

**Information Sheet for LS 138  
Supreme Court and Public Policy  
Fall 2021**

Professor Ben Brown

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Class Lectures: Monday, Wednesday, Friday, 11:10 – 12:00 Pacific time

Office hours: Tuesdays 9:00 - 10:00 am Pacific time

By Zoom

Zoom meeting ID: 983 2209 2035

Campus rules require that you sign into Zoom with your Cal ID.

Materials:

Linda Greenhouse, 2012, *The U.S Supreme Court: A Very Short Introduction* (required reading; you must purchase this book)

The cases and other readings assigned on the syllabus are all available on my website:

<http://www.benbrownshistoryandlaw.com/> ([Links to an external site.](#))

Reference materials:

Peter Irons, *A People's History of the Supreme Court*, presents the important cases with a concentration on the Justices and parties.

Kermit Hall edited two good encyclopedias of the Supreme Court and American law: Kermit Hall, *The Oxford Companion to the Supreme Court of the United States* and *The Oxford Companion to American Law*.

For an overview of constitutional history see Melvin Urofsky and Paul Finkleman, *A March of Liberty: A Constitutional History of the United States*.

A fun-to-read journalistic account of the Court in the 1990s and early 2000s is Jeffrey Toobin's *The Nine*, or his latest book on the Roberts Court, *The Oath*.

To see transcripts of U.S. Supreme Court oral arguments and to hear audio of some of these oral arguments, go to <http://www.oyez.org/> ([Links to an external site.](#)).

To find complete copies of the edited cases that I have provided go to

<http://www.findlaw.com> ([Links to an external site.](#)) or search the Lexis database in the library's database collection.

For a good online glossary of legal terms, go to <http://www.nolo.com/glossary.cfm> ([Links to an external site.](#)).

Grading:

Grades will be based on four factors:

Mid-Term Exam – 25%

Analytical Essay – 25%

Discussion Section assignments and participation – 10%

Final exam – 40%

**Syllabus for LS 138  
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Supreme Court cases, or excerpts from them, are bolded and underlined below. You are responsible for reading the cases as they are found on a separate tab on my website. They are arranged there alphabetically. Other materials are on the LS 138 tab and arranged in the order that we will address them.

### **Week of August 23 – Introduction to the Supreme Court**

#### **Readings:**

Linda Greenhouse, *The U.S Supreme Court: A Very Short Introduction* (you must purchase and read this short book)

Orin S. Kerr, “How to Read a Judicial Opinion”

Alexander Hamilton, Federalist #78

“Brutus’s” 15th essay, The New-York Journal on March 20, 1788

*Hollow Hope*, Chapter 1

#### **Classes:**

August 23 – No class.

August 25 - Introduction to the Supreme Court and its role in U.S. Government.

August 27 - Brief history of the power of the Supreme Court to 1950; Constrained Court v. Dynamic Court debate.

### **Week of August 30 – Advocating for Racial Integration**

#### **Readings:**

Argument analysis in *D.C. v. Wesby* by Amy Howe

**Plessy v. Ferguson**

**Sweatt v. Painter**

#### **Classes:**

August 30 – Supreme Court Advocacy: visiting lecturer Nat Garrett, partner at Jones Day (no live class)

September 1 – Supreme Court and public segregation - creation of Jim Crow.

September 3 - NAACP attack on public segregation through the courts.

### **Week of September 6 – Brown v. Board of Education; Brown Implementation**

#### **Readings:**

**Brown v. Board of Education**

Mary L. Dudziak, “The Court and Social Context in Civil Rights History”

Michael Klarman, “Brown v. Board of Education: Law or Politics”

**Classes:**

September 6 – Labor Day, no class.

September 8 – Brown v. Board - argument and decision.

September 10 – Establishing the meaning of Brown v. Board - Brown II and the Montgomery bus boycott.

**Week of September 13 – Supreme Court Limits on Brown**

**Readings:**

Michael Klarman, “Why Massive Resistance”

**Cooper v. Aaron**

**San Antonio Independent School District v. Rodriguez**

**Milliken v. Bradley**

**Parents Involved v. Seattle School District**

**Classes:**

September 13 – Massive resistance.

September 15 – Limiting Brown v. Board and constitutionalizing white flight.

September 17 – Reversing Brown v. Board and conclusions from public segregation battles.

**Week of September 20 – Enforcing Rights (or not)**

**Readings:**

**Mapp v. Ohio**

**Gideon v. Wainwright**

**Miranda v. Arizona**

**Terry v. Ohio**

Sara Mayeux, “What Gideon Did”

**Classes:**

September 20 – Warren Court and criminal constitutional rights.

September 22 – Effective right to counsel, problem of bail.

September 24 – The attack on the Warren Court. Creating loopholes – search and seizure.

**Week of September 27 – Lessons from Criminal Constitutional Law**

**Readings:**

Michelle Alexander on the New Jim Crow – interview on Fresh Air,  
<https://www.npr.org/2012/01/16/145175694/legal-scholar-jim-crow-still-exists-in-america> (Links to an external site.)

Tina Peng, “I’m a public defender.”

**United States v. Whren** (identified as Whren on website)

**McCleskey v. Kemp**

**Classes:**

September 27 – Politics and mass incarceration.

September 29 – No class

October 1 – The New Jim Crow; Lessons from criminal constitutional law.

**Week of October 4 – Court and Vote Equalization**

**Readings:**

**Reynolds v. Sims**

**South Carolina v. Katzenbach**

**Classes:**

October 4 – Lesson from the first two case studies; midterm review.

October 6 – **Midterm Exam**

October 8 – Voting Rights Act. One person, one vote.

**Week of October 11 – Voting Rights**

**Readings:**

**Shelby County v. Holder**

**Rucho v. Common Cause**

Sarah Weddington’s argument to the Court in *Roe*

**Roe v. Wade**

**Classes:**

October 11 –Gerrymandering in reaction to Reynolds.

October 13 – Voting Rights Act; Voter ID laws and other voter suppression laws.

October 15 – Roberts Court attack on Voting Rights Act.

**Week of October 18 – Roe v. Wade and the Political Attack on Roe; The Court’s Compromise**

**Readings:**

**Planned Parenthood v. Casey** (identified as “Casey” on website)

**Gonzales v. Carhart**

Robert Post and Reva Siegel, “Roe Rage: Democratic Constitutionalism and Backlash”

**Classes:**

October 18 – Roe v. Wade – background and argument.

**Analytical Essay Assigned on October 18**

October 20 – Role of lawyering and Blackmun’s opinion in Roe.

October 22 – Political attacks on Roe; Sandra Day O’Conner and “saving” Roe in Casey.

**Week of October 25 – Roe Rage and Gun Rights**

**Readings:**

Review “Roe Rage” for your analytical essay

**Classes:**

October 25 – State regulatory reaction to Casey; Limiting doctors in Carhart.

October 27 – Lessons from Roe.

October 29 – Gun rights before the mid-twentieth century. and the transformation of the NRA.

**Week of November 1 – Heller and its Legacy**

**Readings:**

**District of Columbia v. Heller**

Posner on Heller

Reva Siegel, “Dead or Alive: Originalism as Popular Constitutionalism in Heller” (identified as “Heller and Originalism” on website)

Nelson Lund on Heller and Originalism

**Classes:**

November 1 – **Analytical Essay due**

November 1 – Federalist Society. Originalism as a backlash against the Warren Court.

November 3 – Originalism and the Second Amendment.

November 5 – Heller: argument, decision and academic reaction.

**Week of November 8 – LGBTQ Rights**

**Readings:**

**Bowers v. Hardwick**

**Romer v. Evans**

**Classes:**

November 8 – Cases since Heller. Lessons from Gun Rights study.

November 10 – LGBTQ rights in mid-twentieth century. AIDS epidemic.

November 12 – Ratifying sodomy laws, Bowers and Romer.

**Week of November 15 – The Unlikely Victory of Marriage Equality**

**Readings:**

**Lawrence v. Texas**

Defense of Marriage Act

**Perry v. Schwarzenegger**

Staged reading of Perry transcript: <https://www.youtube.com/watch?v=q1UG8F9uVgM> (Links to an external site.)

**United States v. Windsor** (identified as “Windsor” on website)

**Classes:**

November 15 – Kennedy and Lawrence – case and reasoning.

November 17 – Marriage equality in the states, Defense of Marriage Act.

November 19 – California, Prop 8 and Perry.

**Week of November 22 – The Unlikely Victory of Marriage Equality, continued**

**Readings:**

**Obergefell v. Hodges**

**Classes:**

November 22 – Marriage equality after Perry.

November 24 and 26 – Thanksgiving break, no class.

**Week of November 29 – Lessons from History;  
How Effective is the Supreme Court in Influencing Public Policy?**

**Readings:**

**Masterpiece Cakeshop v. Colorado Civil Rights Commission**

Erwin Chemerinsky, “Thinking About the Supreme Court’s Successes and Failures”

**Classes:**

November 29 – Wedding cakes, Adoption Agencies and religious liberty. How protected are LGBTQ Rights?

December 1 – Restrained Court v. Dynamic Court revisited.

December 3 – Conclusions from Supreme Court History.

**Final Exam – Monday, December 13, 11:30 am – 2:30 pm.**