

PHIL 165: FREEDOM, EQUALITY, AND THE LAW
Winter 2018

Professor: Samuel Rickless

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Lectures: MWF 10am-10:50am, Peterson 102

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Course Description

In this course we will explore the way in which the concepts of freedom and equality have been understood and applied under the United States Constitution. We will ask whether the Constitution is a moral document designed to implement justice or a document designed to enshrine a particular set of traditions into law. We will then look at how the Equal Protection Clause of the Fourteenth Amendment has been applied to cases in which government has discriminated on grounds of race, ethnic background, gender, undocumented status, wealth, and sexual orientation. We will also look at how the Due Process clauses of the Fifth and Fourteenth Amendments have been applied to cases involving the right to make crucial decisions about one's own life, such as whether to use contraceptives, obtain an abortion, marry a person of a different race, and marry a person of the same sex. Course readings include some of the most important cases in the history of United States law: *Dred Scott*, *The Slaughterhouse Cases*, *Yick Wo*, *Plessy*, *Lochner*, *Brown*, *Palko*, *Carolene Products*, *Korematsu*, *Bakke*, *Grutter*, *Craig v. Boren*, *U.S. v. Virginia*, *San Antonio v. Rodriguez*, *Plyler v. Doe*, *Griswold*, *Roe*, *Casey*, *Bowers*, *Lawrence*, and *Obergefell*. At every stage, we will be asking whether the U.S. Supreme Court's interpretation of the law in these cases is consistent with justice and the values underlying our constitutional republic.

Course Schedule and Readings

All course readings are available on the TritonED course website (in the Content section). I strongly recommend getting all of the required readings in readable form (whether by printing them out or by downloading PDFs onto a tablet) at the beginning of the course. I will not respond to requests to email you copies of the readings. If you have difficulty locating or downloading the readings, please contact Academic Computing Services (about TritonED).

Course Notes

Lecture notes for some (but not all) lectures are available in PDF format on the TritonED course website (in the Content section). The notes are designed as summaries, functioning as study aids. Important details are missing from the notes. Please do not assume that the notes contain everything you need to know. ***These notes are protected by copyright, and it is illegal for you to post them on any website, sell them to anyone, or send them to anyone else (including email) without my permission. They are for your personal use only.***

Week 1: The United States Constitution and the Bill of Rights

- January 8: Introduction to the Course
Reading: The Constitution of the United States
- January 10: Representative Government and the Judiciary
Reading: James Madison, *Federalist #10*
Alexander Hamilton, *Federalist #78*
- January 12: The Bill of Rights
Reading: George Mason, *Objections to the Proposed Constitution*
Reading: James Madison: Speech Proposing Amendments to the Constitution of the United States

Week 2: Constitutional Interpretation

- January 17: How to Interpret Legal Texts
Reading: Walter Sinnott-Armstrong and Susan Brison, “A Philosophical Introduction to Constitutional Interpretation”
- January 19: *Scalia v. Dworkin*
Reading: Antonin Scalia, *A Matter of Interpretation* (excerpts)
Ronald Dworkin, “Comment on *A Matter of Interpretation*”
Antonin Scalia, “Reply to Dworkin’s Comment”

Week 3: Freedom, Race, and Ethnicity

- January 22: Slavery and the Fourteenth Amendment
Reading: *Dred Scott v. Sandford* (1857)
The Fourteenth Amendment to the United States Constitution
- January 24: The Privileges or Immunities Clause and the Due Process Clause
Reading: *The Slaughterhouse Cases* (1873)
Lochner v. People of State of New York (1905)
- January 26: The Due Process Clause and the Equal Protection Clause
Reading: *Palko v. State of Connecticut* (1937)
U.S. v. Carolene Products Co., footnote 4 (1938)
Korematsu v. U.S. (1944)

Week 4: Equality and Race

- January 29: Arbitrary Enforcement and “Separate But Equal”
Reading: *Yick Wo v. Hopkins* (1886)
Plessy v. Ferguson (1896)

FIRST PAPER DUE

- January 31: Separate But Not Equal

Reading: *Plessy v. Ferguson* (1896)
Sweatt v. Painter (1950)
McLaurin v. Oklahoma State Regents (1950)

February 2: *De Jure* Racial Segregation is Inherently Unequal
Reading: *Sweatt v. Painter* (1950)
McLaurin v. Oklahoma State Regents (1950)
Brown v. Board of Education (1954)

Week 5: Affirmative Action and Race

February 5: Racial Quotas
Reading: *Regents of the University of California v. Bakke* (1978)

February 7: Race as a Plus Factor
Reading: *Grutter v. Bollinger* (2003)

February 9: Race as a Deciding Factor
Reading: *Parents Involved etc. v. Seattle School District* (2007)

Week 6: Sex and Gender

February 12: Stereotypes and Sex Discrimination
Reading: *Bradwell v. State of Illinois* (1873)
Muller v. Oregon (1908)

February 14: Rational Basis or Strict Scrutiny?
Reading: *Reed v. Reed* (1971)
Frontiero v. Richardson (1973)

February 16: Intermediate Scrutiny
Reading: *Craig v. Boren* (1976)
U.S. v. Virginia (1996)

Week 7: Poverty and Undocumented Status

February 21: Discrimination on the Basis of Wealth
Reading: *San Antonio School District v. Rodriguez* (1973)

February 23: Discrimination on the Basis of Undocumented Status
Reading: *Plyler v. Doe* (1982)

Week 8: Privacy: Contraception and Abortion

February 26: Contraception
Reading: *Griswold v. Connecticut* (1965)
Eisenstadt v. Baird (1972)

SECOND PAPER DUE

February 28: The Right to Abort One's Pregnancy
Reading: *Roe v. Wade* (1973)

March 2: Access to Reproductive Health Care
Reading: *Planned Parenthood v. Casey* (1992)

Week 9: Sexual Freedom and Polygamy

March 5: Sodomy
Reading: *Bowers v. Hardwick* (1986)

March 7: Sodomy Revisited
Reading: *Lawrence v. Texas* (2003)

March 9: Polygamy
Reading: *Reynolds v. U.S.* (1878)

Week 10: Interracial Marriage and Same-Sex Marriage

March 12: Interracial Marriage
Reading: *Loving v. Virginia* (1967)

March 14: Same-Sex Marriage
Reading: *Obergefell v. Hodges* (2015)

March 16: Conclusion and Review

March 21, Noon: TAKE HOME FINAL DUE

Requirements:

- Seven Quizzes 10%
- First Paper (due Monday, January 29, 10am) 20%
- Second Paper (due Monday, February 28, 10am) 30%
- Take-Home Final Exam (due **Wednesday, March 21, Noon**) 40%

Grading Policies:

- The two lowest Quiz grades will be dropped, leaving five Quiz grades, each of which will count for 2% of your course grade. The Quizzes will be administered at the very beginning of class, so please plan on getting to lecture on time. Each Quiz will focus on the readings for that day.
- Paper/exam extensions will only be given to those who present evidence indicative of a valid excuse in a timely manner. If at any time you believe you have a legitimate claim to an extension, please bring it to my attention as soon as possible. *Unexcused late papers/exams will receive a grade of 'F'.*
- Hard copies of your papers must be turned in to Danny Weltman at the beginning of lecture and electronic copies uploaded to turnitin.com (the take-home exam will be turned in electronically, with no hard copy required). It is very easy to upload your papers through the TritonED website for the course. Please make sure that your name appears only on a separate title page, along with the word count of your paper. Your name should **not** appear in any headers or footers, or anywhere else in your paper. This is to facilitate fair grading.

Additional Notes: Attendance, Electronics, Accommodations, Honor Code

- **Regular lecture attendance is mandatory. If you have a scheduled commitment that conflicts with the course lectures, then cancel the commitment or drop this class.**
- **The use of any electronic equipment other than a note-taking device during lecture is prohibited. The use of such equipment for any purpose other than note-taking is also prohibited. Any student who is watching videos, IM'ing, surfing the web, texting, or engaging in any form of activity that is not directly related to this course or poses a risk of distracting other students during lecture will be asked to leave.**
- **If accommodations are needed for a disability or for religious reasons, please discuss the matter with me as soon as possible.**
- **The academic honor code must be observed in this course. Plagiarism will not be tolerated. Anyone caught plagiarizing will receive an automatic F in the course (not just an F on the relevant assignment) and will be referred to the Office of Academic Integrity and the Council of Deans for administrative penalties, which may include suspension or expulsion from UCSD.**

The UCSD Library has a helpful tutorial on plagiarism prevention here:

Define <http://libraries.ucsd.edu/assets/elearning/plagiarism/mod1-define-web/story.html>

Prevent <http://libraries.ucsd.edu/assets/elearning/plagiarism/mod2-prevent-web/story.html>

Cite <http://libraries.ucsd.edu/assets/elearning/plagiarism/mod3-cite-web/story.html>

- **The policies, readings, and schedule described above are subject to change.**