

American Legal History from 1860 to the Present: Syllabus Legal Studies / History 262, Spring 2018

Social Sciences 6104, Tuesdays and Thursdays, 1:00 – 2:15 pm

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Office hours: Social Sciences 7131, Tuesday and Thursday, 2:30 – 4:00 pm, and by appointment

This course surveys the development of American law from the Civil War to the early Twenty-First Century. After a review of the U.S. Constitution and its modification by the Civil War amendments, it examines the legal dimensions of such topics as race relations and the Civil Rights movement, the growth of modern business, the New Deal, labor rights, the women's movement, the individual rights revolution of the postwar period, and the contemporary conservative reaction. Emphasis is on how law interacts with political, social, and cultural change.

This is a 3-Credit-Hour Course. It meets for two 75-minute sessions per week throughout the Spring semester and carries the expectation that students will work on course learning activities (reading, writing, problem sets, studying, etc.) for about 3 hours out of classroom for every class period (or 6 hours per week).

Grades: will be calculated on the standard UW scale: A=93-100%, AB=88-92%, B=83-87%, BC=78-82%, C=70-77%, D=60-69%, F=0-59%. Grades will be determined as follows:

	<u>% of grade</u>	<u>course points</u>
Attendance and participation:	8	40
Short Essay	7	35
Quizzes	10	50
Midterm essay:	20	100
Third Essay:	25	125
Final exam:	30	150
Total:	100	500

Learning Goals: This class will help students to learn about the role of law in society in (at least) the following ways:

1. Introduce students to the social, political, economic, and cultural determinants of law.
2. Introduce students to the social, political, and economic impacts of law at the macro level.
3. Introduce students to the dynamics of legal ideas and ideologies.
4. Introduce students to the nature of legal reasoning and analysis in common law, civil law, and other legal systems.
5. Introduce students to the functioning of legal institutions, and how those institutions differ from other societal institutions.
6. Introduce students to the cross-cultural and international valences of law in different societies.

To accomplish these goals, students will begin the class by reviewing the history of the Reconstruction period to analyze, in a short essay of two-three pages, the intentions of the framers of the U.S. Constitution's 14th Amendment (goals 1, 3, and 4). Students will then turn to a careful analysis of labor regulations and debates about women's legal rights in federal courts, in preparation for a midterm exam essay, thereby learning about American legal institutions (goal 5), the impacts of law on ordinary people (goal 2), and how social ideologies and legal reasoning interact (goals 2, 3, and 4). Students will also read pertinent primary and secondary sources to write a six-to-eight-page essay about how legal and non-legal

factors interacted in the changes that led the Supreme Court in *Brown v. Board of Education* (1954) to strike down legal segregation in public schools (goals 1, 3, and 6). In the final unit of the class, leading up to the final exam, students will examine how changes in American society since the 1960s have been shaped by complex interactions between law and society (all of the above goals).

Qualitative Assessment for Participation in Lectures: This class is typically a medium-sized lecture, with about 70-90 students. For classes of this size, I assess participation qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester. I typically use my assessment of attendance and participation to adjust students' final grades in borderline cases, especially when a student contributes to class at a level above their performance on written work.

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than THREE unexcused absences is excessive, because missing this much class usually leads to misunderstanding of course materials and assignments; 3) missing more than SIX classes without valid excuses may be grounds for failing the class; and 4) valid excuses are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your planned absences by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family. 5) In cases of absence for quizzes, paper due-dates, and exams, you should inform me of your absence in advance if at all possible. Missing class on such days without prior notice to me may result in a failing grade for that assessment.

Participation Guidelines: You should try to speak up often, and I will also try to call on students. (*Please let us know as soon as possible if you object to being called upon!) But quality of contribution counts more than quantity. Quality contributions reflect your familiarity with the readings and your effort to ask good critical questions about them, such as: What are the main questions the author tries to answer? What is the author's main argument? What specific arguments, assumptions, or evidence are used in support? What is left out? Good participation also means that you listen to others and try to engage seriously but respectfully with what others say.

Computers, Electronic Devices, & Distracted Behavior: Due to the potential for distraction, the use of computers or electronic devices of any kind during class is strongly discouraged. For those who need or strongly prefer to take notes on a computer *and* who strictly avoid any other usage of personal devices in class, you may do so, but please sit in the front row or in the very back row, where distraction to others is hopefully minimized. Engaging in any screen time unrelated to class or in any other distracted or distracting behavior, such as reading unassigned materials, noisy eating or drinking, sleeping, conversation with classmates or on the phone, etc., may result in you being asked to leave the classroom and may also negatively impact your grade.

Quizzes: There will be quizzes approximately every three weeks. These will be announced a week or so in advance and will consist of multiple choice, fill-in the blank, and similar short-answer questions.

Essays: There are three take-home essays, of approximately 2 pages length for the first, 5 for the second, and 6-7 for the third. These will focus on the assigned readings, with topics and guidelines provided one or two weeks before their due dates. Essays must be turned in both as paper copies in class, and as electronic copies to an anti-plagiarism website (www.turnitin.com). Late papers will be heavily penalized: they will be marked down one grade per class day late. For help with the essays, besides asking me after class or in office hours, see the tips on my webpage on [Teaching Guides](#). You can also get one-on-one help at both the [Writing Center](#) and the [History Lab](#).

Final Exam: This will be comprehensive, covering everything studied in the course, including both

factual material and the broader ideas and themes of the course. The format will include some identification, short-answer essays, as well as one or two longer essays. For the three types of questions that you will have on final exam, see the document on this on my [Teaching Guides](#) webpage.

Academic Honesty: Your written work must reflect your own ideas, and where you draw on others' words or ideas you need to indicate this clearly with proper quotations and citations. Academic dishonesty will not be tolerated, and all appropriate penalties, including failing the course, will be strictly enforced. As state law for the UW System explains, academic misconduct includes, but is not limited to "claim[ing] credit for the work or efforts of another without authorization or citation;" see UW's plain-language guidance on [academic integrity](#). Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and download their handout '[Acknowledging, Paraphrasing, and Quoting Sources](#).'

Accommodations: If you need accommodations due to any disability, please let us know within the first two weeks of class, i.e. by Feb. 1. In order to maintain confidentiality, you may do so by coming to either the professor's or the TA's office hours or by emailing one or both of us to arrange a meeting. You will need to provide documentation from the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: mcburney@studentlife.wisc.edu.

Reading Assignments: Ideally you should read each week's assignment by time of Tuesday's lecture, so that you are better able to understand the lectures. However, if this is not possible, you may prioritize them according to the order in which they appear on the syllabus.

More specifically, it is often helpful to start with the most general [secondary source](#) (Foner), and then proceed to the more focused secondary sources (Novak and the introductions in Hall, Woloch, Martin, and the Course Pack). Next, go on to the [primary sources](#) (the texts of laws and cases in the Course Pack or in Hall, Woloch, or Martin), which are the most important and the most challenging readings. The above steps will prepare you, finally, to get the most out of the interpretive essays in Hall, which are key for understanding debates about the material. In fact it may be helpful to skim these essays (when assigned) as a first step, and then read them again more carefully at the end.

Reading Questions & Response: It is your responsibility to not just read, but master the reading assignments as much as possible. To do so, you should read each assignment carefully, take notes, and prepare a short summary of, response to, and critical questions provoked by it as a basis for class discussion. You will accomplish many of these goals by answering the reading questions provided on learn@uw, but any such set of questions cannot address everything of interest in the readings. Your own, personal engagement with the readings remains necessary.

Required Course Pack (1) and Books (4): You need to acquire the course pack and books listed below, and bring them to class (especially discussion section) on the days when they are assigned. They are listed here in the order in which they will be assigned. You should get the books in the editions specified here. Please note that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems. The Course Pack may be purchased at the Social Sciences Copy Center (<http://copy.ls.wisc.edu/>), and the books at the UW Bookstore: www.uwbookstore.com. All these items will also be on reserve at College Library.

Keyser, Richard. *Course Pack for Legal Studies/History 262*, 2018.

Foner, Eric. *The Story of American Freedom*. New York: Norton, 1998.

Hall, Kermit, and Timothy Huebner, eds., *Major Problems in American Constitutional History*, 2nd ed. Boston: Wadsworth, 2010.

Woloch, Nancy, ed., *Muller v. Oregon: A Brief History with Documents*. Boston: Bedford/St. Martins, 1996.

Martin, Waldo E., ed. *Brown v. Board of Education: A Brief History with Documents*. Boston: Bedford/St. Martin's, 1998.

SCHEDULE

Week 1, Jan. 23-25. Law & Society in the Nineteenth Century [35 pages total reading]

- Course Pack (& on Canvas): Novak, *The People's Welfare*, ch. 5, pp. 149-53, 168-89.
- Course Pack (& on Canvas), ch. 1, Women, parts I-III (6 pp.); ch. 3, Wisconsin, part I, Constitution: skim all; read Articles IX, X, and XI (2 pp.)

Week 2, Jan. 30- Feb. 1. Reconstruction: A Constitutional Revolution [41 pages]

- Foner, *American Freedom*, pp. xvii – xviii (5 types of freedom); & ch. 5, pp. 95-113.
- Course Pack (& on Canvas): ch. 2, Civil War (4 pp.); & ch. 3, part I, WI Const., Art. III on suffrage (1 page).
- Hall & Huebner, *ACH*, ch. 6, pp. 211-12 (doc. 6); pp. 226-7 (end of McPherson essay).
- *ACH*, ch. 7, pp. 229-37 (through doc. 1); & pp. 565-69 (Amend. 1-10, 13-15).

Week 3, Feb. 6-8. The Gilded Age: Industrial Revolution, Women's Rights, & Jim Crow [37 pages]

- **Short Essay Due: Feb. 6.**
- Foner, *American Freedom*, ch. 6, pp. 122-27; & 130-37.
- Hall & Huebner, *ACH*, ch. 7, pp. 238-55.
- Course Pack, ch. 1, Women, part IV (3 pp.); & ch. 3, Wisconsin, part II (3 pp.).

Week 4, Feb. 13-15. The Progressive Era: Police Power & Freedom of Contract [61 pages]

- Hall & Huebner, *ACH*, ch. 8, pp. 274-75; 281-86 (doc. 3); 288-90 (doc. 5).
- Course Pack, ch. 4, Labor Law, parts I-II (6 pp.).
- Woloch, *Muller v. Oregon*, ch. 1-2, pp. 3-40; docs. nos. 1-2, pp. 93-99.

Week 5, Tues., Feb. 20. The Progressive Era: Results, Legacy, & Review [33 pages]

- Foner, *American Freedom*, ch. 7, pp. 152-61.
- Hall & Huebner, *ACH*, ch. 8, pp. 293-96 (doc. 7).
- Woloch, *Muller v. Oregon*, ch. 3-4, pp. 41-57; & doc. no. 11, pp. 163-65 (dissents).
- **Midterm Essay Due, Thur., Feb. 22.**

Week 6, Feb. 27- March 1. World War, Crime, & Civil Liberties [56 pages]

- Foner, *American Freedom*, ch. 8, pp. 163-64; 168-85.
- Hall & Huebner, *ACH*, ch. 9, pp. 311-13, 314-16 (intro & docs. 1 & 3); 321-31 (docs. 5-7); & 343-44 (end of Walker essay).
- Course Pack: ch. 5-6, Civil Liberties & Criminal Justice (20 pages).

Week 7, March 6-8. The Great Depression, New Deal, & Early Civil Rights Cases [56 pages]

- Foner, *American Freedom*, ch. 9, pp. 198-210.
- Hall & Huebner, *ACH*, ch. 10, pp. 346-47, 353-58 (doc. 3), & 368-70 (doc. 7).
- Martin, *Brown v. Board*, pp. 1-19.
- Course Pack, ch. 4, part III (5 pp.); & ch. 7, Racial Minorities, through *Gaines v. Canada*, 1938 (14 pp.).

Week 8, March 13-15. World War II, the Cold War, and Changing Race Relations [64 pages]

- Foner, *American Freedom*, ch. 10, pp. 236-47; ch. 11, pp. 252-62.
- Hall & Huebner, *ACH*, ch. 11, pp. 383-89.
- Martin, *Brown v. Board*, pp. 19-27; documents ch. 3, pp. 118-20; ch. 4, pp. 121-37.
- Course Pack, ch. 7, Racial Minorities, from FDR's order of 1941 to end (10 pages).

Week 9, March 20-22. The Affluent Society & the Civil Rights Movement [41 pages]

- Martin, *Brown v. Board*, pp. 27-38.
- Foner, *American Freedom*, ch. 12, pp. 275-87.
- Hall & Huebner, *ACH*, ch. 11, pp. 389-401.
- Course Pack, ch. 8: Civil Rights after *Brown* (5 pages).

- **Spring Break, March 24– April 1.**

Week 10, April 3-5. Civil Rights Movement: Popular Reaction & Legacy [29 pages]

- Hall & Huebner, *ACH*, ch. 11, pp. 402-15.
- Martin, *Brown v. Board*, documents ch. 5, pp. 223-37 (& sample the rest of ch. 5).
- **Third Essay Due, Thur., April 5.**

Week 11, April 10-12. From the Rights Revolution to Same-Sex Marriage [50 pages]

- Foner, *American Freedom*, ch. 12, pp. 287-305.
- Hall & Huebner, *ACH*, ch. 12, pp. 417-33.
- Course Pack, ch. 9, Same-Sex Marriage (17 pages).

Week 12, April 17-19. Freedom, Religion, & Conservative Reaction [53 pages]

- Foner, *American Freedom*, ch. 13, pp. 307-19. (13)
- Hall & Huebner, *ACH*, ch. 13, pp. 451-82. (33)
- Course Pack, ch. 10, Religion (7 pages).

Week 13, April 24-26. Conservative Reaction: Federalism [50 pages]

- Foner, *American Freedom*, ch. 13, pp. 320-32.
- Hall & Huebner, *ACH*, ch. 14, pp. 484-516.
- Course Pack, review ch. 4, Labor Law (part I, intro; & part III-B, *U.S. v. Darby*; 5 pages)

Week 14, May 1-3. The Presidency, Civil Liberties, & the War on Terror [46 pages]

- Hall & Huebner, *ACH*, ch. 15, pp. 518-55.
- Course Pack, ch. 11, Surveillance (Metadata Collection, 9 pages).

Final Exam: Wed., May 9, 2:45 - 4:45 pm.