

## POLITICAL SCIENCE 354: THE CONSTITUTION AND CIVIL LIBERTIES

3 credit hours

Prerequisites: POLS 101 or consent of the instructor.

Spring 2014 (January 14, 2014)

Instructor: Prof. Evan McKenzie	CRN/Course Number: 35681
Office location: BSB 1122-D – soon to be 1126	Times and days class meets: T/Th 12:30-1:45pm
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### COURSE DESCRIPTION, GOALS, AND OBJECTIVES

**Catalog Description:** *354 The Constitution and Civil Liberties 3 hours. Civil rights, including religion, speech, assembly, press, and rights of the accused. Prerequisite(s): POLS 101 or consent of the instructor.*

This course is intended to expose you to many of the principles of American constitutional law that govern the relationship between the individual and government. Civil liberties are limits on the powers, activities, and reach of government into certain aspects of our lives. Our focus will be on a number of provisions of the Bill of Rights --the first ten amendments to the US Constitution--and also some aspects of the post-Civil War amendments, mainly the 14<sup>th</sup> Amendment.

The original intent of the Bill of Rights was to limit only the activities of the national (federal) government. However, after the Civil War, the 14<sup>th</sup> Amendment was ratified, and it contains the Due Process Clause, saying that “no state shall... deprive any person of life, liberty, or property, without due process of law.” The Supreme Court decided that the word “liberty” in that clause encompasses many of the liberties contained in the Bill of Rights. Eventually, nearly all the provisions of the Bill of Rights were extended to limit the actions of state governments in the same way they limit the actions of the national government. We call that process “incorporation” of the Bill of Rights into the 14<sup>th</sup> Amendment Due Process Clause.

We can’t cover all aspects of civil liberties in one course, so we will focus on these concepts: due process of law, especially with reference to the rights of the accused; selective incorporation of most Bill of Rights provisions into the Due Process Clause of the 14<sup>th</sup> Amendment; the right of privacy; freedom of speech; freedom of the press; and the two religion clauses of the First Amendment, the establishment clause and the free exercise clause.

Most people have opinions about these issues already, but we will go beyond personal opinions. In this course, you will learn to think and talk about these issues the way constitutional lawyers do. You will learn how to apply constitutional tests to fact patterns, and construct and evaluate legal arguments.

Our reading material will consist almost entirely of edited versions of United States Supreme Court opinions in major civil liberties cases. So, this is not a law school class, but it is about as close to one as you can get without being in a law school. That's why this is a demanding and rewarding course. The reading is not easy and there is a good deal of it. Regular class attendance, coming to class prepared every day, and participation are essential to your success in this course. The subject matter is controversial and inherently interesting to most students, but it can produce strong feelings. Please remember to be respectful of your fellow students (and me!).

I will probably make some minor changes, additions, and deletions to this syllabus as the semester moves along. You will receive an email to that effect if and when it happens.

I am here to help you and I want you to succeed. Spending time with students one-on-one is part of my job and something I am happy to do. Please do not hesitate to contact me by email, phone, or in person.

## COURSE MATERIALS

### **Required Text**

Ducat, Craig R. 2013. *Constitutional Interpretation Volume II: Rights of the Individual (Tenth Edition)*. Boston: Wadsworth/Cengage.

### **Other Materials**

This course has a Blackboard site, and you have been subscribed to it. Blackboard is a course management system. There are materials and links on the site that we will be using. The lectures are being recorded using Lecture Capture and they will be available on the Blackboard site in the "Echo Capture" section. Use of a computer and internet access are required to access the Blackboard site.

## COURSE POLICIES

***The 7 Essentials: Come to class. Be on time. Be prepared.  
Be respectful. Participate. Ask for help. Don't cheat.***

### **Attendance Policy**

Attendance at all class sessions, on time, is mandatory, and I will be taking roll every day. Most of us, including me, may be late or absent on occasion, but generally it is the same people who are late or absent habitually. If you miss more than six class sessions, you may receive a zero for your attendance and participation grade, at my discretion. It does not matter why you are absent or late. If you aren't present and on time, you do not receive credit for being present and on time. Arriving more than five minutes late is equal to one-half of an absence. But habitual lateness will have significant negative impact on your overall A&P grade because it is disruptive, uncivil behavior.

### **Policy for Missed or Late Work**

I will not accept late papers or other assignments, including extra credit assignments, and I will not administer makeup exams, except in cases of documented emergencies. "Documented" means *written proof from a third party*, such as a letter from a physician in the case of medical emergencies. "Emergencies" means *last-minute occurrences that make attendance impossible*. If you know before an exam that you can't make it on the scheduled date, see me, and you may be allowed to take the exam early, but you will not be allowed to take the exam after the scheduled date for any reason that you knew about before the exam. The same rules apply for turning in written assignments.

### **Policy on Collaboration**

Studying with your fellow students in pairs or groups is fine. However, you must do your own written work without collaboration on the content, unless it is explicitly a group project.

### **Electronic Communication and Electronic Devices**

You are welcome to contact me by email at [mckenzie@uic.edu](mailto:mckenzie@uic.edu). However, you are not allowed to turn in any written assignments by email unless you have advance permission to do so, which is something I rarely grant. If you send me an assignment by email without advance permission, you have not turned in that assignment. You are welcome to use a laptop or tablet computer to access the book or take notes in class, except during exams. However, you may not engage in web surfing, watching videos, playing games, using email or social media, or any other non-class related activity. All cell phones must be turned off and put away during class. They are not to be heard from, seen, talked on, texted with, looked at, or otherwise brought into play at any time when class is in session.

### **Student Courtesy Policy**

You must participate in class discussions and other activities, which means being prepared and speaking coherently, intelligently, and civilly, recognizing that we need to be free to disagree with each other respectfully so that we can learn from each other.

Lack of civility is disruptive to the learning process. You must be a good classroom citizen at all times. This means not doing certain things, including letting your cell phone or pager make noise or looking at it during class; eating in class (a violation of campus rules); conversing with the people sitting near you; watching YouTube videos or web surfing; arriving late; leaving early; sleeping in class; showing a lack of respect for other people or the things they say; and other breaches of good manners. Students who create these situations will receive one warning, after which there will be consequences, and students who cannot remain quiet and civil in class will be asked to leave. I reserve the right to assign a zero points grade for your entire A&P grade for habitual, or severe, breaches of classroom civility.

### **Academic Integrity Policy**

Academic dishonesty has become a major problem here and at other universities. Sadly, here at UIC many pre-law students are some of the worst offenders, even though they are risking charges that could preclude them from ever becoming attorneys. I consider it my professional duty to make sure that dishonest people do not become attorneys. In this course there is a zero tolerance policy for academic dishonesty, including plagiarism. Specifically, the minimum consequence for plagiarism and other forms of academic dishonesty will be a grade of F for the course, which is within my authority pursuant to the UIC Grading Manual. Depending on the seriousness of the situation, I may file a formal complaint with the Office of Student Judicial Affairs, which could result in more serious consequences, potentially including expulsion from the university.

***DO NOT write your briefs by copying, cutting, and/or pasting from other people's work! Read the cases yourself and write your own brief, using your own words, starting with a blank page. If I catch you plagiarizing from canned brief sites or other sources, I WILL GIVE YOU AN F.***

For those who are unfamiliar with the definition of plagiarism, here it is, from the UIC Academic Integrity Policy (emphasis added):

*“A student who submits work, at any stage of the writing process, which in whole or part has been written by someone else or which contains passages quoted or paraphrased from another's work without acknowledgment (quotation marks, citation, etc.) has plagiarized.* Each student should maintain his or her integrity when completing assignments and be overzealous to give credit where it is due. If a student is ever unsure about what constitutes plagiarism or academic dishonesty, he or she should ask the instructor. *Students who are found to have plagiarized work may be subject to various disciplinary actions.*

including a failing grade on a particular assignment, failure of the entire course, and possible expulsion from the university.”

### **Religious Holidays**

Students who wish to observe their religious holidays must notify me by the tenth day of the semester of the date when they will be absent unless the religious holiday is observed on or before the tenth day of the semester. In such cases, you must notify me at least five days in advance of the date when you will be absent. I will make every reasonable effort to honor the request. This is especially important for examination dates, when you must observe the notice requirements if you want an accommodation.

<http://www.uic.edu/depts/oae/docs/ReligiousHolidaysFY20122014.pdf>

### **Disability Accommodation**

The University of Illinois at Chicago is committed to maintaining a barrier-free environment so that students with disabilities can fully access programs, courses, services, and activities at UIC. Students with disabilities who require accommodations for access to and/or participation in this course are welcome, but must be registered with the Disability Resource Center (DRC). You may contact DRC at 312-413-2183 (v) or 312-413-0123 (TTY) and consult the following:

[http://www.uic.edu/depts/oaa/disability\\_resources/faq/accommodations.html](http://www.uic.edu/depts/oaa/disability_resources/faq/accommodations.html).

## **COURSE REQUIREMENTS, METHODS OF EVALUATION, & GRADING POLICIES**

### **Calculation of course grades**

I will assign points, on a 1000 point total scale, to every assignment that correspond to these percentages. For example, the case briefs are 15% of your course grade, and they will be worth up to ten points apiece, times 15, for a total of 150 possible points for all the case briefs taken together.

1. Case briefs: 15% (150 points)

These are 15 one-page summaries of key cases. The objective is for you learn how to think about a case in terms of the parties, the facts that led up to the lawsuit, the key issues, the court’s decision, and the reasoning behind it. You may not exceed one double-spaced page—or you lose one point. Hard copies will be collected at the start of class and will not be accepted after that. Bring an extra copy for your use during class.

2. Mid-term Examination: 30% (300 points)

The mid-term and final examinations will be of equal weight and will have the same format. They will be half objective and half essay tests. You will receive a study guide with all possible essay questions one week before the exam.

3. Final Examination: 30% (300 points)

4. Attendance and participation: 10% (100 points)

Attendance is one-half of your A&P grade, and the quantity and quality of your participation is the other half. Evidence that you are prepared is a big part of this. Participation includes class discussion, and also your involvement in group discussions and activities that we will conduct from time to time. Typically three people will know in advance that they will be called on, but everybody can be called on at any time—so always be prepared.

5. Case Simulation: 10% (100 points)

We will simulate deciding one of the civil liberties cases currently before the USSC. This assignment will have its own set of instructions.

6. Quiz scores: 5% (50 points)

There will be several short pop quizzes along the way—short answer and/or multiple choice.

7. Extra credit: usually 10 points possible for each opportunity.

Events on campus concerning civil liberties and your suggestions may create opportunities for extra credit, and if so I will announce them to all.

**Policy regarding format for written assignments**

No handwritten papers will be accepted. All papers must be submitted using 11 or 12 point fonts and double-spaced. For work containing citations, you must use the American Political Science Association citation format. You can read about how to do that at <http://library.tamu.edu/help/help-yourself/citing-sources/files/Using%20APSA%20Format.pdf>, or find that document on your Blackboard site under “Course Documents,” “APSA Format.”

**Final Examinations**

The dates and times of the exams are scheduled by the Office of Classroom Scheduling and are arranged so that a student, ideally, will have no more than two exams in a day. Any student having more than two final examinations scheduled in one day is entitled to rescheduling. For a schedule of exams and exam policies see:

[http://www.uic.edu/depts/oar/current\\_students/calendars/final\\_exam\\_schedule.html](http://www.uic.edu/depts/oar/current_students/calendars/final_exam_schedule.html)

**UIC RESOURCES**

If you find yourself having difficulty with the course material or any other difficulties in your student life, don't hesitate to ask for help! Come to me, or if it is about an issue beyond this class, please contact your college advisors, or get help from any number of other support services on campus. You can get a referral to the right place, or help on the spot, from concerned advisor in the Undergraduate Success Center (USC) at [usc@uic.edu](mailto:usc@uic.edu).

**The Writing Center**, located in Grant Hall 105, offers one-on-one consultation with student writers who need help developing ideas, or need advice, guidance or additional instruction on any aspects of writing in any class. Tutors are prepared to spend fifty minutes per appointment, and there is no limit to the number of tutoring sessions you can have each semester. Make an appointment and be on time! Bring the paper on which you're working, as well as any related drafts or notes, and information about the assignment. For an appointment, call the Writing Center at (312) 413-2206, or stop by room 105 of Grant Hall. Visit the Writing Center website at [www.uic.edu/depts/engl/writing](http://www.uic.edu/depts/engl/writing) for more information.

**Public Computer Labs** are available throughout campus where you may write and/or print out your work. For a list of labs and the hours they're open, go to [www.acc.uic.edu/pclabs](http://www.acc.uic.edu/pclabs). NOTE: Do not wait until the last minute to print out papers. Sometimes labs have long lines of students waiting for access.

**The Academic Center for Excellence** can help if you feel you need more individualized instruction in reading and/or writing, study skills, time management, etc. Phone: (312) 413-0031.

**Counseling Services** are available for all UIC students. You may seek free and confidential services from the Counseling Center at [www.counseling.uic.edu](http://www.counseling.uic.edu). The Counseling Center is located in the Student Services Building; you may contact them at (312) 996-3490. In addition to offering counseling services, the Counseling Center also operates the InTouch Crisis Hotline from 6:00 p.m.-10:30 p.m. They offer support and referrals to callers, as well as telephone crisis interventions; please call (312) 996-5535.

**COURSE CALENDAR – TOPICS, READING SCHEDULE, ASSIGNMENTS, AND DEADLINES**  
**(SUBJECT TO REVISION)**

<b>Week</b>	<b>Topic</b>	<b>Readings</b>	<b>Assignments/Deadlines</b>
1 January 14/16	Introduction: The Constitution, civil liberties, and the Supreme Court	Introduction, pp. xv-xxiv; Appendix C, “Biographies of the Current Justices. Appendix D, The United States Constitution; Supplement pp. 3-6	
2 January 21/23	Theories of Constitutional Interpretation; reading, understanding, and briefing cases	For Tuesday: Essay, “Modes of Constitutional Interpretation,” pp. 1343-1372. For Thursday: Read “How to Brief a Case” in Course Information section of Blackboard site	Friday, January 24, is the last day to drop courses via Student Self-Service without receiving W grade.
3 January 28/30	Due process of law: Incorporation of the Bill of Rights into the 14 <sup>th</sup> Amendment	Chapter 8, section A: pp. 488-525; read supplement on jury trial and Second Amendment	Tuesday (this is the due date): Brief #1 <i>Barron v. Baltimore</i> Thursday: Brief #2 <i>McDonald v. City of Chicago</i>
4 February 4/6	The right to counsel; right against self-incrimination; confrontation and cross-examination of witnesses: The Fifth and Sixth Amendments	Chapter 8, sections B, C, and D: pp. 526-580; see supplement	Tuesday: Brief #3 <i>Miranda v. Arizona</i>
5 February 11/13	Cruel and Unusual Punishment: The 8 <sup>th</sup> Amendment	Chapter 8, section E: pp. 580-627; read supplement	Thursday: Brief #4 <i>Furman v. Georgia</i>
6 February 18/20	The right of privacy: the right to abortion	Chapter 10, pp. 739-779 and see supplement	Tuesday: Brief #5 <i>Roe v. Wade</i> Thursday: Brief #6 <i>Planned Parenthood v. Casey</i>
7 February 25/27	The right to privacy: other lifestyle issues	Chapter 10, pp. 779-end, and see supplement	Tuesday: Brief #7 <i>Lawrence v Texas</i>
8 March 4/6	<b>Tuesday: Mid-term examination</b> Thursday: begin Freedom of Speech—key concepts	Tuesday: no readings Thursday: pp. 802-809	<b>Tuesday: Mid term examination</b>
9 March 11/13	Freedom of speech: The clear and present danger test	Chapter 11, pp 802-835	Thursday: Brief #8 is a one page explanation of the historical development of the clear and present danger test
10 March 18/20	Freedom of speech: Time, place and manner restrictions and symbolic speech	Chapter 11, pp. 835-909; and see supplement	Thursday: brief #9 <i>West Virginia State BOE v. Barnett</i> . <b>Note: Spring break is March 24-28</b>
11 April 1/3	Freedom of Speech: Campaign speech and corporate speech	Chapter 11, pp. 909-end; and see supplement	Tuesday: Brief #10 Brief <i>Citizens United v. FEC</i>

12 April 8/10	Freedom of the press: censorship and prior restraint	Chapter 12, part A, pp 958-1003 and see supplement	Tuesday: Brief #11 <i>Near v. Minnesota</i>
13 April 15/17	Freedom of the press: obscenity, libel, and fair trial/free press	Chapter 12, sections B, C, and D, pp. 1003-end, and see supplement	Thursday: Brief #12 <i>Alvarez v. US</i> (supplement)
14 April 22/24	Freedom of religion: the establishment clause	Chapter 13, Section A, pp 1067-1123	Thursday: Brief #13 <i>Lemon v. Kurtzman</i>
15 April 29/May 1	Freedom of religion: the free exercise clause	Chapter 13, Section B, pp. 1123-end	Tuesday: Brief #14 <i>Employment Division v. Smith</i> Thursday: Brief #15: what is the most important case you have read this semester, and why?
16 May 5-9	Finals week	None	Final exam as scheduled by Registrar

## THE BILL OF RIGHTS AND THE POST-CIVIL WAR AMENDMENTS

<b>Amendment</b>	<b>Full text</b>	<b>Key provisions</b>
<b>1</b>	Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Amendments 1-10 were ratified in 1791)	<ul style="list-style-type: none"> <li>• Establishment Clause</li> <li>• Free Exercise Clause</li> <li>• Freedom of Speech</li> <li>• Freedom of the Press</li> <li>• Freedom of Assembly/Association</li> </ul>
<b>2</b>	A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.	Right to keep and bear arms
<b>3</b>	No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.	(Rarely mentioned in constitutional jurisprudence)
<b>4</b>	The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.	Protection against unreasonable search and seizure
<b>5</b>	No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.	Rights of the accused: <ul style="list-style-type: none"> <li>• Grand Jury</li> <li>• Double Jeopardy</li> <li>• Self-incrimination</li> <li>• Due Process Clause</li> </ul> Takings Clause (protection of private property)
<b>6</b>	In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.	Rights of the accused: <ul style="list-style-type: none"> <li>• Speedy and public trial by impartial jury</li> <li>• Informed of charges</li> <li>• Confrontation Clause</li> <li>• Witnesses</li> <li>• Right to Counsel</li> </ul>
<b>7</b>	In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the	Right to jury trial in civil cases (federal only—not incorporated into Due Process Clause of 14 <sup>th</sup> Amendment)

	common law.	
<b>8</b>	Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	<ul style="list-style-type: none"> <li>• Bail, fines</li> <li>• Cruel and Unusual Punishment</li> </ul>
<b>9</b>	The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.	Additional rights may exist— foundation for right to privacy
<b>10</b>	The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.	Reservation of “police powers” to states to safeguard “health, welfare, safety, and morals” of their people
<b>13</b>	Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation. (ratified in 1865)	<ul style="list-style-type: none"> <li>• Abolition of slavery</li> <li>• Grant of new power to Congress to enforce 13<sup>th</sup> Amendment</li> </ul>
<b>14</b>	<p>Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.</p> <p>....</p> <p>Section 5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. (ratified in 1868)</p>	<ul style="list-style-type: none"> <li>• Applies to the states</li> <li>• Creates rights of US national citizenship that states cannot interfere with.</li> <li>• Citizenship by birth in US.</li> <li>• Privileges and Immunities Clause</li> <li>• Due Process Clause (NOTE: this is the foundation for incorporation of Bill of Rights Provisions, originally applicable to the US national government, to state governments)</li> <li>• Equal Protection Clause</li> <li>• Section 5 grants new power to Congress to enforce the 14<sup>th</sup> Amendment</li> </ul>
<b>15</b>	<p>The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.</p> <p>The Congress shall have power to enforce this article by appropriate legislation. (ratified in 1870)</p>	The enforcement provision grants new powers to Congress— foundation for Voting Rights Act of 1965