

Syllabus for LS 177 – Fall 2009

Professor R. Ben Brown

Survey of American Legal and Constitutional History
Legal Studies 177 - University of California, Berkeley
Fall, 2009

Week 1 - 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: Magna Carta; Navigation Act of 1660; English Bill of Rights.

Week 2 - Colonial Law

Religion and Law; Contracts and Compacts - Founding documents of the Colonies; Colonial Complaints against England

Readings: John Winthrop, "Little Speech on Liberty"; Case of Thomas Granger; Pyncheon Court Records; Maryland Servants and Pigs; Pope Aluey Trials; Virginia Statute on Slavery; General Laws of Massachusetts; Declaration of Independence.

Week 3 - 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, 1787.

Week 4 - Establishing the Republic

Ratifying the Constitution and adding the Bill of Rights and Judicial Review.

Readings: Thomas Jefferson to James Madison on the Constitution; Federalist Papers: 10, 40, 78; Bill of Rights; **Calder v. Bull.**

Week 5 - Transforming Private Law in the Early Republic

Contract Law and Charles River Bridge.
Property Law.
Federal Land Policy.

Readings: **Charles River Bridge v. Warren Bridge**; Jackson Veto message; Fitch v. Hamlin; Sands v. Taylor; **Ogden v. Saunders**; Merrit v. Parker; Martin v. Bigelow; Snow v. Parsons; Fifty Associates v. Tudor; Studwell v. Ritch; Hellen v. Noe; Federal Land Laws.

Week 6 - Slavery and Native Americans

The Law of Slavery.
Indian Removal.
Women's Rights and Family Law.

Readings: Georgia Slave Code; Somerset v. Stewart; State v. Mann; State v. Boyce; Worley v. State; Tecumseh Speech to Governor Harrison; **Johnson v. McIntosh**; Askew v. Dupre; Married Women's Property Act.

Week 7 - The Second Party System and the Coming of the Civil War

Slave expansion in the territories as a flashpoint for conflict.
The Supreme Court steps in - Dred Scott and the election of Lincoln.

Readings: 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; **Ableman v. Booth**; South Carolina Secession Resolution; Abraham Lincoln's First Inaugural Address.

Week 8 - Reconstructing the Nation

Mid-Term Examination on Tuesday, October 13.

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 Codes; 1866 Civil Rights Act; 1875 Civil Rights Act; **Slaughterhouse Cases**; **Civil Rights Cases**.

Week 9 - 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: In re Phelan; **In re Debs**; Work Accidents and the Law; **Mugler v. Kansas**; **Railway v. Minnesota**; **Lochner v. New York**.

Week 10 - Establishing Southern Apartheid

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

Readings: **Plessy v. Ferguson**; **Bailey v. Alabama**.

Week 11 - Individual Rights at the turn of the Century

The Comstock law, World War I and limitations on political speech. Eugenics and Progressivism. The coming of the Great Depression.

Readings: Comstock Law; **Schenck v. U.S.**; **Abrams v. U.S.**
Eugenics Statistics; **Buck v. Bell**.

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

Roosevelt's programs and the Court's intransigence.
Roosevelt's second term and the transformation of the Court.
Carlene Products and the Japanese Internment.

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 13 - Adopting Equality Liberalism

The Road to Brown.
Dismantling Southern Apartheid.
The Incorporation Controversy and the Federalization of Individual Rights.

Readings: Michael J. Klarman, Brown v. Board of Education and the Civil Rights Movement pp. 1-125. **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 14 - 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.

Readings: Klarman, pp. 125-188; Lyndon B. Johnson, Commencement Address at Howard University: “To Fulfill These Rights.” **Griswold v. Connecticut**; Excerpt from Sarah Weddington’s oral argument in *Roe v. Wade*.” **Roe v. Wade**.

Week 15 - Backlash against Equality Liberalism

Proposition 13 and Reaganism.
The end of New Deal regulation - the defeat of the Clinton Health Care Bill.
Rehnquist and traditionalist jurisprudence.

Readings: Proposition 13; Ronald Reagan’s First Inaugural Address, **Casey v. Planned Parenthood**, **U.S. v. Lopez**; **Bowers v. Hardwick**; **Lawrence v. Texas**; **Michael H. v. Gerald D.**;