

American Legal History from 1860 to the Present: Syllabus Legal Studies / History 262, Spring 2016

Humanities 1131, Tues.-Thur., 2:30 – 3:45 pm

Email: rkeyser (at) wisc.edu

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

Prof. Richard Keyser

phone: 608-890-4647

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:

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| Attendance and participation: | 10% |
| Quizzes | 10% |
| Midterm exam: | 20% |
| Essay: | 30% |
| Final exam: | 30% |

Attendance & Participation Assessment: Success in this class, as in most, is greatly favored by regular attendance and participation, and therefore I will keep track of them. But I do not assess attendance and participation quantitatively by assigning points. Instead, I assess these factors qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester. This is partly because I find that most students' attendance and participation correlates rather well with their performance on written work, and therefore worrying over a precise point system is not worth it. However, I do use my qualitative 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, athletic participation, and for well-documented major illnesses or emergencies in the immediate family.

Participation Guidelines: You should try to speak up often, and I will also try to call on students. (*Please let me 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, no computers or electronic devices of any kind may be used in class, except when you have received my

approval in cases of documented medical need. Engaging in any unauthorized screen time 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 negatively impact your grade.

Quizzes: There will be quizzes throughout the semester, approximately every two weeks or so. I will often let you know about an upcoming quiz a week or so in advance, but there may also be ‘pop’ or unannounced quizzes. The format will consist of short answer, multiple choice, fill-in the blank, or paragraph-length responses to questions about the reading.

Essay: This will be one 6-8 page essay focusing on the assigned readings. The topic and guidelines will be given later, about two weeks before the due date. 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.

Midterm and Final Exams: These will be comprehensive, covering everything studied in the course up to the time of each exam, 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”

(https://www.students.wisc.edu/doso/docs/uws_chapter_14.pdf). For plain-language guidance, see: <https://www.students.wisc.edu/doso/students/>. Specifically on the proper ways to give credit to sources, consult the Writing Center (<http://www.writing.wisc.edu/>) and download their handout ‘Acknowledging, Paraphrasing, and Quoting Sources:’ http://writing.wisc.edu/Handbook/Acknowledging_Sources.pdf.

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Jan. 29. In order to maintain confidentiality, you may do so by coming to my office hours or by emailing me 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 and Note-Taking: Ideally you should read all of the week’s assignments by Tuesday’s class, but 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, 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. 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 (approx. 2 pages for each week’s assignments).

Required Course Pack (1) and Books (4): You need to acquire the course pack and books listed below, and bring them to class 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*, 2016.

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. 19-21. Law, Society, & War in the Nineteenth Century [68 pages total reading]

- Course Pack (& on learn@uw): Novak, *The People's Welfare*, ch. 5, pp. 149-53, 168-89.
- Course Pack (& on learn@uw): Women and Family Law in Early America (6 pages).
- Foner, *American Freedom*, introduction, pp. xiii – xxii; & ch. 5, pp. 95-107.
- Hall & Huebner, *ACH*, App. I, pp. 557-69: Constitution & Amendments 1-10, 13-15.

Week 2, Jan. 26-28. Reconstruction: a Constitutional Revolution? [44 pages]

- Foner, *American Freedom*, ch. 5, pp. 105-13.
- Course Pack (& on learn@uw): Black Codes (3 pages).
- Hall & Huebner, *ACH*, App. I, pp. 565-69 (Amendments 1-10, 13-15); ch. 7, pp. 229-43 (through doc. 2); 248-51 (doc. 5); 255-62 (Amar essay & beginning of Benedict essay).

Week 3, Feb. 2-4. The Gilded Age: Industrial Revolution, Labor, & Jim Crow [62 pages]

- Foner, *American Freedom*, ch. 6, pp. 115-37.
- Hall & Huebner, *ACH*, ch. 7, pp. 243-47 (docs. 3-4); 251-55 (doc. 6); 266-72 (Hoff essay).
- Woloch, *Muller v. Oregon*, ch. 1-2, pp. 3-20; & docs nos. 1-2, pp. 93-99.

Week 4, Feb. 9-11. The Progressive Era: Police Power, Gender, & Freedom of Contract [47 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.

Week 5, Tues., Feb. 16. 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 Exam, Thur., Feb. 18.**

Week 6, Feb. 23-25. World War, Crime, & Civil Liberties [58 pages]

- Foner, *American Freedom*, ch. 8, pp. 163-93.
- Hall & Huebner, *ACH*, ch. 9, pp. 311-31; & 338-44.

Week 7, March 1-3. The Great Depression, New Deal, & Early Civil Rights Cases [65 pages]

- Foner, *American Freedom*, ch. 9, pp. 195-218.
- Hall & Huebner, *ACH*, ch. 10, pp. 346-81.
- Martin, *Brown v. Board*, pp. 1-19.

Week 8, March 8-10. 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.

Week 9, March 15-17. The Affluent Society & the Civil Rights Movement [48 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.

- **Spring Break, March 21–25.**

Week 10, March 29-31. 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).

- **Paper Due, Tues., April 5.**

Week 11, April 7. Civil & Personal Liberties: The Rights Revolution [18 pages]

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

Week 12, April 12-14. From the Right of Privacy to Abortion & Same-Sex Marriage [61 pages]

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

Week 13, April 19-21. Freedom & Religion [50 pages]

- Foner, *American Freedom*, ch. 13, pp. 320-32.
- Hall & Huebner, *ACH*, ch. 13, pp. 451-82.
- Course Pack: *Everson v. Board of Education*, 1947 (5 pages).

Week 14, April 26-28. Federalism [33 pages]

- Hall & Huebner, *ACH*, ch. 14, pp. 484-516.

Week 15, May 3-5. The Presidency, Civil Liberties, & the War on Terror [54 pages]

- Hall & Huebner, *ACH*, ch. 15, pp. 518-55.
- Course Pack: Metadata Collection Cases & Laws (16 pages).

Final Exam: Friday, May 13, 7:45 - 9:45 am.