

Syllabus for LS 177 – Fall, 2007

Professor R. Ben Brown

Week of August 27 - Introduction to legal history

Competing visions of the history of U.S. law and society.
The creation of the English common law. England in the 1600's.
The English Colonial Experience.

Readings: Common Law Writs; Magna Carta; Navigation Act of 1661; English Bill of Rights.

Week of September 3 - Colonial Law

Contracts and Compacts - Founding documents of the Colonies.
Property law - American Indian v. European.
Role of law in framing Colonial demands - Declaration of Independence.

Readings: John Winthrop, "Speech on Liberty;" Case of Thomas Granger;
Colonial Court Records; Virginia Statute on Slavery; New York Slave Conspiracy; Laws and Liberties of Massachusetts; Declaration of Independence.

Week of September 10 - Revolution and Republicanism

Republicanism and Creation of the States - Pennsylvania Constitution of 1776.
The Problem of a weak central government - Articles of Confederation.
Framing the Constitution.

Readings: Pennsylvania Constitution of 1776; Articles of Confederation; United States Constitution, 1789.

Week of September 17 - Establishing the Republic and Capitalism

Ratifying the Constitution - Federalist Papers.
The Bill of Rights and Judicial Review.
Contract Law and Charles River Bridge.

Readings:; Federalist Papers: 10, 40, 78; The Bill of Rights; Jefferson Letters;
Calder v. Bull; Charles River Bridge v. Warren Bridge; Fitch v. Hamlin; Sands v. Taylor;
Ogden v. Saunders.

Week of September 24 - Property and Indian Removal

Property Law.
Indian Removal.
Federal Land Policy.

Readings: Bank Veto message; Public Land Statutes; Kent, Commentaries; Merritt v. Parker; Martin v. Bigelow; Snow v. Parsons; Fifty Associates v. Tudor; Studwell v. Ritch; Hellen v. Noe.

Week of October 1 - Slavery and Native Americans

Women's Rights and Family Law.
The Law of Slavery.
Slave expansion in the territories as a flashpoint for conflict.

Readings: O'Neal, The Negro Law of South Carolina; Somerset v. Stewart; Bryan v. Walton; State v. Mann; State v. Boyce; Worley v. State; Speech of Tecumseh to Governor Harrison; Johnson v. McIntosh; Askew v. Dupre; Divorce and Adoption statutes; New York Married Women's Property Act; Paul Finkelman, Dred Scott v. Sandford: A Brief History with Documents, with particular emphasis on pp. 1 – 76 and 168 – 219; Fugitive Slave Act of 1850; Abelman v. Booth.

Week of October 8 - The Second Party System and the Coming of the Civil War

The Supreme Court steps in - Dred Scott and the election of Lincoln.

Readings: Excerpt from Chief Justice Taney's opinion in Dred Scott; Abraham Lincoln's House Divided Speech; South Carolina Secession Resolution; Abraham Lincoln's First Inaugural Address.

Mid-Term Examination on Thursday, October 11

Week of October 15 - Reconstructing the Nation

Domestic Policy during the War - Homestead Act and the Continental Railroad.
Southern Resistance and the Black Codes.
Passing and interpreting the Civil War Amendments.

Readings: Abraham Lincoln, "Gettysburg Address;" Abraham Lincoln, Second Inaugural Address; Freedman's Bureau Act; Mississippi Black Code; Civil Rights Act of 1866; Ku Klux Klan Act of 1871; U.S. Grant, Klan Act Proclamations; The Slaughterhouse Cases; Civil Rights Cases.

Week of October 22 - Establishing Southern Apartheid

Redeeming and Segregating the South.
Disfranchising African Americans.
Establishing cropper culture with contract and criminal law.

Readings: William Cohen, “Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis;” Chapter 3; David M. Oshinsky, “Worse than Slavery” Parchman Farm and the Ordeal of Jim Crow Justice, Chapter 3; Plessey v. Ferguson; Bailey v. Alabama.

Week of October 29 - Road to Industrialization

Organizing Capital, Disorganizing Labor.
Liberal Zenith - Lochner and the triumph of Freedom of Contract Liberalism.
The Progressive Reaction - Regulating chaos and criticizing law.

Readings: Chandler, “Seedbed of Managerial Capitalism;” Commonwealth v. Hunt; Farwell v. Boston & Worster Railroad; Tobacco Contract; Montgomery Ward Injunction; In re Phelan; Work Accidents and the Law; Munn v. Illinois; Mugler v. Kansas; Railway v. Minnesota; Goodcharles v. Wigeman; Illinois Factory Laws; Lochner v. New York; Robert Hale, “Coercion and Distribution in a Supposedly Non-Coercive State.”

Week of November 5 - Individual Rights at the turn of the Century

The Comstock law and limitations on speech.
Limitation on reproductive choices - abortion law and sterilization.
World War I and limitations on political speech.
The Great Depression and Roosevelt’s First Inaugural Address

Readings: Comstock Law; Buck v. Bell; Eugenics Statistics; Schenck v. U.S.; Abrams v. U.S.; Whitney v. California; Muller v. Oregon; Pennsylvania Coal v. Mahon; Adkins v. Children’s Hospital.

Week of November 12 - New Deal and the end of Freedom of Contract Liberalism

The Court’s attack on the New Deal
Roosevelt’s second term and the transformation of the Court.
Carolene Products and the Japanese Internment.
The Road to Brown.

Readings: Richard Polenberg, The Era of Franklin D. Roosevelt with particular emphasis on chapters 1, 2, 6, 7 and pp. 126 – 132, 191 – 203.

Week of November 19 - Adopting Equality Liberalism

No class on November 22 – Thanksgiving Day

Dismantling Southern Apartheid.

The Incorporation Controversy and the Federalization of Individual Rights.

Readings: Sweatt v. Painter; Brown v. Board of Education; “Public Statement by Eight Alabama Clergy”; Martin Luther King, “Letter from Birmingham Jail”; Gideon v. Wainwright.

Week of November 26 - Zenith of Equality Liberalism

Congress comes on board - The Civil Rights Act and the Voting Rights Act.

Women freed to be men - the road to Roe.

The Third Wave of Federal Regulation.

Readings: Lyndon B. Johnson, Commencement Address at Howard University: “To Fulfill These Rights.” Betty Friedan, “A Woman’s Civil Right.” Kathie Amatniek, “Funeral Oration for the Burial of Traditional Womanhood.” Griswold v. Connecticut; Sarah Weddington, “The Argument That Won *Roe v. Wade*.” Roe v. Wade.

Week of December 5 - Backlash against Equality Liberalism

Proposition 13 and Reaganism.

The War between Two Liberalisms:

Roe to Casey to Carhart

Bowers to Lawrence

Brown to Parents Involved

Readings: Proposition 13; Michael H. v. Gerald D.; Casey v. Planned Parenthood; Gonzales v. Carhart; Bowers v. Hardwick; Lawrence v. Texas; Michael H. v. Gerald D.; The Defense of Marriage Act; Parents Involved v. Seattle School District.

Final Examination – December 17 – 12:30 – 3:30 p.m.