

Christina Bambrick
MWF 9-9:50 in MEZ B0.306
Spring 2017

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Office Hours: MW 3-4:30
in MEZ 3.224

GOV 312L (38553)

An Introduction to Rights: Theory, Practice, and Debates

It's a free country! It's my right! How many times have you heard these expressions? How many times have you used them? From these playground taunts to more serious appeals in public fora, the language of rights pervades American discourse today. This may be a virtue if this rights-consciousness results in a more just society. But it may be counterproductive as well. People may resort to "rights talk" at the expense of reasoned argument, preventing understanding or dialogue with others who seem to disagree. Moreover, emphasizing rights may distract from thinking about our duties as citizens or even as human beings.

If we are going to discuss and debate rights as much as we do, we should know something about them. Arguably, we should know something about their history, their status in law, and the important questions concerning rights that are up for debate even today. This course is an introduction to each of these aspects of the concept of rights. Though one could easily fill a whole class with any one of these three subjects, the purpose of this class is to offer a broad introduction so that students walk away more informed on the subject of rights in general. Those students who are interested in pursuing further study of rights or government should also find this class a useful introduction on which to base more focused study in the future.

In the first section of this class, we will read many of the essential texts from the history of rights theory. This section will be challenging. Indeed, it is only because these texts are so complex and rich that we are still reading them after hundreds (and even thousands!) of years. So don't be discouraged if you struggle. You will be rewarded (both intellectually and in your grade) if you stick with it, and ask me if you need further clarification beyond the lecture.

The second section covers in broad strokes the history of rights in constitutional law. Though we will focus on United States constitutional law, I will take opportunities throughout to draw comparisons with other countries. This section will be more practical insofar as it will help you understand the current state of rights jurisprudence in the U.S. However, my hope is that this section will begin to draw out how the theoretical and historical foundations of rights have directly informed the development of the American constitutional order.

Lastly, in the third section we will take up a variety of questions about rights that remain open for debate. Where do we think rights come from? How do we find rights in law? Can rights ever be limited or taken away? Are there limits to what the concept of rights can accomplish? After the first two sections of the course, we should be prepared to weigh in on these big questions, and even offer some answers.

Text:

Mary Ann Glendon. *Rights Talk*. New York: Free Press, 1993.

***Other materials will be available on Canvas, or online.** (Most if not all of the scanned materials on Canvas are also available online, if you prefer to read in a larger font.)

Course Requirements:

Grades will be based on three noncumulative exams. The first two exams will be in-class and multiple choice. I permit make-up exams only if students produce documentation of accident, illness, or university or legal obligation. Unexcused absence will result in a score of zero for that exam.

The last exam will be a take-home written exam. You will choose 1 question (from 3-5 possible options) to answer in an analytical essay that demonstrates understanding of course material. Exam must be uploaded as a .doc or .pdf to Canvas no later 11:59pm on Saturday, May 6. I will have a 5 minute grace period, but all exams submitted after this period will be considered late. I will run all essays through TurnItIn, the university's plagiarism detection software – so please do not plagiarize!

I expect everyone to complete the assigned reading prior to class. Readings will be difficult some weeks, but I try to mix in a few days of light reading throughout the semester. Exams will be based on material from both the readings and lecture, so it is in your best interest to keep up. We will have good opportunities for discussion and debate in this course, and everyone will benefit if you do your part by reading.

I will give regular pop quizzes based on a given day's reading assignment. These quizzes are designed simply to see that you have done the reading. If you do the reading, you will not have any trouble with them. I will drop the lowest quiz grade.

If you do not plan to attend lecture, then this class is not for you. Attendance is both essential for success on the exams, and a component of your final grade. Each class, I will call roll for a portion of the class roster. You may have 5 unexcused absences over the semester without penalty. After that, you will lose one grade level (or 3 points) from your final grade for each unexcused absence. Feel free to ask me if you'd like an update on your attendance record at any point

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|---------------------|------------------|-----|
| Exam 1 | (Feb. 22) | 25% |
| Exam 2 | (Apr. 5) | 25% |
| Essay Exam 3 | (May 3-6) | 25% |
| Quizzes | | 15% |
| Attendance | | 10% |

Grade Scale:

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|-----|--------------|
| A: | 93-100 |
| A-: | 90-92 |
| B+: | 87-89 |
| B: | 83-86 |
| B-: | 80-82 |
| C+: | 77-79 |
| C: | 73-76 |
| C-: | 70-72 |
| D+: | 67-69 |
| D: | 63-66 |
| D-: | 60-62 |
| F: | Less than 60 |

Without exception, I will round up scores of 0.5 and higher and round down scores of less than 0.5.

Technology: I discourage laptops as they tend to hinder learning and discussion. However, if you choose to use one please sit in the back of the classroom so as not to distract others. I reserve the right to ask all students to close their laptops during certain parts of lecture and discussion. So it is in your best interest to keep a notebook on hand, too. Cell phones should be silent and stowed away, out of sight.

Academic Dishonesty/Cheating: I have a zero tolerance policy for cheating, and expect students to adhere to the UT Honor Code: *The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.*
Review these links for more information on plagiarism, academic integrity, and UT's policies: <http://deanofstudents.utexas.edu/conduct/>
<http://www.lib.utexas.edu/services/instruction/learningmodules/plagiarism>

Students with Disabilities: Students may request academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities. Please inform me within the first two weeks of classes if you intend to use such accommodations.

Religious Holy Days: By UT policy, you must notify me of your absence at least fourteen days prior to the date of observance of a religious holy day.

Class Schedule:

- Jan. 18 Introduction to the Class
- Jan. 20 Langlois, Anthony J. Chapter 1: "Normative and Theoretical Foundations of Human Rights," in *Human Rights: Politics and Practice*, 3rd ed. Ed. Michael Goodhart. Oxford: Oxford UP, 2016.

I. Theoretical and Historical Foundations

Government Before Rights

- Jan. 23 Aristotle (c. 384-322 B.C.)
The Ethics i.1-5, 7, 13, v. 6-7.
Trans. Terrence Irwin. Indianapolis: Hackett, 1999.
The Politics iv.11, vii.1
- Jan. 25 Thomas Aquinas, *Summa Theologiae* (1265-1273) I.II, Q. 90, 94, 95, 96
Trans. Father of the English Dominican Province, 2016.

The Modern Rights Tradition

- Jan. 27 Thomas Hobbes, *Leviathan* (1652) I.xiii-xiv, II.xvii
Ed. Edwin Curley. Indianapolis: Hackett, 1994.
- Jan. 30 John Locke, *Second Treatise of Government* (1688) Ch. 2,3,5,7,11,18.
Ed. Mark Goldie. Oxford World's Classics, 2016.
English Bill of Rights (1689) – available online
- Feb. 1 Jean-Jacques Rousseau, *The Social Contract* (1762) Book I – all; Book II - ch. i.
Ed. Leo Damrosch. Trans. Peter Constantine. New York: Modern Library Classics, 2013.
- Feb. 3 U.S. *Declaration of Independence* (1776) – available online
French *Declaration of the Rights of Man and Citizen* (1789) – available online
- Feb. 6 Kant's *Groundwork for the Metaphysic of Morals* (1785), First Section – 393-394;
Second Section , 413-414, 419-421, 428-429, 432-435.
Ed. And Trans. Allen Wood. New Haven, CT: Yale UP, 2002.
Jeffrey Abramson. "Kant's Crooked Timber" in *Minerva's Owl*. Cambridge, MA:
Harvard UP, 2009. Pp. 258-278.

Critiques of Rights and Liberalism

- Feb. 8 Selections from Burke, Bentham, Marx from Jeremy Waldron's *Nonsense on Stilts*

Whose rights?

- Feb. 10 Elizabeth Cady Stanton, "Declaration of Sentiments and Resolutions" (1848) – available online
- Feb. 13 Frederick Douglass, "What to the Slave is the Fourth of July?" (1852) - available online

Giving Peace (and Rights) a Chance in the 20th Century

- Feb. 15 Franklin Delano Roosevelt, *The Four Freedoms* (1941)
Watch here: <https://www.youtube.com/watch?v=qrNDwyj4u1w>
United Nations Universal Declaration of Human Rights (1948)
European Convention for the Protection of Human Rights (1950)
- Feb. 17 Jacques Maritain, Introduction to *Human Rights* (1951)
- Feb. 20 Review
- Feb. 22 Exam 1**

II. Rights in U.S. (and Comparative) Constitutional Law

**Unless otherwise noted, all texts in this unit are taken from American Constitutional Law, Ed. Kommers, Finn, Jacobsohn. Plymouth, UK: Rowman and Littlefield, 2010.*

The Early Constitution and Court

- Feb. 24 Constitution and Bill of Rights of the United States – available online
<http://constitutioncenter.org/media/files/constitution.pdf>
<http://constitutioncenter.org/interactive-constitution#>
Mary Ann Glendon, "Ch. 1: The Land of Rights," in *Rights Talk*. New York: Free Press, 1991
- Feb. 27 The Constitution and Judicial Review, 57-59
Comparative Perspectives, 72-75
Marbury v. Madison (1803), 76-81
Comparative Note 3.1 on p. 78

Writing Rights

- Mar. 1 Hadley Arkes, "Ch. 4: On the Dangers of a Bill of Rights: Restating the Federalist Argument," in *Beyond the Constitution*. Princeton: Princeton UP, 1990.
Selections from Federalist (78, 84) and Anti-federalist Papers (Brutus)
Bills of Rights in Other Constitutions, 105-107

Rights and the States

- Mar. 3 Constitutional Theory and the Need for a Bill of Rights, 109-113
Barron v. Baltimore (1833), 135-136
Take a look at the influence of state constitutions on the drafting of the U.S. Constitution:
<http://constitutionalrights.constitutioncenter.org/> (click "Writing Rights")
And the Bill of Rights of the Texas Constitution:
<http://www.statutes.legis.state.tx.us/Docs/CN/pdf/CN.1.pdf>
Emily Zackin, Chapter 1 in *Looking for Rights in All the Wrong Places*. Princeton:
Princeton UP, 2013.

The Fourteenth Amendment and a New Birth of Rights

- Mar. 6 The Early Struggle for Judicial Supremacy, 59-61
Dred Scott v. Sandford (1856), 83-85
Lincoln's First Inaugural Address (1861), 755-758
Civil War Amendments (XIII, XIV, XV)
Comparative Note 3.3 on p. 83

Incorporation of the Bill of Rights

- Mar. 8 The Reconstruction Amendments and the Bill of Rights, 113-114
The Fourteenth Amendment and the Incorporation Doctrine, 114-122
Palko v. Connecticut (1937), 144-147
Adamson v. California (1947), 147-151

Economic Due Process

- Mar. 10 The Rise and Fall of Economic Due Process, 216-223
Lochner v. New York (1905), 246-251
Comparative Note 5.3 on p. 248
Comparative Note 5.4 on p. 249
West Coast Hotel v. Parrish (1937), 251-256
Comparative Note 5.5 on p. 253
Comparative Perspectives, 223-227

Spring Break

Noneconomic Substantive Due Process

- Mar. 20 The Early Development of Noneconomic Substantive Due Process, 267-273
US v. Carolene Products (1938), 296-297
Korematsu v. US (1944)
- Mar. 22 Substantive Due Process: The Development of a Constitutional Right to Privacy,
273-289
Griswold v. Connecticut (1965), 302-310

Comparative Note 6.1 on p. 303
Comparative Perspectives, 289-295

Mar. 24 Roe v. Wade (1973), 310-318
Comparative Note 6.2 on p. 310
Lawrence v. Texas (2003), 359-369
Comparative Note 6.7 on p. 359
Washington v. Glucksberg (1997), 376-388
Comparative Note 6.9 on p. 378

Mar. 27 Glendon, "Ch. 3: The Lone Rights Bearer," in *Rights Talk*

Equal Protection

Mar. 29 The Equal Protection Clause and Racial Discrimination, 597-616
Plessy v. Ferguson (1896), 625-629
Brown v. Board (1954), 629-633
Comparative Note 9.2 on p. 630
Civil Rights Act of 1964
Comparative Perspectives, 616-618

Mar. 31 Watch *Eyes on the Prize* in class

Apr. 3 Review

Apr. 5 Exam 2

III. Ongoing Debates

Knowing Rights

Where rights come from

Apr. 7 Oliver Wendell Holmes, *Natural Law* (1918)
Excerpts from Jacques Maritain, *The Rights of Man and Natural Law* (1943)
Calder v. Bull (1798), 228-231

Finding rights in law

Apr. 10 Antonin Scalia, "Originalism: The Lesser Evil" (1988)
Roper v. Simmons (2005), 187-196

Apr. 12 Scalia- Breyer Debate on Foreign Law:

<http://www.freerepublic.com/focus/news/1352357/posts?page=8>
<https://www.c-span.org/video/?185122-1/constitutional-relevance-foreign-court-decisions>

Glendon, Ch. 6, "Rights Insularity," in *Rights Talk*

Limits to Rights

- Apr. 14 Excerpts from: Ronald Dworkin, "Rights as Trumps," in *Theories of Rights*. Ed. Jeremy Waldron (1984). 153-167.
And Alexander Bickel, *The Least Dangerous Branch* (1962)
- Apr. 17 Glendon, "Ch. 2: The Illusion of Absoluteness," in *Rights Talk*
- Apr. 19 Andrew Clapham, *Human Rights: A Very Short Introduction* (2015)
Ch. 6: "Balancing Rights," 110-121
Ch. 8: "Discrimination and Equality," p. 142-145
- Apr. 21 Writing Successful Essay Exams
Sponsored by the UT Writing Center

Limits of Rights

- Apr. 24 Ackerly, Brooke. "Ch. 2: Feminist and Activist Approaches to Human Rights," in *Human Rights: Politics and Practice*, 3rd ed. Ed. Michael Goodhart. Oxford: Oxford UP, 2016.
Lilla, Mark. "The End of Identity Liberalism." *The New York Times*. Nov. 18, 2016.
<https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html>
- Apr. 26 DeShaney v. Winnebago County (1989), 338-342
Glendon, "Ch. 4: The Missing Language of Responsibility," in *Rights Talk*
- Apr. 28 Glendon, "Ch. 5: The Missing Dimension of Sociality," in *Rights Talk*
- May. 1 Charles Epp, "Chapter 1: Introduction" in *The Rights Revolution*, Chicago: Chicago UP, 1998.
- May 3 Summary and Review in class
Exams available on Canvas by 5pm
- May 6 **Exams due on Canvas by 11:59pm**