

Law and Politics in United States History (LAWP)

CTY Course Syllabus

Required Texts:

- *American Legal History: Cases and Materials*, Kermit Hall, Paul Finkelman, and James W. Ely (New York: Oxford University Press, 2010).
- *A People's History of the Supreme Court*, Peter Irons (New York: Penguin, 2006).
- Additional documents, essays, and texts will be made available by the instructor throughout the course.

Classroom Norms and Expectations

1. Respect each other as a citizen in a community of learners
2. Approach every new idea and activity with an open mind
3. Always put forth your best effort to complete work and provide positive contributions to discussion
4. Follow all expectations set forth by CTY, including but not limited to the Honor Code, Zero Indifference Policy.

Course Overview:

This course examined the history of the United States through the lens of the judiciary, especially the Supreme Court, with a deliberate focus on controversial ideas and eras that have defined America as a whole today. Student learned about developments in legal theory as well as early foundations of the United States, the development of the Constitution, the changing state of commerce, slavery, the changing definition of citizenry, Progressivism and the development of a police state, freedom of speech, rights of the criminally accused, civil rights, rights of students, and the concept of privacy. Through the course, students developed an understanding and appreciation for the complexity of the American legal system and for the history of America. Additionally, students had the opportunity to critique and challenge the decisions of the Supreme Court, both within and outside of the historical and social context.

Students were expected to approach material in a variety of media, including but not limited to positions papers, structured debates, research projects, free-form discussion, and in-depth analysis of text and primary sources. Students were challenged to become critical thinkers as well as reflective in the role they play in the greater American story.

Syllabus (note – assignments are subject to change throughout the course at the will of the instructor):

Day One: Introductions, Class Expectations, Legal and Political Philosophy and the Creation of the United States

Morning:

- Introductions, Honor Code, CTY Technology Policy, Class Constitution, Pre-Test
- Free Write: What is history? What is law? How do they intersect? What kinds of laws are ideal?
- Read excerpt “The Theme Considered ,” “As Falling Within an Interpretive Tradition,” and “And Consistent with the Constitution’s History.” *Active Liberty*, (Breyer 2005. pp. 15-34)

Afternoon:

- Discussion on Breyer
- Lecture: Early Foundations of American Law
- Read Magna Carta (**Hall** 1-6), Mayflower Compact (**Hall** 12-14), *Second Treatise on Government* (Locke - print out)
- Frayer Model: What is American Law?

Evening:

- What is the importance of tone the Magna Carta, the Mayflower Compact, and Locke?
- Declaration of Independence – Read Aloud and discussion (**Hall** 91-94)
- Federalist 10 (**Hall** 120-123)

Day Two: Constitution, The Development of the Supreme Court, John Marshall, and Separation of Powers

Morning:

- Review, discussion of readings from Day 1: Evening
- Articles of Confederation (**Hall** 111-112)
- Group Activity: Needs, Problems, Solutions to the Articles of Confederation
- Read Federalist 78 (**Hall** 123-126), Anti-Federalist Readings (printout)
- Discussion: Conflicts between the Federalist and Anti-Federalists. What is the difference?

Afternoon

- Read the Constitution and amendments: Annotation, Cornell Notes (**Hall**, page 684)
- Constitution Scavenger Hunt

Evening:

- Writing: How does the Constitution solve the problems of the Articles of Confederation? What problems remain?
- Diagram: How is power distributed in the Constitution?

- How to Read Effectively
- Readings: “The Framework of Judicial Statesmanship,” *The Supreme Court Under Marshall and Taney* (Newmeyer 2006, pp. 1-17)

Day Three: John Marshall, Debates between National and State Power, Geographical Development, and Commerce

Morning:

- Review, discuss readings from night before on Judicial Statesmanship
- Read and discuss and brief: “To Say What the Law Is” (**Irons** 96-106)
- Large Class Discussion: Who is Marshall? Why does this matter?
- Introduction to Legal Briefs
- Read *Marbury v. Madison* (**Hall** 143-147) and brief as a class

Afternoon:

- Continue brief on *Marbury v. Madison*
- Lecture: Economic Development in Early America
- Jigsaw – Group Brief and Skits/Presentations: *McCulloch v. Maryland*, *Gibbons v. Ogden*, *Dartmouth College v. Woodward*, *Charles River Bridge v. Warren Bridge Company* (**Hall** 159-163, 155-158, 172-176, 176-179)

Evening:

- Continue Jigsaw – Group Brief and Skits/Presentations: *McCulloch v. Maryland*, *Gibbons v. Ogden*, *Dartmouth College v. Woodward*, *Charles River Bridge v. Warren Bridge Company*
- Read “Federalism” (Breyer, pp. 56-65), “The Good and the Wise” (**Irons**, p. 121-136)

Day Four: Geographical Development and Commerce; Citizenry and Slavery

Morning:

- Review readings from the night before
- Present Lincoln-Douglass Debate Format
- Debate Preparation: Topic: A strong national government provides the greatest protection for the people.
- Debate and reflection on debate
- Quiz: Federalism

Afternoon:

- Continue Quiz
- Review Quiz Answers
- Group Activity and Discussion: What is personhood? How is it defined by the Constitution?
- Lecture: Slavery in Early America
- Readings on Slavery and Early Slave Codes (**Hall** 53-62)

Evening:

- “Slavery Without Submission, Emancipation Without Freedom, *A People’s History of the United States* (Zinn 2003, 172-210)
- Review on how to write briefs, especially with a focus on the rationale of the Court

Day Five: Citizenry and Slavery

Morning:

- Venn Diagram – Zinn Reading from the night before with slave code readings
- Library: Primary Source Documents on Slavery
- Read “A Small Pleasant Looking Negro,” (**Irons**, 157-167)

Afternoon:

- Continue “A Small Pleasant Looking Negro”
- Discussion – Background of Dred Scott, Who is Roger Taney?
- Watch “Division,” *America: The Story of Us* (Burns, 2010)

Evening:

- Read *Dred Scott v. Sanford* (**Hall**, 238-243)
- Discuss: Why is Dred Scott such a big deal?

Day Six: Slavery, Further Expansion of the United States, The Gilded Age, and Government Regulation

Morning:

- Lecture: The Civil War and Its Aftermath: Amendments 13, 14, 15
- Read “Our Constitution is Color-Blind” (**Irons**, 221-227)
- Read “Of the Passing of the First Born,” *The Souls of Black Folk*, W.E.B. DuBois
- Found Poetry: What is DuBois’s message?
- Read, brief, and discuss *Plessy v. Ferguson* (**Hall**, 282-286)

Afternoon:

- Finish briefing *Plessy v. Ferguson*
- Quickwrite and Socratic Seminar:
 - o “Legislation is powerless to eradicate racial distinctions or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation.” – Justice Brown, *Plessy v. Ferguson*
 - Based on the decisions that we have seen in *Dred Scott v. Sanford* and *Plessy v. Ferguson*, what do you project the trajectory of civil rights cases will be? Based on the laws at our disposal, do minorities have a chance in court? What political/legal issues will push these ideas to the forefront?

Evening:

- Lecture: Gilded Age, Expansion in the United States, Populism

- Reading: Excerpt of “Robber Barons and Rebels” (**Zinn**, 253-295)
- Reading questions and discussion

Day Seven: Substantive Due Process, Liberty of Contract, and Police Powers

Morning:

- Read Interstate Commerce Act (**Hall**, pg 381), Sherman Anti-Trust Act (**Hall**, pg 383), Populist Platform (**Hall**, pg 386)
- Group research and presentation preparation: *Slaughterhouse Cases*, *Munn v. Illinois*, *United States v. EC Knight*, *Ives v. South Buffalo Railway Company* (**Hall**, 270-273, 376-378, 393-396, 383-385)
- Group presentations
- Discussion: Where do we see a transformation of power with the 14th Amendment?
- Short Discussion: Review
- Lecture: Substantive Due Process, Liberty of Contract, and the Police State

Afternoon:

- Quickwrite: Are you surprised by the expansion of the 14th Amendment? Why might use of the 14th Amendment be important for economic expansion? What does this do to the relationship between the federal and state governments?
- Lecture: Substantive Due Process and making meaning out of the 14th Amendment
- Gallery Walk: Factory Conditions at the Turn of the Century
- Read “The Work Was Light and Healthful,” **Irons**, 254-256

Evening:

- The Modern Supreme Court: Reading and Discussion

Day Eight: Liberty of Contract, Women’s Rights, Freedom of Speech

Morning:

- Read *Lochner v. New York* (**Hall**, 405-408), The Brandeis Brief (**Hall** 468-470), *Muller v. Oregon* (**Hall**, 408-410)
- Review case briefs for *Lochner* and *Muller*
- Review reading and Liberty of Contract: Men vs. Women

Afternoon:

- Debate Preparation: An individual’s right to liberty of contract is greater than the right of a state to regulate the health and welfare of its citizens.
- Discuss *Plessy* briefs and improvements to brief writing

Evening:

- Debate: Liberty of Contract v. State Police Power
- Read and discuss *Buck v. Bell*

- Read “Falsely Shouting Fire In a Crowded Theater” (**Irons**, 265-281), “Holmes’ Constitutional Jurisprudence” by Novick (print out)
- Profile: Holmes

Day Nine: Freedom of Speech

Morning:

- Present information on final project: research on controversial topics that we don’t talk about much in the course: topic ideas include: Internet Privacy, Drug Legalization, Immigration, Cruel and Unusual Punishment, Second Amendment Concerns, Flag Burning, USA PATRIOT Act, Euthanasia, Animal Rights
- Lecture: World War One, Civil Liberties, The State of the Court
- Read Espionage Act, *Schenck v. United States*, *Abrams v. United States*, *Gitlow v. New York* (**Hall 424-428: Gitlow is in Major Problems – print out**)

Afternoon:

- Research and development of final project

Evening:

- Developing your own litmus test: Clear and Present Danger: Activity and Discussion
- Brief on *Abrams v. United States*

Day Ten: Civil Liberties in a New Era: World War II

Morning:

- *Tinker v. Des Moines* – Read and discuss
- Symbolic Speech Activity: Armbands
- Quick write and discussion: When have your rights been oppressed? What was the reason? How did you feel?
- Lecture: World War II and the climate of the United States; what is strict scrutiny?
- Read Executive Order 9066 (print out)
- Discussion: Does the government have a compelling government interest to restrict the rights of Japanese? How far does executive privilege really reach?
- Background on Fred Korematsu

Afternoon:

- Research for final project – final preparations

Evening:

- Read and brief *Korematsu v. United States*
- Begin political cartoon activity for *Korematsu*

Day Eleven: Civil Liberties and Race, Introduction to the Warren Court

Morning:

- Review of Racism, Discuss on legal theory behind Warren Court
- YouTube Video: Watch Colored Doll Test and discuss
- Read *Brown v. Board of Education* (1954 and 1955) (**Hall** 499-502)
- Discuss *Brown* and its aftermath: MLK, Malcolm X, Civil Rights, Civil Rights Amendment

Afternoon:

- Writing Activity: Does treating everyone equally mean treating everyone the same?
- Discuss Writing
- Activity: Acting as a college admissions board

Evening:

- Complete Research Project in the Lab
- *Law and Order*: Supreme Court Nominations

Day Twelve: Affirmative Action; The Creation of Privacy in the Constitution

Morning:

- Review College Admissions Board Activity
- Read, discuss, and brief *Regents of the University of California v. Bakke* (**Hall**, p. 507-513)
- Discussion: Is there a need for affirmative action?
- Prepare debate: Racial Quotas should be used to promote ethnic diversity.

Afternoon:

- Prepare debate: Racial Quotas should be used to promote ethnic diversity.
- Debate

Evening:

- Continue *Law and Order*: Supreme Court Nominations
- Activity: Constructing Privacy in the Constitution
- Read *Griswold v. Connecticut, Roe v. Wade* (**Hall** 519-525)
- Discussion: *Griswold*

Day Thirteen: Rights of Privacy, Continued

Morning:

- Stand Your Convictions: What are rights that are expressly regulated by the individual?
- Oral Argumentation: *Roe v. Wade*
- Read, brief, and discuss *Roe v. Wade* (**Hall** 521-525)

Afternoon:

- Continued Discussion on Abortion

- Quickwrite: Where can we find morality in the Constitution?
- Read and discuss *Bowers v. Hardwick* and *Lawrence v. Texas*
- What are predictions for rights of gays to marry in regards to the Fourteenth Amendment?

Evening:

- SPEs
- *Twelve Angry Men* and reflection on the film and class

Day Fourteen: Executive Privilege and Criminal Rights

Morning:

- Read, discuss, and brief *United States v. Nixon* (**Hall**, p. 638-641)
- Read, discuss, and brief *Miranda v. Arizona* (**Hall**, p. 554 – 557)

Afternoon:

- Finish *Miranda*
- Student Presentations

Evening:

- Post-test
- Finish Presentations
- Game: What do we really know about the American Constitution?

Day Fifteen:

Morning:

- Final project presentations
- Course wrap-up