

**MOREHEAD STATE UNIVERSITY
SPRING 2007**

GOVERNMENT 322: COURTS AND CIVIL LIBERTIES
105 RADER HALL, 12:40 MWF1

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PERSONAL LIBERTY IN THE TWENTY-FIRST CENTURY

State and local governments have enacted laws to forbid flag burning and cross burning. Other laws have forbidden snake handling and the ritual sacrifice of animals and required students to say the pledge of allegiance, read about creationism in biology textbooks, and say prayers at football games. Still other laws have criminalized homosexual behavior and restricted access to abortion. State and local laws have also permitted racial and gender discrimination in employment and college admissions and sought to remedy past discrimination through affirmative action.

State legislatures, city councils, and local boards of education have enacted these laws to promote nationalism and religion, to protect health, safety, and morals, and to discriminate against women and blacks and to remedy discrimination. These laws have raised constitutional questions about personal liberty, privacy, and equality. Do they violate the U.S. Constitutional rights of people to express themselves, to practice their religions, to privacy and to equal treatment?

The U.S. Supreme Court's cases which answer these questions have defined our rights to speak, to practice our religions, enjoy our privacy, and be free from discrimination. To understand these cases, we will examine the political circumstances which have led governments to defend their and people to attack these laws as violations of their federal constitutional rights. Then we will examine the Court's decisions and their rationales. Finally, we consider the meaning of these decisions for the future of personal constitutional liberties.

READINGS

Mark Tushnet, *A Court Divided: The Rehnquist Court and the Future of Constitutional Law*, 2006

The Tushnet text will provide the legal and political context for your analysis of civil liberties cases by focusing on the justices of the U.S. Supreme Court and their views on civil liberties issues. We will read 8 of its 13 chapters.

Steven Emanuel, *Constitutional Law*, 24th ed., 2006.

The Emanuel outline is an up-to-date resource which will enable you to understand the key legal concepts and leading civil liberties cases. We will use 4 of this weighty volume's 16 chapters.

William Green, *Fundamental Rights in Action*, 18th ed., 2007.

The Green casebook contains 16 civil liberties cases and a framework for analyzing them.

Other required articles, marked with an asterisk (*) in the "Assignments" section, are available on Blackboard course site.

ASSIGNMENTS

I. SUPREME COURT AND FUNDAMENTAL RIGHTS: January 19-28

A. Supreme Court, Judicial Activism, and Personal Liberty

"The Supreme Court of the United States," video.

*Peter Irons and Stephanie Guitton "The Supreme Court: A Thrilling Place to Be," xv-xxiv, in their *May It Please the Court*, 1993.

Tushnet, "William Rehnquist's Court, 13-48, and "Two Kinds of Republican," 49-70, in his *A Court Divided*.

Green, "Caroline Products Footnote Four," in Schultz, *The Encyclopedia of the United States Constitution*, 2007. A.19

B. Faith-Based Government and Fundamental Rights to Speech, Religion, Privacy, and Equality

*Garry Wills, "A Country Ruled by Faith," *New York Review of Books*, November 16, 2006.

Emanuel, "Roadmap of Constitutional Law," 1-4; and "Bill of Rights and the States," 143-47.

Green, "Overview of Cases and Methods of Constitutional Analysis," A.1.

Green, "Constitutional Modes of Analysis Chart," A.5.

II. FREEDOM OF SPEECH: January 31 – February 14

A. General Principles

Tushnet, "Antonin Scalia's First Amendment," 30-56, in his *A Court Divided*.

Emanuel, "General Themes," 452-62; and Capsule Summary, C.51-66.

Green, "Freedom of Speech Analysis Chart," A.2.

B. Flag Burning and Cross Burning

Emanuel, "Flag Desecration," 534-36.

Texas v. Johnson (1989), B.1.

**Texas v. Johnson* oral argument, 152-59, in Irons and Guitton, *May It Please the Court*, 1993.

Green, "Primer on Case Briefing and Opinion Writing," A.11-16.

Emanuel, "Hate Speech," 498-505.

Green, "Virginia v. Black (2003), in Rasmussen, ed., *Encyclopedia on Criminal Justice in United States*, 2006. A.21.

Virginia v. Black (2003), B.7.

C. Libelous, Obscene, and Indecent Speech, Nude Dancing, and Child Pornography

Emanuel, Defamation, 543-49; and "Obscenity," 549-57.

Green, "Hicklin Rule (*Regina v. Hicklin*, 1868)," in Hudson, Schultz, and Vile, eds., *Encyclopedia of the First Amendment*, 2007. A.20.

Emanuel, "All Speech Not Created Equal," 506-09;

Erie v. Pap's A&M (2000), B.15.

Emanuel, "Regulation of Indecency in the Media, 509-12.

Green, "*FCC v. Pacifica Foundation* (1978)" and *New York v. Ferber* (1982) in Schultz and Vile, eds., *The Encyclopedia of Civil Liberties in America*, 2005. A.22-23.

Emanuel, "Indecency on the Internet," 512-15.

Reno v. ACLU (1997), B.23.

III. RELIGIOUS FREEDOM: February 16 – March 5

A. General Principles

Tushnet, "The Religious Right's Agenda - Symbols and Money," 180-203, in his *A Court Divided*.

Emanuel, "Introduction," 646-47; and Capsule Summary, C.70-78.

Green, "Freedom of Religion Analysis Chart," A.3.

B. Peyote, Snake Handling, and Ritual Sacrifice of Animals

Emanuel, "What Constitutes a Religious Belief, 689-90, "Intent to Interfere With Religion," 679-81; "Traditional Approach to Unintended Effect Cases," 681-82; "Modern Approach to Unintended Effect Cases," 682-88; and Public Health, 689.

Green, "*Church of Lukumi Babalu Aye v. City of Hialeah*" (1993)," in Hudson, Schultz, and Vile, eds., *Encyclopedia of the First Amendment*, 2007. A.24.

Church of Lukumi Babalu Aye v. City of Hialeah (1993) C.1.

C. Scientific Creationism, Intelligent Design, and The Ten Commandments

Emanuel, "Background," 647-48; "Financial Aid to Religious Schools," 671-78; Religion and Public Schools," 648-
Edwards v. Aguillard (1987), C.9. / 56.

**Edwards v. Aguillard* oral argument, 76-85, in Irons and Guitton, *May It Please The Court*, 1993.

Santa Fe Independent School District v. Roe (2000), C.15.

Emanuel, "Ceremonies and Displays," 659-68.

McCreary v. ACLU of Kentucky (2005), C.21.

EXAM #1: March 7

IV. RIGHT TO PRIVACY: March 12 – April 2

A. General Principles

Emanuel, "Substantive Due Process: Overview," 155-56; and Capsule Summary, C.19-26.

Green, "Constitutional Modes of Analysis Chart," A.5.

B. Reproductive Privacy

Tushnet, "Holding the Line on Abortion," 204-222, in his *A Court Divided*.

Emanuel, "Birth Control," 157-60.

Griswold v. Connecticut (1965), D.1.

Emanuel, "Roe v. Wade," 160-64.

Roe v. Wade (1973), D.7.

**Roe v. Wade* oral argument, 344-53, in Irons and Guitton, *May It Please The Court*, 1993.

Emanuel, "Modification of Roe by Casey," 164-72; "Post-Roe Developments (Consent, Public Funding, and Types of Abortions)," 172-78.
Stenberg v. Carhart (2000), D.15.
Emanuel, "Post-Roe Regulation of Contraception," 179-80; and "Future of a Woman's Right to Choose," 178-79.

C. Sexuality

Tushnet, "Anthony Kennedy and Gay Rights," 156-179, in his *A Court Divided*
Emmanuel, "Sexuality, Including Homosexuality," 183-92.
Lawrence v. Texas (2003), D.23.
*Jonathan Rauch, "A More Perfect Union," *Atlantic Monthly*, 2004.

V. EQUALITY: April 4 - 18

A. General Principles

Emanuel, "Introduction," 231-39; and Capsule Summary, C.29-41
Green, "Constitutional Modes of Analysis Chart," A.5.

B. Gender, Same-Sex Schools, and Homosexuality

Emanuel, "Legal Disabilities Motivated by Animus Towards Unpopular Groups," 243-46.
Romer v. Evans (1997), E.1.

Tushnet, "Ruth Bader Ginsberg's Equal Protection Clause," 104-29, in his *A Court Divided*.

Emanuel, "Classifications Based on Sex," 319-30.

U.S. v. Virginia (1996), E.9.

C. Race and Affirmative Action in Education

*Green, "The Struggle for Racial Equality: Abraham Lincoln, John Marshall Harlan, and Frederick M. Vinson,"
Kentucky Almanac and Book of Facts, 2nd ed., 2006. A.25.

Emanuel, "Segregation and Its Remedies," 263-73.

Emanuel, "Preferential Admissions," 280-96.

Tushnet, "Race, Affirmative Action, and Crime," 223-39, in his *A Court Divided*.

Grutter v. Bollinger (2003), E.19.

Gratz v. Bollinger (2003), E.26.

VI. SUPREME COURT AND THE FUTURE OF PERSONAL LIBERTY: April 20 – May 1

Tushnet, "The End of the Rehnquist Court, 347-60, in his *A Court Divided*

*Linda Greenhouse, "Roberts Court May Be Defined by Second Term," *New York Times*, October 2, 2006.

*Jeffrey Rosen, "Roberts and The Future," *New York Times Magazine*, August 28, 2005.

EXAM #2: May 7 at 12:45.

GENERAL COURSE STRUCTURE AND PROCEDURES:

You will attend class on a prompt and regular basis and take attendance at every class meeting. You may not tape record any class meeting without my prior approval which will be limited to cases of documented medical necessity. If you have a cell phone, it must be turned off during class.

COURSE GRADE:

The 4 bases of your course grade are

- 1) cases analyses: 11%,
- 2) answers to questions on the readings: 11%
- 3) class and group discussion: 11%, and
- 4) two exams: 33% each, 66% total.

I will use a plus/minus scale to grade your course work and determine your course grade:

A+=4.3, A=4.0, A-=3.7, B+=3.3, B=3.0, B-=2.7, C+=2.3, C=2.0, C-=1.7, D+=1.3, D=1.0, D-=.7

GENERAL INSTRUCTIONS FOR BRIEFS AND ANSWERS TO QUESTIONS ON THE READINGS

Your briefs and answers to questions on the readings will comply with the following requirements:

- 1) type your briefs and answers,
- 2) type or handwrite your name in the upper right hand corner of each page,
- 3) staple the pages together if your brief and answers are more than one page;
- 4) do not paper clip or dog ear the pages; and
- 5) do not use a cover sheet or plastic binder.

1. **CASE ANALYSIS:** The first basis for your course grade will be your ability to analyze U.S. Supreme Court opinions. You will use the "Primer on Case Briefing" in Green, *Fundamental Rights in Action*, and, if you are unfamiliar with the legal terms, you will consult the "Glossary of Legal Terms" in Green, *Fundamental Rights in Action* or a legal dictionary. To develop the skill of legal analysis and exposition, everyone will brief *Texas v. Johnson* and, thereafter, you will write several case briefs prior to the classes for which they are assigned. In class, you and other students who have been assigned the cases will discuss them with me.

Case Participation: You will discuss your cases on the days they are assigned. After you are assigned a case, if you know you will be absent on the day you are assigned to discuss it, you must inform me as soon as possible. If you do not, you will receive a failing grade on your case. Make plans now to discuss your cases when they are assigned. I will allow a make-up case only in the most exceptional circumstances. Even though you are not assigned to discuss a case, you must attend class, read all the cases, and participate in and take notes on the discussions.

Case Analysis Grade: Your case grade will be based on your in-class discussion of the cases you are assigned and the material in Emanuel text related to your cases. You will receive a grade for your case analysis, not your case briefs, but you must hand in your briefs at the end of the classes at which they are discussed. If you do not, you will not receive a grade for your case analysis. I will determine your case analysis grade using 2 criteria: first, your ability to pay attention to and follow the discussion, your preparedness to answer my questions, and your willingness to volunteer answers; and second, your ability to answer questions about the case, its legal terms and concepts, and the related material in Emanuel in a clear, concise, and thorough manner with only minimal reference to your brief.

2. **QUESTIONS ON THE READINGS.** The second basis of your course grade will be your answers to questions on Tushnet and readings identified with an asterick (*) in the Assignment section. I will provide you with the questions for each reading. To receive credit for them, you must 1) answer the questions before class, 2) attend the entirety of the class, and 3) hand in your answers at the end of the class for which the readings is assigned. If you substantially answer the questions, you will receive a check. A check is 1 point. I will not accept excuses for late assignments, because the credit you receive on these assignments will be based on 3 less than the total number of assignments.
3. **CLASS AND GROUP DISCUSSIONS OF READINGS.** The third basis of your course grade will be your participation in class and group discussions of readings. Your discussions will require that you will have completed the reading assignments prior to the classes at which they will be discussed. To receive credit for an assignment, you must 1) complete the reading assignment prior to class, 2) attend the entirety of the class devoted to the assignment, and 3) hand in your assignment at the end of the class for which it is assigned. Your group discussion grade will have 2 bases: first, your completed assignment; and second, my observation of your class and group participation.
4. **EXAMINATIONS:** The fourth basis for your course grade will be 2, one hour in-class exams which will require you to know the Supreme Court's jurisprudence, legal principles, and cases. The first exam will deal with all the material since the beginning of the term. The second exam will consider only the material since the first exam. There will be no comprehensive final exam. Plan to take these exams when they are scheduled. Attendance is mandatory. Make-up exams will be given at my discretion in extraordinary circumstances and on the basis of a verifiable excuse provided prior to the exam.

COURSE ASSESSMENT

At the end of the semester, you will assist me in assessing the value of the course readings and the case analyses and group discussions and in making suggestions for their use the next time I teach the course by completing a Course Information Questionnaire.

PLAGIARISM NOTICE

This course involves individual and group learning. Individual learning is governed by university rules prohibiting plagiarism. Plagiarism is the use of the words or ideas of another as if they were one's own. You are required to individually author your case briefs, answers to questions on the readings, and exams.

Three practices are prohibited and will result in a failing grade on the assignment in which they are discovered. First, copying from another student's case brief, answers to questions on the readings, or exam and submitting it as your work. Second, collaborating with another student in writing a case brief, answering questions on a reading assignment; or taking an exam and submitting it as your work. Third, copying material from books, articles, court cases, course readings, and Internet sites without citing and quoting the source and, thereby, representing it as your own work.

OFFICE HOURS AND ADVISING AVAILABILITY

You may discuss course-related matters during my office hours: 9:30-10:15 MWF1 and 11:30-12:30 M,F1. My office phone is 783-2128. If I am not in my office, you may leave a message in my office door folder, on my voice mail, with the GGH department secretary in 350 Rader (783-2655), or contact me at w.green@morehead-st.edu or 859-233-7513.