

CONSTITUTIONAL HISTORY OF THE UNITED STATES FROM THE END OF
RECONSTRUCTION (1877) TO THE PRESENT
512:404

Tuesday & Thursday 4th Period (1:10-2:30), Murray 211

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This is a discussion course focusing on Supreme Court cases since Reconstruction (1877). It is a history class, not a law course, but students will learn a good deal about constitutional law as well as about the history of Supreme Court decisions.

May 21st, 1954: 17-year-old Nathaniel Steward in class at the Saint-Dominique school in Washington, where the Supreme Court decision in *Brown v. Board of Education of Topeka, Kansas* (1954) was first applied.



Source: <http://i.huffpost.com/gen/1798311/original.jpg>

In addition to daily class discussions of specific Supreme Court cases, students will all have an opportunity to participate in a moot court debate of a landmark case: the *Abrams* case that first raised constitutional issues about freed speech in the World War I era, the 1960s *Engel* decision that banned school prayer in the public schools and set off the modern debate on church-state relations, *Roe v. Wade*, and the abortion controversy of the 1970s; the last major court victory for the principle of affirmative action in a case involving the University of Michigan law school; and the efforts to have the death penalty declared unconstitutional as a cruel and unusual punishment. We will also look at more recent cases that deal with the 2nd Amendment and the right to bear arms, the constitutionality of limits on political contributions, the rights of detainees at Guantanamo, and limits under the 14th amendment on the government's power over immigration and immigrants. But as a history course, we will begin back in the 1870s and work forward, placing the post-Civil War and Reconstruction period in the context of the 14th Amendment.

Through the Civil War, the Supreme Court used the **commerce, contract, and necessary and proper clauses** of the Constitution to strengthen the government and provide a basis for economic development. Constitutionally, the effort failed, and Civil War followed. In this course, we will explore the post-Civil War transformation of constitutional government created by (1) the challenge to federalism and localism by the growth of an integrated national economy; and by (2) the passage of the **14th Amendment**. The 14th amendment has been at the center of a struggle between an ever more powerful national government and those using the judicial process to protect the rights of individuals. We will discuss briefly the revolutionary implications of the 13th and 14th Amendments (especially for African Americans), then look at the subsequent use of the 14th Amendment to limit government regulation of private economic rights ("substantive due process"). This transformation of the 14th Amendment from a narrowly crafted amendment concerned with protecting newly freed slaves to a broadly constructed provision of the Constitution to protect property interests is one of the most crucial stories in constitutional history. We will then explore the battle over civil liberties during WWI, which again will involve the 14th Amendment (the "extension" of the "Bill of Rights" to protect individuals from the actions of state governments as well as the federal government). During the Great Depression (1929-1941) and the New Deal (1933-1941), the Federal government took extraordinary steps to revive and reform the economy. These challenged older 14th Amendment notions of individual economic freedom ("substantive due process") and extended federal commerce and taxing power (concerns from before the Civil War). We will next look at the extension of the Bill of Rights protections during the post-WWII era (freedom of and from religion, the death penalty, free speech, civil rights, women's rights), and the conservative retrenchment of the court that began in the 1980s.

The course will be graded on two exams (there is no final exam), quizzes on the readings, a short research paper (5-8 pages) on a major Supreme Court case selected from a list at the end of this syllabus, moot court and class discussion. Discussion is not extra credit; it is required and students receive a specific grade for the quality of their participation. With some small exceptions that will be explained before a quiz or exam, all exams and quizzes are OPEN

BOOK. Students will have the questions beforehand, be allowed to bring notes to class for the exam/quiz, and be encouraged to study together.

Readings:

Robert M. Goldman, *Reconstruction and Black Suffrage Losing the Vote in Reese and Cruikshank* (2001). ISBN 978-0-7006-1069-3

Bruce J. Dierenfield, *The Battle over School Prayer How Engel v. Vitale Changed America* (2007). ISBN 978-0-7006-1526-1

Kenneth M. Murchison, *The Snail Darter Case: TVA versus the Endangered Species Act* (2007). ISBN 978-0-7006-1505-6

Mark Tushnet, *A Court Divided: The Rehnquist Court and the Future of Constitutional Law* (Norton, 2005). The best treatment of the modern court, which illustrates its contentious decision making on key issues -- abortion, gay rights, affirmative action, freedom of expression, the taking of private property for "public" use. Amazon.com price \$13.28. ISBN: 978-0393327571

Recommended but Optional:

Stanley Kutler, ed., *The Supreme Court and the Constitution: Readings in American Constitutional History*. (3rd edition, Norton, 1984). This is your text BUT IT IS OPTIONAL. I will post all cases we will be reading on Sakai, but this book is a very good reference tool and includes easily read edited versions of most of the historically important cases through the 1980s. Amazon.com has some used copies at a significant discount, but make sure you get the third edition. ISBN: 978-0393954371.