

## Week four plan

### Civil Rights and Civil Liberties

1. Sign in
  - a. Poll question: who won the debate? Or Paris is the city of lights, Phl is the city of brotherly love, what is Madison the city of?
2. Discuss the debate and in reference to the paper. The new due date is 10/15 but I suggest you finish it and get it to me earlier.
3. Questions from lecture or the reading
4. Review of terms:
  - a. What's the difference between a right and a liberty?
  - b. The due process clause of the 14<sup>th</sup> Amendment:
    - i. Due process was mentioned in lecture and the Progressive article. What is due process?
      1. There are two types: procedural and substantive.
        - a. Procedural: means government has to use the proper common sense procedures of the law in its interactions with citizens.
          - i. Is a law too vague?
          - ii. Was a citizen read their rights?
          - iii. Did a citizen have an attorney present at their trial?
        - b. Substantive: even if government uses the right procedure, a law can be struck down by the SC if the substance of the law is unconstitutional.
          - i. An example privacy:
          - ii. There is no explicit right to privacy in the Constitution but it is generally believed to be there from 4<sup>th</sup> Amendment.
            1. The Roe v Wade abortion decision declared a Texas law in violation of substantive due process and ruled that in the first trimester, it was unreasonable for a state to interfere with a woman's right to the privacy of an abortion.
          - iii. SDP as the black box of constitutional law.
  5. History of the 14<sup>th</sup> amendment:
    - a. It was passed by the Union Congress after the Civil War.
    - b. A time of only northerners in the Congress because the southern states had not yet been readmitted.
    - c. The southern states knew that it obliged them to treat all citizens equally so they were loathe to ratify it.
    - d. In order for the amendment to pass it had to be ratified by the states. Why did they ratify it if it was against their interests?
      - i. The Union forced any state that wanted to be readmitted into the Union to ratify the 14<sup>th</sup> so the southern states did.
    - e. It was ratified in 1868 when 28 of the 37 states had ratified

- f. As Coleman said in class it was ignored for many years after its ratification. Then it was seized upon during the civil rights era and was reinterpreted as applying to the states.
    - i. we talked about two kinds of constitutional change: is this reinterpretation soft or hard change?
6. Discussion:
- 7. Chapter 4 in Faultlines talks about the USA Patriot Act and the concerns of libertarians.
    - a. What's a libertarian again?
    - b. What are the concerns of libertarians about the Patriot Act?
      - i. because of fears of security and terrorism we are losing our checks on what the government can and can't interfere with.
    - c. What does Ponnuru have to say to the libertarians?
      - i. Read the fine print...not that much new here.
      - ii. Making things specific limits government because before it was so broad that government could do whatever it wanted.
    - d. The chapter notes that 78% of the country favored sacrificing rights to fight terrorists...why should we stop this clear majority?
      - i. What would Madison say about this?
      - ii. What two aspects of political culture (property, religion, liberty, individualism, democracy) are in tension here?
    - e. Historically there is a comparison worth considering. Americans in the 1920s and 1950s were terrified that communists had infiltrated the US government and were planning a revolution. Our very own Wisconsin Senator Joe McCarthy led the Red Scare. It got to the point where if you questioned McCarthy you were seen as a communist sympathizer. Eventually MCs stood up to him and public opinion shifted against him.
      - i. Is this analogous to present day terrorism?
        - 1. Why, why not?
    - f. The Progressive characterizes Ashcroft as saying: "If the government abuses some people in this fight, so be it. It's war, and the casualties of a few are outweighed by the protection of many."
      - i. Whether they're right or wrong in characterizing him in that way, where's the line between protecting liberty and ensuring security?
    - g. One of Ponnuru's points is, not much of this is new so it isn't that bad? Any problems with this?
8. Affirmative Action:
- a. Multiple choice question: How have proponents of the policy of affirmative action in higher education argued for it?
    - i. As payback for America's racist past including segregation and slavery.
    - ii. As a way to hold white success back while encouraging black success?
    - iii. As a way to better educate lawyers and thereby serve clients better.
  - b. Were you surprised this was the avenue they chose?
  - c. A debate from polisci that you should know about: substantive vs. descriptive representation. How does that pertain to the diversity in the classroom question?
  - d. What's the background on Clarence Thomas and SC justices? Why was he chosen? Freud would have a field day with this one...

- e. End vs. means: Does he disagree with diversity as a compelling state interest?
  - i. Not necessarily. He says they haven't defined diversity well enough or why the state has an interest in a diverse student body. More importantly, he disagrees with the means that they are using to get it. "Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy..."
- f. What does Thomas think they should do instead?
  - i. Become less elite
  - ii. Drop the LSAT as a index to student achievement.
- g. What are the strengths of his argument?
  - i. There are more than one road to a goal.
  - ii. He is right that diversity is an underdefined concept
- h. Weaknesses?
  - i. His subtle shot at diversity as mere aesthetics. What's his point? He's wrong that this is the adherent's goal.
  - ii. He fails to attack the descriptive vs. substantive representation debate.
- i. CLEA piece. Discuss amicus briefs if we have time.
  - i. What's the main point?
    - 1. The country is getting more diverse and we need lawyers who have familiarity with the diversity and can effectively represent the plural interests. Racial diversity in the classroom is shown in studies to enhance student knowledge about other types of races.
  - ii. What are the strengths of this piece?
    - 1. Points to studies that show that students feel that this is an important part of their educations. Points to studies showing that minorities view facts differently than non-minorities.
    - 2. Good point that diversity shows that one person doesn't speak for all their race.
  - iii. Weaknesses:
    - 1. They talk a lot about exposure and less about interactions between students. Exposure means seeing people around? Living together? Eating together? Just sitting next to each other may not be enough.
    - 2. Do they justify their allegiance to the LSAT/being elite?

Week five plan:

1. Sign in sheet: poll question: Ninjas or Pirates?
2. Questions from class or the reading?
3. Discuss the web activities: what topics did you end up choosing? What did you learn? Any broader lessons about polling?
4. Public opinion:
  - a. Are Americans idiots or sensible?
  - b. Tell them about the Subaru dealership and NPR "don't agree with many of his policies but I admire a man who can wear a cowboy hat."
  - c. Should we be concerned?
  - d. Ask them some polling questions that are sort of esoteric
    - i. What's the population of the US?
      1. 371 million
      2. 323 million
      3. 294 million
    - ii. Who was the 18<sup>th</sup> president of the US?
      1. Lincoln
      2. Grant
      3. Johnson
    - iii. Where was the first capital of the US?
      1. New York
      2. Boston
      3. Philadelphia
    - iv. How many combined members of Congress are there?
      1. 453
      2. 355
      3. 535
    - v. Who breaks ties in voting in the Senate?
      1. The Speaker of the House
      2. The Speaker of the Senate
      3. The Vice-President of the U.S.
  - e. Both Robinson and Schudson think that American voters are ignorant and that's bad.
  - f. What is Robinson's point about polling?
    - i. Polling is controlled by pollsters who often have an agenda (to perpetuate their own utility their polls have to be seen as saying something – the problem is that they often aren't). Issue polls aren't useful because they ask if we support or oppose various positions...but we don't even know what the positions are.
  - g. What is Schudson's point about democracy?
    - i. Democracy is more than just voting, we need to be able to take and debate positions on issues.
    - ii. Agree?
    - iii. Disagree?