

## 2010-2011 Executive Precepts Program

(New York City, Philadelphia, and Princeton)

Sponsored by the James Madison Program in American Ideals and Institutions  
Princeton University

### Civil Liberties

This year we take a detour from our multi-year reading of The Great Books to focus on a theme found in many of those works: the meaning of *Liberty*. The idea is to examine the promise, made specifically in the 14th amendment of the U.S. Constitution, to protect our liberty. Who is supposed to keep the promise? (Certainly not the courts, at least not in the Framers' plan, though today most people think so.) And what should liberty mean? Does it include, say, a farmer growing wheat on his own land to feed his family? (The Supreme Court said no.) How about a young man stringing up a nonsensical banner ("BONG HiTS 4 JESUS") to tweak his high school principal? Does liberty include watching virtual child pornography, and selling it? (The Court says yes it does.) Does liberty include ending one's own life? These questions beget other questions, like how is the Court, or Congress, or anyone, supposed to protect liberty if there is no agreement on what the term means, or a method for deriving a meaning? These are some of the issues we will discuss this academic year in our precept series.

### Reading List

#### Meeting 1 – Whose Notion of Liberty? Which Conception of Rights? The Problem of Moral Pluralism

Declaration of Independence  
U.S. Constitution (Amendments. I – XIV)  
Federalist Papers # 10, 51, 78

Michael H. v. Gerald D. (1989)  
Morse v. Frederick (2007)

#### Meeting 2 – Natural Rights, Civil Liberties, Constitutional Interpretation – and Guns.

Nearly everyone is in agreement that the Supreme Court possesses great power in interpreting the Constitution. Consensus breaks down, however, on the question of how the Court should use

it. There is widespread agreement that, in some decisive way, the “original” understanding of the Constitution must be respected, even two-hundred plus years out from the Founding. But sometimes – as with the Religion Clauses and in the recent Second Amendment case – there is also widespread disagreement about what the “original” understanding is. In the latter case (*Heller*) part of the interpretive dispute depended upon disagreement concerning the meaning of a relevant natural right (such as the right to preserve one’s life) and political theory (the relationship of an armed citizenry to the security of a free state).

Lincoln’s First Inaugural Address  
Scalia, “Originalism: The Lesser Evil”  
Brennan, “The Constitution ...: Contemporary Ratification”

District of Columbia v. Heller (2008)

### **Meeting 3 – Political Expression**

“If you have to ask the question, the answer won’t help,” one’s mother used to say. With these words Mother might describe the Court’s effort in the post-World War II era to answer the question, “What is free speech?” The Supreme Court has struggled to distinguish among flag burnings and other forms of “expressive behavior”, and to balance the interest of persons in free expression with the needs of national security and domestic order. Many Americans would say that the Court’s efforts have been unavailing. That is to say, the Court is no closer to a coherent definition of free speech today than it was 50 years ago. But is this a bad thing?

Mill, *On Liberty*, Chs. 1 and 2  
Texas v. Johnson (1989)  
Citizens United v. Federal Election Committee (2010)

### **Meeting 4 – Obscenity, Pornography and Non-Speech Speech**

“I shall not today attempt to further define the kinds of material I understand to be [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”

— Justice Potter Stewart in *Jacobellis v. Ohio* (1964)

Stanley v. Georgia (1969)  
Cohen v. California (1971)  
Ashcroft v. Free Speech Coalition (2002)

### **Meeting 5 – Equal Protection and Affirmative Action**

The February 28, 2003 *Wall Street Journal* ran a short story about a bake sale sponsored by the Republican Party of the University of California at Los Angeles, where the price of cookies was \$1.50 for white and Asian males, \$1.25 for white and Asian females, \$.75 for black and Hispanic males, and \$.50 for black and Hispanic females. The paper went on to report that Democrat

students objected that the sale trivialized an important social issue and even had the effect of “silencing” speech through the use of ridicule. Whatever the motives behind the “affirmative action bake sale,” it raises a vexing question: should state-run institutions, such as colleges, law schools and city fire departments, be permitted to take race into account in admissions, hiring, and promotion?

Grutter v. Bollinger (2003)  
Gratz v. Bollinger (2003)  
Ricci v. DeStefano (2009)

### **Meeting 6 – The Religion Clauses: Free Exercise and Establishment**

Some Constitutional scholars see the religion “clauses” of the First Amendment as complementary; others see them as adversarial. Depending on which view one takes, one reaches very different conclusions.

Reynolds v. United States (1878)  
Lee v. Weisman (1992)  
McCreary County v. ACLU (2005)  
Van Orden v. Perry (2005)

### **Meeting 7 – “... Of Life, Liberty, or *Property*”**

Property rights, believed by the Founders to be a bulwark against tyrannical government, have been eclipsed in the years since the Great Depression. Pride of place has passed to other rights, some of which, like privacy, are unmentioned in the Constitution. Should property rights be restored to their former dignity? Or was their fall warranted?

John Locke, On Property, 2nd Treatise on Government

Wickard v. Filburn (1942)  
Hawaii Housing Authority v. Midkiff (1984)  
Kelo v. New London (2005)

### **Meeting 8 – Euthanasia and Assisted Suicide**

Cruzan v. Missouri Dept. of Health (1990)  
Washington v. Glucksberg (1997)  
Vacco v. Quill (1997)  
“Assisted Suicide: The Philosophers’ Brief”

### **Meeting 9 – Precept and Dinner on Princeton Campus**

Professor Robert P. George will select the last reading in the spring of 2011.