Law and Personal Freedom
Legal Studies 252
Spring 2006
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 must be addressed throughout the semester during class and/or 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 question(s) presented- 5%
Annotated bibliography – 5%
Introduction and paper skeleton/outline– 5%
Final paper – 35%

READING REQUIREMENTS

Available at Food for Thought Books, 106 N. Pleasant Street, Amherst.

Reading packet available at Collective Copies, 71 S. Pleasant Street, Amherst.

Online readings available at [www.umass.edu/legal/Lorenz/freedom](http://www.umass.edu/legal/Lorenz/freedom)

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).

**February 1:** Introduction
Read syllabus

**February 6:** 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 (to be distributed)

February 8: The Role of Law
Elizabeth Mensch: 23-52
Film – *The Man Who Shot Liberty Valance* (Part I)

February 13: The Role of Law
Howard Zinn: 412-419 (to be distributed)
Susan Tiefenbrun: 677-701 (available online)
Film – *The Man Who Shot Liberty Valance* (Part II)

February 15: 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 (available online)

*Boyd v. U.S.* (1886) 116 U.S. 616

February 20: No class

Holiday

February 21: The Right of Privacy
Jeffrey Rosen: 3-26

*Olmstead v. U.S.* (1928) 277 U.S. 438

February 22: The Right of Privacy
*Griswold v. Connecticut* (1965) 381 U.S. 479
Jeffrey Rosen: 26-53

February 27: 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.


March 1: Obscenity, Pornography, and Offensive Speech – QUIZ #2

*Cohen v. California* (1971) 403 U.S. 15


March 6: Obscenity, Pornography, and Offensive Speech


March 8: Race – TITLE AND QUESTION(S) PRESENTED 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

March 13: Race

*Dred Scott v. Sandford* (1857) 60 U.S. 393
Plessy v. Ferguson (1896) 163 U.S. 537
Derrick Bell: 239-258

March 15: Race
Washington v. Davis (1979) 426 U.S. 229
Rogers M. Smith: 709-733 (available online)

March 20: No class
Spring Break

March 22: No class
Spring Break

March 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

March 29: Freedom from and of Religion
West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624

April 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)

April 5: 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

April 10: The War on Drugs
Erika L. Johnson: 629-664 (available online)


April 12: The War on Drugs – QUIZ #4
Kathleen R. Sandy: 665-693 (available online)
U.S. v. Oakland Cannabis Buyers Cooperative (2001) 00-151

April 17: No class
Holiday

April 19: Catch-up day
There is no extra reading. We will simply try to catch-up on any topics that we did not finish and discuss research paper progress.

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

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 (to be distributed)

*Powell v. Alabama* (1932) 287 U.S. 45
*Gideon v. Wainwright* (1963) 372 U.S. 335

**April 26:** The Right to Counsel and Procedural Safeguards


**May 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

*Carroll v. U.S.* (1925) 267 U.S. 132
*U.S. v. Robinson* (1973) 414 U.S. 218

**May 3:** The Fourth Amendment

*Delaware v. Prouse* (1979) 440 U.S. 648

**May 8:** The Fourth Amendment

*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)

**May 10:** The Fourth Amendment

*City of Indianapolis v. Edmond* (2000) 99-1030 (available online)
*Illinois v. Lidster* (2004) 02-1060 (available online)

**May 15:** Review– QUIZ #5

Review

**May 17:** Review

Review

**May 19-26:** Final Examination Period

FINAL ASSIGNMENT DUE ON TUESDAY MAY 23 AT 2:00 IN GORDON HALL 121