

UNIVERSITY OF WISCONSIN-MADISON  
Department of History

Semester Fall Year 1986

<u>COURSE NO.</u>	<u>COURSE TITLE</u>	<u>INSTRUCTOR</u>
331	American Legal and Constitutional History	Stanley Kutler

COURSE DESCRIPTION

The course surveys the development of American legal and constitutional theory and selected examples of the application and impact of that theory. Topics include the Old World and colonial background to the American Constitution; the making of the Constitution; the Supreme Court under Marshall and Taney; Slavery, the Constitution, and the Coming of the Civil War; Reconstruction and the New Constitutional Order; Industrialism and the Constitution, 1865-1941; and some problems in civil rights and civil liberties. The course basically focuses on institutional and theoretical problems from the late 18th century to the mid-twentieth century.

LECTURES

Two lectures per week, each 75 minutes. One discussion section per week, for 50 minutes.

WRITTEN ASSIGNMENTS AND EXAMINATIONS

One midterm, a brief paper, and a final.

GRADING SYSTEM

Written assignments plus the discussion performance will be calculated to determine grades.

REQUIRED READINGS

Casebook, selected texts and articles.

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History 331

American Legal and Constitutional  
History

Mr. Kutler

This class meets on Monday and Wednesday for lectures. In addition, there will be a discussion hour with the teaching assistant.

You will have one mid-term examination, a paper due on December 1, and, of course, a final examination. You are expected to attend the discussion sections. Your grade will depend on your performance. Obviously, no attendance, no grade.

The basic texts are:

Robert McCloskey, THE AMERICAN SUPREME COURT

Stanley Kutler, THE SUPREME COURT AND THE CONSTITUTION (3rd ed.)

Stephen Botein, EARLY AMERICAN LAW

Various articles, available at Kinko's, 620 University Avenue.

September 3	Introduction
September 8	The Old World & English Background
September 10	Colonial Constitutional Development Botein, EARLY AMERICAN LAW
September 15	The American Revolution
September 17	The Declaration & the Development of Nationality
September 22	The Articles of Confederation
September 24	The Constitution: Ideological Background Wood, CREATION OF THE AMERICAN REPUBLIC, Chs. 10-13
September 29	The Constitution: The Convention & Ratification Scheiber, "Federalism"
October 1	The Constitution: Language and Meaning Kutler, 741-756
October 6	1789: The First Government
October 8	NO CLASS
October 13	The Supreme Court, 1789-1801 Kutler, 3-24; McCloskey, 3-53
October 15	The Marshall & Taney Courts: Judicial Power Kutler, 25-49, 101-114; McCloskey, 54-100
October 20	The Marshall & Taney Courts: Political Economy Kutler, 63-89, 114-119; Hurst, "The Release of Energy"
October 22	The Marshall & Taney Courts: National Powers Kutler, 50-62, 90-100, 126-138
October 27	EXAMINATION
October 29	Slavery & the Constitution: Fugitive Slaves Kutler, 145-149
November 3	Slavery & the Constitution: The Territories & Dred Scott Kutler, 150-160; Bestor, "American Civil War"
November 5	Reconstruction: Southern Policy, Amendments Kutler, 164-182, 192-193, 197-224
November 10	Reconstruction; Impeachment; New Judicial Power Kutler, 183-191; Wiecek, "Reconstruction of Federal Judicial Power"
November 12	Industrialism & the Constitution, 1865-1941 Kutler, 225-257; McCloskey, 101-35
November 17	Due Process and Social Legislation Kutler, 282-293, 309-320, 337-358

November 19 The Commerce Clause  
Kutler, 264-281, 359-364

November 24 The New Deal & Constitutional Crisis, 1933-1937  
Kutler, 365-386; McCloskey, 136-179

November 26 The Court Fight: 1937  
Kutler, 387-428

December 1 Freedom of Speech: A Historical Survey  
Kutler, 324-336, 429-441, 472-484; Levy, "Liberty and the First  
Amendment"

December 3 The Civil Rights Revolution  
Kutler, 548-577

December 8 Presidential Power, Watergate, and the Constitution  
Kutler, 703-728