Introduction: Along with questions of representation, power, and jurisdiction, the framers of America’s Constitution carefully considered the general issue of individual rights. In fact, Publius argued that the Constitution itself should be considered a “bill of rights” in that its sole purpose is to limit the scope of governmental authority. Yet despite all the vigorous debate on the subject, the Constitution was drafted in the late eighteenth-century absent a comprehensive listing of rights and liberties. It was only after ratification looked tenuous that the first Congress set out to amend the Constitution to include a set of liberties. That set, of course, is known as the Bill of Rights.

The central aim of this course is to become intimately familiar with certain safeguards found in our Bill of Rights and corresponding constitutional amendments. To do that, we must examine the work of the institution most closely affiliated with the interpretation of our liberties—the Supreme Court. Beginning with an examination of the principles of absorption, incorporation, and substantive due process, we will explore the cases surrounding the controversial right of privacy. After that, we will investigate the subject of Equal Protection, discussing the different strands of the Equal Protection doctrine. Finally we will spend a good deal of the semester on the topic of free expression. It has been argued that the First Amendment represents the core of the liberal American design, and thus we should carefully consider its many textures. In the end, the goal of this course is to develop a broad understanding of the Constitution, the Bill of Rights and the role of the Court in American politics.

In order to fully succeed, however, this class cannot lose sight of historical context. Too often a course on Civil Liberties will focus primarily on the cases and principles without also paying sufficient attention to the historical circumstances surrounding the development of the law. Accordingly, we will make every effort to connect the work of the Court with the progress of our country’s political history. (Robert McCloskey’s book entitled The American Supreme Court is the single most important work considering the development of American Constitutional Law and thus it should be read with as much care as the Sullivan text). It is safe to say that without an acute awareness of the times and circumstances in which the Court operated, we cannot hope to achieve our
main goal of becoming educated and knowledgeable citizens of the American constitutional experiment.
Style: The investigation of American constitutional law requires a deep and full commitment by all. Students, therefore, must be prepared to carefully read and digest the material as they will ultimately be responsible for sharing their thoughts, ideas and questions with the class. It seems appropriate then to conduct the class by utilizing a variety of techniques including general discussions, presentations and simulations. Because this class will be treated more like a seminar, lectures will be kept to a minimum and student participation, as I have said, will be required.

Requirements: 1) The study of constitutional law and civil liberties, like political philosophy, is an ongoing, deliberative exercise. Accordingly, involvement by all students in the class is essential to fully grasping the importance of constitutional thought. Each student will thus be required to do all the reading prior to the scheduled class, as well as actively participate in all class discussions. Make no mistake, your grade will suffer considerably if you do not attend class.

2) Students will be required to participate in a moot court session scheduled at the end of the semester. Details, including the controversy, will be distributed at an appropriate time. The moot court requirement includes a 15-page final paper.

3) In addition, a midterm exam will be administered on March 28. This is the only date on which the mid-term will be given (i.e., there will be no Make Up Exam). Students missing the midterm without a valid excuse will receive a “0” for that part of the grade.

4) A cumulative final exam will be taken at the scheduled time (May 10)

Course Materials: (1) Required books available for purchase at the Book Store:


A note about the reading: The cases mentioned on the syllabus are the major ones explored in the Sullivan text. That, however, is not to say they are the only ones. Often times we will discuss some of the secondary cases, and, as such, they demand equal attention. I implore you to take them seriously.

A note about Gideon’s Trumpet: There are no specific assignments in *Gideon’s Trumpet*. I will assume that by the end of the semester you have read the entire
book. I can think of no better introduction to the process of constitutional argument and organization. It is an extremely useful source or reference for understanding the subtle nuances of arguing a civil liberties case.

**Introduction**

January 24: Introduction

January 26: McCloskey. *The American Supreme Court* (chpts. 7-9, Epilogue)
Sullivan. *Constitutional Law* (pp. 443-467)
  - Barron v. Mayor and City Council of Baltimore (1833)
  - Slaughter-House Cases (1873)
  - Saenz v. Roe (1999)

**Substantive Due Process:**
**The Incorporation Debate**

January 31: Sullivan. *Constitutional Law* (pp. 467-474)
  - Palko v. Connecticut (1937)
  - Adamson v. California (1947)

February 2: Sullivan. *Constitutional Law* (pp. 474-484)
  - Duncan v. Louisiana (1968)

February 7: Sullivan. *Constitutional Law* (pp. 485-500)
  - Lochner v. New York (1905)

February 9: Sullivan. *Constitutional Law* (pp. 500-513)
  - Nebbia v. New York (1934)
  - United States v. Carolene Products Co. (1938)
  - Williamson v. Lee Optical Co. (1955)

**Privacy**

February 14: Sullivan. *Constitutional Law* (pp. 544-557)
  - Griswold v. Connecticut (1965)
  - Eisenstadt v. Baird (1972)

February 16: Sullivan. *Constitutional Law* (pp. 558-567)
  - Roe v. Wade (1973)

February 21: Sullivan. *Constitutional Law* (pp. 568-591)
• Thornburgh v. American College of Obst. & Gyn. (1983)
• Webster v. Reproductive Health Services (1989)
• Planned Parenthood of Southeastern Penn. v. Casey (1992)

February 23: Sullivan. *Constitutional Law* (pp. 600-614)
• Bowers v Hardwick (1986)
• Lawrence v. Texas (2003)
Equal Protection:
Race

February 28: Sullivan. *Constitutional Law* (pp. 640-677)
- Plessy v. Ferguson (1896)
- Korematsu v. United States (1944)
- Brown v. Board of Education I (1954)

March 2: Sullivan. *Constitutional Law* (pp. 677-685)
- Brown v. Board of Education II (1955)
- Loving v. Virginia (1967)

Gender

March 7: Sullivan. *Constitutional Law* (pp. 769-778)
- Frontiero v. Richardson (1973)
- Craig v. Boren (1976)

March 9: Sullivan. *Constitutional Law* (pp. 778-803)
- Mississippi University for Women v. Hogan (1982)

Purposeful and Benign Discrimination

March 21: Sullivan. *Constitutional Law* (pp. 685-707)
- Washington v. Davis (1976)
- Rogers v. Lodge (1982)

March 23: Sullivan. *Constitutional Law* (pp. 707-758)
- Regents of University of California v. Bakke (1978)

March 28: Midterm Exam
Freedom of Expression

March 30: Sullivan. *Constitutional Law* (pp. 1333-1372)
- Near v. Minnesota (1931)
- The Pentagon Papers Case (1971)

April 4: Sullivan. *Constitutional Law* (pp. 984-1002)
- Schenck v. United States (1919)
- Frohwerk v. United States (1919)
- Debs v. United States (1919)

April 6: Sullivan. *Constitutional Law* (pp. 1002-1022)
- Abrams v. United States (1919)
- Gitlow v. New York (1925)
- Whitney v. California (1927)

April 11: Sullivan. *Constitutional Law* (pp. 1022-1038)
- Dennis v. United States (1951)
- Brandenburg v. Ohio (1969)

April 13: Sullivan. *Constitutional Law* (pp. 1038-1054)
- Chaplinsky v. New Hampshire (1942)
- Cohen v. California (1971)
- Feiner v. New York (1951)

April 18: Sullivan. *Constitutional Law* (pp. 1054-1094)

April 20: Sullivan. *Constitutional Law* (pp. 1094-1126)
- Roth v. United States (1957)
- Alberts v. California (1957)
- Miller v. California (1973)
- Paris Adult Theatre I v. Slaton (1973)
- American Booksellers Ass’n. v. Hudnut (1985)

April 25: Sullivan. *Constitutional Law* (pp. 1138-1158)
- FCC v. Pacifica Foundation (1978)
- Reno v. American Civil Liberties Union (1997)

April 27: Sullivan. *Constitutional Law* (pp. 1192-1221)
• United States v. O'Brien (1968)
• Street v. New York (1969)
• Texas v. Johnson (1989)
May 2: Sullivan. *Constitutional Law* (pp. 1226-1264)
  • Cox v. New Hampshire (1941)
  • Cox v. Louisiana (1965)
  • Members of City Council v. Taxpayers for Vincent (1984)

May 3-9: Review Session (time to be determined)

May 10: **Final Exam** (morning)
Some Useful Secondary Sources
(For additional or supplemental reading)

• Henry Abraham. *Freedom and the Court: Civil Rights and Liberties in the United States*
• Laurence Tribe. *Constitutional Choices*
• Judith Baer. *Equality Under the Constitution: Reclaiming the Fourteenth Amendment*
• Alexander Bickel. *The Least Dangerous Branch*
• John Brigham. *Civil Liberties and American Democracy*
• May Ann Glendon. *Rights Talk: The Impoverishment of Political Discourse*
• Christopher Wolfe. *The Rise of Modern Judicial Review*
• David M. O’Brien. *Storm Center: The Supreme Court in American Politics*
• John Agresto. *The Supreme Court and Constitutional Democracy*
• Nat Hentoff. *The First Freedom: The Tumultuous History of Free Speech in America*
• Robert H. Bork. *The Tempting of America: The Political Seduction of the Law*
• The Federalist Society. *The Great Debate: Interpreting Our Written Constitution*
• Donald L. Horowitz. *The Courts and Social Policy*
• Leonard Levy. *Freedom of Speech and Press in Early America: Legacy of Suppression*
• John Hart Ely. *Democracy and Distrust*
• Martha Minow. *Making All the Difference—Inclusion, Exclusion and American Law*
• Rogers Smith. *Liberalism and American Constitutional Law*
• Ronald Dworkin. *Taking Rights Seriously*
• Laurence Tribe and Michael Dorf. *On Reading the Constitution*
• Sanford Levinson. *Constitutional Faith*
• Cass Sunstein. *After the Rights Revolution*
• William Rehnquist. *The Supreme Court*
• Archibald Cox. *The Court and the Constitution*
• David A.J. Richards. *Toleration and the Constitution*
• Raoul Berger. *Government by Judiciary: The Transformation of the Fourteenth Amendment*
• Henry Abraham. *The Judiciary*
• Felix Frankfurter. *The Commerce Clause under Marshall, Taney and Waite*
• Gerald Gunther (ed.). *John Marshall’s Defense of McCulloch v. Maryland*
• Bruce Ackerman. “The Storrs Lectures: Discovering the Constitution”
Note: If you need additional, more specific, references, come see me and I will direct you further.