

## LS 177 American Legal and Constitutional History Syllabus

Professor: Douglas C. Sangster (doug.sangster@berkeley.edu)

GSI: Bonnie Cherry (bonniecherry@berkeley.edu)

Lecture: M-Th, 12-2, Wheeler Hall 222

Section 101: M, 10-12, Wheeler Hall 24

Section 102: Th, 2-4, Wheeler Hall 24

This course will introduce you to major themes of American Legal and Constitutional History from the eighteenth century to the present day. It will proceed primarily chronologically, focusing on the foundations of the legal system and constitutional order, and then showing how these changed over the course of the history of the United States. The themes and topics are intentionally broad in order to give you a deep and wide-ranging understanding of American legal and constitutional history.

My office hours will be Wednesdays at 2-3 pm at Strada, and by appointment.

### Learning Objectives:

1. You should know the foundational structures of the American legal system and how those structures developed over time. You should understand what is meant by the federalist separation of power, as well as how the three branches of government interact to create, interpret, and enforce laws.
2. You should know how slavery was a product of law, and the ways in which the law was used to abolish slavery. You should also know how there continued to be racial prejudice in the wake of the abolition of slavery, and how various activists and public intellectuals challenged that legal paradigm.
3. You should know the ways in which the law has been used to expand and restrict liberties among various groups in the United States. The law has been weaponized to isolate and subjugate individuals, and it has also been used to expand the concept of a free and liberal society as well. Showing how law has been applied in both circumstances is an important aspect of this course.
4. You should be able to read case law and analyze it in a way that makes you aware of its legal and policy implications. You should know how to “brief” a case, i.e., understand a case’s major components and the impact the case will have going forward.

### Grading/Assignments:

Midterm: 40%

Final Exam: 50%

Section Attendance and Participation: 10%

You will be allowed to miss *one section*, no questions asked. Any more absences would affect your section attendance and participation grade.

## Week 1

Day 1, 5/20: Current Supreme Court Cases and Course Introduction

Reading: No required assignment, I recommend reading the Constitution before this class, definitely by the second class

Day 2, 5/21: Theories of Constitutionalism: Hobbes, Locke, and Montesquieu

Reading: Hobbes, *De Cive*; Locke, *Two Treatises*

Day 3, 5/22: *Marbury v. Madison* and Judicial Review; *McCullough v. Maryland* and Federalism

Reading: *Marbury v. Madison*, *McCullough v. Maryland*

Day 4, 5/23: African Founders, Oppression, and Forced Removal of Indigenous Population

Reading: Frederick Douglass's "The Constitution and Slavery," *Johnson v. M'Intosh*, Locke's *Two Treatises* Ch. 5

## Week 2

Day 5, 5/27: No Class, Memorial Day

Day 6, 5/28: Freedom of Speech and the Freedom of the Press

Reading: *Whitney v. California*, *Brandenburg v. Ohio*

Day 7, 5/29: Slavery and Law in Antebellum United States

Reading: *State v. Mann* and *Dred Scott*

Day 8, 5/30: The Civil War and the Second Founding

Reading: The Tenth Amendment, Reconstruction Amendments, *The Slaughterhouse Cases*, *Plessy v. Ferguson*

## Week 3

Day 9, 6/3: State Action Doctrine

Reading: *The Civil Rights Cases*, *Shelley v. Kraemer*, *Brown v. Board*

Day 10: 6/4: Economic Liberties and the Right to Contract: Lochner Era

Reading: *Lochner v. New York*, *Carolene Products*

Day 11, 6/5: Review Session

Day 12, 6/6: Midterm

#### Week 4

Day 13, 6/10: Rights to Privacy and Autonomy Under Substantive Due Process: Procreation

Reading: *Buck v. Bell*, *Griswold v. Connecticut*

Day 14, 6/11: Rights to Privacy and Autonomy Under Substantive Due Process: Abortion

Reading: *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Dobbs*

Day 15, 6/12: Rights to Privacy and Autonomy Under Substantive Due Process: Marriage Equality

Reading: *Bowers v. Hardwick*, *Romer v. Evans*, *Lawrence v. Texas*, *United States v. Windsor*, *Obergefell v. Hodges*

Day 16, 6/13: Commerce Clause

Reading: *United States v. Lopez*, *Gonzales v. Raich*, *NFIB v. Sebelius* (Individual Mandate)

#### Week 5

Day 17, 6/17: Sexism Against Women in the Law

Reading: *Reed v. Reed*, *Frontiero v. Richardson*, *Craig v. Boren*, *US v. Virginia (VMI)*

Day 18, 6/18: Health Law

Reading: *NFIB v. Sebelius* (Medicaid Expansion)

Day 19, 6/19: Disability Law

Reading: *Access Now Inc. v. Southwest Airlines Co.*, *Toyota Motor*, *Rico v. Xcel Energy*

Day 20, 6/20: Modern Day Issues of Race

Reading: *Shelby County v. Holder*, *Parents Involved*, *SFFA v. Harvard* revisited

#### Week 6

Day 19, 6/24: Presidential Power

Reading: *Youngstown Sheet & Tube Co. v. Sawyer*, *Trump v. Hawaii*

Day 20, 6/25: Right to Social Welfare Benefits

Reading: *Goldberg v. Kelly*, *Mathews v. Eldridge*

Day 23, 6/26: Review Session

Day 24, 6/27: Final Exam