INTRODUCTION.


- Jefferson, Bill for Crimes, 1778, *Founders’ Const* 5:374 (read the first two paragraphs only).
- Northwest Ordinance, 1787, bill of rights.
- Brent Johnson, “‘Knockout Game’ Bill: N.J. Lawmakers Introduce Measure Mandating Minimum Prison Term”.

Optional:

All OPTIONAL readings will be on Blackboard, under “Content.”

- West, “Economic Principles of America’s Founders.” The founders on what laws are needed to secure the right to acquire and possess property.


Optional:


1/23. Civil rights in the U. S. Constitution. The use and disadvantage of “parchment barriers.”

- U. S. Constitution: Preamble; Article 1, sec. 8, 9, & 10; Article 3, sec. 2 & 3; Article 4, sec. 2 & 4; Amendments 1-10, 13-15. The Constitution is in O’Brien, starting on p. 1.
- Discussion of Founders on Bill of Rights, O’Brien, 320-324.
- Home Building & Loan v. Blaisdell, 1934, O’Brien 249 to middle of 250; bottom of 252 to 254.

Optional:

- Nelson Lund, “Federalism and Civil Liberties.” Argues that the Bill of Rights is not very
important as a restraint on state governments.

Philip A. Hamburger, “Trivial Rights.” Argues that the main restraint on the federal government is not the Bill of Rights but the enumeration of limited federal powers.

Zuckert, “Completing the Constitution: 14th Amendment and Constitutional Rights.”

**14TH AMENDMENT: EQUAL PROTECTION.**

   - Civil Rights Act of 1866, O’Brien (quoted in the middle of 1394).
   - Dahl, “Why wasn’t Aaron Alexis prosecuted for previous shooting incidents?” with
      Addendum on the Seattle case.
   - Stefanie Thomas, “Family of Humble Murder Victim”.

Optional:

   - Milliken v. Bradley, 1974, O’Brien 1477 (first 2 paragraphs in Burger’s opinion); 1478 (second paragraph only).

Optional:
   - Earl M. Maltz, “Originalism and the desegregation decisions—a response to Professor McConnell.”

Optional:

   - Regents v. Bakke, 1978, O’Brien, bottom of 1514 to third paragraph on 1515; ¶2 on 1517; 1520 ¶3 to 1521 ¶2.
   - Gratz v. Bollinger, 2003, O’Brien, second-last paragraph on 1549 to 1550 ¶2; read the Ginsburg opinion, starting on 1551.
   - Grutter v. Bollinger, 2003, O’Brien; read the paragraph that starts on the bottom of 1553; 1554 ¶2; 1555 ¶2 and ¶3 (up to “patently unconstitutional”); ¶2 on 1557; opinions of Scalia and Thomas on 1560.
Richmond v. Croson, 1989, O’Brien. Read the last paragraph on 1526; 3rd and 4th paragraphs on 1529.
Adarand v Pena, 1995, O’Brien. In O’Connor’s opinion, read the first 3 paragraphs, starting on 1540; ¶1, ¶2, and ¶3 on 1544; Ginsburg’s dissent on 1547.
Adarand v. Pena, Thomas concurring opinion. ......................................................... 80
Steve Thompson, “Dallas City Hall . . . Minority Contracting” ............................. 81

2/6. “Equal protection” and employment; laws treating men and women differently; racially mixed marriage.
The EEOC’s 4/5 rule. ................................................................. 85
Bradwell v. Illinois, 1872. . ........................................................... 85
Quotation from Muller v. Oregon, 1908, O’Brien, middle of 1562.
Craig v. Boren, 1976, O’Brien. Read the first 3 paragraphs of Brennan’s opinion, starting on 1573; Also ¶5 on 1574, starting with “Even were this.”
Optional:
Upham, “Interracial Marriage and . . . Privileges or Immunities.”

14TH AMENDMENT. DUE PROCESS OF LAW.

2/11. Fourteenth Amendment, Due Process of Law.
Joseph Story, Commentaries, §1783 only (due process of law), Founders’ Constitution, 5:296.
Supreme Court, Murray’s Lessee, 1856, summary. .................................................. 86
Sailer, “Minority Police Racial Profiling Immigrants” ................................. 87
The Economist, “The grabbing hand of the law,” with Mark Steyn’s comment 88
Stephen Baskerville, Taken Into Custody, 165-67, 177-186.
Optional:
Ryan Williams, “The One and Only Substantive Due Process Clause.”

14TH AMENDMENT. PRIVILEGES OF CITIZENSHIP.

2/13. Fourteenth Amendment, Privileges or Immunities of Citizenship.
Review Locke, Letter on Toleration, on private associations. .......................... 11
Campbell v. Morris, 1797. ................................................................. 89
Corfield v. Coryell, 1823. ................................................................. 90
Dred Scott v. Sandford, 1857, on privileges and immunities of citizenship. 91
Slaughterhouse Cases, 1873. ................................................................. 91
McDonald v. Chicago, 2010. ................................................................. 94
Optional:

John Harrison, “Reconstructing the Privileges or Immunities Clause.” “The actual content of the p. and i. . . . is given by positive law, state and national.” This is disputed by Upham. However, later in the piece Harrison agrees with Upham about many of the actual privileges of citizenship. Harrison also has a competent discussion of equal protection and due process.


David R. Upham, “Protecting the Privileges of Citizenship: Founding, Civil War, and Reconstruction.”

2/16, Sun. 5:00 pm. First civil rights paper due.

2/18. Fourteenth Amendment: Privileges of citizenship cases perhaps wrongly decided as due process cases.

Munn v. Illinois, 1877, O’Brien 280, ¶2-5, plus Field’s dissent.
Holden v. Hardy, 1898 ............................................................... 97
Bernstein, “Oyez” (on Barbier and Lochner). ........................................... 100

2/20. Due Process of Law (or Privileges of Citizenship?) and race.

Civil Rights Cases, 1883, O’Brien 1420-1426.
Buchanan v. Warley, 1917 ............................................................... 103

RELIGION: FREE EXERCISE AND ESTABLISHMENT.


Review Locke, Letter on Toleration, on private associations. ......................... 11
Boston, Rights of the Colonists, on religion, 1772, Founders’ Constitution 5:60
Congress to Quebec, 1774, Founders’ Constitution 5:61-64
State Constitutions: VA (Founders’ Constitution 5:70), NC (71), PA (71), NY (75), MA (77-78)
Washington, Thanksgiving Proclamation, Founders’ Const. 5:94
Washington, Farewell Address, 1796, excerpt on religion and education. ............. 104
review Northwest Ordinance, 1787, provisions on religion and education. ................. 9
Madison, Memorial and Remonstrance, 1785, Founders’ Constitution 5:82-84
Jefferson, Letter to Danbury Baptists, 1802, Founders’ Constitution 5:96
Barnes v. First Parish, 1810 (on Mass. estab. of relig.) ...................................... 105
Optional:

2/27. Free exercise of religion: exemptions from general laws.
Washington, letter to Hebrew Congregation, 1790. ............................... 106
Washington, letter to Quakers, 1789. ...................................................... 107
Sherbert v. Verner, 1963, O’Brien, read the first 4 paragraphs of Brennan’s opinion (starts on 848), and the first paragraph of Harlan’s dissent (850).
Wisconsin v. Yoder, 1972, O’Brien, read the paragraph on the middle of 855 (starts with “[A]”) and Douglas’s dissent on 857.
Church of Lukumi Babalu Aye v. City of Hialeah, 1993, O’Brien, starting at ¶5 on 868 to ¶2 on 869.
Hosanna-Tabor School v. EEOC, 2012......................................................... 109

Optional:
Michael W. McConnell, “The Origins and Historical Understanding of Free Exercise of Religion.” This article, and Hamburger’s response, were the basis of the Scalia and O’Connor opinions in the *Boerne* case.

Eversen v. Board, 1947, O’Brien. Read the editor’s intro on 758; last 2 paragraphs on 759; last para on 760 to bottom of 761.
Zelman v. Simmons-Harris, 2002, O’Brien, first two paragraphs of Rehnquist’s opinion on 815; also Stevens’s dissent on 817-18.
Van Orden V. Perry, 2005, O’Brien. Read Thomas’s concurring opinion, 828-29; and Stevens’s dissent, 829-30.
McCreary County V. ACLU of Kentucky, 2005, O’Brien. Read the editor’s intro to the case on 830-31; the last para on 831 in Souter’s opinion. In Scalia’s dissent, read the first 2 paragraphs on 836, the first full para on 837, and the last para on 837.

3/6. Midterm examination

FREEDOM OF SPEECH AND PRESS.
West, “Free Speech in the Founding and in Modern Liberalism,” 310-339. . . . . . . . . . . Blackboard
Respublica v. Oswald, 1788, Founders’ Constitution 5:126-7 (read the right column on 126
to the top para on 127).
People v. Croswell, 1804, Founders’ Const. 5:160 (this page only).
U.S. v. Cooper, 1800, Founders’ Const 5:149-150 (para on bottom rt of 149 to top rt. of 150).
People v. Ruggles, 1811, Founders’ Constitution 5:101 only, + last para of Ruggles on 102.
Updegraph v. Commonwealth, 1824, Founders’ Constitution 5:173 only (just this page).
Optional:
Commonwealth v. Blanding, 1825, Founders’ Constitution 5:176-79 (focus on 176-77)

West, “Free Speech in the Founding and in Modern Liberalism,” 339-359. . . . . . . . . . . Blackboard
Gitlow v. New York, 1925, O’Brien, 452 to the top para on 454; also Holmes’s dissent, 455.
Brandenburg v. Ohio, 1969, O’Brien 467-468 (skip the intro; read the Per Curiam opinion).
Memoirs v. Massachusetts, 1966, Clark and Douglas. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 112
Miller v. California, 1973, O’Brien, read only the para starting on 491, line 3.
Optional:

3/25. Government limits on speech injurious to the disadvantaged: broadcasting, employer
speech, campaign finance regulation. Speech in places owned by, or under jurisdiction of,
government.
West, “Free Speech in the Founding and in Modern Liberalism,” 359-384. . . . . . . . . . . Blackboard
National Labor Relations Board v. Gissel, 1969. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 110
Morse v. Frederick, 2007 (“bong hits for Jesus”). . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 111
Summaries of Lamb’s Chapel, Rosenberger, and Good News v. Milford, O’Brien 753-754.
West Virginia v. Barnette, 1943, O’Brien 676-680 (read only Jackson’s opinion of the Court).
Optional:
Bradley Smith, “Campaign Finance Reform’s War on Political Freedom.”
Jonathan Rauch, “Offices and Gentlemen.” How laws against sexual harassment deny free
speech.

4TH, 5TH, 6TH, AND 8TH AMENDMENTS (AND 14TH AMDT DUE PROCESS CLAUSE).

4/1. Searches and seizures. Right to counsel (Miranda).
Original meaning: O’Brien 890-892.
Summary of U.S. v. Chadwick and Ark. v. Sanders, O’Brien 940 (last para) to middle of 941.
Miranda v. Arizona, 1966, O’Brien, 1076 (explanatory paragraph only at top of page), 1077 ¶4 to 1079 ¶5, 1080 ¶4 to 1081, last para on 1085 to ¶3 on 1086.
Admin. searches: O’Brien middle of 960-961; other warrantless searches on 963-965.
Optional:
Randy Barnett, “Knowledge is Power: How the NSA Bulk Data Seizure Program Is Like Gun Registration.”

4/3. Takings; right to be informed of charges and confront accusers; right to counsel. 8th Amdt.
Vanhorne’s Lessee, Federal District Court of PA, 1795, *Founders’ Constitution*, read the 2d
and 3d paragraphs only of the first column on 5:319.
Tahoe-Sierra, 2002 .............................................................. 114
Right to be informed of charges and to confront accusers: O’Brien 1187-1190.
Gideon v. Wainwright, 1963, O’Brien. Read the paragraph on the bottom of 1145; top
paragraph on 1149.
Alabama v. Shelton, 2002 ...................................................... 117
Furman v. Georgia, 1972, O’Brien. Read the opinion of Douglas, starting on 1225, and
Rehnquist’s dissent on 1234. Also look at the graph on 1215 (executions, 1930-2010).
[TGW: in future, maybe add Brennan’s and Burger’s dissent.]
McKlesky v. Kemp, 1987, O’Brien, read the first paragraph of Brennan’s dissent on 1247.

FAMILY LAW AND CIVIL RIGHTS.

4/8. Divorce and custody law in earlier America
Tom James, “History of Custody Law” ........................................ 118-128
Stephen Baskerville, *Taken Into Custody*, 11-35.

4/6, Sun. 5:00 pm. Second civil rights paper due.

4/10. Divorce, custody, and child support law today
Stephen Baskerville, *Taken Into Custody*, 35-79.

4/15. Divorce, custody, and child support law today
CIVIL RIGHTS AND SEXUAL EXPRESSION.

4/17. Illegitimacy, birth control, right to nonmarital sex, abortion.
    Planned Parenthood v. Casey, 1992, O’Brien, read the indented paragraphs on 1326-27
    summarizing the “undue burden” test. Also read the last 4 paragraphs of Scalia’s dissent
    on 1332.
    Stenberg v. Carhart, 2000, O’Brien, read only the final paragraph of Breyer’s opinion on
    1293.
    Guttmacher Institute, Facts on Induced Abortion in the U.S......................... 144
    Optional:
    Thomas West, “Founding-Era Laws Promoting Marriage.”

    Review Locke, Letter on Toleration................................................. 11
    Boy Scouts v. Dale, 2000, O’Brien 721 to middle of 722; ¶3 on 723 to end of ¶2 on 724; in
    Stevens’s dissent, second-last para on 727 to 728.
    Lawrence v. Texas, 2003......................................................... 146
    Optional:
    Claeys, “The Private Society and the Liberal Public Good in John Locke’s Thought.”
    Freedom of association in Locke.

    U.S. v. Windsor................................................................. 152
    Hillary Clinton, LGBT rights speech, 2011........................................... 155
    Tarringo Vaughan, “Joe Biden: Transgender … is ‘civil rights issue of our time’”…… 155
    Banda, “Coy Mathis ... Transgender ... School Bathroom”.................................. 156
    Optional:
    Brown v. Buhman, 2013 (this is the Utah polygamy case discussed in Schwartz’s article).

CONCLUSION.

4/29. Conclusion.
COURSE REQUIREMENTS for undergraduates:
A midterm and final examination. Each counts about 25% of the final grade.
Two papers. Each counts about 25%.
Paper topics to be announced. Both papers: 1,700 - 2,000 words in length (about 5 to 6 pages, double-spaced). Please hand in a printed copy and a copy emailed to me. Send me the email copy on the Sunday due date by 5:00 pm. On Monday by 5:00 pm, put the printed copy in the mail slot outside my office in Kendall 313.
Preparation, participation, memory of assigned readings, and attendance will affect the final grade if unusually good or bad. Students who rarely volunteer to answer questions about the readings will be graded down.
For any given day, students are responsible not only for the readings assigned for that day but also for the previous class day. Each class period will be devoted to the assignments for that day and the previous day.
Students will be asked to submit brief questions or comments on that day’s assigned readings at the beginning of class, once a week. About 100-150 words. Details will be announced.
Late work will be accepted, but the grade will typically be lowered. The amount is at the discretion of the instructor. The later the work is completed, the more the grade will suffer.

COURSE REQUIREMENTS for graduate students:
A midterm and a final examination. Each counts about 15% of the final grade.
Two papers. Each counts about 35%.
Preparation, participation, memory of assigned readings, and attendance will affect the final grade if unusually good or bad. Students who rarely volunteer to answer questions about the readings will be graded down.
For any given day, students are responsible not only for the readings assigned for that day but also for the previous day. Each class period will be devoted to the assignments for that day and the previous day.
Students will be asked to submit brief questions or comments on that day’s assigned readings at the beginning of class, once a week. About 100-150 words. Details will be announced.
Two papers, about 3,000 to 3,400 words each (about 8 to 10 pages) for grad students. Prompts will be provided. In their papers, graduate students must briefly discuss the views of at least three important or thoughtful scholars, with two of whom they disagree at least in part. Send me the email copy by 5:00 pm on Sunday. On Monday by 5:00 pm, put the printed copy in the mail slot outside my office in Kendall 313.
Late work will be accepted, but the grade will typically be lowered. The amount is at the discretion of the instructor. The later the work is completed, the more the grade will suffer.
During the course, and especially in preparation for their papers, grad students are expected to read some of the scholarly literature. The optional readings listed in the course plan indicate some of the things that I have found useful. You are expected to find others.

DR. WEST:
Email twest@hillsdale.edu. Cell phone 972-849-8515, 8:00am to 10:00pm. Leave a message. Office hours (Kendall 313): TuTh 11:00-11:15, 1:00-2:15, 3:45-4:00. I am often in the office at other times. For an appointment, email or phone.
OTHER MATTERS

Students are bound by all relevant College rules and regulations, including the Policy on Academic Honor.

Computers and other electronic devices must be silenced and put away.

Food and drinks are permitted if consumed silently and cleaned up afterward.

BOOKS REQUIRED:


West, Thomas G., ed. *Course Packet for Civil Rights, Politics 305 and 509*.