

**PHIL 165: FREEDOM, EQUALITY, AND THE LAW**  
**Winter 2019**

**Professor:** Samuel Rickless

**Office:** HSS 8012

**Office Hours:** Wednesdays 2pm-3pm and Fridays 10am-11am, or by appointment

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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 7: Introduction to the Course  
Reading: The Constitution of the United States
- January 9: Representative Government and the Judiciary  
Reading: James Madison, *Federalist #10*  
Alexander Hamilton, *Federalist #78*
- January 11: 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 and the Fourteenth Amendment**

- January 14: How to Interpret Legal Texts  
Reading: Walter Sinnott-Armstrong and Susan Brison, “A Philosophical Introduction to Constitutional Interpretation”
- January 16: *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”
- January 18: Slavery and the Fourteenth Amendment  
Reading: *Dred Scott v. Sandford* (1857)  
The Fourteenth Amendment to the United States Constitution

## **Week 3: Freedom, Race, and Ethnicity**

- January 23: 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 25: 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 28: Arbitrary Enforcement and “Separate But Equal”  
Reading: *Yick Wo v. Hopkins* (1886)  
*Plessy v. Ferguson* (1896)

### **FIRST PAPER DUE**

- January 30: Separate But Not Equal

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

February 1: *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 4: Racial Quotas  
Reading: *Regents of the University of California v. Bakke* (1978)

February 6: Race as a Plus Factor  
Reading: *Grutter v. Bollinger* (2003)

February 8: Race as a Deciding Factor  
Reading: *Parents Involved etc. v. Seattle School District* (2007)

### **Week 6: Sex and Gender**

February 11: Stereotypes and Sex Discrimination  
Reading: *Bradwell v. State of Illinois* (1873)  
*Muller v. Oregon* (1908)

February 13: Rational Basis or Strict Scrutiny?  
Reading: *Reed v. Reed* (1971)  
*Frontiero v. Richardson* (1973)

February 15: Intermediate Scrutiny  
Reading: *Craig v. Boren* (1976)  
*U.S. v. Virginia* (1996)

### **Week 7: Poverty and Undocumented Status**

February 20: Discrimination on the Basis of Wealth  
Reading: *San Antonio School District v. Rodriguez* (1973)

February 22: Discrimination on the Basis of Undocumented Status  
Reading: *Plyler v. Doe* (1982)

### **Week 8: Privacy: Contraception and Abortion**

February 25: Contraception  
Reading: *Griswold v. Connecticut* (1965)  
*Eisenstadt v. Baird* (1972)

**SECOND PAPER DUE**

February 27: The Right to Abort One's Pregnancy  
Reading: *Roe v. Wade* (1973)

March 1: Access to Reproductive Health Care  
Reading: *Planned Parenthood v. Casey* (1992)

**Week 9: Sexual Freedom and Polygamy**

March 4: Sodomy  
Reading: *Bowers v. Hardwick* (1986)

March 6: Sodomy Revisited  
Reading: *Lawrence v. Texas* (2003)

March 8: Polygamy  
Reading: *Reynolds v. U.S.* (1878)

**Week 10: Interracial Marriage and Same-Sex Marriage**

March 11: Interracial Marriage  
Reading: *Loving v. Virginia* (1967)

March 13: Same-Sex Marriage  
Reading: *Obergefell v. Hodges* (2015)

March 15: Conclusion and Review

**March 22, 2:30pm: TAKE HOME FINAL DUE**

**Requirements:**

- Seven Quizzes 10%
- First Paper (due Monday, January 28, 1pm) 20%
- Second Paper (due Monday, February 25, 1pm) 30%
- Take-Home Final Exam (due **Friday, March 22, 1pm**) 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 your TA 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.**