This course covers the development of constitutional law from Reconstruction to the Warren Court. Constitutional Law I is not a prerequisite, but a good background in American history is strongly recommended. We will focus on the development of modern civil liberties doctrine and the emergence of the federal courts as the primary guarantor of civil rights, examining not only constitutional doctrine but also the broader intellectual and political context in which it evolved. Topics will include adoption of the Reconstruction amendments, the struggle over economic regulation and the doctrine substantive due process, the influence of legal realism on constitutional politics, FDR's battle with the Supreme Court and the expansion of civil liberties under the Warren Court.

Texts:

Kelly, Harbison, Belz, Vol. II

Ely, *Democracy and Distrust*

***Additional readings in coursepack and on reserve***

**Course requirements:** The course will consist of lecture and discussion. You are expected to complete the readings before class so that you can come to class prepared to listen attentively and engage in a lively and thoughtful discussion.

Note: Attendance is required. Repeated absences will affect your grade.

Your grade will be computed as follows:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Midterm</td>
<td>25%</td>
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<tr>
<td>Final</td>
<td>35%</td>
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<tr>
<td>Additional assignments, presentations, participation</td>
<td>15%</td>
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<tr>
<td>Case Note</td>
<td>25%</td>
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**All assignments must be turned in on the day they are due, or you will receive no credit. This applies to the case note as well.**

**Weekly presentations:** Each week, selected students will present an assigned case to the class. The student should locate the full text of the case in the library and concisely (10 min. max) present the following:

1. Summarize the facts of the case
2. Explain the Court's reasoning and the holding
3. Explain the reasoning of the dissenting opinions, if any
4. Explain why this case is significant, both politically and legally
Case Note: You will choose a significant constitutional case from the modern era (1865 to present) and write a 7-10 page case note (12-pt font, 1 inch margins). Case notes are designed to explain the facts, reasoning and holding in a case in a concise and simple fashion. They follow a standard format:

I. Facts
II. Issue
III. Doctrine
IV. Court's Analysis
V. Holding

We'll discuss the details of writing case notes in more depth in class (see syllabus).

You may rewrite your case note as often as you like, for a new grade.

I recommend that you choose your case from the following list. If you want to work on a case not on this list, you must clear it with me first:

The Slaughterhouse Cases, 83 US 36 (1873) [equal protection]
The Civil Rights Cases, 109 US 3 (1883) [equal protection]
Lochner v New York, 198 US 45 (1905) [econ regulation]
Munn v Illinois, 94 US 113 (1877) [labor]
Muller v Oregon, 208 US 412 (1908) [labor]
In re Debs, 154 US 564 (1895) [free speech]
Schenck v US, 249 US 47 (1919) [free speech]
West Coast Hotel v Parrish, 300 US 379 (1937) [labor]
Palko v Connecticut, 302 US 219 (1937) [due process]
West Virginia State Board of Education v Barnette, 319 US 624 (1943) [church & state]
Korematsu v US, 323 US 214 (1944) [equal protection]
Brown v Board of Education, 347 US 483 (1954) [equal protection]
Mapp v Ohio, 367 US 643 (1961) [rights of accused]
Griswold v Connecticut, 381 US 479 (1965) [privacy rights]
Brandenburg v Ohio, 395 US 444 (1969) [free speech]
US v O'Brien, 391 US 367 (1968) [free speech]
Miranda v Arizona, 384 US 436 (1966) [rights of accused]
Roe v Wade, 410 US 113 (1973) [abortion rights]
I. Introduction

Class 1: Introduction to the course

Class 2: American judicial system

US Constitution, Article III

II. Reconstruction Amendments

Class 3: Douglas' Appendix to Adamson v California

Civil Rights Bill of 1866

13th, 14th, 15th amendments

KHB Ch. 17

III. Race and citizenship

Class 4: Slaughterhouse Cases

KHB Ch. 18

Class 5: Civil Rights Cases

Class 6: Plessy v Ferguson

Class 7: How to Write a Case Note

IV. Labor vs Capital I: Economic regulation

Class 8: Munn v Illinois

KHB Ch. 19, 20

Class 9: Lochner v New York

KHB Ch. 21, 23

Class 10: Muller v Oregon

V. Labor vs Capital II: Civil Liberties

Class 11: Debs v US

KHB Ch. 26

Regents of the Univ. of California v Bakke, 438 US 265 (1978) [aff. action]

Bowers v Hardwick, 478 US 186 (1986) [gay rights]

Nollan v California Coastal Commission, 483 US 825 (1987) [takings; env'tal regulation]

McClesky v Kemp, 481 US 279 (1987) [capital punishment]

Penry v Lynaugh, 492 US 302 (1989) [capital punishment]
Class 12: Schenck v US: Mock appeal

VI. FDR vs the Court

Class 13: Llewellyn, *A Realistic Jurisprudence-The Next Step* (selection) [R]

   Pound, *The Ideal Element in American Judicial Decision* [R]

Class 14: West Coast Hotel v Parrish

   Adkins v Childrens Hospital

   KHB Ch. 24, 25

Class 15: MIDTERM EXAM

VII. Desegregation

Class 16: Brown v Board of Education

   KHB Ch. 29

Class 17: Heart of Atlanta Motel v US, Katzenbach v McClung

   US v Morrison [handout]

VIII. Justifying Judicial Activism

Class 18: Carolene Products, footnote 4

   KHB Ch. 30

Class 19: Ely, Ch. 1-3

Class 20: Ely, Ch. 4-5

Class 21: Ely, Ch. 6-8

IX. Modern Civil Liberties

Class 22: 42 USC 1983

   *Case Note due

Class 23: Brandenburg v Ohio

Class 24: Wallace v Jaffree

Class 25: Roe v Wade

Class 26: Miranda v Arizona

Class 27: Furman v Georgia

Class 28: Review