

University of California
Berkeley
Current Political and Moral Conflicts and the U.S. Constitution
Legal Studies 39D P 001 SEM

Syllabus

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America is in the midst of important political, social, moral and ethical debates. The United States Supreme Court has indicated that it will be a full participant in certain of these debates. As a result, the Court has been accused by some, including some of its justices, of usurping power from the other branches of government, ignoring the principle of Federalism, ignoring constitutional limits on its power, disregarding the "will of the people," and creating an "imperial judiciary" (a supreme authority, not a supreme court). Others, including other justices, defend the Court stating the Court has acted properly to protect fundamental freedoms in the face of unprecedented political and governmental efforts to limit them, and has properly responded to our changing society in its application of the principles set out in the Constitution. The seminar will examine certain current, controversial issues; explore the different constitutional theories expressed by the members of the Court; and examine the inherent conflict between: (A) fundamental individual "unalienable rights," and (B) a democratically elected "majority rules" government. In addition, the seminar will explore the ways in which the Court has changed the political, social, moral and ethical debate, and affected how we live.

The course is aimed to develop critical thinking: *how* to think, not *what* to think. Students are expected to read and understand each assignment, including the facts of the cases, the justices' views of the role of the Constitution in deciding each case, the effect of the Court's decisions on American government and society, and the reasons for the conflicting, often vitriolic and sometimes violent reactions to the Court's decisions. Students are expected to attend each seminar, and be prepared to discuss that week's assignment.

The seminar will be conducted using the Socratic Method: there will be very little lecturing. Throughout the term, each student will be required to prepare three short papers setting forth his/her disagreement with an opinion expressed in that week's assigned readings. Each student may select the topics to write about, but each paper must address a material, constitutional argument (not a social, economic, or political one). Each short paper must be handed in before the start of that class, and should be no more than three double spaced typed pages (approximately 750 words). It is advisable to skip a week between papers. In the materials for this week is a brief guide addressing how to write these papers. There will be a longer, final paper assigned on the last day of the term as a "take home." The final paper will require that you decide a case based on a set of facts that I will present to you and should be approximately 2500 words. There is no mid-term exam. Clear, logical and concise writing is expected, as it reflects clear, logical and concise thinking.

Your final grade will be based on the following: quality of class preparation/discussion (30%); three short opinion papers (30%); and the final paper (40%). Your grade will be based on the sharpness of your thesis, the tightness and persuasiveness of your argument, your engagement with the materials, and the intellectual curiosity and creativity you exhibit.

A range: This paper is outstanding in form and content. The thesis is clear and insightful; it expands in a new way on ideas presented in the course. The evidence presented in support of argument is carefully

chosen and deftly handled. The argument is not only unified and coherent, but also complex and nuanced. Finally, and most important, the essay shows a real engagement with the materials, and some indication of the wider implications of the thesis.

B range: This paper's thesis is clear; the argument is coherent and presents evidence in support of its points. The argument shows comprehension of the material and manifests critical thinking about the issues raised in the course. The paper is reasonably well written and proofread. The argument, while coherent, does not have the complexity, the insight, or the integrated structure of an A range paper, but still has some of the passion and engagement of an A range paper.

C range: This paper has some but not all of the basic components of an argumentative essay (i.e., thesis, evidence, coherent structure): for example, it may offer a thesis of some kind, but it presents no evidence to support this thesis; or it may present an incoherent thesis; or it may simply repeat points made in the materials without an overall argument. Such a paper is usually poorly organized, written and proofread. The paper also seems to lack any real engagement with the subject matter, and shows little understanding of the course materials. A paper will fall below a "C" if it lacks more than one of the basic components of an argumentative essay.

Class Participation: The course is designed to encourage vigorous intellectual exchange, the expression of various viewpoints, and the ability to speak effectively and cogently. Participation in discussions will be evaluated on the following guidelines, which stress the quality rather than the mere quantity of contributions to discussion.

A range: The student is fully engaged and highly motivated. This student is well prepared, having read the assigned texts, and has thought carefully about the issues raised. This student's ideas and questions are productive (either constructive or critical) and stimulate class discussions. This student listens and responds to the contributions of other students.

B range: The student attends class regularly, is well prepared for discussion, and participates consistently. This student contributes productively to the discussion by sharing thoughts and questions that demonstrate familiarity with the material. This student refers to the materials and shows interest in other students' contributions.

C range: The student meets the basic requirements of section participation: preparedness and regular attendance. This student participates rarely in class discussion. This student may offer a few interesting or insightful ideas from time to time, but these ideas do not connect well to the general discussion: they do not help to build a coherent and productive discussion. (Failure to fulfill satisfactorily any of these criteria will result in a grade of "D" or below.)

In all cases, students must listen respectfully to the ideas proffered by both the instructor and fellow students, and respond thoughtfully. The course will steer us into some provocative and controversial areas, and to make the most of this experience, we must create and maintain an open environment in which deep disagreements can be voiced without incivility.

The reading material for each week is posted on bCourse. Each seminar's reading is indicated by a number corresponding to the week.

CLASS SCHEDULE: LS SEM 39D

PART I Introduction

Week 1: Introduction to the Course - The Supreme Court and the U.S. Constitution; so you think you can think.

PART II

Personal Autonomy

Week 2: Expansion of constitutionally protected rights: Fundamental Rights, the "Penumbra" of the Bill of Rights -the Right of Privacy- the right to be free from unwanted governmental interference.

Week 3: Private Conduct Between (Among) Consenting Adults-can/should the government legislate morality?

Week 4: Marriage - Same Sex, Polygamous, Incestuous -how slippery is the slope? Who gets to decide who (and how many people) you can marry?

Week 5: Equal Protection and Gender (sex) Identity --who gets to decide who you are and who must agree?

Week 6 : Abortion and Reproductive Rights -who controls your body? Are protections from majority rule for privacy, marriage, and gender identity now at risk?

PART III

Governmental Limitations on "Protected Rights"

Week 7: Speech- does the First Amendment requirement that there be "...no law... abridging the freedom of speech" really mean *no law*? "Fighting words," threats and incitements.

Week 8: "Symbolic" speech - what "acts" are afforded First Amendment protection as "speech"?

Week 9: "Virtual speech" - virtual child pornography - punishing speech or punishing thoughts?

Week 10: Are colleges and universities subject to the First Amendment (Part 1): "woke-ness," "snowflakes," "trigger warning," "micro-aggressions" and cancel culture: what can a college make you say and prohibit you from saying.

Week 11: Are colleges and universities subject to the First Amendment (Part 2): College Speech Codes: what speech protected in the "public square" should/can be prohibited on a public college campus (*e.g.*, Berkeley) and who gets to decide what speakers can speak on campus?

Week 12: Religion - does the First Amendment requirement that there be "...no law respecting the establishment of religion or prohibiting the free exercise thereof" really mean *no law*? What qualifies as a religion? How is religion "exercised"? Can corporations have religious beliefs?

Week 13: Government mandated speech and "expressive" acts, and anti-discrimination laws: Can the government make you do (say) something that violates your beliefs?

Week 14 : Review.

APPENDIX **DECLARATION OF INDEPENDENCE;
THE CONSTITUTION OF THE UNITED STATES;
THE SUPREME COURT JUSTICES**