

Syllabus for Pondering Politics: The Bill of Rights

Sundays at JASA Spring 2019 Semester



Class Meetings: 11:00 a.m. – 11:55 a.m.

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Course Description: This course will explore the protections in the Bill of Rights, the first ten amendments to the U.S. Constitution. In a ten amendments in ten weeks curriculum, we will start with the First Amendment's protection for freedom of speech, consider the more controversial protection of gun ownership in the Second Amendment, and end with the Tenth Amendment's role in balancing state and federal power.

Aims of Course: To explore the scope of our rights under the Bill of Rights, the way controversies over those rights are resolved in the legal system and ultimately the U.S. Supreme Court, and to consider the role the Supreme Court plays in our democracy.

Class Coverage:

Week One (March 3) - First Amendment's Free Speech Clause. An introduction to the techniques used by courts to balance the interests in protecting freedom of expression against the government's interests in regulating speech. Examples will include flag burning, libel, threats, and hate speech.

Week Two (March 10) - First Amendment's Religion Clauses. An exploration of the Establishment and Free Exercise Clauses and the tension between them. Issues include how much does the government have to separate itself from religion, is the government being neutral toward religion when it accommodates religious beliefs or is it favoring religion, and when can religious observers be exempt from laws that apply to everyone else. The issue of how much the interpretation of the Religion Clauses is likely to change with the addition of Justices Kavanaugh and Gorsuch will also be addressed.

Week Three (March 17) - Second Amendment's Right to Bear Arms and the Third Amendment's Prohibition on the Quartering of Soldiers. The Supreme Court only recognized an individual right to gun ownership in 2008 and has resolved only one other case involving that right, leaving many questions unanswered. This year it will decide the constitutionality of a New York City gun law and may, therefore, resolve some of the unanswered questions. Class discussion will focus on what we know and don't know about the scope of this newly recognized right. The Third Amendment prohibits the quartering of soldiers in private residences without the consent of the occupant. While the reason the amendment was included in the Bill of Rights is known and will be explored, the Supreme Court has never interpreted the Third Amendment.

Week Four (March 24) - Fourth Amendment. The amendment provides protections in the investigation phase of a criminal case when evidence is being collected. It protects against

unreasonable searches and seizures and also establishes the probable cause standard to obtain a search warrant. The methods used to apply the amendment's reasonableness standard to specific circumstances will be discussed as well as the many exceptions carved out by the courts.

Week Five (March 31) - The Fifth Amendment Double Jeopardy, Self-Incrimination, and Takings Clauses. Issues to be explored include when does jeopardy attach, when can a criminal defendant assert the privilege against self-incrimination, and how do the courts distinguish between the government taking private property on the one hand and significantly restricting the use of the property by its private owner on the other hand.

Week Six (April 7) - Fifth Amendment Due Process Clause. This discussion will focus on the elements of procedural due process including notice and an opportunity to be heard and the substantive rights protected by the Due Process Clause including fundamental rights not specifically listed in the Bill of Rights such as the right to marry, the right to terminate a pregnancy, and the right of parents to direct the upbringing of their children.

Week Seven (April 14) - Fifth Amendment's Equal Protection Component of the Due Process Clause. While the Fifth Amendment, unlike the Fourteenth Amendment, does not mention equal protection, the Supreme Court has found equal protection to be applicable to both the federal and state governments by recognizing that one of the aspects of fairness protected by the Fifth Amendment Due Process Clause is equality of treatment. We will discuss the Court's approach to equal protection when the government discriminates based on race, gender, age, disability, wealth, and other classifications.

Week Eight (April 28) - Sixth Amendment. The amendment provides protections during the trial phase of a criminal prosecution. The class will explore a number of the rights specifically protected including the right to a speedy and public trial, the right to an impartial jury, the right to know what you are accused of, the right to cross-examine government witnesses, the right to subpoena favorable witnesses, and the right to an attorney.

Week 9 (May 5) - Seventh and Eighth Amendments. Civil Jury Trials, Excessive Fines and Cruel and Unusual Punishments. The Seventh Amendment civil jury trial right only applies to federal courts and not state courts, whether the excessive fines clause applies to the states will be decided by the Supreme Court this year, and while the Eighth Amendment applies to both the states and the federal government, there is still uncertainty as to when a punishment is cruel and unusual. Class discussion will focus on all of these issues.

Week 10 (May 12) - Ninth and Tenth Amendments. The Ninth Amendment appears to recognize the existence of individual rights not specifically listed in the first eight amendments. Despite recognizing the existence of such rights, such as the right to marry, the Supreme Court has not relied on the Ninth Amendment as the source of any of these rights and the explanation for that decision will be explored. The Tenth Amendment describes the division of power between the states and the federal government. The deliberate tensions that exist between the two governments under our constitutional system will be explored.