

American Legal History from 1860 to the Present: Syllabus Legal Studies / History 262, Spring 2017

Social Sciences 6104, Tues.-Thur., 2:25 – 3:15 pm

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Office hours: Social Sciences 7131, Tues. & Thur., 11:30 am – 12:30 pm, and by appointment

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Office hours: Humanities 4266, Tues/Thurs 3:30-4:30 and by appt.

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.

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:	20	100
Short Essay	5	25
Quizzes	8	40
Midterm essay:	20	100
Third Essay:	23	115
Final exam:	24	120
Total:	100	500

Attendance & Participation Assessment: Success in this class, as in most, is greatly favored by regular attendance and participation. Therefore we will keep track of them, both in lecture and in discussion section. However, lecture attendance and participation are not assessed quantitatively by assigning points, but rather qualitatively and subjectively at the professor and the TA's discretion (i.e., A-level, B-level, etc.) at the end of the semester. The bulk of this portion of your grade will be based on your participation in discussion section and will be determined by the TA.

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than FOUR 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, athletic participation, and for well-documented major illnesses or emergencies in the immediate family.

Participation Guidelines: You should try to speak up often, and we 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 in lecture approximately every three weeks. These will be announced a week or so in advance and will consist of multiple choice or fill-in the blank questions. The TA may also require short quizzes or writing assignments for discussion section; if so, these will count only towards your participation grade (i.e., not part of the 8% for quizzes noted above, under Grades).

Essays: There are three take-home essays, of approximately 1-2 pages length for the first, 4-5 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.

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.

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 Jan. 31. 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: Because discussion sections begin on Monday, Jan. 23rd, *after* the first week of class, this and subsequent discussion sections will focus primarily on consolidating your understanding of the previous week's readings. However, from week 2 onwards, you are responsible for reading the current week's assignment by time of Tuesday's lecture—and certainly by the time of Thursday's lecture, so that you are better able to understand the lectures. In tackling the readings, you may prioritize them according to the order in which they appear on the syllabus and/or according to the TA's guidelines.

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, and Martin). 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 ongoing 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 or by the TA, 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*, 2017.

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

Dates are those of the lectures on Tuesdays and Thursdays. Don't forget that discussion sections meet on Mondays!

Week 1, Jan. 17-19. Law & Society in the Nineteenth Century [62 pages total reading]

- Course Pack (& on learn@uw): Novak, *The People's Welfare*, ch. 5, pp. 149-53, 168-89; & ch. 1, Women & Family Law (7 pages); & ch. 3, The Comstock Law, 1873 (1 page).
- Foner, *American Freedom*, pp. xvii – xviii (types of freedom); ch. 5, pp. 95-107.
- Hall & Huebner, *ACH*, App. I, pp. 557-69 (Constitution & Amendments 1-10, 13-15).

Week 2, Jan. 24-26. Reconstruction: a Constitutional Revolution? [33 pages]

- Foner, *American Freedom*, ch. 5, pp. 105-13.
- Course Pack (& on learn@uw): ch. 2, Black Code, 1865 (3 pages).
- Hall & Huebner, *ACH*, ch. 6, pp. 211-12 (doc. 6); pp. 226-7 (end of McPherson essay); App. I, pp. 565-69 (Amendments 1-10, 13-15); ch. 7, pp. 229-37 (through doc. 1); 255-60 (Amar essay).

Week 3, Jan. 31 - Feb. 2. The Gilded Age: Industrial Revolution, Labor, & Jim Crow [68 pages]

- **Short Essay Due: Jan. 31.**
- Foner, *American Freedom*, ch. 6, pp. 115-37.
- Hall & Huebner, *ACH*, ch. 7, pp. 238-55 (docs. 2-6); 260-61 (beginning of Benedict essay); 266-72 (Hoff essay).

- Woloch, *Muller v. Oregon*, ch. 1-2, pp. 3-20.

Week 4, Feb. 7-9. The Progressive Era: Police Power, Gender, & Freedom of Contract [54 pages]

- Foner, *American Freedom*, ch. 7, pp. 139-51.
- Hall & Huebner, *ACH*, ch. 8, pp. 274-90.
- Woloch, *Muller v. Oregon*, ch. 2, pp. 21-40; docs. nos. 1-2, pp. 93-99.

Week 5, Tues., Feb. 14. The Progressive Era: Results, Legacy, & Review [37 pages]

- Foner, *American Freedom*, ch. 7, pp. 152-61.
- Hall & Huebner, *ACH*, ch. 8, pp. 290-96.
- Woloch, *Muller v. Oregon*, ch. 3-4, pp. 41-57; & doc. no. 11, pp. 163-65 (dissents).

- **Midterm Essay Due, Thur., Feb. 16.**

Week 6, Feb. 21-23. World War, Crime, & Civil Liberties [69 pages]

- Foner, *American Freedom*, ch. 8, pp. 163-93.
- Hall & Huebner, *ACH*, ch. 9, pp. 311-16 (to doc. 3); 321-31 (docs. 5-7); & 343-44 (end of Walker essay).
- Course Pack: ch. 3-4, Civil Liberties & Criminal Justice (20 pages)

Week 7, Feb. 28 - March 2. The Great Depression, New Deal, & Early Civil Rights Cases [67 pages]

- Foner, *American Freedom*, ch. 9, pp. 195-218.
- Hall & Huebner, *ACH*, ch. 10, pp. 346-70.
- Martin, *Brown v. Board*, pp. 1-19.
- Course Pack, ch. 5, Racial Minorities, through *Gaines v. Canada*, 1938 (14 pages).

Week 8, March 7-9. World War II, the Cold War, and Changing Race Relations [71 pages]

- Foner, *American Freedom*, ch. 10, pp. 219-47; ch. 11, pp. 249-62.
- 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. 5, Racial Minorities, from FDR's order of 1941 to end (10 pages).

Week 9, March 14-16. The Affluent Society & the Civil Rights Movement [53 pages]

- Foner, *American Freedom*, ch. 11, pp. 262-73; ch. 12, pp. 275-87.
- Martin, *Brown v. Board*, pp. 27-38.
- Hall & Huebner, *ACH*, ch. 11, pp. 389-401.
- Course Pack, ch. 6: Civil Rights Era (5 pages).

- **Spring Break, March 18-26.**

Week 10, March 28-30. Civil Rights: Popular Response and 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, Tues., April 4.**

Week 11, April 6. Civil & Personal Liberties: The Rights Revolution [18 pages]

- Foner, *American Freedom*, ch. 12, pp. 287-305.

Week 12, April 11-13. From the Right of Privacy to Abortion & Same-Sex Marriage [56 pages]

- Foner, *American Freedom*, ch. 13, pp. 307-19.
- Hall & Huebner, *ACH*, ch. 12, pp. 417-33; 438-49.
- Course Pack, ch. 7, Reproduction & Sex (*Obergefell v. Hodges*, 2015, 14 pages).

Week 13, April 18-20. Freedom & Religion [50 pages]

- Foner, *American Freedom*, ch. 13, pp. 320-32.
- Hall & Huebner, *ACH*, ch. 13, pp. 451-82.
- Course Pack, ch. 8, Religion (7 pages).

Week 14, April 25-27. Federalism [36 pages]

- Hall & Huebner, *ACH*, ch. 14, pp. 484-516.
- Course Pack, ch. 9, Federalism (3 pages)

Week 15, May 2-4. The Presidency, Civil Liberties, & the War on Terror [46 pages]

- Hall & Huebner, *ACH*, ch. 15, pp. 518-55.
- Course Pack, ch. 10, Surveillance (Metadata Collection, 8 pages).

Final Exam: Wed., May 10, 12:25 - 2:25 pm.