

THE ORIGIN AND EVOLUTION OF AMERICAN CIVIL RIGHTS LAW

Professor Stephen M. Rich

Office: Room 474

Email: srich@law.usc.edu

Office Hours: TBA and by appointment

Assistant: Maria Chan

Email: mchan@law.usc.edu

Course description. This course traces the development of U.S. constitutional and statutory mechanisms designed to fulfill the promise of equality under the law. American civil rights law represents one of our nation's most celebrated traditions. The course will examine the substance of federal civil rights laws, with special attention to the manner in which this body of law has evolved over time and to the equality values that have competed for dominance across this history. The course will provide students with an introduction to doctrinal frameworks in several key civil rights areas (including education, employment, voting, and marriage), and it will discuss how these frameworks have applied to different types of discrimination (including discrimination based on race, sex, religion, disability, and sexual orientation).

Students will be asked to consider how, over time, civil rights laws' inclusion of new protected statuses and prohibition against new forms of discrimination may have exposed unforeseen problems with the project of providing equality under the law. For example, are legal mechanisms constructed to address problems of civil and political inequality faced by former slaves after the Civil War adequate to address issues of social inequality faced by their descendants in the present day? Are laws passed during Reconstruction and the civil rights era merely anachronistic political artifacts in today's "post-racial" America, or are they more relevant than ever given the contentious policing and immigration issues of our time? Are existing civil rights laws adequate to address claims of discrimination based on non-racial statuses, such as gender, sexual orientation, and class? Or have the racial origins of American equality discourse obscured the uniqueness of those claims? Building upon its historical foundation, the course will conclude by giving close consideration to contemporary issues such as marriage equality, racially discriminatory policing practices, campus sexual harassment policies, voter identification laws, and the Trump administration's controversial travel ban.

Student performance will be evaluated on the basis of a short mid-term paper written in response to questions posed by the instructor (30% of final grade) and a longer final essay which may be written in response to questions posed by the instructor or it may be written on a topic approved by the instructor (60% of final grade). In addition, class attendance and participation will account for 10% of the final grade.

Learning objectives. The course is structured help students to fulfill the following learning objectives.

1. For students to obtain an understanding of the origins of American civil rights law and the particular objectives and assumptions that shaped the law at its origins.

2. For students to develop proficiency in the application of current civil rights law doctrine across a range of social circumstances.

3. For students to understand the set of normative commitments and assumptions that continue to guide the development and enforcement of American civil rights law.

4. For students to develop the ability to use their understandings of legal assumptions and normative commitments in order to apply those understandings to contemporary cases.

Grading. Grades will be determined on the basis of a midterm paper (30%), a final paper (60%), and class attendance and participation (10%). The midterm paper should be 5-7 pages in length, double-spaced, and it should answer a question posed by the instructor, present a clear thesis, and give due consideration to arguments against the student's thesis. The final paper should be 20-25 pages in length. Regardless whether they are written in response to questions posed by the instructor (option 1) or on topic approved by the instructor (option 2), all final papers should present a clear and original thesis, include (where necessary) supporting research outside the course materials, and give due consideration to arguments against the student's thesis.

Course materials and assignments. Two books are available at the campus bookstore: Eric Foner's *The Second Founding* and Bruce Ackerman's *The Civil Rights Revolution*. Traditionally, law school courses use casebooks compiled from excerpted judicial decisions and editors' commentary meant to give context to those decisions. These books with provide us with a great deal of important contextual information, and each raises a unique point of view about the importance of civil rights law within our constitutional order. All other course materials shall be provided both online through Blackboard and (for those of you who prefer a physical copy) in the form of a workbook of readings selected by the instructor. Most of these readings will consist of unredacted judicial opinions. Again, traditionally law students read excerpted opinions which permits them to cover more cases more quickly. We, however, will read primarily unredacted opinions and cover fewer cases more deeply.

I. Introduction: Problems of Slavery and Citizenship

- ❖ Assignment 1: Douglass, "What to the Slave Is the Fourth of July?"
Dred Scott v. Sandford
excerpts from Rogers Smith, *Civic Ideals*

II. The Origins of Civil Rights Law

A. The Reconstruction Amendments and Early Civil Rights Legislation

- ❖ Assignment 2: *The Slaughterhouse Cases*
Bradwell v. Illinois
Eric Foner, *The Second Founding* intro. and chs. 1 & 2
- ❖ Assignment 3: *Giles v. Harris*
Eric Foner, *The Second Founding* ch. 3
- ❖ Assignment 4: *The Civil Rights Cases*
Eric Foner, *The Second Founding* ch. 4
- ❖ Assignment 5: *Pace v. Alabama*
Plessy v. Ferguson

B. The Fourteenth Amendment and the “Second Reconstruction”

- i. The Warren Court Reconceptualizes Equal Protection and Judicial Review
- ❖ Assignment 6: *Brown v. Board of Education (I)*
Brown v. Board of Education (II)
Bruce Ackerman, *The Civil Rights Revolution* chs. 7 & 8
- ii. Struggles over the Implementation of Brown
- ❖ Assignment 7: *Cooper v. Aaron*
Green v. County Sch. Bd.
Bruce Ackerman, *The Civil Rights Revolution* ch. 11
- iii. The Right to Vote
- ❖ Assignment 8: *Gomillion v. Lightfoot*
Harper v. Virginia Board of Elections
- iv. Congressional Authority
- ❖ Assignment 9: *Heart of Atlanta Motel v. United States*
Katzenbach v. Morgan
- v. From Integration to Intimacy
- ❖ Assignment 10: *Loving v. Virginia*
Bruce Ackerman, *The Civil Rights Revolution* ch. 13

D. Defining Discrimination after the Warren Court: Equal Protection in the 1970s

vi. Sex Discrimination

- ❖ Assignment 11: *Frontiero v. Richardson*
Craig v. Boren

vii. School Desegregation

- ❖ Assignment 12: *Milliken v. Bradley*

viii. The Right to Vote

- ❖ Assignment 13: *Whitcomb v. Davis*

ix. Effect vs. Intent

- ❖ Assignment 14: *Griggs v. Duke Power Co.*
Washington v. Davis

III. Pluralism and the Tiers of Scrutiny

A. Rational Basis Review

- ❖ Assignment 15: *City of Cleburne v. Cleburne Living Center*

B. Intermediate Scrutiny

- ❖ Assignment 16: *Michael M. v. Superior Court of Sonoma County*
- ❖ Assignment 17: *United States v. Virginia*

C. Strict Scrutiny

- ❖ Assignment 18: *City of Richmond v. Croson*
- ❖ Assignment 19: *Rice v. Cayetano*
- ❖ Assignment 20: *Grutter v. Bollinger*

IV. Statutory Regimes

A. Title VII of the 1964 Civil Rights Act

1. Defining Discrimination

- ❖ Assignment 21: *Griggs v. Duke Power Co.*
McDonnell Douglas Corp. v. Green
- ❖ Assignment 22: *United Steelworkers v. Weber*
- ❖ Assignment 23: *Price Waterhouse v. Hopkins*

2. Defining Harassment

- ❖ Assignment 24: *Meritor Savings Bank v. Vinson*
Faragher v. City of Boca Raton

B. Title XI of the Education Amendments of 1972

- ❖ Assignment 25: *Gebser v. Lago Vista Independent Sch. Dist.* (SR)
Davis v. Monroe County Board of Educ. (SR)
Saul & Taylor, NY TIMES, “Betsy DeVos Reverses
Obama-Era Policy on Sexual Assault Investigations” (SR)

C. Continuing Problems of Interpretation and Enforcement

- ❖ Assignment 26: *Oncale v. Sundowner Offshore Services, Inc.*
Renee v. MGM
Jespersen v. Harrah’s Casino
- ❖ Assignment 27: *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*

V. Questions in Contemporary Constitutional Law

- ❖ Assignment 28: *Obergefell v. Hodges*

Statement on Academic Conduct and Support Systems

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC

Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students. <https://diversity.usc.edu/>