

**U.S. Constitutional History after 1865
HIUS 152B**

Winter 2024 Syllabus

Description of the Course

This is a study of the historical development of constitutional thought and practice in the United States from the end of the Civil War to the present.

Learning Objectives

This course is designed to teach students the following:

- The general organization and content of the text of the U.S. Constitution, the Bill of Rights, and the Civil War Amendments.
- The principal theories of constitutional interpretation.
- The legal doctrine, as articulated by the U.S. Supreme Court, interpreting and applying selected provisions of the U. S. Constitution and its amendments in the period after 1865, with particular attention to federalism, separation of powers, the Bill of Rights, and the Fourteenth Amendment.
- The ideas and events that shaped the interpretation of the U.S. Constitution in the period after 1865.
- The impact of the Supreme Court's interpretation of the U.S. Constitution on American political, social, economic, and cultural life.

Students will learn

- to critically analyze texts by an examination of primary and secondary source documents.
- to construct a legal brief of Supreme Court opinions in which the student identifies the issue to be decided and the result in the case and explains the court's reasoning in reaching that result.
- to synthesize Supreme Court holdings into a doctrinal framework for resolution of future disputes

Required Text

Melvin Urofsky & Paul Finkelman, *A March of Liberty, Volume II, From 1898 to the Present* (Third Edition, Oxford University Press).

Please note that additional required readings will be published on the Canvas site for this course. They are designated under "Assignments" with an asterisk.

Grading Policy

The grade in this course will be based on two midterm exams and a final exam. Each midterm will count for 20 percent of your grade and the final exam will count for the remaining 60 percent of your grade. Exams will be administered online via Canvas and will be open book, open note exams. Exams will cover the material discussed in lecture as well as any assigned readings to the extent that they address the topics addressed in lecture.

I anticipate that the first midterm will become available on Friday, February 2 and will be available until Wednesday, February 7. I anticipate that the second midterm will become available on Thursday, February 29, and will be available until Tuesday, March 5. I anticipate that the final will become available on Friday, March 15, and will remain available until 5 p.m., Monday, March 18.

Office Hours and Contact Information

My office is located in Room 729 of the Arts and Humanities Building. I currently plan to hold office hours on Mondays, immediately after class, from 3 p.m. to 5 p.m. I can also meet with you at other times on Zoom by appointment.

Please feel free to contact me by e-mail or by telephone to discuss whatever you wish or to arrange a meeting. My e-mail address is kvandev@ucsd.edu. My cell phone number is 858 414 1602.

In addition to my Ph.D. in history from UCSD, I have a law degree from Harvard Law School and I practiced law for a decade before I began teaching law full-time. I continue to occasionally litigate constitutional law issues before the California appellate courts. If you are interested in pursuing a legal career, I would be pleased to discuss law school or legal careers with you.

Recorded Lectures

Assuming that there are no technical problems, all classes will be recorded and links to the recordings will be posted on Canvas. Your speaking during class constitutes consent to being recorded. If you wish to tell me something and not be recorded saying it, please speak with me other than during class.

Assignments

I. Formation of the Constitution

- 1/8 Introduction
- 1/10 The Constitution
 - The U.S. Constitution, U&F A5-A13
 - The Bill of Rights, U&F A13-A15
- 1/12 The Civil War Amendments and Reconstruction
 - 13th, 14th and 15th Amendments, U&F A15-A17
 - The Civil Rights Cases*

II. The Civil War to the New Deal: The Court as a Conservative Bulwark 1865 – 1937

- 1/17 Race, Gender and Religion in the Gilded Age
 - U&F 591-595, 662-666
 - Plessy v. Ferguson*
 - Bradwell v. Illinois*
 - Reynolds v. United States*
- 1/19 Populism, Progressivism and the Supreme Court
 - U&F 595-612, 615-632, 635-639, 643-648
 - Lochner v. New York*
- 1/22 The Constitution and World War I
 - U&F 669-694, 723-727
 - Abrams v. United States*
 - Whitney v. California*

III. The New Deal: The Emergence of Modern Judicial Liberalism 1937 - 1953

- 1/24 The New Deal and Economic Regulation
 - U&F 737-738, 740-759, 761-769, 778-779
- 1/26 The New Deal and Preferred Rights
 - U&F 787-803, 833-842
 - U.S. v. Carolene Products*
 - West Virginia State Board of Education v. Barnette*

IV. The Warren Court: Judicial Liberalism Ascendant 1953 - 1969

- 1/29 The Warren Court and Racial Segregation
U&F 816-823, 851-870
Korematsu v. United States*
Brown v. Board of Education*
- 1/31 The Civil Rights Movement
U&F 873-895, 937-938
- 2/2 The Warren Court and Free Speech
U&F 897-906, 923-926
New York Times v. Sullivan*
- 2/5 The Warren Court and Freedom of Religion
U&F 906-912
Everson v. Board of Education*
- 2/7 The Warren Court and Criminal Defendants
U&F 912-917, 938-940
Miranda v. Arizona*

V. The Burger Court: A Time of Transition 1969 - 1986

- 2/9 The Right of Privacy in the Warren and the Burger Courts
U&F 917-919, 996-999
Griswold v. Connecticut*
Roe v. Wade*
- 2/12 The Burger Court and Equal Protection
U&F 977-987; 989-994
- 2/14 The Burger Court and the Bill of Rights
U&F 1003-1010; 1014-1019; 1024-1026
Miller v. California*
Cohen v. California*
- 2/16 The Burger Court and Separation of Powers
U&F 947-973

VI. The Rehnquist Court: A Conservative Majority with Swing Votes 1986 - 2005

- 2/21 The Rehnquist Court and Federalism
U&F 1029-1032, 1069-1076
- 2/23 The Rehnquist Court and Privacy
U&F 1049-1056, 1057-1060
Planned Parenthood v. Casey*
Lawrence v. Texas*
- 2/26 The Rehnquist Court and Free Speech
U&F 1076-1084
Ashcroft v. Free Speech Coalition*
- 2/28 The Rehnquist Court and Religion
U&F 1086-1098
- 3/1 The Rehnquist Court and Equal Protection
U&F 1032-1049
- 3/4 The Rehnquist Court and the War on Terror
U&F 1111-1133
- 3/6 The Rehnquist Court and the Presidency
U&F 1060-1064
Bush v. Gore*

VII. The Roberts Court: Conservatism Ascendant 2005 – Present

- 3/8 The Roberts Court, Federalism, and Separation of Powers
U&F 1135-1138
- 3/11 The Roberts Court and Individual Rights I
U&F 1148-1150, 1160-1162
Citizens United v. Federal Election Commission*
District of Columbia v. Heller*
Obergefell v. Hodges*
- 3/13 The Roberts Court and Individual Rights II
Dobbs v. Jackson Women's Health*
New York State Rifle & Pistol Association v. Bruen*
Kennedy v. Bremerton School District*
Students for Fair Admissions v. Harvard*

Conclusion

3/15 Summary Reflections
Assignment to be Announced

Supplemental Readings

If you would like to read more about constitutional history, here are some suggested readings:

Bernard Bailyn, *The Ideological Origins of the American Revolution* (Belknap Press Enlarged Edition 1992).

Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (The Free Press 1913). This is a classic and controversial work that has been reissued several times.

Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (Random House 2009).

Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention May to September 1787* (Little Brown 1966).

Barry Cushman, *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (Oxford University Press 1998).

Alexander Hamilton, James Madison and John Jay, *The Federalist* (This is a collection of articles written by the three authors in support of the ratification of the Constitution. Numerous editions are available.)

Ralph Ketcham, ed., *The Anti-Federalist Papers and the Constitutional Convention Debates* (Mentor Books 1986).

Pauline Maier, *Ratification: The People Debate the Constitution 1787-1788* (Simon and Schuster 2010).

Robert G. McCloskey, *The American Supreme Court* (University of Chicago Press, 5th ed. 2010).

Richard B. Morris, *The Forging of the Union, 1781-1789* (Harper 1987).

Richard B. Morris, *Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution* (New American Library 1985).

Lucas A. Powe, Jr., *The Warren Court and American Politics* (Harvard University Press 2001).

Lucas A. Powe, Jr., *The Supreme Court and the American Elite, 1789-2008* (Harvard University Press 2009).

Bernard Schwartz, *The Great Rights of Mankind: A History of the American Bill of Rights* (University of Wisconsin, rev. ed. 1992).

David O. Stewart, *The Summer of 1787: The Men who Invented the Constitution* (Simon and Schuster 2007).