

Syllabus for 20th Century American Legal and Constitutional History  
Fall 2013

The readings for the course are either from the required books: Urofsky's **Supreme Decisions** and Hull, et al. **Roe v. Wade** or from materials on my website:

<http://legalconstitutionalhistory.sharepoint.com/>

U.S. Supreme Court Cases are arranged alphabetically under the Supreme Court Cases tab on my website. Other materials are under the 20<sup>th</sup> Century tab.

**August 29 -**

Readings – Pennsylvania Constitution of 1776; U.S. Constitution of 1787

Lecture - Introduction: Theories of the role of law in society. Law as a Discourse of Power. Legal Ideologies in the United States: Common Law, Classical Republicanism, Classical Liberalism, Progressivism.

**September 3 & 5 –**

Readings - McGuire v. McGuire; **Roe v. Wade, Chapters 1 & 2, pp. 1-88**; Comstock Law; Anthony, "On Being Arrested for Voting;" Plessy v. Ferguson; William Cohen, "Negro Involuntary Servitude in the South: 1865-1940: A Preliminary Analysis;" Bailey v. Alabama; **Supreme Decisions, Chapter 12.**

The Law of the family in 1900: Patriarchy, Property and the Law of Divorce. Reproductive regulations: State abortion laws and their enforcement. The Comstock Law's restrictions on disseminating information about contraception. The Battle for Women's Suffrage. The Southern establishment of Jim Crow and the lack of will to oppose it. Quasi-legal lynching and the use of criminal law for labor control.

**September 10 & 12 -**

Readings - Lochner v. New York; Coppage v. Kansas; Muller v. Oregon; Cook County Injunction; In re Debs; "Work-Accidents and the Law;" **Supreme Decisions, Chapter 11 & 13.**

Economic regulation in 1900: Organizing Capital, Disorganizing Labor. Federal court injunctions used to suppress labor organization. Adopting Freedom of Contract Liberalism. Lochner and Supreme Court limitations on state regulation of business.

### **September 17 & 19 –**

Readings - Schenk v. U.S.; Abrams v. U.S.; Buck v. Bell; “Legislative Status of Eugenical Sterilization;” “I.Q. Ranking from Army Tests;” Pennsylvania Coal v. Mahon; Adkins v. Children Hospital; Roosevelt’s First Inaugural Address; **Supreme Decisions, Chapter 14.**

World War I and attacks on free speech. Eugenics, eugenic sterilization and Buck v. Bell. Freedom of Contract Liberalism in the 1920s. The Great Depression, Roosevelt’s election and the Hundred Days.

### **September 24 & 26 -**

Readings - Schechter v. U.S.; Carter v. Carter Coal; Roosevelt’s Second Inaugural; 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; Supreme Decisions, Chapter 16.

The First New Deal. The Supreme Court’s attack on the New Deal. Labor in the 1930s. The Court retreats. Carolene Products Footnote and Roosevelt’s appointments.

### **October 1 & 3 -**

Readings - Minersville School District v. Gobitis; West Virginia State Board of Education v. Barnette; Korematsu v. U.S.; Powell v. Alabama; Shelley v. Kraemer; Sweatt v. Painter; **Supreme Decisions, Chapter 17.**

Civil rights in the 30s and 40s: Scottsboro and A. Philip Randolph. Jehovah’s Witnesses and the Japanese Internment. NAACP Legal Defense Fund.

### **October 8 & 10 –**

Readings – Brown v. Board of Education; Michael Klarman, “Brown v. Board of Education: Law or Politics;” Michael Klarman, “Why Massive Resistance;” Cooper v. Aaron; **Supreme Decisions, Chapter 18.**

The NAACP’s legal campaign against Plessey. Deciding Brown v. Board of Education. Enforcing Brown and Massive Resistance. Little Rock - the Court takes a stand. The meaning of Brown.

### **October 15 & 17 – Midterm on October 15**

Readings - The Civil Rights Act of 1964; Heart of Atlanta Motel v. U.S..

Brown and the Civil Rights Movement. Sitting down in Nashville and on the buses; Congress comes on board: The Civil Rights Act of 1964. The Court expands the Constitution - Heart of Atlanta Motel.

## October 22 & 24 –

Readings – Voting Rights Act; Reynolds v. Sims; Mapp v. Ohio; Gideon v. Wainwright; Miranda v. Arizona; Brandenburg v. Ohio; **Supreme Decisions, Chapter 19, 20.**

Voting in Mississippi. The March on Selma and the Voting Rights Act of 1965.  
Equalizing the Vote. Creating Equality Liberalism: Incorporation controversy and the creation of Criminal Constitutional law. Warren Court and First Amendment.

## October 29 & 31-

Readings - Friedan, “A Woman’s Civil Right;” **Roe v. Wade, Chapters 3-4, pp. 89 - 179**; Griswold v. Connecticut; Loretta Lynn, “The Pill;” Weddington, “The Argument that Won Roe v. Wade;” Roe v. Wade; California’s No-Fault Divorce Law; **Supreme Decisions, Chapter 21.**

Expanding Equality Liberalism to include reproductive rights. Betty Friedan, the Pill, the right to Privacy and Roe v. Wade. Incorporating feminism into Equality Liberalism. Changes in the divorce law and the adoption of No-Fault in the early 70’s. Using law to create norms: Sexual harassment law and redefining gender relations.

## November 5 & 7 -

Readings - Just v. Marinette County; Equal Rights Amendment; LBJ, “Commencement Speech at Howard University;” Milliken v. Bradley; Washington v. Davis; Regents of the U. of C. v. Bakke; Proposition 209.

Regulating the economy for the public good: The EEOC and Affirmative Action - pushing equality beyond opportunity. Silent Spring, the EPA and the ESA. State environmental laws. Limiting Equality Liberalism: Reaffirming structural inequality. Bakke and the limits of Affirmative Action. Proposition 13 and the Reagan Revolution.

## November 12 & 14 –

Readings - Planned Parenthood v. Casey; **Roe v. Wade, Chapters 4 - Conclusion, pp. 180 – 340**; Michael H. v. Gerald D.; Michelman, “In support of Roe v. Wade;” Foster, “The Feminist Case against Abortion;” Lucas v. South Carolina Coastal Council; Kelo v. New London, Connecticut; Oregon Propositions 37 and 49.

Limiting Feminism – Political attacks on Roe; Compromising on Roe – Planned Parenthood v. Casey; Protecting the Family. The attack on environmentalism: Lucas and Kelo and the politics of regulatory takings. Oregon’s Prop 37 and 49.

**November 19 & 21-**

Readings - Bowers v. Hardwick; Lawrence v. Texas; “The Defense of Marriage Act; Perry v. Schwarzenegger; Gonzales v. Carhart; **Supreme Decisions, Chapter 22.**

Gay rights and Gay Marriage in the 21<sup>st</sup> Century. Reproductive Rights in the 21<sup>st</sup> Century.

**November 26 –**

Readings - Grutter v. Bollinger; Parents Involved v. Seattle School District.

Attacking Affirmative Action. The New Jim Crow?

**December 3 & 5 -**

Readings - U.S. v. Lopez; Three Justices on Precedent. **Supreme Decisions, Chapter 23.**

The latest incorporation – the Second Amendment. Corporations and Free Speech. Battle over Federal power and the Commerce Clause: Lopez, Gonzales v. Raich and Obamacare. Is the Supreme Court a Court of Laws? The Battle over Precedent. Review for final.

**Final Examination – December 20, 7:00 to 10:00 p.m.**