

CIVIL LIBERTIES: AN INTRODUCTION TO THE BILL OF RIGHTS

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Text: Civil Liberties Primis Customtext

Useful URLs: law.cornell.edu; findlaw.com; fedworld.gov/supcourt/index.htm;
law.upenn.edu/conlaw; <http://www.galaxy.com/b/d?n=47708>

This course examines the civil liberties tradition in the United States. We will discuss civil liberties in the broader framework of social and political philosophy and read Supreme Court cases concerning the Bill of Rights. This important legal instrument seeks formally to enumerate and codify certain individual liberties considered "fundamental" and thereby immune from potential incursion by democratic majorities or governmental action. We will focus on four major civil liberties principles-- freedom of expression (speech, press, religion), privacy, due process and equal protection.

Preparing cases in advance along with regular attendance and active class participation are essential. There will be a midterm and final examination, several short in-class quizzes and a legal opinion writing assignment (approximately 10 pages) based on a hypothetical fact pattern. All of the foregoing will count towards the final grade.

Annotated Course Outline: Other cases will be added as required.

Introduction: Thinking about civil liberties.

Deontology; Utilitarianism; Natural Rights; Legal Positivism

Theories of Jurisprudence:

1. Traditional/Analytical Jurisprudence
2. Sociological Jurisprudence
3. Legal Realism & Critical Legal Studies (CLS)

Judicial Review: Marbury v. Madison (1803) & Van Alstyne essay pgs 7-11

Incorporation: Nationalization of the Bill of Rights

(The 14th Amendment); The Black/Frankfurter Debate

Barron v. Baltimore (1833)* Slaughterhouse Cases (1873)* Hurtado v. California (1884)* Adamson v. California (1947)* Gitlow v. New York (1925)

Freedom of Religion: (Free Exercise and [Anti-]Establishment)

House Debate on Religion Clauses (1789) pgs 12-13

Reynolds v. U.S. (1878)* Gov'tal regulation of religion

Pierce v. Society of Sisters (1925)* Oregon law compelling public school attendance unreasonably conflicts with parents' F.E. interest; privacy in rearing of offspring

Cantwell v. Connecticut (1940)* State permit for charitable solicitations violating F.E.; Incorp. of F.E. Clause

Minersville School District v. Gobitis (1940) /PA Flag Salute

West Virginia Bd. of Ed. v. Barnette (1943) /reversal

Prince v. Massachusetts (1944)* Jehovah's Witness minors selling periodicals: state's overriding interest in protecting children prevails over F.E.

Everson v. [Ewing] Bd. of Ed. (1947) Incorp. [Anti-]Est./Wall of Separatn. or Neutrality? NJ bus fare reimbursement not Estab.

McGowan v. Maryland (1961)* Sunday closing law as serving purpose of "uniform day of rest" thus not Estab.

Braunfeld v. Brown (1961)* Sunday closing challenged by Philadelphia Orthodox Jews on F.E. grounds (religious practice effecting an eco. burden); indirect not direct conseq. so no F.E. burden

Torcaso v. Watkins (1961)* MD public employment theistic oath --> F.E. as protecting non-religion

Engel v. Vitale (1962) Non-denom. NY Regent's prayer = Estab.

Sherbert v. Verner (1963)* SC Seventh Day Adv. denied benefits; seemingly indirect burden but still F.E.

Abington School District v. Schempp & Murray v. Curlett (1963)* PA bible reading and MD Lord's Prayer = Estab; Two-test for Estab.

U.S. v. Seeger (1965)* /Conscients. objtrs. protected by F.E.

Gillette v. U.S. (1971)* /but not for objection to a particular war

Tilton v. Richardson (1971)* Federal funding of academic bldg. construction in sectarian and secular colleges not such entanglement as to violate Estab.

Epperson v. Arkansas (1968)* State "monkey law" excluding teaching of evolution = non-secular legislative purpose

Lemon v. Kurtzman (1971) PA/RI public funding parochial schools --> three-pronged test for [Anti-]Estab.

Stone v. Graham (1980)* Kentucky Ten Commandments posted in classrooms as non-secular/not "legal heritage."

Widmar v. Vincent (1981)* Ct. overturned Missouri State Uni. denial of facilities for student group religious activities: promotes free ideas in public forum

Wisconsin v. Yoder (1972)* Compulsory Amish school attendance; indrt. burden and generally applicable law but religious interest of Amish held to override state; way of life as a religious exemption

U.S. v. Lee (1981)* Congress Soc. Sec. exemption for Amish not F.E. claim: Amish not forced to become employers: gov'tal interest as compelling

Heffron v. ISKCON (1981)* Reasonable time, place and manner regulation for fixed booths at Minnesota Fairs not violation of F.E.

Bob Jones University v. U.S. (1983)* F.E. discrimination allowed but no I.R.S. Sec 501 c(3) tax exemption

Wallace v. Jaffree (1985) Alabama moment of silence; state cannot prefer religion over non-religion

Lynch v. Donnelly (1984) /RI public display as secular; accommodation as not Establishment

Allegheny County v. Greater Pittsburgh ACLU (1989)* /cultural diversity and secular objects in display so not Estab.

[Mormon] Church v. Amos (1987)* Title VII s 702 exemption as accommodation not excessive entanglement

Goldman v. Weinberger (1986) Deference to military over F.E. --> Congressional statutory reversal pgs 29-33

Edwards v. Aguillard (1987) Louisiana Balanced Treatment Act for teaching of creationism = advancing religion

Lyng v. Northwest Indian Cemetery Protective Assoc. (1988)* Forest road etc. through cemetery as incidental burden on Free Exercise

Texas Monthly Inc. v. Bullock (1989)* Texas tax exemption to religious periodicals = Estab.

Jimmy Swaggart Ministries V. Board of Equalization (1990)* Generally applicable CA sales tax on religious items not F.E.

Employmt. Div. v. Smith II (1990) Ceremonial peyote ingestion; where generally applicable law and one civil liberty, statute does not warrant strict scrutiny; but no denial of unemployt. when petitioners were fired as drug rehab. counsellors

Lee v. Weisman (1992)* RI public school prayer = Estab.

Church of Lukumi Babalu Aye v. City of Hialeah (1993)* Animal sacrifice proscription not narrowly tailored nor religiously neutral

Freedom of Speech:

House Debate 1789

Schenck v. U.S. (1919) Holmes' clear and present danger test

Abrams v. U.S. (1919) Bad tendency test

Gitlow v. New York (1925) Deferential standard and presumption of reasonableness for sedition statutes; incorporation

Whitney v. California (1927) Brandeis' imminent danger

Hague v. CIO (1937) speech plus; public forum

Chaplinsky v. New Hampshire (1942)* Fighting words

Valentine v. Chrestensen (1942)* Purely commercial advrts. here not protected; NY anti-litter ordinance upheld

Dennis v. U.S. (1951) return to "semblance" of imminent danger test but really balancing test for statutory (not evidentiary) review;

Yates v. U.S. (1957) Advocacy of action vs ideas

NAACP v. Alabama (1958)* Freedom of association

U.S. v. O'Brien (1968)* Symbolic speech (burning draft card); overriding substantial gov'tal interest --> O'Brien test, middle tier review

Brandenburg v. Ohio (1969) Advocacy irrespective of imminent danger vs actual unlawful action

Cohen v. California (1971) Offensive conduct protected

Buckley v. Valeo (1976) Limiting campaign contribtns. vs 1st Amendment

Village of Skokie v. Nazi Party (1978)* Fighting words vs symbolic speech; directed, content-based prohibition not a narrowly-tailored reasonable time, place and manner regulation

Prune Yard Shopping Center v. Robins (1980) Private property and non-association vs free speech cf. Taking/Eminent Domain

Texas v. Johnson (1989) /Flag burning = symbolic speech not fighting words; gov'tal interest not overriding

U.S. v. Eichman (1990) /Overturning statutory reversal

Robert A. Viktora (R.A.V.) v. City of St. Paul (1992)* MN hate crime law as selective, non-content neutral and directed so violates F.S.

Madsen v. Women's Health Center (1995)* Content neutrality required in regulating abortion protesters' speech plus

Freedom of Press:

Milton's Areopagitica 1644

Near v. Minnesota (1931) No prior restraint

New York Times v. Sullivan (1964) Actual malice standard for public figures

Time Inc. v. Hill (1967)* privacy vs free press

New York Times v. U.S. (1971)* Pentagon papers; heavy burden on govt. to prove national security threat

Gertz v. Robert Welch Inc. (1974)* Private person; no need to prove actual malice

Bigelow v. Virginia (1975)* Advertising protected (legal abortions in NY) ; served legitimate public interest

Cox Broadcasting v. Cohn (1975)* GA privacy statute protecting rape victim's names overturned

Nebraska Press Assoc. v. Stuart (1976) Free press vs fair trial

Richmond Newspapers Inc. v. Stuart (1980) Press trial access

Hustler Magazine v. Fallwell (1988) Parody article of public figure; no emotional stress damages for "outrageousness"

CNN v. Noriega (1990)* Rehnquist Ct. upheld restraining order against broadcasting tapes of Noriega conversations; lawyer client privilege

Pornography/Obscenity:

Roth v. U.S. (1957) Three part test for obscenity

Miller v. California (1973) Test reasserted, community standard

Paris Adult Theater I v. Slaton (1973) Deference to states; New York v. Ferber (1982)* Child pornography

City of Renton v. Playtime Theaters Inc. (1986)* Zoning regulation as not content-based

Procedural Due Process:

Powell v. Alabama (1932) 5th A. rt. to counsel in capital cases

Duncan v. Louisiana (1968) 14th A. D.P. rt. to jury trial

Palko v. Connecticut (1937) 5th A. double jeopardy

Benton v. Maryland (1969)* Overrules Palko to incorporate double jeopardy

Mallory v. U.S. (1957) 5th A. rt. against self-incrim.

Gideon v. Wainwright (1963) overturns Betts v. Brady (1942) to grant indigents 6th A. rt. to counsel for non-capital cases

Escobedo v. Illinois (1964) 5th A. rt. to counsel; coerced confession inadmissible

Malloy v. Hogan (1964)* Incps. 5th A. rt against self-incrimination

Miranda v. Arizona (1966) Miranda rights; affirmative obligation on government

Furman V. Georgia (1972) Death penalty as cruel and unusual

Gregg v. Georgia (1976) Death penalty allowed with proced. due process guarantees

McCleskey v. Kemp (1987) Death penalty as not racially discriminatory

Olmstead v. U.S. (1928) 4th A. searches and seizures; wire tap not a search

Katz v. U.S. (1967) Overrules Olmstead; 4th A. protects people not places so need search warrant for wiretap

Weeks v. U.S. (1914) Exclusionary Rule re. admissible evidence

Mapp v. Ohio (1961) Incorporates Weeks re. 4th A. tainted evidence

Stone v. Powell (1976) Habeas corpus denied

U.S. v. Leon (1984) Good faith exception to 4th A. Exclry. Rule

Equal Protection:

Race—

Dred Scott v. Sandford (1857) Blacks not citizens by original intent; judicial review --> the “self-inflicted wound”

Plessy v. Ferguson (1896) Separate but equal

Korematsu v. U.S. (1944)* Race as suspect classification

Smith v. Allwright (1944) All-white primary. violates 14/15th Amendments

Sweatt v. Painter (1950)* Separate “and” equal

Brown v. Bd. of Ed. I (1954) & II (1955) overrules Plessy, public school desegregation with all deliberate speed

Swann v. Charlotte-Mecklenburg Bd. of Ed. (1971) Judicial remedies; bussing

Milliken v. Bradley (1974) Specific not generalized remedies

Heart of Atlanta Motel v. U.S. (1964)/ Title VII Civil Rights Act 1964; Commerce Clause with Katzenbach v. McClung (1964)

Moose Lodge No. 107 v. Irvis (1972) Private clubs’ freedom of association vs 14th A. invidious discrimination

De Funis v. Odegaard (1974) Affirmative action; mootness Regents of the Uni. of Calif. v. Bakke (1978) Affirmative action goals but not quotas

Local 28 of Sheet Metal Workers v. EEOC (1986) Historic pattern of discrim. so remedy appropriate

Metro Broadcasting Co. v. FCC (1990) Diversity as legitimate governmental objective

Gender—

Reed v. Reed (1971)* Gender and E.P.

Phillips v. Martin Marietta Corp. (1971)* Title VII discrim. against mothers with preschool children

Taylor v. Louisiana (1973)* 6th A rt re. women on juries

Frontiero v. Richardson (1973) Women and the military

Orr v. Orr (1979)* Women too liable for divorce alimony payments

Craig v. Boren (1976)* Oklahoma unequal alcohol statute

Califano v. Goldfarb (1977)* Equality of soc. sec. benefits

Rostker v. Goldberg (1981) Women and selective service

Michael M. V. Superior Ct. of Sonoma County (1981)* Gender-specific CA statutory rape law

Mississippi Uni. for Women v. Hogan (1982)* Women-only nursing school as discriminatory

Johnson v. Transportation Agency (1987) Women and affrm. action

Juveniles—

In Re. Gault (1967) Procedural D.P. rts. for minors

Tinker v. Des Moines School Dist. (1969) Symbolic speech rts for school children

Privacy:

Griswold v. Connecticut (1965) Penumbra of privacy

Loving v. Virginia (1967)* Miscegenation statute as unconst.

Stanley v. Georgia (1969) Private possession of pornographic materials as protected

Roe v. Wade (1973) Reproductive privacy

Akron v. Akron Center for Reproductive Health (1983) Undue burden standard

Webster v. Reproductive Health Services (1989) States permitted to regulate conditions for abortion

Rust v. Sullivan (1991)* Federal gag rule on abortion

Planned Parenthood v. Casey (1992)* PA state restrictions

Bowers v. Hardwick (1986) Rational basis test for private sexual activity

Lawrence v. Texas (2003) Overturns Bowers

Romer v. Evans (1996) Colorado's Amdt 2 struck down on E.P. grounds

Cruzan v. Director, Missouri Dept. of Health (1990) Right to die