

POLSC 341  
Spring 2010  
Section 051  
HW 1729  
Email: williamadler@gmail.com

Prof. William D. Adler  
Office: HW 1718A  
Hours: Monday 2:30-4:00 pm,  
and by appointment  
<http://adlers.home.att.net/william/>

## **Constitutional Law: Civil Rights and Civil Liberties**

This course explores the Constitution, the law surrounding it, and the politics of constitutional interpretation. We will be focusing on issues of civil rights and civil liberties, including the right to privacy, the equal protection clause, and the Bill of Rights. Of particular interest will be the role of American courts in effecting social change.

Unlike many other classes in constitutional law, in this course you will not only be reading cases and opinions written by the Supreme Court (though you will do plenty of that, too!). The readings are also concerned with a wide variety of related issues such as how the Court operates; varieties of constitutional interpretation; and the role of courts relative to other forces in society. For those of you planning to attend law school, you will find that this course provides you with a solid background in *political* concerns prior to concentrating on strictly *legal* issues.

### **Required Books**

There are 2 required texts for this course. They are available at Shakespeare Bookstore:

David M. O'Brien, *Constitutional Law and Politics: Civil Rights and Civil Liberties* (7th edition) (W.W. Norton, 2008), ISBN 978-0-393-93039-9.

Course Pack for POLSC 341, produced by Campus Course Paks ([www.ccpaks.com](http://www.ccpaks.com)).

### **Course Learning Objectives**

This is a demanding course that requires substantial reading, writing, and intensive class discussions. Students are expected not only to learn the substantive material, but also to apply concepts across multiple areas of constitutional law and criticize theories presented by scholars. By the end of the semester, students should be able to write concisely and thoroughly regarding a topic in constitutional law, critique scholarly work based on empirical evidence, and generate their own reasoned perspectives on issues of civil rights and civil liberties.

### **Course Requirements**

- 1) Complete all readings on schedule. If you miss a class, email me for the next reading assignment, as the schedule may change.
- 2) Attend on time and actively participate in class discussions. Those who arrive more than 3 minutes late, or who leave in the middle of class, will be marked absent. Each student is allowed

only **two** unexcused absences. Your participation grade will be reduced by one-third of a letter for each unexcused absence over two. Not being active during class discussions will also result in a lowering of your participation grade. Use of electronic devices such as phones, blackberries, or music players during class **is prohibited**.

3) Keep up with the news! We will frequently discuss current events as they relate to the concepts we are discussing in class. This way, we will try to connect what can be vague ideas to real-world outcomes. Read a newspaper, visit [cnn.com](http://cnn.com), or do anything that helps makes you an informed citizen.

4) I will occasionally conduct quizzes in short answer format. I do this to ensure that everyone is completing the assigned reading and participating in discussions.

5) Take the final exam. It will consist of essay questions and will be given in-class. I will likely give you sample questions ahead of the test. Make-up exams will only be given in the event of an emergency, verified with proper documentation.

6) We will be conducting a Supreme Court simulation. Each student will be assigned to be one of the current sitting justices or a lawyer arguing the case in front of the Court. Depending on the number of students enrolled, we will have either one or two simulations during the semester. I will inform you of the case to be discussed well in advance of the simulation.

The purpose of the simulation will be to have a hands-on experience in a courtroom setting. As such, I expect each student playing a justice to be fully prepared before the day of the simulation. This will be accomplished by writing a 6-8 page paper that will be due 2 weeks prior to the day of the simulation. This paper will cover the professional background of the student's assigned justice, as well as the justice's preferred approach to a case and method of interpretation. The paper will also analyze 2 opinions written by the justice relating to an issue we are discussing this semester. **No late papers will be accepted.** However, if you turn the paper in on time, I will give you the option of revising it, if you wish. You **must** use outside sources besides those provided in the syllabus - at least 4 sources.

After the simulation has been completed, each student-justice will then write an opinion regarding the case presented. The opinion will rely on Court precedents and that justice's style of argumentation. The opinion must be no less than 8 pages long; there is no upper limit. Opinions are due no later than 2 weeks after the simulation is completed; again, **no late papers will be accepted.** If you turn the paper in on time, I will give you the option of revising it.

Students who are assigned to play the role of a lawyer arguing in front of the Court have different assignments. Four weeks prior to the date of the simulation, they will turn in a 6-8 page paper that briefly reviews the professional background and interpretive style of each justice of the Court. This will allow each student-lawyer to be prepared to face the justices in the simulation. You **must** use outside sources besides those on the syllabus - at least 4 sources. Two weeks prior to the simulation, each student-lawyer will turn in a case brief that discusses the case in detail and presents a set of arguments that attempt to convince the justices to rule for that side. The brief must be at least 8 pages long; there is no upper limit. It should be based on Court

precedents and the student's best estimation of how to win over the justices. **No late papers will be accepted.** If you turn in the papers on time, I will give you the option of revising them.

Grades for the simulation will be based on the written assignments as well as the student's performance during the simulation. The more accurately you approximate your designated justice or lawyer, the better your grade.

All written assignments must be typed in a 12 point font, double spaced, with one-inch margins, and have page numbers. Papers not meeting these criteria will be penalized. All papers must also be submitted to [www.turnitin.com](http://www.turnitin.com) (note that I **will not** accept papers not submitted to turnitin.com):

Class ID - 3021412  
password - constitution

### **Grading**

Work conducted towards the end of the semester will be more heavily weighted in my mind when dispensing final grades; in other words, *improvement counts*.

Attendance/Participation: 10%  
Quizzes: 20%  
Simulation: 40%  
Final: 30%

Incompletes will only be given for valid, documented emergencies. As well, please note that Hunter College rules specify that credit/no credit grading may only be used if a student has completed all the work assigned for the course.

**NOTE ON PLAGIARISM:** Any student found plagiarizing work will receive a grade of **zero** for that assignment and an **F** for the course. **It is your responsibility to avoid plagiarism; if you are uncertain about what constitutes plagiarism, please ask!** For more information, see this website about "Avoiding Plagiarism:" <http://owl.english.purdue.edu/owl/resource/589/01/>.

### **Accessibility**

In compliance with the Americans with Disabilities Act of 1990 (ADA) and with Section 504 of the Rehabilitation Act of 1973, Hunter College is committed to ensuring educational parity and accommodations for all students with documented disabilities and/or medical conditions. It is recommended that all students with documented disabilities (Emotional, Medical, Physical and/or Learning) consult the Office of AccessABILITY located in Room 1214B to secure necessary academic accommodations. For further information and assistance please call (212-772-4857)/TTY (212-650-3230).

## Schedule of Classes and Exams

February 1st: Introduction

February 3<sup>rd</sup>, 8<sup>th</sup>, and 10<sup>th</sup>: Judicial Review and Constitutional Interpretation

O'Brien, 23-38, 45-54, 66-95

Antonin Scalia, "Originalism: The Lesser Evil" (course pack #1)

Stephen G. Breyer, "Our Democratic Constitution" (course pack #2)

Richard A. Posner, "Against Constitutional Theory" (course pack #3)

February 17<sup>th</sup> and 18<sup>th</sup>: How the Court Works

(Monday, February 15<sup>th</sup>: No classes; Thursday, February 18<sup>th</sup>: Monday schedule)

O'Brien, 103-127, 175-205

John M. Harlan II, "The Role of Oral Argument" (course pack #4)

February 22<sup>nd</sup>, 24<sup>th</sup>, and March 1<sup>st</sup>: The Right of Privacy

O'Brien, 357-68 (*Griswold*), 1232-1262, 1270-1292, 1304-1315

Randy E. Barnett, "Justice Kennedy's Libertarian Revolution: *Lawrence v. Texas*" (course pack #5)

Nelson Lund and John O. McGinnis, "*Lawrence v. Texas* and Judicial Hubris" (course pack #6)

March 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>: Equal Protection

O'Brien, 1334-1426, 1434-1453, 1456-1473, 1491-1513, 1533-1544

Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (course pack #7)

Michael W. McCann, "Reform Litigation on Trial" (course pack #8)

Eric Schnapper, "Affirmative Action and the Legislative History of the Fourteenth Amendment" (course pack #9)

Michael W. McConnell, "The Originalist Case for *Brown v. Board of Education*" (course pack #10)

March 17<sup>th</sup> and 22<sup>nd</sup>: Nationalization of the Bill of Rights

O'Brien, 324-341, 375-390, 277-284 (*Slaughterhouse*)

**Wednesday, March 24<sup>th</sup>: Simulation**

April 7<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup>: 1<sup>st</sup> Amendment – Free Expression  
(March 29<sup>th</sup>-April 5<sup>th</sup>: Spring Recess)

O'Brien, 408-433, 445-447, 453-471, 487-501, 599-603, 607-623, 627-640

April 19<sup>th</sup>, 21<sup>st</sup> and 26<sup>th</sup>: 1<sup>st</sup> Amendment - Religion

O'Brien, 709-773, 787-803, 810-819, 819-862

Steven A. Engel, "The *McCulloch* Theory of the Fourteenth Amendment: *City of Boerne v. Flores* and the Original Understanding of Section 5" (course pack #11)

Christopher L. Eisgruber and Lawrence G. Sager, "Congressional Power and Religious Liberty after *City of Boerne v. Flores*" (course pack #12)

April 28<sup>th</sup> and May 3<sup>rd</sup>: 4<sup>th</sup> Amendment – Searches and Seizures

O'Brien, 870-905, 967-982, 989-994, 997-1015, 1025-1027

May 5<sup>th</sup> and 10<sup>th</sup>: 5<sup>th</sup> Amendment – Self-Incrimination

O'Brien, 1028-1056, 1064-1069, 1073-78

May 12<sup>th</sup>: 8<sup>th</sup> Amendment: Capital Punishment

O'Brien, 1168-1188, 1208-1222

**Final Exam: Monday, May 17th**