site, go to <http://polisci.niu.edu>. For the most up-to-date information on scholarships, internships, and other department news, I encourage you to "like" the department on Facebook (<https://www.facebook.com/NIU.PoliticalScience>) or follow us on Twitter (@niupols).

Plus/Minus Grading System

Grading symbols that may be used from Fall 2013 onwards for undergraduates are these: A, A-, B+, B, B-, C+, C, D, and F. No other grade options were endorsed by the University Council.

Graduate students will continue to be evaluated using the Graduate School grading system that was implemented in Fall 2012. That system differs from the Undergraduate grading scale because the Graduate school grading options also include the symbol C-, a grade that is not part of the undergraduate grading symbols.

Frequently Asked Questions information from the NIU Registration and Records website is available at: <http://www.niu.edu/regrec/grading/gradingfaqs.shtml>

Departmental Classroom Decorum Statement Adapted for this Course

Students are to arrive at class on time. Students are to remain for the entire session unless excused by the professor beforehand or confronted with a serious personal emergency. For instance, it is not acceptable for students to walk in and out of class to answer cell phones, take casual bathroom and smoking breaks, or attend to other personal matters. Cell phones, pagers, or any electronic devices that make noise must be *turned off* during class unless the instructor has been notified beforehand of a special circumstance (e.g., sick family member, pregnant wife, special childcare situation, etc.). No one should talk while someone else is talking; this includes comments meant for a classmate rather than the entire group. What may seem like a whisper or a harmless remark to one person can be a distraction to someone else, particularly in a small room. Overall, classroom dialogue and behavior should always be courteous, respectful of others, and consistent with the expectations set forth by the university.

Reading Assignments and Lecture and Discussion Topics

WEEK 1 INTRODUCTION AND COURSE OVERVIEW

HISTORICAL BACKGROUND AND BRIEFING CASES

NOTE: NO CLASS THURSDAY, AUGUST 28th

Liberty, Privacy, and “Substantive” Due Process

The Slaughterhouse Cases (1873) (725-733)
(privileges and immunities – butchers).

WEEK 2 LIBERTY TO CONTRACT

Introduction to Substantive Due Process (741-745).

Lochner v. New York (1905) (739-744) (liberty of contract – bakers).

WEEK 3 PRIVACY TO CONTRACEPT

The *Lochner*-era cases (755-761).

Demise of the *Lochner*-era cases (761-768).

Griswold v. Connecticut (1965) (845-853)
(right of privacy – married use of contraceptives).

Griswold and the Right to Privacy
[particularly *Eisenstadt v. Baird, et al* (1972)] (853-857)
(right of privacy – distribution of contraceptives to unmarried people).

WEEK 4 PRIVACY AND LIBERTY TO ABORT

**NOTE: MIDTERM #1 HANDED OUT AT END OF CLASS ON
TUESDAY, SEPTEMBER 16TH**

Roe v. Wade (1973) (843-849) (right of privacy – abortion).

The Abortion Regulation Cases (877-880).

The Abortion Funding Cases (869-877), including:
Maier v. Roe (1977) (869-872);
Harris v. McRae (1980) (872-873).

Planned Parenthood v. Casey (1992) (884-903)
(liberty right – abortion).

Gonzales v. Carhart (2007) (TBA)
(liberty right – abortion).

WEEK 5 PRIVACY AND LIBERTY TO SODOMIZE

**NOTE: MIDTERM #1 DUE AT BEGINNING OF CLASS ON
TUESDAY, SEPTEMBER 23rd**

Bowers v. Hardwick (1986) (930-935)
(right of privacy – sodomy).

Lawrence v. Texas (2003) (912-922).
(right of liberty and privacy – sodomy).

Homosexuality, Sexual Liberty, and Substantive Due Process (948-949).

WEEK 6 LIBERTY TO COMMIT SUICIDE

Cruzan v. Missouri Department of Public Health (1990) (950-957)
(liberty interest – refusing life support).

Washington v. Glucksberg (1997) (957-965)
(liberty interest – assisted suicide).

WEEK 7 LIBERTY IN STATE HOSPITALS AND PRISONS

Youngberg v. Romeo (1982) (**only on e-reserves**) (liberty interest – rights to care, safety, and training of institutionalized mentally retarded).

Washington v. Harper (1990) (**only on e-reserves**) (liberty interest – prisoner’s right to refuse anti-psychotic medication).

“Equal Protection of the Laws”

WEEK 8 RACIAL DESEGREGATION OF PUBLIC SCHOOLS

Plessy v. Ferguson (1896) (464-467).
(racially separate but equal train compartments).

The Road to Brown (462-465).

Brown I and *Brown II* (1954 and 1956) (465-473)
(racially separate schools not equal).

WEEK 9

NOTE: MIDTERM #2 HANDED OUT AT END OF CLASS ON TUES., OCTOBER 21st

Southern Desegregation Cases (483-488).

Northern Desegregation Cases (488-500).

Parents v. Seattle (2007) (TBA).

RATIONAL BASIS REVIEW V. STRICT SCRUTINY

NYCTA v. Beazer (1979) (502-504).
(subway refuses to employ methadone users).

WEEK 10 RACE-SPECIFIC CLASSIFICATIONS THAT DISADVANTAGE MINORITIES IN WARTIME AND HOUSING

NOTE: MIDTERM #2 DUE AT BEGINNING OF CLASS ON TUES., OCTOBER 28TH

Korematsu v. United States (1944) (525-529)
(military orders internment of Japanese on West Coast during WWII).

Shelley v. Kraemer (1948) (**only on e-reserves**) (judicial enforcement of contracts prohibiting re-sale of homes to non-whites).

NON-RACE-SPECIFIC CLASSIFICATIONS THAT DISADVANTAGE MINORITIES IN HIRING, HOUSING, AND ADMINISTRATION OF JUSTICE

Washington v. Davis (1976) (546-549) (Black applicants to D.C. police department fail qualifying test at higher rate than whites).

Village of Arlington Heights (1977) (550-553) (Chicago suburb refuses to rezone land to build low income housing, disproportionately affecting racial minorities).

What Constitutes a Racially Motivated Classification? (535-542), including:

Yick Wo v. Hopkins (1886) (559).

WEEK 11 Problems in Administration of Criminal Justice (542-545).

McCleskey v. Kemp (1987) (569-573) (Georgia blacks murdering whites sentenced to death more often than white murderers).

Racial Disparities in Investigating, Charging, and Sentencing (550-553).

RACE-SPECIFIC CLASSIFICATIONS THAT ARE FACIALLY NEUTRAL IN MARRIAGE AND PRISON

Loving v. Virginia (1967) (529-531) (Virginia prohibits marriage of whites with non-whites).

Johnson v. California (2005) (**only on e-reserves**) (California racially segregates prisoners).

WEEK 12 **RACE-SPECIFIC CLASSIFICATIONS THAT BENEFIT MINORITIES IN ADMISSION TO UNIVERSITIES AND PROFESSIONAL SCHOOLS**

Bakke v. Regents of the University of California (1978) (**only on e-reserves**) (U.C. Davis medical school sets aside 16 seats for minority applicants).

Grutter v. Bollinger (2003) (594-606) (U. of Michigan law school uses race “as a factor” in admissions).

Application of Strict Scrutiny (583-587).

Gratz v. Bollinger (2003) (608-611) (U. of Michigan undergrad college of liberal arts gives automatic “bonus points” to minorities in admissions).

WEEK 13 RACE-SPECIFIC CLASSIFICATIONS THAT BENEFIT MINORITIES IN PUBLIC CONTRACTING

Fullilove v. Klutznick (1980) (577-578)
(Congress requires 10 percent of federal funds spent on local public works to go to minority contractors).

City of Richmond v. Croson (1989) (578-581) (Virginia city requires prime contractors to subcontract 30 percent of their city business to minority businesses).

Adarand v. Peña (1995) (581-589) (Federal highway construction programs provide additional funds to contractors who hire subcontractors controlled by “socially and economically disadvantaged individuals”).

Constitutionality of “Benign” Racial Classifications (589-594).

WEEK 14 GENDER DISCRIMINATION IN ADMINISTRATION OF ESTATES, GOVERNMENT BENEFITS, AND BEER SALES

NOTE: NO CLASS THURS., NOV. 27th, THANKSGIVING BREAK

Early Cases (622-623), including:

Bradwell v. Illinois (1873) (622);

Muller v. Oregon (1908) (623).

Reed v. Reed (1971) (624) (Idaho gives male survivors the right to administer estates).

Frontiero v. Richardson (1973) (624-626) (Federal law permits male members of armed services to claim wives as dependents without proving dependency).

From *Reed* to *Craig v. Boren* (626-629).

Craig v. Boren (1976) (629-634) (Oklahoma prohibits 3.2% beer sales to men under 21 and women under 18).

Heightened Scrutiny for Gender Classifications? (634-639).

**WEEK 15 GENDER DISCRIMINATION IN STATUTORY RAPE LAWS,
GOVERNMENT BENEFITS AND ADMISSION TO MILITARY
ACADEMIES**

Michael M. v. Sonoma (1981) (**only on e-reserves**) (California prohibits males from having sex with girls outside of marriage).

Archaic and Overbroad Generalizations v. “Real” Differences (639-640).

The Relevance of “Real Differences” (654-658).

Califano v. Goldfarb (1977) (658-661) (Social Security benefits are automatically payable to widows of beneficiary while widowers have to prove dependency).

Califano v. Webster (1977) (661-662) (Social Security Act allows women to exclude more of their lower wage earning years than men in calculating retirement benefits).

The Problem of “Benign” Gender Classifications (662-665).

U.S. v. Virginia (1996) (640-647).

(All male military school – VMI -- wants to stay that way).

“Real Differences” and Formal Equality (644-648).

WEEK 16 FINALS

**NOTE: FINAL EXAM, TUES., DECEMBER 9TH, 4-5:50 p.m.
GOOD LUCK!**