As events of the last few years have shown, the Supreme Court has played a crucial role in American political life. There is practically no issue of social significance in the American past that did not at some point end up in the nation’s courtrooms, yet much of the workings of the constitution remain obscure. This subject is designed to introduce students to the main themes and events of American constitutional law since 1787. It introduces terms and concepts of law and legal history, focusing on three recurring themes in American public life: liberty, equality, and property. Readings consist mostly of original court cases, especially from the U.S. Supreme Court, but the focus of the class is on the historical connections between those cases and broader social, political, and cultural trends.

Requirements: The success of this class depends on the active participation of all students. Classroom participation (15%) represents a substantial portion of the grade, and will be evaluated in terms of preparation, participation in large and small group discussion, active listening, collaboration, and overall contributions to the class experience during the term. Needless to say, if you do not attend a class it is impossible for you to contribute to it. Students are expected to keep up with the readings and attend class regularly, as classroom discussions and readings do not always overlap.

Writing assignments are frequent, but short. All students will submit a case brief on one of the assigned cases (10%). All students will submit position papers (5-6pp.) on two of the three class themes (25% each), and take the final examination (25%). Writing assignments are generally due on paper in person at the beginning of the class in which they are due. If the due date is set for a Friday, papers may be submitted by attachment, on the condition that you keep a backup paper copy of the paper in case there is difficulty reading the attachment. Extensions will be granted only for good reasons explained well in advance; computer malfunctions are never an acceptable excuse for a late submission. Adherence to standards of academic honesty is required; if you have any questions about how to go about your writing or cite your sources, don’t hesitate to ask.

Books: Copies of all required books have been placed on reserve in the Humanities Library. Most of the cases listed below are included in Hall et al., eds., American Legal History. Recent cases can be found online at www.findlaw.com. Readings should be completed by the beginning of the class under which they appear, unless otherwise stated.

** CLASS OUTLINE **

WEEK ONE: INTRODUCTION: WHAT IS LAW? WHAT IS THE CONSTITUTION?

Class 1


Class 2


WEEK TWO: THE CONSTITUTION AND JUDICIAL REVIEW

Class 3

READING: The Constitution. Members of the class will take responsibility for different portions.


“The Slaves’ Appeal to the Royal Governor of Massachusetts” (1774), in Diane Ravitch, ed., The American Reader: Words that Moved a Nation (1990), pp. 16-17.

Abigail Adams, “Correspondence with John” (1776), in Diane Ravitch, ed., The American Reader: Words that Moved a Nation (1990), pp. 30-32.

Class 4

READING: Ellen Greenberg, The Supreme Court Explained, pp. 1-12, 61-75, and any other portions of the book that you wish. You will find that you will refer back to this book frequently over the course of the semester.


WEEK THREE: PROPERTY RULES IN THE NEW NATION

Class 5

READING: Richard N. Current, “The Dartmouth College Case,” in Garraty, Quarrels that Have Shaped the Constitution, pp. 21-35.


George Dangerfield, “The Steamboat Case,” in Garraty, Quarrels that Have Shaped the Constitution, pp. 57-69.


McCulloch v. Maryland, 17 U.S. 316 (1819).
Gibbons v. Ogden, 22 U.S. 1 (1824).

WEEK FOUR: PROPERTY AND EQUALITY BEFORE THE CIVIL WAR

Class 6


CASE: Johnson v. M’Intosh, 21 U.S. 543 (1823).
Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

Class 7


Don E. Fehrenbacher, “The Dred Scott Case,” in Garraty, Quarrels that Have Shaped the Constitution, pp. 87-99.


Dred Scott v. Sanford, 60 U.S. 393 (1857).
Class 8

WRITING: CASE BRIEF due.

WEEK FIVE: EQUALITY: THE STRANGE CAREER OF THE 14TH AMENDMENT

Class 9


Alan F. Westin, “The Case of the Prejudiced Doorkeeper,” in Garraty, Quarrels that Have Shaped the Constitution, pp. 139-156.


Class 10


WEEK SIX: PROPERTY: THE FALL AND RISE OF REGULATION

Class 11


CASES: Munn v. Illinois, 94 U.S. 113 (1877).
In re Debs, 294 U.S. 564 (1895).

Class 12


Frank Freidel, “The Sick Chicken Case,” in Garraty, Quarrels that Have Shaped the Constitution, pp. 233-252.


West Coast Hotel v. Parrish, 300 U.S. 379 (1937).

Class 13

WRITING: FIRST position paper due.

WEEK SEVEN: LIBERTY: MODERNIZING THE FIRST AMENDMENT

Class 14


**CASES:**

**Class 15**

**READING:** Philippa Strum, *When the Nazis Came to Skokie: Freedom for Speech We Hate* (1999), pp. 1-35.


**CASES:**

**WEEK EIGHT: LIBERTY: FREEDOM OF (AND FROM) RELIGION**

**Class 16**

**READING:** Kermit Hall, et al., eds., *American Legal History* (1996), pp. 74-75.


**CASES:**

**Class 17**

**READINGS:** Readings on vouchers to be announced based on developments in the US Supreme Court.

**CASES:**
WEEK NINE: EQUALITY: THE WARREN COURT AND SUBSTANTIVE DUE PROCESS

Class 18


William H. Rehnquist, All the Laws but One: Civil Liberties in Wartime (1998), pp. 184-211.


Ex parte Endo, 323 U.S. 273 (1944).

Class 19


WEEK TEN: LIBERTY: THE WARREN COURT AND IMPLIED LIBERTIES

Class 20


Class 21


WEEK ELEVEN: EQUALITY: THE RISE AND FALL OF AFFIRMATIVE ACTION

Class 22


Readings on affirmative action to be announced based on developments in the US Supreme Court this spring.


Class 23

WRITING: SECOND position paper due.

WEEK TWELVE: EQUALITY: OTHER SUSPECT CLASSIFICATIONS

Class 24


Readings on Title IX to be announced based on developments this spring.
CASES:  

Class 25


CASES:  

WEEK THIRTEEN: LIBERTY: CONSERVATIVE CONSTITUTIONALISM

Class 26


CASES:  

Class 27


CASES:  
Class 28

WRITING: THIRD position paper due.

WEEK FOURTEEN: CONCLUSIONS: THE CONSTITUTION AFTER SEPTEMBER 11TH

Class 29


Readings on civil liberties after September 11th to be announced.

Class 30


FINAL EXAMINATION

The final examination for this class will be only two hours long, and will draw primarily from the second half of the semester.