

Constitutional Law II: Civil Liberties and Civil Rights

POLS 3122, Fall 2020

Professor Law (Yes, that's actually my name)

Office Hours: by appointment on Zoom

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Con Law I traditionally focuses on the political powers and structures of U.S. government, Con Law II by contrast is devoted to the examination of civil rights and civil liberties. Civil liberties are the rights for all generally laid out in the Bill of Rights (the first ten amendments to the US Constitution). Civil rights are the rights that almost everyone in the US have but are systematically denied to some individuals and groups based on race/ethnicity, sex, sexual orientation or other social category.

One set of related questions in this course that we will continually revisit is: Can our constitution, drafted in 1787, remain relevant today? What has allowed the U.S. Constitution to remain viable after all these years, making it the longest surviving constitution in the world? Will our constitution be able to survive the advances in modern science, medicine, and a more and more complex society or, will one day soon, the document be rendered irrelevant by technological progress?

A second series of questions focus on the quest for equal treatment in American society among several diverse groups: racial minorities, women, LGBTQ. What actually constitutes equal treatment for members of these groups and how does the law erase or create barriers to equality? Does equal treatment mean treating everyone the same way in all of the time?

A basic assumption in this course is that laws (and legal institutions) are not neutral and impartial, but is an instrument that can create or level inequalities. Using this approach, the course focuses on two broad themes.

You may also find the following websites helpful:

www.oyez.org (A website that provides case summaries, mp3 files of oral arguments, and links to full decisions of almost all of the Supreme Court cases)

www.scotusblog.com (discussion of contemporary Supreme Court cases and a site of Supreme Court junkies)

Textbook

There is one required book that can be purchased at the bookstore or online. There should be plenty of used copies floating around because it is an older edition fo the book:

David O'Brien, *Constitutional Law and Politics: Civil Liberties and Civil Rights* (Vol. Two), Ninth edition. W.W. Norton and Company, ISBN-10: 0393922405.

There are also required readings on Blackboard.

Online class schedule

Our class will meet on Zoom on M and W from 1pm to approximately 1:30PM. The most current Zoom login information (the link and the password) can be found on Blackboard under Announcements. You use the same URL and password every week to get to our Zoom session.

Zoom is free to you if you register. You can either go to Zoom.us on a browser or download the app to your smartphone. Please register with a name I can recognize. "HotKitty69" looks like a Zoom bomber/spammer to me. Also I need you to use your own names on Zoom so I and other students can know you.

If possible, turn your *camera on* a) to build some sense of community, b) So I and your fellow students can put a face to the name. (You can use a Zoom virtual background if you like. My house is messy too, that's why I use a background. Here's how to do it. <https://www.youtube.com/watch?v=d0ZIE5Ynuxc> c)

I understand sometimes you might have to leave your camera off, usually because your internet speed is slow and Zoom works better without the camera off and with just audio. But please, camera on as the default. It's weird enough that we're all online. It's even worse if we're all looking at small black boxes with just a name.

The online Zoom sessions are optional, although you really should attend. Because most of what have been my formal lectures on PowerPoint are for you to read and listen to on your own, the Zoom sessions are for me to to go in depth on difficult concepts, tie current events to what we are studying, and for you to ask questions. The Zoom sessions will be recorded for your to watch later.

2) I will post a PowerPoint slide with my audio lecture in it by Sunday PM for the following week. After watching the PowerPoint each week, there is a 5 questions multiple choice quiz. The questions are not tricky; anyone who listened to the PowerPoint audio and read through the slides should be able to easily answer it. There are no quizzes the weeks you have a response paper due.

3) All assignments are online in Blackboard including the taking of tests and submission of papers. Your quizzes each week and discussion threads are also in Blackboard. The quizzes every week are 5 questions and should be taken after you listen to/read the PowerPoint lecture for the week.

4) I don't have traditional weekly office hours, but you can always email me and schedule an appointment and I'll send you a Zoom link for an individual session.

Your final grade will be calculated as follows:

Midterm	Oct. 19	25%
1 page reaction papers (5X in the semester)		25%
Quizzes (7X in the semester)		25%
Final Exam	Dec 16	25%

**Grading criteria:

100-94	A
93-90	A-
89-87	B+
86-83	B
82-80	B-
79-77	C+
76-73	C
72-70	C-
69-67	D+
66-63	D
62-60	D-
59 and below	F

Administrative Policies

1) The due dates of assignments for exams with respect to religious holidays is governed by NY state law and those policies can be found here:

<http://www.brooklyn.cuny.edu/web/about/initiatives/policies/nondiscrimination.php>

2) The faculty and administration of Brooklyn College support an environment free from cheating and plagiarism. Each student is responsible for being aware of what constitutes cheating and plagiarism and for avoiding both. The complete text of the CUNY Academic Integrity Policy and the Brooklyn College procedure for implementing that policy can be found at this site: <http://www.brooklyn.cuny.edu/bc/policies>. If a faculty member suspects a violation of academic integrity and, upon investigation, confirms that violation, or if the student admits the violation, the faculty member **MUST** report the violation.

3) In order to receive disability-related academic accommodations students must first be registered with the Center for Student Disability Services. Students who have a documented disability or suspect they may have a disability are invited to set up an appointment with the Director of the Center for Student Disability Services, Ms. Valerie Stewart-Lovell at 718-951- 5538. If you have already registered with the Center for Student Disability Services please provide your professor with the course accommodation form and discuss your specific accommodation with him/her.

4) Communication with your professors is especially important while we are online. Please tell me if something is wrong and you're having difficulty completing the work—I cannot read your mind. We are all trying to get through an unprecedented pandemic along with severe economic challenges. It is ok to ask for an extension on assignments. I will not automatically grant them and it depends on the circumstances, but I will consider it.

5) If you email me please put your name and name of the class in the subject line. With two classes and everyone online, it will be harder for me to learn your names. I generally respond to email in under 24 hours, but not after 5pm on week days and over the weekend unless it's an emergency. I'm trying to keep my sanity as well.

6) Basic needs: Your safety and well-being are important to me during this difficult time. There are resources on campus free of charge to you that I can direct you to if you need it including: a food pantry on campus, a micro-grant for emergencies (some money for rent, to replace lost textbooks), psychological counseling services (free and *confidential* to all our students, and a on campus health clinic). If you feel comfortable, let me direct you to those resources. Shoot me an email.

Schedule of Assignments

Week One: Who gets to do judicial review? What does the Constitution say about Judicial Review?

What is the role of the federal judiciary in the American political system according to Federalist Papers no 78? What is judicial review and where does the federal judiciary derive it from? After reading the Constitution's Article I, II, and III, which branch does the US Constitution assign to have the right of judicial review?

Readings: Read the US Constitution Article III, skim Articles I and II, O'Brien pages 23-40, *The Virginia and Kentucky Resolutions of 1798*, *President Roosevelt's Radio Broadcast, March 1937* and Alexander Hamilton Federalist Papers number 78 (on Blackboard under "Course documents").

Weeks Two: The Nationalization of the Bill of Rights, The Rise and Retreat of Due Process

What does it mean when someone refers to a Bill of Rights amendment as "incorporated?" How does a constitutional amendment become applied to the states? Which Bill or Rights protections are or are not incorporated?

Readings: O'Brien, pages 331-346, *Hurtado v CA*, *Palko v CT*, *Duncan v LA*, *McDonald v Chicago*, and pages 407-415, .

**Response paper 1 due Sunday night of this week 11:59PM on Blackboard, no quiz this week.

Week Three: The First Amendment--Freedom of speech.

What rights are covered by the First Amendment? Why is political speech distinct from regular speech? What justifications have political theorists and the Supreme Court offered for protecting political speech? Can you really say whatever you want whenever you want to say it? What are the limits to your freedom of speech?

Readings: O'Brien, pages 444-463, *Schenck v US*, *Dennis v US*, *Brandenburg v OH*.

Week Four: The First Amendment--Obscenity, Hate speech, Freedom of the Press, Symbolic Speech

What limits are there to one's freedom of expression. Who decides what is obscene and pornographic and what is art? How does one make that determination? What is "symbolic speech?"

Readings: O'Brien, pages, 490-498, *Miller v CA*, pages 532-539, *Federal Communications Commission v Pacifica Foundation*, *R.A.V. v City of St. Paul, MN*, pages 634-638, *New York Times v. U.S.*, pages 659-663, Pages 680-684, *WV State Board of Education v Barnette*.

**Response paper 2 due by Sunday night 11:59pm on Blackboard, no quiz this week.

Week Five: Civil liberties in the time of covid19

In the middle of a pandemic, can the government (state or federal) curtail people's right to protest and peacefully assemble? Could the federal government give a nationwide quarantine order? What is the legal authority for state governors issuing quarantine orders that prohibit public gatherings? What happens when the quarantine orders conflicts with someone's right to religion (going to a religious service)?

Readings (are on Blackboard): *Ward v Rock Against Racism*, Findlaw, "Is there a right to peaceful protest?" , We the People podcast, "Civil Liberties and Covid19) (listen to first 17 minutes of the podcast)

Week Six: Civil liberties and the First Amendment—Religious Freedom What does "free exercise" mean in the context of constitutional law? What constitutes a religion?

Readings: O'Brien, pages 848-855, *Sherbert v. Verner*, *Wisconsin v Yoder*, *Church of the Lukumi Babalu Aye v. City of Hialeah*, *City of Boerne v Flores*.

**Response paper 3 due by Sunday night at 11:59pm on Blackboard, no quiz this week.

Week Seven: Civil liberties and the Fourth Amendment, Unreasonable Search and seizure

What constitutes an "unreasonable search"? (e.g. what makes the search unreasonable? How do we apply words like "unreasonable search and seizure" written in 1798 to contemporary situations and technologies?

Readings: O'Brien pages 898-907, *AZ v Hicks*, pages 920-931, *MN v Dickerson*, Pages 954-962, *CA v Acevedo*, Pages 1003-1009, *Olmstead v US*, *Kyllo v US*, *US v Jones*, pages 1043-1047, *Mapp v OH*.

Midterm exam: Oct. 19.

Week Eight: Civil liberties and the freedom of movement

Can states ban the people from other states from coming into their borders? Can the federal government issue a national quarantine order? Does a national or public health emergency give Governors and the President a blank check to restrict the freedom of movement of citizens?

Readings (readings are on Blackboard): *Edwards v People of the State of CA (1941)*, Meryl Justin Chertoff, "Coronavirus threatens constitutionally protected freedom of movement", Anthony Michael Kriess, "Contagion and the right to travel",

**Response paper 4 due at 11:59pm on Sunday on Blackboard, no quiz this week.

Week Nine: Civil rights, racial equality and state action

With this section, we head into Civil Rights. Does equality mean we treat everyone the same way at all times and in every instance? When might it be appropriate to treat someone differently in order to achieve equality? How many kinds of equality can you identify? Which type(s) of equality should law and public policy be most concerned with? What does "state action" mean?

Readings: O'Brien pages 1412-1437, *Dred Scott v Sanford*, *Plessy v Ferguson*, *Bob Jones University v US*.

Week Ten: Civil rights, racial discrimination in education

Why did the NAACP decide to challenge racial inequality beginning in the realm of education? Why do Americans expect equality or at least expect that there is the possibility of upward social and economic mobility? Does racial equality mean treating people of all races the same way in every instance?

Readings: O'Brien, pages 1468-1481, *Brown v Board of Education*, *Cooper v Aaron*, *Parents Involved in Community Schools v Seattle School District no. 1*.

Week Eleven: Civil Rights, affirmative action and reverse discrimination

What are the rationales for and against affirmative action? How does one achieve racial equality without quotas?

Readings: O'Brien, pages 1530-1539, *Regents of the University of CA v Bakke*, *City of Richmond v J.A. Croson*, *Adarand Constructors Inc. v Pena*, *Gratz v Bollinger*.

**Response paper 5 due on Sunday night 11:59pm on Blackboard, no quiz this week.

Week Twelve: Civil Rights, sex and gender equality

Is sexual and gender equality achieved by treating men and women exactly the same in every instance? Why and when might it be inappropriate to do so?

Readings: O'Brien, pages, 1582-1591, *Frontiero v Richardson*, *Craig v Boren*, *United States v VA*, *Romer v Evans*.

Week Thirteen: Catch up/review