

Syllabus for 20th Century American Legal and Constitutional History
Summer, 2010

Week of May 24 -

Readings - **Gideon's Trumpet, Chapters 1 & 2, pp. 1-30**; Pennsylvania Constitution of 1776; U.S. Constitution of 1787. McGuire v. McGuire; ***Roe v. Wade, Chapters 1 & 2, pp. 1-89***; Rules for Female Teachers; Comstock Law; Anthony, "On Being Arrested for Voting." Lochner v. New York; Coppage v. Kansas; Pennsylvania Coal v. Mahon; Cook County Injunction; In re Debs; "Work-Accidents and the Law."

Class 1 - Introduction: Theories of the role of law in society; law as a discourse of power. Visions of Law in the United States: Common Law, Republicanism, and Classical Liberalism, Progressivism.

Class 2 - The Structure of the American Legal System in 1900.
The Law of the family in 1900: Patriarchy, Property and the Law of Divorce.
Reproductive regulations: State abortion laws and their enforcement.

Class 3 - The Comstock Law and restrictions on disseminating information about contraception. The Battle for Women's Suffrage. Economic regulation in 1900: Organizing Capital, Disorganizing Labor.

Class 4 - Adopting Freedom of Contract Liberalism. Lochner and Supreme Court limitations on state regulation of business. Federal court injunctions used to suppress labor.

Week of May 31

Readings - Plessy v. Ferguson; William Cohen, "Negro Involuntary Servitude in the South: 1865-1940: A Preliminary Analysis;" Bailey v. Alabama; David Oshinsky, "American Siberia." Schenk v. U.S.; Abrams v. U.S.; Buck v. Bell; "Legislative Status of Eugenical Sterilization;" "I.Q. Ranking from Army Tests." Adkins v. Children Hospital; Roosevelt's First Inaugural Address; Schechter v. U.S.; Carter v. Carter Coal.

No Class on Monday, May 31 – Memorial Day

Class 5 - Civil rights: The Southern establishment of Jim Crow and the lack of will to oppose it. Re-enslaving the poor: Quasi-legal lynching and the use of criminal law for labor control.

Class 6 - The Red Scare and the Court's refusal to protect political speech. Buck v. Bell and the Court's approval of eugenics and compulsory sterilization.

Class 7 - The Court in the 1920's: The high-water mark of Freedom of Contract Liberalism. The Great Crash: The breakdown of capitalism and Hoover's response. The beginning of the end of Freedom of Contract liberalism: Roosevelt's election and the Hundred Days.

Week of June 7

Readings - Roosevelt's Second Inaugural; West Coast Hotel v. Parrish; N.L.R.B. v. Jones & Laughlin Steel Corp.; U.S. v. Carolene Products; NLRB and Taft-Hartley Acts; Korematsu v. U.S.; Shelley v. Kraemer; Sweatt v. Painter; Michael Klarman, "Brown v. Board of Education: Law or Politics;" Brown v. Board.

Class 9 - Dismantling Freedom of Contract Liberalism. Establishing the New Deal agencies. The Second New Deal and the showdown with the Court. The meaning of the Carolene Product's footnote.

Class 10 – Reconstituting the Court. Civil rights in the 30's: Scottsboro and A. Philip Randolph. Civil rights in the 40's: World War II and the Japanese Internment.

Class 11 - The NAACP's legal campaign against Plessey. Deciding Brown v. Board of Education.

Class 12 - Questions about the first half of the course; Midterm Examination in Lecture.

Week of June 14 -

Readings – Michael Klarman, "Why Massive Resistance;" Cooper v. Aaron; Public Statement by 8 Alabama Clergymen; Martin Luther King, Jr., "Letter from the Birmingham City Jail;" "I Have a Dream." **Gideon's Trumpet, Chapters 3 - Epilogue, pp. 31-250**; LBJ, "Commencement Speech at Howard;" Heart of Atlanta Motel v. U.S.; Reynolds v. Sims; Mapp v. Ohio; Gideon v. Wainwright; Brandenburg v. Ohio.

Class 13 - Brown and the Southern Civil Rights movement: Finding political will in Little Rock; Sitting down in Nashville and on the buses; Voting in Mississippi.

Class 14 - Legislating Equality Liberalism - The Civil Rights Act of 1964; the March on Selma and the Voting Rights Act of 1965. The Court expands the Constitution - Heart of Atlanta Motel; Equalizing the Vote.

Class 15 - Creating Equality Liberalism: Incorporation controversy and the creation of criminal constitutional law.

Class 16 - Civil rights and free speech: McCarthyism and New York Times v. Sullivan.

Week of June 21 -

Readings - Friedan, "A Woman's Civil Right;" Amatriek, "Funeral Oration for the Burial of Traditional Womanhood;" **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; Reva Siegel, "A Short History of Sexual Harrassment;" Jenson v. Eveleth Mines; Just v. Marinette County; Regents of the U. of C. v. Bakke; Proposition 13; Proposition 209; U.S. v. Lopez.

Class 17 - Feminism and birth control: The woman's movement, the demand to extend liberal ideology to encompass women and the technology that allowed this expansion. Women freed to be Men: Griswold and Roe and women's control over reproduction.

Class 18 - 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.

Class 19 - Regulating the economy for the public good: The third wave of Federal agencies: The EEOC and Affirmative action - pushing equality beyond opportunity; Silent Spring the EPA and the ESA;

Class 20 - Opposing Equality Liberalism: Reacting to the expansion of government: Bakke and the limits of Affirmative Action; Proposition 13 and the Reagan Revolution. The Rehnquist Court limits on Federal power: The new Federalism jurisprudence and limits on the commerce clause.

Week of June 28 -

Readings - Lucas v. South Carolina Coastal Council; Kelo v. New London, Connecticut; **Roe v. Wade, Chapters 4 - Conclusion, pp. 180 - 285**; Bowers v. Hardwick; Lawrence v. Texas; "The Defense of Marriage Act;" Michael H. v. Gerald D.; Michelman, "In support of Roe v. Wade;" Foster, "The Feminist Case against Abortion;" Planned Parenthood v. Casey; Grutter v. Bollinger; Gonzales v. Carhart; Parents Involved v. Seattle School District. Three Justices on Precedent.

Class 21 - The attack on environmentalism: Lucas and Kelo and the politics of regulatory takings. The battle against feminism: Protecting Fathers; The Court Retreats from Roe.

Class 22 – Victories of the Conservatives: Limiting Affirmative Action; Outlawing Partial Birth Abortions; Overturning Brown; Protecting Guns; Empowering Corporations.

Class 23 – Who died and made Justice Kennedy God? Review for final.

Class 24 - Final Examination in Lecture.