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### **The Constitutional Law of Civil Liberties**

Political Science 4336  
Spring Semester 2008  
Mr. Kobylka

Hours: 1-2 Mon., 9:30-10:30 Tues.,  
3:30-4:30 Thurs., 3-4 Fri., and  
by appointment  
Phone: (214) 768-2525  
e-mail: [jkobylka@smu.edu](mailto:jkobylka@smu.edu)  
URL: <http://faculty.smu.edu/jkobylka/>  
Blackboard: <http://smu.edu/cms/>

#### ***Course Description and Statement of Purpose***

An undergraduate course in civil rights and liberties means different things to different people. It can be seen as a course designed to teach students what “the law” *is*. Such a course would focus on legal doctrine. It could also be a vital component of a “pre-law” program – something of an incubator and hatchery for law schools. Such a course would begin the long and arduous process of teaching people think like lawyers. In many universities, civil liberties courses are taught as a combination of the above. This will not be the case here.

It is significant that this course is taught in a *political science* department. Our study will adopt a particular perspective: that of a student of governmental institutions and processes. Our foci are two: *civil liberties* under the Constitution and the *Supreme Court*. Specifically, the purpose of this course is to give you an understanding of the United States Constitution as its interpretation by the Supreme Court has evolved over time. We will treat the Constitution and the Court not as abstract islands unto themselves, but as real entities shaping, and being shaped by, the times and the political and institutional context in which they exist. In addition, we will examine the interplay of the Justices (and their constitutional perspectives) on the courts we examine. In short, we will investigate the development of constitutional principles, specifically focusing on the relationship between the Supreme Court and the rest of the political system. Along the way, we will note what “the law is” (and how it got to be such), but our preeminent focus will be on the Court as one part of a system of government. We will study the Court as a political institution that influences – and is influenced by – public policies and the processes through which those policies are determined.

The substantive constitutional focus of this course is the concept of liberty. We will examine the constitutional concepts of freedom of expression, religion, and personal privacy through the prism ground by the decisions of the Supreme Court. The text of the First Amendment harbors expression (speech and press), but that species of liberty the Court has called privacy springs from what Justice Douglas called “penumbras and emanations” of the Bill of Rights and the due process clause of the Fourteenth Amendment. While it may be obvious that an inferred right such as privacy would be subject to interpretative expansion, contraction and controversy, the same is true of the liberties protected by the text of the First Amendment. First, there are the definitional problems: what are speech, press, and religion? What does it mean to “abridge” expression, “prohibit” the “free exercise” of religion? What kind of a law is “respecting an establishment of religion”? Second, context changes and with it, sometimes, understanding. Electronic media, not to mention the internet, were not fixtures of the founding age. Religious differences in early America were almost exclusively between different Christian sects. Yet, the Supreme Court has to apply documents written in the world of the 18<sup>th</sup> Century to latter day situations. The *documents* have not changed, but their *meaning* has... at least in some ways. What those changes have been and why they have occurred is a central question this class will address. We will treat the definition and evolution of constitutional principles of liberty as they have been developed and applied over time. This will cause us to also consider the role the Court plays in constitutional understanding, the nature of judicial decision-making, and the interaction between law and politics. In sum, we will examine judicial interpretations of the constitutional civil liberties, and how these interpretations influence the development of constitutional doctrine and law.

SMU's political science department offers five courses that explicitly treat judicial-constitutional questions. While this course focuses on civil liberties, the others examine 1) the sweep of constitutional law (PLSC 3330), 2) the structure of the governmental system (PLSC 4335), 3) civil rights (PLSC 4337), and 4) defendants' rights (PLSC 4338). None of these courses is a requirement for the others; each is an independent analytic whole.

PLSC 4336 - *Constitutional Law of Civil Liberties* - 1

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