

Constitutional History II
Reconstruction to the Civil Rights Movement
Fall 2016

Professor Michael Klarman

Our primary course materials will consist of photocopied materials available on the course website and in hard copy from the law school copy center. We will also be reading significant portions of my book *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2004), which should be available from the law school bookstore.

The numbers along the left-hand side of the syllabus represent assignments (of which there are 20), rather than class sessions (of which there are 36); most of the reading assignments will occupy us for longer than a single sixty-minute class.

My office is Areeda 332. My email is mklarman@law.harvard.edu. My office hours this semester are Wednesdays from 3:00 to 5:00 and Fridays from 3:00 to 5:00. I would prefer that people make appointments directly with me, **not** with my assistant. Most days, I'm also happy to stick around after class to converse about American constitutional history, the Celtics, the Red Sox, or whatever else is on your mind.

I need to reschedule two classes this semester. We will not have class on Thursday, Sept. 15 or on Weds., Sept. 28. Those classes will be rescheduled for Friday, Oct. 7 and Friday, Oct. 21 at 2:00 pm (that is, immediately after our regularly scheduled classes those Fridays) and will meet in the same classroom where we regularly meet, Austin North.

1. 13th Amendment

Michael Zuckert, "Completing the Constitution: The Thirteenth Amendment,"
4 Constitutional Commentary 259 (1987) 1

2. 14th Amendment

Amendment XIV [1868] 26
William Nelson, *The Fourteenth Amendment* (1988) 27

3. 15th Amendment

Earl Maltz, *Civil Rights, the Constitution, and Congress, 1863–1869* (1990) 43

4. Reconstruction: Interbranch Struggle

Charles Warren, <i>The Supreme Court in United States History</i> , Vol. II (1926)	63
Stanley Kutler, <i>Judicial Power and Reconstruction Politics</i> (1968)	86

5. Retreat from Reconstruction?: *Civil Rights Cases*

Case Summaries	100
Michael Les Benedict, "Preserving Federalism: Reconstruction and the Waite Court," 1978 <i>Supreme Court Rev.</i> 39	101

6. Race in the *Plessy* Era

Michael J. Klarman, <i>From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality</i> (2004), Chapter 1 (not included in packet)	
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7. Economic Regulation in the *Lochner* Era

Case Summaries	142
Howard Gillman, <i>The Constitution Besieged</i> (1993)	144

8. Women's Suffrage and the 19th Amendment

Aileen S. Kraditor, <i>The Ideas of the Woman Suffrage Movement, 1890–1920</i> (1965)	183
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9. Race in the Progressive Era

Klarman, <i>From Jim Crow to Civil Rights</i> , Chapter 2 (not included in packet)	
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10. The Birth of the Modern First Amendment

Mark Graber, <i>Transforming Free Speech</i> (1991)	216
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11. Race in the Interwar Period

Case Summary of White Primary Cases	241
Klarman, <i>From Jim Crow to Civil Rights</i> , Chapter 3: pp. 98–116, 135–52, 158–70 (not included in packet)	

12. The Birth of Modern Criminal Procedure

Klarman, *From Jim Crow to Civil Rights*, Chapter 3: pp. 117–35, 152–58
(not included in packet)

13. The New Deal Crisis and the Court-Packing Plan

Case Summary: New Deal Cases 242
Leuchtenburg, “The Origins of Franklin D. Roosevelt’s ‘Court-Packing Plan’,”
1966 Supreme Court Rev. 347 243
Barry Cushman, “Rethinking the New Deal Court,” 81 Va. L. Rev. 201 (1944) 265

14. Japanese-American Internment

Peter Irons, *Justice at War* (1983) 326

15. Race in the World War II Era

Klarman, *From Jim Crow to Civil Rights*, Chapters 4–5, pp. 171–217, 236–64
(not included in packet)

16. Birth of the Modern Establishment Clause

Mary Ann Glendon & Raul F. Yanes, “Structural Free Exercise,” 90 Mich.
L. Rev. 477 (1991) 383
Michael Klarman, “Rethinking the Civil Rights and Civil Liberties
Revolutions,” 82 Va. L. Rev. 1 (1996) 398

17. Jehovah’s Witnesses, Communists, and the First Amendment

William McAninch, “A Catalyst for the Evolution of Constitutional Law:
Jehovah’s Witnesses in the Supreme Court,” 55 University of
Cincinnati L. Rev. 997 (1987) 416
Case Summary: McCarthy Era Cases 450
C. Herman Pritchett, *Congress Versus the Supreme Court, 1957–1960* (1961) 451

18. The Justices' Internal Deliberations in *Brown v. Board of Education*

Justice Douglas's conference notes, <i>Brown v. Board of Education</i>	469
Justice Jackson, draft concurrence, <i>Brown v. Board of Education</i>	471
"A Random Thought on the Segregation Cases," Law Clerk William Rehnquist memo to Justice Jackson	496

19. *Brown II*, Subsequent Desegregation Developments, and *Brown*'s Consequences I

Klarman, *From Jim Crow to Civil Rights*, Chapters 6–7, pp. 321–84
(not included in packet)

20. *Brown*'s Consequences II: *Brown* and the Civil Rights Movement

Klarman, *From Jim Crow to Civil Rights*, Chapter 7, pp. 385–442
(not included in packet)