

PHIL 165: FREEDOM, EQUALITY, AND THE LAW
Summer Session 1, 2020

Professor: Samuel Rickless

Office Hours: 1pm-2pm, Tuesdays and Thursdays, by Zoom

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Course Description

In this course we will explore the way in which the concepts of freedom and equality have been understood and applied under the United States Constitution. We will ask whether the Constitution is a moral document designed to implement justice or a document designed to enshrine a particular set of traditions into law (or perhaps something else entirely). We will then look at how the Equal Protection Clause of the Fourteenth Amendment has been applied to cases in which government has discriminated on grounds of race, ethnic background, gender, undocumented status, wealth, and sexual orientation. We will also look at how the Due Process clauses of the Fifth and Fourteenth Amendments have been applied to cases involving the right to make crucial decisions about one's own life, such as whether to use contraceptives, obtain an abortion, marry a person of a different race, and marry a person of the same sex. Course readings include some of the most important cases in the history of United States law: *Dred Scott*, *The Slaughterhouse Cases*, *Yick Wo*, *Plessy*, *Lochner*, *Brown*, *Palko*, *Carolene Products*, *Korematsu*, *Bakke*, *Grutter*, *Craig v. Boren*, *U.S. v. Virginia*, *San Antonio v. Rodriguez*, *Plyler v. Doe*, *Griswold*, *Roe*, *Casey*, *Bowers*, *Lawrence*, and *Obergefell*. At every stage, we will be asking whether the U.S. Supreme Court's interpretation of the law in these cases is consistent with justice and the values underlying our constitutional republic.

Course Schedule and Readings

All course readings are available on the Canvas course website (in the Files section). I strongly recommend getting all of the required readings in readable form (whether by printing them out or by downloading PDFs onto a tablet or laptop) at the beginning of the course. I will not respond to requests to email you copies of the readings. If you have difficulty locating or downloading the readings, please contact Academic Computing Services (about Canvas).

Course Notes

Lecture notes for some (but not all) lectures are available in PDF format on the Canvas course website (in the Files section). The notes are designed as summaries, functioning as study aids. **Important details are missing from the notes.** Please do not assume that the notes contain everything you need to know. ***These notes are protected by copyright, and it is illegal for you to post them on any website, sell them to anyone, or send them to anyone else (including email) without my permission. They are for your personal use only.***

June 30: The United States Constitution and the Bill of Rights

First Lecture: Introduction to the Course
Reading: *The Constitution of the United States (including Amendments 1-27)*

Second Lecture: The Bill of Rights
Reading: George Mason, *Objections to the Proposed Constitution*
James Madison: *Speech Proposing Amendments to the Constitution of the United States*
Notes on the Bill of Rights

July 1, 5pm: Questions for the July 2 Pre-Class Response Posted on Canvas

July 2: Constitutional Interpretation and the Fourteenth Amendment

Pre-Class Response Due before 1:30pm
First Lecture: How to Interpret Legal Texts/Scalia's Theory
Reading: Walter Sinnott-Armstrong and Susan Brison, "A Philosophical Introduction to Constitutional Interpretation"
Notes on Brison and Sinnott-Armstrong
Antonin Scalia, *A Matter of Interpretation* (excerpts)

Second Lecture: Dworkin v. Scalia/Slavery and the Fourteenth Amendment
Reading: Ronald Dworkin, "Comment on *A Matter of Interpretation*"
Antonin Scalia, "Reply to Dworkin's Comment"
Dred Scott v. Sandford (1857), excerpts
The Fourteenth Amendment to the United States Constitution

July 6, 5pm: Questions for the July 7 Pre-Class Response Posted on Canvas

July 7: Freedom, Race, and Ethnicity

Pre-Class Response Due before 1:30pm
First Lecture: The Privileges or Immunities Clause and the Due Process Clause
Reading: *The Slaughterhouse Cases* (1873)
Lochner v. People of State of New York (1905)
Notes on Lochner

Second Lecture: The Due Process Clause and the Equal Protection Clause
Reading: *Palko v. State of Connecticut* (1937)
U.S. v. Carolene Products Co., footnote 4 (1938)
Notes on Palko and Carolene Products
Korematsu v. U.S. (1944)
Notes on Korematsu

July 8, 5pm: Questions for the July 9 Pre-Class Response Posted on Canvas

July 9: Equality and Race

Pre-Class Response Due before 1:30pm

First Lecture: Arbitrary Enforcement and “Separate But Equal”
Reading: *Yick Wo v. Hopkins* (1886)
Plessy v. Ferguson (1896)
Notes on Plessy

Second Lecture: Separate But Not Equal
Reading: *Sweatt v. Painter* (1950)
McLaurin v. Oklahoma State Regents (1950)
Brown v. Board of Education (1954)
Notes on Brown
Bolling v. Sharpe (1954)

July 13, 5pm: Questions for the July 14 Pre-Class Response Posted on Canvas

July 14: Affirmative Action and Race

Pre-Class Response Due before 1:30pm

First Lecture: Racial Quotas v. Race as a Plus Factor
Reading: *Regents of the University of California v. Bakke* (1978)
Notes on Bakke
Grutter v. Bollinger (2003)
Notes on Grutter

Second Lecture: Race as a “Deciding” Factor
Reading: *Parents Involved etc. v. Seattle School District* (2007)
Notes on Seattle School District

July 15, 5pm: Questions for the July 16 Pre-Class Response Posted on Canvas

July 16: Sex and Gender

Pre-Class Response Due before 1:30pm

First Lecture: Sex Discrimination: Rational Basis or Strict Scrutiny?
Reading: *Bradwell v. State of Illinois* (1873)
Muller v. Oregon (1908)
Notes on Bradwell and Muller
Reed v. Reed (1971)
Frontiero v. Richardson (1973)

Second Lecture: Intermediate Scrutiny
Reading: *Craig v. Boren* (1976)
Notes on Frontiero and Craig
U.S. v. Virginia (1996)
Notes on U.S. v. Virginia

July 19, 11pm: PAPER DUE

July 21: Poverty and Undocumented Status

First Lecture: Discrimination on the Basis of Wealth
Reading: *San Antonio School District v. Rodriguez* (1973)
Notes on Rodriguez

Second Lecture: Discrimination on the Basis of Undocumented Status
Reading: *Plyler v. Doe* (1982)
Notes on Plyler

July 22, 5pm: Questions for the July 23 Pre-Class Response Posted on Canvas

July 23: Privacy: Contraception and Abortion

Pre-Class Response Due before 1:30pm
First Lecture: Contraception and Abortion
Reading: *Griswold v. Connecticut* (1965)
Notes on Griswold
Eisenstadt v. Baird (1972)
Roe v. Wade (1973)
Notes on Roe
Second Lecture: Access to Reproductive Health Care
Reading: *Planned Parenthood v. Casey* (1992)
Notes on Casey

July 27, 5pm: Questions for the July 28 Pre-Class Response Posted on Canvas

July 28: Sexual Freedom and Polygamy

Pre-Class Response Due before 1:30pm
First Lecture: Sodomy
Reading: *Bowers v. Hardwick* (1986)
Lawrence v. Texas (2003)
Second Lecture: Polygamy
Reading: *Reynolds v. U.S.* (1878)

Day 10: Interracial Marriage and Same-Sex Marriage

First Lecture: Interracial Marriage and Same-Sex Marriage
Reading: *Loving v. Virginia* (1967)
Obergefell v. Hodges (2015)

Second Lecture: Same-Sex Marriage + Conclusion and Review
Reading: *Obergefell v. Hodges* (2015)

August 1, 6pm: TAKE HOME FINAL DUE

Requirements:

- Seven Pre-Class Responses 20%
- Paper (due on July 19, 11pm) 30%
- Take-Home Final Exam (due August 1, 6pm) 50%

Grading Policies:

- The two lowest Pre-Class Response grades will be dropped, leaving five Pre-Class Response grades, each of which will count for 4% of your course grade. Each Pre-Class Response due on a lecture day will focus on the readings for the lectures on that day and/or on the lectures on the immediately preceding lecture day. For example, the Pre-Class Response due before 1:30pm on July 2 will focus on the readings for June 30 and/or on the readings for July 2. There will be no makeup Pre-Class Responses and no extensions will be given on Pre-Class Responses. If you are unable to complete five Pre-Class Responses and you have a valid excuse, I will take the grade percentages represented by the missing Pre-Class Responses and divide them equally across the Paper and the Take-Home Final Exam. For example, if you complete four Pre-Class Responses and you have a valid excuse for missing three Pre-Class Responses, then your four completed Pre-Class Responses will count for 16% of your course grade, the Paper will count for 32% of your course grade, and the Take-Home Final Exam will count for 52% of your course grade. If you are unable to complete five Pre-Class Responses and you do **not** have a valid excuse, then you will receive a grade of F on all missing Pre-Class Responses.
- Paper/exam extensions will only be given to those who present evidence indicative of a valid excuse in a timely manner. If at any time you believe you have a legitimate claim to an extension, please bring it to my attention as soon as possible. ***Any unexcused late paper or exam will receive a grade of F.***
- Electronic copies of your Pre-Class Responses, your Paper and your Take-Home Final Exam must be uploaded to the Assignments section of the Canvas website for the course. Please make sure that your name appears only on a separate title page, along with the word count (when a word limit is assigned). Your name should **not** appear in any headers or footers, or anywhere else in any assignment. This is to facilitate fair grading.

Attendance, Lecture Participation, Accommodations, Honor Code

- **Regular synchronous lecture attendance is mandatory, unless you have a good reason to be absent from lecture as a result of the COVID-19 crisis or as a result of personal emergency. Lectures will be recorded for students who have a good reason to be absent from lecture, and lectures will be made available as soon as possible after they are concluded. Good reasons to be absent from lecture as a result of the COVID-19 crisis include: being in a time zone that makes it seriously inconvenient to attend lecture; needing to care for a dependent during lecture; being at work as an essential worker during lecture; being at work as a non-essential worker who needs to work during lecture because the COVID-19 crisis took away other sources of income; having**

no internet access or very unstable internet access during lecture. Good reasons to be absent from lecture as a result of personal emergency include: participation in an important family (zoom) gathering, such as a wedding or funeral; serious illness or incapacitation; needing to care for someone who is seriously ill or incapacitated. If you want to skip synchronous lecture attendance for all or part of the course, and you think you have good reason to do so, please contact me by email in advance (preferably, well in advance) of the first day of the course to explain exactly when you would prefer to be absent from lecture and why. If you are unable to attend lecture synchronously as a result of a personal emergency, please contact me as soon as you can to let me know why you will be (or were) absent.

- **Lecture participation norms: I expect students in this course who attend lectures synchronously to participate and to engage in discussion with me and with each other. I will occasionally talk for a while, but I will take regular breaks (including a 15-20 minute break between the two lectures on the same day) and often ask you questions with the expectation that you will answer them. Learning is an active process: it does not consist in the passive reception of information. In order to get something from the course, you need to be following what I am saying and be actively involved in thinking about it. I also encourage you to ask questions (or make comments) directly related to the course content under discussion, even when I have not prompted you explicitly to answer a question. One of the advantages of Zoom is that it permits you to ask questions both in person and by using the Chat function. If you would like to ask a question in person, simply raise your hand using the Raise Hand function in the Participants space, and I will call on you as soon as I can. If you would like to ask a question using the Chat function, please do so anytime by making your question visible to all, unless the question is private. I will consider your question as soon as I am able, but it may take me a little longer to get to a Chat question than to a Raised Hand question. I will stop every 5-10 minutes to check the Chat. If I forget to do this, please remind me. If a student posts a question on Chat, please do not respond to it in Chat: it will take me too long to follow or catch up to a parallel thread on Chat. If I find a question in Chat, I may address it myself or open it up for responses from all students. If I do the latter, please don't hesitate to raise your hand and contribute to discussion. I may occasionally assign you (randomly) to Breakout Rooms in Zoom to discuss a question, and I will trust you to stay focused on the question during the Breakout Sessions. My aim is to make the experience as close to a real time lecture as possible.**
- **If accommodations are needed for a disability or for religious reasons, please discuss the matter with me (whether by email or zoom) as soon as possible.**
- **The academic honor code must be observed in this course. Plagiarism will not be tolerated. Anyone caught plagiarizing will receive an automatic F in the course (not just an F on the relevant assignment) and will be referred to the Office of Academic Integrity and the Council of Deans for administrative penalties, which may include suspension or expulsion from UCSD. In Canvas, there is a tool that takes you to the Academic Integrity Website for UCSD, where you will find answers to questions you may have about academic integrity at UCSD, including helpful answers to questions about plagiarism.**