

Information Sheet for LS 177
Survey of United States Legal and Constitutional History
Spring 2022

Professor Ben Brown
e-mail - rbbrown@berkeley.edu

Class Lectures: Tuesday, Thursday 11:00 am Pacific time

Zoom Office Hours: Fridays 9:00–10:00 am Pacific time
Office Hours Zoom Meeting ID: 983 2209 2035

Grading:

Grades will be based on four factors:

Mid-Term Exam – 25%

Analytical Essay – 20%

Final exam - 40%

Discussion Section assignments and participation - 15%

Materials:

Melvin I. Urofsky, 2012, *Supreme Decisions: Great Constitutional Cases and Their Impact* (required reading; you must purchase and read this book)

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

<http://www.benbrownshistoryandlaw.com/>

Reference materials:

Linda Greenhouse, 2012, *The U.S Supreme Court: A Very Short Introduction*. This is an accessible review of the Supreme Court.

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/>.

To find complete copies of the edited cases that I have provided go to <http://www.findlaw.com> 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>.

Syllabus for LS 177
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Supreme Court cases, or excerpts from them, are bolded and underlined below. They can be found in the tab labeled “U.S. Supreme Court Cases - edited” on my website in alphabetical order. You are responsible for reading the cases as they are found in that tab.

State court cases are underlined but not bolded below. They, and all other materials can be found in the tab labeled “Survey of US - LS 177” on my website. They are arranged there in the order that we will address them. You are responsible for reading the materials as they are found in that tab.

Week of January 17 - Introduction. Colonial law and Road to Revolution.

Readings:

John Winthrop, “Little Speech on Liberty”
Case of Thomas Granger
Pynchon Court Records
Maryland Servants and Pigs
Pope Aluey Trials
Virginia Statutes on Slavery
General Laws of Massachusetts
Declaration of Independence.

Classes:

January 18 – Introduction to American Law; Colonial Law.

January 20 – Events leading to Revolution.

Week of January 24 - State Building and Republican Ideology.

Readings:

Pennsylvania Constitution of 1776
Articles of Confederation
United States Constitution, 1787
Thomas Jefferson to James Madison on the Constitution
Federalist Papers #10
Virginia Ratification Message
New York’s Ratification Message
Bill of Rights

Classes:

January 25 – Classical Republicanism and creating American states.

January 27 – The 1787 Constitution, Bill of Rights

Week of January 31 - Local Law and Creative Destruction.

Readings:

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

Federalist Papers #78

Calder v. Bull

Ogden v. Saunders

Jackson Veto message

Sands v. Taylor

Fifty Associates v. Tudor

Hellen v. Noe

Urofsky: Chapter 1 – Marbury v. Madison; Chap. 2 – M’Culloch v. Maryland; Chap. 3 – Gibbons v. Odgen.

Classes:

February 1 – Establishing American Common Law

February 3 – Law and Creative Destruction.

Week of February 7 - Creating Rights, Creating Oppression.

Readings:

John Belton O’Neill “Negro Law of South Carolina” chapter 2 pp. 17 -28

Somerset v. Stewart

State v. Mann

State v. Boyce

Tecumseh Speech to Governor Harrison

Johnson v. McIntosh

The Seneca Falls Declaration of Sentiments

Married Women’s Property Act

Fugitive Slave Act of 1850

Dred Scott v. Sandford

Ableman v. Booth

Urofsky: Chapter 4 – Worcester v. Georgia; Chap. 5 – Prigg v. Pennsylvania; Chap. 6 – Dred Scott v. Sandford.

Classes:

February 8 – Creating Rights; Creating Oppression - White Male Rights and the Exploitation of African-American Labor. Displacing of Native Americans.

February 10 – Slave expansion in the territories as a flashpoint for conflict. The Supreme Court steps in: Dred Scott.

Week of February 14 - The election of Lincoln, the Civil War and the Expansion of Federal Power.

Readings:

South Carolina Secession Resolution
Abraham Lincoln's First Inaugural Address
Abraham Lincoln's "Gettysburg Address"
Abraham Lincoln's Second Inaugural Address
Freedmen's Bureau Act
Mississippi Black Codes
1866 Civil Rights Act
1875 Civil Rights Act

Classes:

February 15 – Secession, War and Reconstruction.

February 17 – White Southern Response to Reconstruction; Civil War Amendments.

Week of February 21 - Abandoning the Freedpeople.

Readings:

Slaughterhouse Cases

Bradwell v. Illinois

Civil Rights Cases

Plessy v. Ferguson

Bailey v. Alabama

Urofsky: Chapter 8 – The Slaughterhouse Cases; Chap. 9 – Bradwell v. Illinois; Chap. 12 – Plessy v. Ferguson.

Classes:

February 22 – Supreme Court Reacts to the Civil War Amendments.

February 24 – Using Law to Create Jim Crow. Supreme Court Ratifies Jim Crow.

Week of February 28 - Midterm; Organizing Capital, Disorganizing Labor.

Readings:

In re Debs

Mugler v. Kansas

Chicago, Milwaukee Railway v. Minnesota

Loewe v. Lawlor

Urofsky: Chapter 11 – In re Debs.

Classes:

March 1 - Organizing Capital; Disorganizing Labor.

March 3 – **Midterm Exam**

**Week of March 7 - Triumph of Liberty of Contract Liberalism,
Progressive Reaction, Speech Rights; Eugenics.**

Readings:

Lochner v. New York

Comstock Law

Schenck v. U.S.

Abrams v. U.S.

Eugenics Statistics

Buck v. Bell

Urofsky: Chapter 13 – Lochner v. New York; Chap. 14 – Abrams v. United States

Classes:

March 8 – Lochnerism; The Progressive Response to Lochnerism.

March 10 – Reproductive Rights.

**Week of March 14 - The Coming of the Great Depression and
the New Deal. The Court Abandons Economic Rights.**

Readings:

Roosevelt's First Inaugural Address

Schechter v. U.S.

Carter v. Carter Coal

West Coast Hotel v. Parrish

Preamble to National Labor Relations Act

N.L.R.B. v. Jones & Laughlin Steel Corp.

U.S. v. Carolene Products (alphabetized as **Carolene Products** on website)

Urofsky: Chapter 16 – The New Deal Cases.

Classes:

March 15 – Liberty of Contract in the 1920s; Coming of the Great Depression.

March 17 – New Deal and the Court's Reaction to the New Deal.

Week of March 21 - Have a great spring break!

**Week of March 28 - Search for Values and Brown v. Board of Education.
Analytical Essay Assigned on March 29**

Readings:

Minersville School District v. Gobitis

West Virginia State Board of Education v. Barnette

Korematsu v. U.S.

Michael Klarman, "Law or Politics"

Brown v. Board of Education

Michael Klarman, "Why Massive Resistance"

Cooper v. Aaron

The Civil Rights Act of 1964

LBJ's Address to Howard University

Urofsky: Chapter 17 – The Flag-Salute Cases; Chapter 18 – Brown v. Board of Education

March 29 - Analytical Essay Assigned

Classes:

March 29 – The Roosevelt Court searches for a new way. Road to Brown.

March 31 – Road to Brown, Implementing Brown, Civil Rights.

**Week of April 4 – Voting Rights; The Supreme Court and
Criminal Defendant Rights;
Reproductive Rights and Women's Rights.**

Readings:

Voting Rights Act of 1965

Heart of Atlanta Motel v. U.S.

Reynolds v. Sims

Gideon v. Wainwright

Miranda v. Arizona

Heart of Atlanta Motel, Inc. v. United States

Reynolds v. Sims

Griswold v. Connecticut

Betty Friedan, "A Woman's Civil Right"

Sarah Weddington's argument to Court in Roe

Roe v. Wade

Serena Mayeri, "When the Trouble Started: The Story of Frontiero v. Richardson"

Urofsky: Chapter 20 – Miranda v. Arizona; Chapter 21 – Roe v. Wade.

Classes:

April 5 – Voting Rights, Criminal Defendant Rights and Incorporating the Bill of Rights.

April 7 – Reproductive Rights and Women’s Equality

**Week of April 11 - Retreat from Brown and Roe.
Analytical Essay Due – April 12**

Readings:

Milliken v. Bradley

Washington v. Davis

Ronald Reagan’s First Inaugural Address

Planned Parenthood v. Casey (alphabetized as **Casey** on website)

Gonzales v. Carhart

Classes:

April 12 – Retreat from Brown, Equal Protection and Affirmative Action

April 14 – Retreat from Roe.

**Week of April 18 – Subverting Criminal Defendant’s Rights.
The unlikely victory of Marriage Equality.**

Readings:

Michelle Alexander on the New Jim Crow – interview on Fresh Air

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

Michael H. v. Gerald D.

Bowers v. Hardwick

Defense of Marriage Act

Lawrence v. Texas

Perry v. Schwartzenegger

United States v. Windsor (alphabetized as **Windsor** on website).

Urofsky: Chapter 22 – The Gay Rights Cases.

Classes:

April 19 – The new Jim Crow.

April 21 – Struggle for Marriage Equality, Explaining the Victory.

Week of April 25 – The Roberts Court Conservative Activism.

Readings:

Parents Involved v. Seattle School District

Lisa McElroy, “Citizens United History”

Reva Siegel, “Dead or Alive: Originalism as Popular Constitutionalism in Heller”

Shelby County v. Holder

Classes:

April 26 – Roberts overturns Brown; Citizens United.

April 28 – Heller, Attack on Voting Rights

Final Examination – Thursday, May 12 – 8:00 am–11:00 pm