

Political Science 352S
Civil Liberties in the Modern State
Fall 2001
Wellesley College

Instructor: Professor Lynda Dodd
Office: 230 PNE
Office Hours: Thursday 1:00 – 2:30,
Tuesday 11:00 – 12:30,
and by appointment
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Class Location: PNE 251
Time: M 2:50-5:20

I. Description and Objectives

By examining Supreme Court decisions in light of works in American history, politics, and political theory, we will explore legal, political, and philosophical debates on civil liberties today. Issues examined will include struggles over freedom of religion, speech, and privacy.

II. Course Text and Readings

Books required for the course are available at the Wellesley Bookstore:

- John Locke, *Letter on Toleration*
- David M. O'Brien, *Civil Rights and Civil Liberties*, 5th ed. ("O'Brien")
- David M. O'Brien, *Supreme Court Watch 2001* ("SCW")

- A course packet of photocopied readings is also required. ("CP")

III. Course Requirements and Grading

- There is an early midterm examination, which is worth 20% of your course grade. The midterm examination is closed book, and includes short answer identification questions,

and 1-2 essay questions. I will provide you with a study guide to help you prepare for the exam.

- You are also required to complete three 7-10 page critical response essays, worth a total of 40% of your course grade. Three essay due dates are listed on the schedule below. You may consider as possible topics for your essays any of the “discussion memo” questions (see below under class participation) from the previous seminars. The goal for these essays is to give you an opportunity to more formally and completely develop an argument based upon the recently completed readings and seminar discussions. No additional research is required, although you should cite any other sources used. Please note that on the date that an essay is due, they must be turned in to me (via email attachment, or in the department) on Friday. Late assignments will be penalized by one-third grade per day.

- The closed book, self-scheduled final examination is worth 30% of your course grade. The examination will include both short identification and essay questions. I will provide you with a study guide to help you prepare for the exam.

- Class participation is worth 10% of your course grade. At the end of each seminar, I will provide you with a “discussion memo,” a short list of questions to help guide your reading and preparation for the next week’s discussion. You may also wish to use these questions when writing your critical responses essays.

IV. Schedule of Assignments and Readings

Sep. 10: Introduction to the Course

- O’Brien, pp. 1-21, 23-39, 69-96, 299-312 (pp. 100-126, 162-195 recommended only)

Sep. 17: Religion and the Crisis of Modern Liberalism -- Historical Roots and Philosophic Foundations

- John Locke, *Letter Concerning Toleration* (entire)
- James Madison, *Memorial and Remonstrance*, (CP)
- Michael McConnell, “The Origins and Historical Understanding of Free Exercise of Religion,” (CP)
- Ronald Dworkin, “Liberalism,” (CP)
- William Galston, *Liberal Purposes*, (CP)
- Michael Sandel, “Freedom of Choice or Freedom of Conscience,” (CP)
- Stephen Carter, *The Culture of Disbelief*, (CP)

- O’Brien, pp. 655-63

Sep. 24: The Establishment Clause, Accommodation, and Equal Treatment

- O'Brien, pp. 663-759

Everson v. Bd. of Education (1947)
Engel v. Vitale (1962)
Abington School District v. Schempp (1963)
Lemon v. Kurtzman (1971)
Wallace v. Jaffree (1985)
Lee v. Weisman (1992)
Zobrest v. Catalina Foothills School District (1993)
Bd. of Ed. of Kiryas Joel v. Grumet (1994)
Rosenberger v. U. of Virginia (1995)
Agostini v. Felton (1997)
Santa Fe Independent School District v. Doe (2000)
Mitchell v. Helms (2000)
Good News Club v. Milford Central School (2001)

***** critical response essay due Friday, Sep. 28 *****

Oct. 1: The Free Exercise of Religion

- O'Brien, pp. 759-808

Sherbert v. Verner (1963)
Wisconsin v. Yoder (1972)
Employ. Div., Dep't of Human Resources of Oregon v. Smith (1990)
Church of Lukumi Babalu Aye v. Hialeah (1993)
City of Boerne v. Flores (1997)

***** "Midterm" Examination Oct. 15 – closed book, in class *****

Oct. 22: Obscenity, Pornography, and Domination

- O'Brien, pp. 421-472

Stanley v. Georgia (1969)
Miller v. California (1973)
Paris Adult Theatre I v. Slaton (1973)
New York v. Ferber (1982)

Barnes v. Glen Theatre (1991)
Reno v. ACLU (1997)
NEA v. Finley (1998)
City of Erie v. Pap's A.M. (2000) (SCW)

- Catharine MacKinnon, *Feminism Unmodified*, (CP)
- Nadine Strossen, "A Feminist Critique of 'the' Feminist Critique of Pornography," (CP)

Oct. 29: Political Expression, Offensive Speech, and Diversity

- O'Brien, pp. 371-421, 473-505, 612-636

Schenck v. U.S. (1919)
Gitlow v. New York (1925)
Dennis v. U.S. (1951)
Brandenburg v. Ohio (1969)
Rust v. Sullivan (1991)
Cohen v. California (1971)
FCC v. Pacifica (1978)
Bethel School District v. Fraser (1986)
R.A.V. v. City of St. Paul (1992)
Wisconsin v. Mitchell (1993)
West Virginia Bd. of Ed. v. Barnette (1943)
Tinker v. Des Moines Ind. School District (1969)
Texas v. Johnson (1989)

- Richard Delgado and Jean Stefaniec, "Words That Wound," (CP)
- Henry Louis Gates, "Let Them Talk: Why Civil Liberties Pose No Threats to Civil Rights," (CP)

Nov. 5: Free Speech and the Campaign Finance Reform Debate

- Daniel Ortiz, "Constitutional Restrictions on Campaign Finance Regulation," (CP)

- Gunther, *Constitutional Law*, (CP)

Buckley v. Valeo (1976)
Colorado Republican Campaign Comm. v. FEC (1996)

- Daniel Ortiz, "Politics and the First Amendment," (CP)
- Ronald Dworkin, "The Curse of American Politics," (CP)
- Bradley A. Smith, Faulty Assumptions and Undemocratic Consequences of

- Campaign Finance Reform,” (CP)
- Cass Sunstein, “Political Equality and Undemocratic Consequences,” (CP)

***** critical response essay due Friday Nov. 9 *****

Nov. 12: Privacy and Abortion

- O’Brien, pp. 1189-1243

Griswold v. Connecticut (1965)

Roe v. Wade (1973)

Maher v. Roe (1977)

Webster v. Reproductive Health Services (1989)

Planned Parenthood of Pa. v. Casey (1992)

Stenberg v. Carhart (2000) (SCW)

- John T. Noonan, “The Root and Branch of *Roe v. Wade*,” (CP)
- Judith Jarvis Thomson, “A Defense of Abortion,” (CP)
- David Strauss, “Abortion, Toleration, and Moral Uncertainty,” (CP)
- John Hart Ely, “The Wages of Crying Wolf: A Comment on *Roe v. Wade*,” (CP)
- Ruth Bader Ginsberg, “Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*,” (CP)

Nov. 19: Sexual Orientation

- O’Brien, pp. 1243-1255

Bowers v. Hardwick (1986)

- Michael Sandel, “Moral Argument and Liberal Toleration: Abortion and Homosexuality,” (CP)
- Jed Rubenfeld, “The Right of Privacy,” (CP)
- Kendall Thomas, “Beyond the Privacy Principle,” (CP)

***** critical response essay due Friday Nov. 23 *****

Nov. 26: The Right to Die

- O’Brien, pp. 1255-76

Cruzan v. Director, Missouri Dep't of Health (1990)

- John H. Garvey, "Freedom and Representation," (CP)
- Nancy K. Rhoden, "Litigating Life and Death," (CP)
- Ronald Dworkin, "The Right to Death," (CP)
- Yale Kamisar, "When is There a Constitutional 'Right to Die'? When is There No Constitutional 'Right to Live'?" (CP)

Dec. 3: The Limits of Modern American Civil Liberties Law

- Paul Brest, et al., eds. *Processes of Constitutional Decisionmaking* (CP)

DeShaney v. Winnebago County Dep't of Social Services (1989)

- Susan Bandes, "The Negative Constitution: A Critique," (CP)

Dec. 10: Conclusion and Review

***** Final Examination – closed book, self-scheduled *****