

PROBLEMS IN CIVIL LIBERTIES

Course Description

American political discourse has been increasingly dominated by “rights talk,” which we may understand broadly as the claim to exemption from the authority of the political community. It is widely understood, for example, that an adherent of a minority religion is not expected to conform to the religious preferences of the majority. But beyond such clear-cut cases, hazy ones loom. Where does the authority of the community end and the autonomy of the individual begin? This course will explore those questions, first through a theoretical overview of the problem of rights, then through the prism of a series of controversies in contemporary political discourse.

Course Goals

Students should acquire a broad theoretical understanding of the political theory of rights and a familiarity with some of the landmark civil liberties cases in U.S. constitutional law. They should be able to apply those theoretical principles thoughtfully to contemporary questions of rights and critically assess Supreme Court rulings on civil liberties. Finally, students should become familiar with the major civil liberties issues involved in the War on Terror and be able to take thoughtful positions on them.

Required Readings

Louis Fisher, *The Constitution and 9/11*
Mary Ann Glendon, *Rights Talk*
J.S. Mill, *On Liberty*
Christopher Rowe, ed., *The Last Days of Socrates*
David Wootton, ed., *John Locke: Political Writings*
John Yoo, *War by Other Means*

Course Requirements

Students will write three papers of 6-8 pages, each worth 30 percent of the grade. Paper topics and due dates are listed below. Students must choose one topic from each of the three sections of the syllabus (theoretical foundations, Constitutional cases, War on Terror). Participation will account for the remaining 10 percent. Participation consists of thoughtful and respectful comments that demonstrate careful preparation.

Course Readings

The course will follow approximately the following schedule. I will assign specific readings at least one week in advance.

I. THEORETICAL FOUNDATIONS

Jan. 17 and 19: Introduction.

Alexander Hamilton, Federalist 84

James Madison, "Speech Introducing Proposed Constitutional Amendments"

Jan. 24 and 26: An Introduction to Rights

Glendon, *Rights Talk* (selections)

Jan. 31 and Feb. 2: Ancient Perspectives

Plato, *Apology, Crito* (all in *The Death of Socrates*)

Willmoore Kendall, "The People vs. Socrates Revisited"

(http://www.mmsi.org/ma/03_01/kendall.pdf)

Paper topic (DUE FEB. 9): Respond to Kendall's essay, making a case for either the conviction or acquittal of Socrates.

Feb. 7, 9, 14, 16: Modern Perspectives

Locke: Second Treatise and Letter Concerning Toleration

Mill: *On Liberty*

Paper topics (DUE FEB. 23): Can Mill's harm principle be consistently applied? OR: In what sense, if any, does Locke provide a case for limiting the power of the majority?

II. CONSTITUTIONAL CASES

Feb. 21 and 23: First Amendment

Gitlow v. New York, New York Times v. Sullivan, Buckley v. Valeo, Citizens United v. FEC

Paper topic (DUE MARCH 1): Write a brief for either the repeal or affirmation of *Citizens United*.

Feb. 28 and March 1: Privacy

Griswold v. Connecticut, Roe v. Wade, Casey v. Planned Parenthood, Gonzales v. Carhart, Bowers v. Hardwick, Lawrence v. Texas

Paper topic (DUE MARCH 13): Write a brief for either the repeal or affirmation of *Griswold*.

March 6 and March 8: SPRING BREAK

March 13, 15, 20, 22: Race and Affirmative Action

Plessy v. Ferguson, Korematsu v. U.S., Brown v. Board of Education, Bakke v. University of California, Michigan cases

Nathan Glazer, *Affirmative Discrimination* (selections)

Nathan Glazer, "In Defense of Preference" (Blackboard)

Paper topic (Glazer appears to change his mind on affirmative action.

Drawing on the cases of we have read as well as Glazer's writings, which view do you prefer and why?)

III. THE WAR ON TERROR

March 22-April 30 (NO CLASS ON APRIL 5 AND 12)

John Yoo, *War by Other Means*

Louis Fisher, *The Constitution and 9/11*

Paper topic: Is the Constitutional regime capable, within Fisher's limits, of responding to the threat of terrorist organizations like al-Qaeda? Draw on both Yoo and Fisher in your answer.