

# American Legal History from 1860 to the Present: Syllabus Legal Studies / History 262

University of Wisconsin-Madison, Spring, 2020

Tues. and Thur., 2:30 – 3:45 pm;

Education L 196

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Office Hours: 7131 Soc Sci, Tues. & Thur., 11:00 am – 12:30 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 carries the expectation that students will work on the course learning activities (reading, lectures, film clips, class discussions, quizzes, writing, etc.) for a total of at least 135 hours (45 hours per credit hour) over the semester, or about 9.5 hours per week. This includes the two class meetings of 75 minutes each per week, or a total of 2.5 hours of class time. That leaves at least 7 hours/week outside of class that you should devote to course materials and activities.

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

1. Analyze and articulate their own arguments about how social, political, and cultural phenomena shape law and legal systems.
2. Analyze and articulate their own arguments about the social, political, and cultural impacts of law at the societal and individual levels.
3. Demonstrate knowledge about how legal ideas and ideologies have changed over time and have shaped law and legal systems.
4. Demonstrate their abilities to find, interpret, and utilize resources relevant to law and society.
5. Demonstrate their abilities to analyze information, to write clearly and persuasively, and to construct original arguments.

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 14<sup>th</sup> Amendment (goals 1, 3, and 5). Students will then turn to a careful analysis of labor regulations and debates about workers' and women's legal rights in federal courts, in preparation for a midterm exam essay (goals 1, 2, 3, and 5). Next, students will read pertinent primary and secondary sources to write a six-to-seven-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, 4, and 5). 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).

**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:

	% of grade	Course Points
Attendance & Participation	8	40
Quizzes	12	60
Short Essay	10	50
First Midterm	20	100
Second Midterm (Essay)	25	125
Final Exam	25	125
Total	100	500

**Note:** in order to pass this class, you must complete all of the essay assignments, the midterm, and the final exam, and at least 75% of the quizzes.

**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 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.

**Qualitative Assessment for Participation in Discussions (in class and online):** This class is typically a medium-sized lecture, with about 50-70 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. For more detail on this, see the rubric for assessing contributions to discussions in Canvas, under the Course Orientation Module.

**Quality of Participation:** When making contributions to the discussion, 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 any other electronic devices in class is prohibited. I make exceptions only if you speak to me, explaining your need to use a computer to take notes. Those students who have my approval to use a computer in class must, in order to minimize the potential for distracting others, sit in either the back row or at the ends of rows and near the front or back of the classroom. Engaging in any unauthorized screen time or in any other distracted or distracting behavior, such as

reading unassigned materials, audible eating or drinking, sleeping, conversation with classmates or on the phone, etc., may negatively impact your grade.

**Quizzes:** There will be quizzes approximately every two weeks, online on Canvas, which will consist of multiple choice or true/false questions.

**Essays:** There will be two to three essays, one short one of 2-3 pages near the beginning of the semester, and one or two other, longer ones, of 4-6 pages each. All the essays focus on the assigned readings and other course materials. Essays must be turned in as electronic copies on Canvas (not via email!). Late papers will be heavily penalized: they will be marked down one grade per class day late. For help with papers, besides asking me and reading the guides on [my website](#), you can get additional individual help at both the [History Lab](#) and the [Writing Center](#).

**Past-Due Guidelines:** 1) valid excuses for any late or missed assignments are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your scheduling conflicts by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family. 2) In cases of missed deadlines for quizzes, discussions, and paper due-dates, you should inform me of your absence in advance if at all possible. Missing these deadlines without prior notice to me may result in a failing grade for that assessment.

**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. 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 this topic. 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 me know within the first two weeks of class, i.e. by Sept. 19. It is the student's responsibility to contact the McBurney Center and arrange to have the proper notification sent to me. See: <https://mcburney.wisc.edu/>. If you are on or near campus, you can also visit their office, the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741; or email them at: [mcburney@studentlife.wisc.edu](mailto:mcburney@studentlife.wisc.edu).

**Reading Assignments:** The reading load for this class is moderate in terms of pages numbers: in print the total weekly reading averages about 50-70 pages. However, these readings are often challenging; many legal texts, for example, are quite dense. To succeed you need to devote sufficient time to read carefully and, ideally, take notes. You should try to get through most or all of the readings towards the beginning of the week, and you can also prioritize them according to the order in which they appear on the syllabus.

More specifically, it is often helpful to start with the general secondary sources (texts written recently), such as the lectures (and your notes from them), some of the material in the Course Pack,

and the (optional) background readings in the book by Foner. Then proceed to the primary sources: (texts written during the period you are studying), including laws, cases, constitutional debates, etc.; most of these are in the Course Pack. The primary sources are the most important and the most challenging readings, and these will often be the focus of class discussions.

**Textbooks:** You need to acquire or have regular access to the Course Pack and the two required books listed below, all of which will be needed for key class assignments. It is also probably very helpful to have access to the book recommended below; it provides an excellent historical survey of the period covered by this class. Please note that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems. The books are available from many online vendors, as well as from the UW Bookstore: [www.uwbookstore.com](http://www.uwbookstore.com). All these items will also be on reserve at College Library.

**Required Course Pack (1):**

Keyser, Richard. *Course Pack for Legal Studies/History 262, Spring, 2020*. UW, L and S Copy Center, 6102 Social Sciences.

**Required Books (2):**

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*, 2<sup>nd</sup> ed. Boston: Bedford/ St. Martin's, 2019.

**Recommended Book (1):**

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

## SCHEDULE

### **I. The Nineteenth Century & Constitutional Revolution**

Week 1, Tues. & Thur., Jan. 21 & 23. Law & Society in the Nineteenth Century.

- Course Pack (and on Canvas) Module 1 readings and film clips.

Week 2, Tues.-Thur., Jan. 28 – 30. Reconstruction: A Constitutional Revolution.

- Course Pack, Module 2.
- For background: Foner, *American Freedom*, ch. 5, pp. 95-113.
- **Short Essay: Due Sun., Feb. 2.**

### **II. Rights in the Progressive Era**

Week 3, Tues.-Thur., Feb. 4 – 6. The Gilded Age: Industrial Revolution, Women's Rights, & Jim Crow.

- Woloch, *Muller v. Oregon*, ch. 1, pp. 5-20; & docs. 1-3, pp. 93-105.
- Course Pack, Module 3.

- For background: Foner, *American Freedom*, ch. 6, pp. 115-37.

Week 4, Tues.-Thur., Feb. 11 – 13. Progressive Reform, Police Power, & Freedom of Contract.

- Woloch, pp. 3-4; 21-40; & docs. nos. 7-8, pp. 133-50.
- Course Pack, Module 4.
- For background: Foner, *American Freedom*, ch. 7, pp. 139-61.

Week 5, Tues.-Thur., Feb. 18 – 20. The Progressive Era: Results and Legacy.

- Woloch, pp. 40-59; docs. nos. 9 & 11, pp. 150-51, 157-65.
- Course Pack, Module 5.

- **First Midterm Essay: Due Sun., Feb. 23.**

### III. Civil Liberties and Civil Rights to *Brown v. Board*

\*Note: the page numbers in the Martin book below still reflect the first edition and are thus only approximate; they will be revised soon to reflect the correct page numbers in the second edition.

Week 6, Tues.-Thur., Feb. 25 – 27. Crime, Civil Liberties, & Civil Rights between the Wars

- Course Pack, Module 6.
- For background: Foner, *American Freedom*, ch. 8, pp. 163-93.

Week 7, Tues.-Thur., March 3 – 5. The New Deal & Early Civil Rights Cases

- Woloch, docs. 13-14, pp. 185-89.
- Martin, *Brown v. Board*, begin introduction, to WWII, pp. 3-19.
- Course Pack, Module 7.
- For background: Foner, *American Freedom*, ch. 9., pp. 195-218.

Week 8, Tues.-Thur, March 10 – 12. WWII, Cold War, & Race Relations to *Brown*

- Martin, *Brown v. Board*, continue introduction, from WWII to Truman, pp. 19-27; documents nos. 17-20 (from *Sweatt v. Painter* through *Briggs v. Elliott*), pp. 112-31.
- Course Pack, Module 8.
- For background: Foner, *American Freedom*, ch. 10, pp. 219-21; 236-47; ch. 11, pp. 252-62.

- **Spring Break, March 14-22**

Week 9, Tues.-Thur, March 24 – 26. *Brown v. Board* & the Civil Rights Movement.

- Martin, *Brown v. Board*, finish introduction, pp. 28-40; doc. 28, Warren's opinion, 1954, pp. 163-69; doc. 32, Warren's ruling on relief, 1955, pp. 190-93; doc. 51, "Southern Manifesto," pp. 213-16; and sample the rest of ch. 5 on "Popular Response."
- Course Pack, Module 9.
- For background; Foner, *American Freedom*, ch. 11, pp. 262-73; ch. 12, pp. 275-82.

- **Second Midterm Essay Due, Sun., March 29.**

## IV. The Rights Revolution and Conservative Reaction

Week 10, Tues.-Thur., March 31 - April 2. *Brown's* Legacy & Later Civil Rights' Debates.

- Martin, *Brown v. Board*, "The Legacy of *Brown*," pp. 217-25.
- Course Pack, Module 10.
- For background: Foner, *American Freedom*, ch. 12, pp. 282-87.

Week 11, Tues.-Thur., April 7 – 9. Personal Freedom: Rights Revolution to Abortion Rights

- Course Pack, Module 11.
- For background, Foner, *American Freedom*, ch. 12, pp. 287-305.

Week 12, Tues.-Thur., April 14 – 16. Feminism, Same-Sex Rights, Religion, and Conservative Reaction.

- Course Pack, Module 12.
- For background: Foner, *American Freedom*, ch. 13, pp. 307-32.

Week 13, Tues., April 21 – 23. Conservative Reaction: Criminal Justice, the War on Drugs, and Federalism.

- Course Pack, Module 13.

Week 14, Tues.-Thur., April 28 – 30. Conservative Reaction: Presidential Powers, National Security, and Gun Rights.

- Course Pack, Module 14.
  
- **Final Exam, Wed., May 6, 2:45 – 4:45 pm.**