Law and Personal Freedom
Legal Studies 252

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You can’t separate peace from
freedom because no one can be
at peace unless he has freedom.

- Malcolm X (1925-1965)

Freedom is not something that one
people can bestow on another as a
gift. They claim it as their own and
none can keep it from them.

- Kwame Nkrumah (1900-1972)

People crushed by law have no hopes
but from power. If laws are their enemies,
they will be enemies to laws; and those,
who have much to hope and nothing to lose,
will always be dangerous, more or less.

- Edmund Burke (1729-1797)

We, too, born to freedom, and believing
in freedom, are willing to fight to
maintain freedom. We, and all others
who believe as deeply as we do, would
rather die on our feet than live on our
knees.

- Franklin D. Roosevelt (1882-1945)

Liberty has never come from
government. Liberty has always come
from the subjects of government. The
history of liberty is the history of
resistance. The history of liberty is the
history of the limitation of
governmental power, not the increase of
it.

- Woodrow Wilson (1856-1924)

Freedom and liberty, theoretical foundations of United States law, remain abstract
principles, oftentimes at the fingertips of its citizens. Some may view freedom as the absence of
slavery or imprisonment. Others may see freedom as the release from arbitrary or despotic
control. While others might describe it as the state of being able to act without hindrance or
restraint. Oliver Wendell Holmes saw freedom as, “the right of strict social discrimination of all
things, and persons and it is one of the most precious privileges.” Lord John Acton connected
freedom and liberty and wrote, “By liberty I mean assurance that every man shall be protected in
doing what he believes to be his duty against the influence of authority and majorities, custom
and opinion.”

The concepts of freedom and liberty have been debated for centuries. In this course, we
hope to continue those debates and insert contemporary issues into the discussion. Using
various themes, we will address the intersection between Law and Freedom and draw lines
connecting those visionary concepts.

While this course uses case law as its predominant source, we do not solely want to think
of these issues in terms of U.S. Supreme Court doctrine. Instead, we hope to analyze the cases
and other readings and determine if the law remains poised to capture the images that liberty
and freedom entail.
REQUIREMENTS AND GRADING

(1) Quizzes – 25%
Five in-class quizzes each worth 5%. There will be NO make-up quizzes.

(2) Attendance and participation – 25%
There is no substitute for attending class. If you need to miss class, inform me in advance or shortly thereafter. Attending class, taking copious notes, and keeping up with the reading and assignments is imperative. There are no short cuts, so do the work. Class discussions will be the cornerstone of this course. If you are not prepared to speak, get prepared. If you are shy, this will be the time to become more vocal. If you are talkative, this may be the time to listen and learn from others as well. **NOTE: If it appears that the class is not keeping up with the assigned reading, additional pop-quizzes will be administered and factored into the participation grade.**

(3) Research paper – 50%
Consists of a 10-15 page paper. The paper can be written on the topic of your choice in connection with the course. Your paper topic will be addressed throughout the semester during both class and office hours. In an attempt to avoid writing the paper in the last days of the semester and producing inadequate work, periodic assignments concerning the research paper will be due in intervals.

- Title and abstract- 5%
- Annotated bibliography – 5%
- Introduction and paper skeleton- 5%
- Final paper – 35%

COURSE SCHEDULE

**NOTE: Reading assignments are to be completed BY that class. All reading is subject to change. Awareness of any changes is the responsibility of the student. All readings can be found in the course packet, book, or online, except where listed, in which case I will distribute the appropriate reading(s).**

**September 8:** Introduction
Read syllabus – Reading Packet available at Campus Design and Copy. *The Unwanted Gaze* is available at Food for Thought Books, 106 N. Pleasant St., Amherst.

**September 13:** The Role of Law
*PART 1: THE ROLE OF LAW*

The Role of Law: This section is designed as an inaugural understructure for the course. Here we ask if freedom is abridged by silent and gradual encroachments or violent and sudden usurpations or not at all. One might turn to the story of a frog: if you throw a frog into boiling water, it will immediately jump free. However, if you immerse a content frog in water at a normal temperature, and gradually increase the temperature, then you can boil him alive without restraint. This section is important because it will be used as the class progresses to discuss deeper issues within the realm of law.

- James Kent: 40-42
- September 15: The Role of Law
- Elizabeth Mensch: 23-52
- Film – *The Man Who Shot Liberty Valance* (Part I)
**September 20:** The Role of Law  
Howard Zinn: 412-419  
Susan Tiefenbrun: 677-701  
Film – *The Man Who Shot Liberty Valance* (Part II)

**September 22:** The Right of Privacy – QUIZ #1  
PART 2: THE RIGHT OF PRIVACY

**The Right of Privacy:** The Right of Privacy is not specifically provided for in the U.S. Constitution or the Bill of Rights. Yet, it remains a notion set forth in various Supreme Court opinions and is controlling law today. In this section, we ask where privacy reaches and debate the application of the Right of Privacy in various contexts.

Samuel Warren and Louis D. Brandeis: 193-218  
*Boyd v. U.S.* (1886) 116 U.S. 616

**September 27:** The Right of Privacy  
Jeffrey Rosen: 3-26  
*Olmstead v. U.S.* (1928) 277 U.S. 438

**September 29:** The Right of Privacy  
*Griswold v. Connecticut* (1965) 381 U.S. 479  
Jeffrey Rosen: 26-53

**October 4:** Obscenity, Pornography, and Offensive Speech  
PART 3: OBSCENITY, PORNOGRAPHY, AND OFFENSIVE SPEECH

**Obscenity, Pornography, and Offensive Speech:** The problem of defining what is obscene is establishing a public consensus. This section does not have the bold aspiration that it will create public consensus. Instead, we hope to view these issues of speech from a socio-legal standpoint and help understand why the law approaches speech the way that it does.


**October 6:** Obscenity, Pornography, and Offensive Speech – QUIZ #2  
*Cohen v. California* (1971) 403 U.S. 15  

**October 11:**  
Holiday

**October 13:** Obscenity, Pornography, and Offensive Speech  

**October 18:** Race – TITLE AND ABSTRACT DUE  
PART 4: RACE

**Race:** Race, specifically in contemporary times, is understood in terms of “color-blind constitutionalism.” In this section, we intend to view the effects of that approach and analyze its impact. Race remains the most widely discussed issue in societal discourse and thus, an important legal theme.

*Scott v. Negro London* (1806) 7 U.S. 324  
*State v. Mann* (1829) 13 N.C. 263 (available online)  
*The Amistad* (1841) 40 U.S. 518

**October 20:** Race  
*Dred Scott v. Sandford* (1857) 60 U.S. 393  
*Plessy v. Ferguson* (1896) 163 U.S. 537  
*Brown v. Board of Education* (1954) 347 U.S. 483  
Derrick Bell: 239-258
October 25: Race
Washington v. Davis (1979) 426 U.S. 229
Rogers M. Smith: 709-733

October 27: Freedom from and of Religion – QUIZ #3
PART 5: FREEDOM FROM AND OF RELIGION

Freedom from and of Religion: Religious freedom is guaranteed in the First Amendment. Yet, religious freedom has never been absolute in terms of the law. In this section, we look at the disputes surrounding law and religion with particular attention given to cases involving the pledge of allegiance and religion in public schools.

Thomas Jefferson: to be distributed
Cantwell v. Connecticut (1940) 310 U.S. 296

November 1: Freedom from and of Religion
West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624

November 3: Freedom from and of Religion – ANNOTATED BIBLIOGRAPHY DUE
Lee v. Weisman (1992) 505 U.S. 577
Newdow v. U.S. Congress (2002) 9th Cir. 00-16423 (available online)

November 8: The War on Drugs
PART 6: THE WAR ON DRUGS

The War on Drugs: The War on Drugs is a political doctrine that remains connected to the law. Various aspects of the issue concerning drugs and their legalization hinge on the strength or weakness of the law. This section looks at the history of the War on Drugs and the effect that the Court has had on the subject.

James P. Gray: 95-122

November 10: The War on Drugs
Erika L. Johnson: 629-664

November 15: The War on Drugs – QUIZ #4
Kathleen R. Sandy: 665-693
U.S. v. Oakland Cannabis Buyers Cooperative (2001) 00-151

November 17: The Right to Counsel and Procedural Safeguards
PART 7: THE RIGHT TO COUNSEL AND PROCEDURAL SAFEGUARDS

The Right to Counsel and Procedural Safeguards: The Sixth Amendment guarantees the accused “the assistance of counsel for his defense.” This section is designed to view that safeguard’s effectiveness. Anecdotal instances of constitutional violations are not enough to negate the goal of the rule of law. Here, we hope to go beyond mere case law and delve into historical foundations concerning the right to counsel.

Howard Zinn: 433-443
Powell v. Alabama (1932) 287 U.S. 45
Gideon v. Wainwright (1963) 372 U.S. 335

November 22:
No class – Thursday class schedule followed

November 24: The Right to Counsel and Procedural Safeguards – INTRODUCTION AND PAPER SKELETON DUE


November 29: The Right to Counsel and Procedural Safeguards
Burch v. Louisiana (1979) 441 U.S. 130
Murray v. Giarratano (1989) 492 U.S. 1
December 1: The Fourth Amendment
PART 8: THE FOURTH AMENDMENT
The Fourth Amendment: The Fourth Amendment guarantees individuals the freedom from unreasonable searches and seizures. A central topic to any discussion surrounding criminal procedure, the Fourth Amendment and case law concerning it are replete with exceptions. We will address those exceptions and their constitutional consistency.
Jeffrey Rosen: 54-90
U.S. v. Robinson (1973) 414 U.S. 218

December 6: The Fourth Amendment
Delaware v. Prouse (1979) 440 U.S. 648

December 8: The Fourth Amendment – QUIZ #5
U.S. v. Martinez-Fuerte (1976) 428 U.S. 543 (available online)
Michigan Dept. of State Police v. Sitz (1990) 496 U.S. 444 (available online)

December 13: The Fourth Amendment
City of Indianapolis v. Edmond (2000) 99-1030 (available online)
Illinois v. Lidster (2004) 02-1060 (available online)

December 16-22: Final Examination Period
FINAL ASSIGNMENT DUE ON MONDAY DECEMBER 20 AT 2:00 IN GORDON HALL 115

Revised 9/8/04