

Information Sheet and Syllabus for LS 177:  
Survey of American Legal and Constitutional History

Professor Ben Brown

Office hours: Tuesdays, 10:30-11:30  
Office: JSP building, 2240 Piedmont, Room 114  
e-mail - rbbrown@ berkeley.edu.

Grades will be based on four factors:

Mid-term exam - 25%

Paper – 15% to be assigned on Thursday, October 11 and due on Thursday, October 25.

Participation in discussion section - 10%

Final exam - 50%

The discussion section grade will include required written assignments per your GSI's instructions. The final will be given on Wednesday, Dec. 12, 3:00 – 6:00 p.m.

Required Materials: Melvin Urofsky, *Supreme Decisions*. All other materials are on my website:

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

Materials for this course before the 20th Century are under the **LS 177 Survey** tab; edited Supreme Court Cases are bold and underlined on the syllabus and can be found under the **Supreme Court Cases** tab; materials for the 20<sup>th</sup> Century are under the **20th Century Legal History** tab.

Supplemental Materials:

For an overall narrative of United States legal history, see: Kermit Hall, [A Magic Mirror](#). For an encyclopedic overview of law in America, see: Lawrence Friedman, [A History of 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](#). For a leftist perspective on constitutional history, and good mini-biographies of the justices, see: Peter Irons, [A People's History of the Constitution](#). To see transcripts of U.S. Supreme Court oral arguments and to hear tapes of some of these oral arguments, go to: <http://www.oyez.org/>. Note that I have heavily edited the Supreme Court cases on my website. To find full versions of Supreme Court decisions go to: <http://www.findlaw.com>.

## Syllabus for LS 177 – Fall 2012

### Professor R. Ben Brown

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

Materials for this course except for the Urofsky readings are on my website:

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

Materials from before the 20th Century are found under the LS 177 Survey tab; edited Supreme Court Cases are bold and underlined on the syllabus and can be found under the Supreme Court Cases tab; materials for the 20th Century are under the 20th Century Legal History tab.

#### *Week 1 - Colonial Law*

The Plurality of Colonial Legal Discourse.

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.

#### *Week 2 - Revolution and Republicanism*

The conflict between the English Empire and the Colonies after the French and Indian war. Classical Republicanism and Creation of the States. The Problem of a weak central government.

Readings: Declaration of Independence; Pennsylvania Constitution of 1776; Articles of Confederation.

#### *Week 3 - Establishing the Republic*

Drafting and Ratifying the Constitution, Adding the Bill of Rights and Creating Judicial Review.

Readings: United States Constitution, 1787; Thomas Jefferson to James Madison on the Constitution; Federalist Papers: 10, 40, 78; Virginia Ratification Message; New York’s Ratification Message; Bill of Rights; **Calder v. Bull.**  
**Urofsky: Chapter 1.**

#### *Week 4 - Private Law in the Early Republic*

From Localized Law to a Centralized Law of Rights in the States. Creative Destruction and the Rejection of Blackstone's Common Law.

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.

### *Week 5 – Creating Rights; Creating Oppression*

White Male Civil Rights and the Exploitation of African-American Labor, the Control of Women and the Displacing of Native Americans.

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

**Urofsky: Chapter 4.**

### *Week 6 - The Second Party System and the Coming of the Civil War*

Slave expansion in the Territories. The Supreme Court steps in - Dred Scott and the Election of Lincoln.

Readings: Fugitive Slave Act of 1850; Dred Scott v. Sandford; Ableman v. Booth; South Carolina Secession Resolution; Abraham Lincoln’s First Inaugural Address.

**Urofsky: Chapters 5 & 6.**

### *Week 7 - Reconstructing the Nation*

Expanding Federal Power: Expanding the Empire and Expanding Civil Rights to Freedmen.

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.

### *Week 8 - Abandoning the Freedpeople.*

***Mid-Term Examination on Tuesday, October 9.***

Restricting the Civil War Amendments.

Readings: Slaughterhouse Cases; Bradwell v. Illinois; Civil Rights Cases.  
Urofsky: Chapters 8 & 9.

*Week 9 - Establishing Southern Apartheid and Market Hegemony*

Recapturing Black Labor in the South. Organizing Capital; Disorganizing Labor in the North.

Readings: Plessy v. Ferguson; Bailey v. Alabama; Federal Court Injunction; In re Debs.  
Urofsky: Chapters 11 & 12.

*Week 10 – The Freedom of Contract Liberal Zenith*

Lochner and the Triumph of Economic Rights. Rejecting other Rights.

Readings: Work Accidents and the Law; Mugler v. Kansas; Railway v. Minnesota; Lochner v. New York; Comstock Law; Schenck v. U.S.; Abrams v. U.S.; Eugenics Statistics; Buck v. Bell.  
Urofsky: Chapters 13 & 14.

*Week 11 – The New Deal*

The Great Depression, the New Deal and the dismantling of Freedom of Contract Liberalism.

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.  
Urofsky: Chapter 16.

*Week 12 – Search for Values and the Adoption of Equality Liberalism*

Jehovah’s Witnesses, Japanese Internment and the NAACP’s Attack on Jim Crow.

Readings: Minersville School District v. Gobitis; West Virginia State Board of Education v. Barnette; Korematsu v. U.S.; Sweatt v. Painter; Michael Klarman, “Brown v. Board of Education: Law or Politics;” Brown v. Board of

**Education**; Michael Klarman, "Why Massive Resistance;" **Cooper v. Aaron**; The Civil Rights Act of 1964; Voting Rights Act of 1965.  
**Urofsky: Chapters 17 & 18.**

*Week 13 - Adopting Equality Liberalism*

The Warren Court and Equality in Voting. The Incorporation Controversy and the Federalization of Individual Rights.

Readings: **Heart of Atlanta Motel v. U.S.**; **Reynolds v. Sims**; **Mapp v. Ohio**; **Gideon v. Wainwright**; **Brandenburg v. Ohio**; Friedan, "A Woman's Civil Right;" **Griswold v. Connecticut**; Loretta Lynn, "The Pill;" Weddington, "The Argument that Won Roe v. Wade;" **Roe v. Wade**.  
**Urofsky: Chapters 20 & 21.**

*Week 14 - Limiting Equality Liberalism to Equality before the Law*

The Limits of Equal Rights; Protecting the Family.

Readings: **Milliken v. Bradley**; **Washington v. Davis**; **Regents of the U. of C. v. Bakke**; Ronald Reagan's First Inaugural Address; **Planned Parenthood v. Casey**; **Michael H. v. Gerald D.**; **Bowers v. Hardwick**.

*Week 15 - Battle of Two Liberalisms in the 21<sup>st</sup> Century*

Gay Rights; Affirmative Action and the Roberts Court.

Readings: **Lawrence v. Texas**; "The Defense of Marriage Act;" **Grutter v. Bollinger**; **Parents Involved v. Seattle School District**; **Gonzales v. Carhart**.  
**Urofsky: Chapter 22.**