

# **American Legal History from 1860 to the Present**

## **Legal St/Hist 262, University of Wisconsin-Madison, Spring 2022**

### **SYLLABUS**

#### **Instructional Modality**

Face-to-face, Tues. and Thur., 9:30 – 10:45 am, 5106 Social Sciences.

#### **Instructor**

Prof. Richard Keyser, rkeyser (at) wisc.edu. Office Hours: Tues. & Thur., 11:00 am – 12:00 pm, 7131 Social Sciences, and by appointment.

#### **Course Description**

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.

**Credit Hours:** This is a 3-Credit-Hour course, for which the credit standard is met by: a) the two class meetings of 75 minutes each per week; and b) the expectation that students will work on course learning activities (reading, writing, film clips, studying, etc.) for about 3 hours out of the classroom for every class period, or about 6 hours per week outside of class.

**Regular and Substantive Student-Instructor Interaction:** In this course students interact with the instructor primarily in each scheduled class meeting and through the comments provided by the instructor on each student's assigned papers. The instructor also interacts with each student and the class during individual students' presentations to the class and in the midterm and final consultations with each student. The instructor's weekly office hours provide an additional opportunity for students to ask questions.

**Course Designation & Level:** Breadth - Either Humanities or Social Science. Level – Intermediate. Requisite: Sophomore Standing. L&S Credit - Counts as Liberal Arts and Science credit in L&S.

#### **Student 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, the intentions of the framers of the U.S. Constitution's 14<sup>th</sup> Amendment (goals 1, 3, and 5). Students will then examine 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 an 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

Grades are 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>
Participation	10	50
Quizzes	15	75
Short Essay	10	50
Midterm Exam	20	100
Midterm Essay	20	100
Final Exam	25	125
Total:	100	500

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

### Attendance and Participation

#### Attendance and Past-Due 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.
- 4) valid excuses for any absence or any late or missed assignment 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 or missed deadlines for quizzes, paper due-dates, and exams, you should inform me of your absence or other problem in advance if at all possible. Missing class or a deadline without prior notice to me may result in a failing grade for that assessment.

**Online Discussions.** Part of your participation will consist of your posts to online discussions on the course website, for which the class will be divided into several discussion sections. Students in each group will be required to post responses on a rotating basis, approximately every three weeks (the precise schedule is to be determined). When it is your group's turn, each student will need to make a total of **two posts**, including both your answers to the questions and your responses to others. Each posting should aim for a length of **between about 100 and 250 words**.

**Assessment of Discussion Contributions and Participation.** There will be a rubric posted on Canvas and your discussion posts will be scored accordingly. These numeric scores will focus on such criteria as the length of posts, being on time, being on topic, citing pertinent evidence, and a rough assessment of the quality of your posts. These scores will provide, however, only one factor in determining your participation grade. Final grades for participation will be determined at the end of the semester, taking into account both the numeric scores on your online posts and a qualitative assessment of your attendance and the overall quality and consistency of your discussion contributions, both online and in class. Then I will assign an overall grade level, i.e., A-level contributor, AB-level, etc. For more detail, see the "Rubric for Final Assessment of Discussion Contributions," under the Course Orientation Course Pack.

**Quality of Participation:** When making discussion contributions, both in class and online, quality of contribution counts more than quantity. A quality contribution is one in which you: a) cite the assigned readings and other sources; b) make thoughtful and ideally original points; and c) explain your ideas clearly and concisely. 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 need to use a computer class should if possible, 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.

## Written Work

**Quizzes:** There will be online quizzes due approximately every week, which will consist of multiple choice or true/false questions. You will be provided with a study guide at least several days before each quiz.

**Essays:** There will be two essays, one short one of about three pages near the beginning of the semester, and one longer midterm essay of about six pages. Both 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, see the tips on my webpage on [Teaching Policies & Guides](#). You can also get one-on-one help at both the [Writing Center](#) and the [History Lab](#).

**Midterm and Final Exams:** These 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 more detail on exam questions, see the document on “The Three Types of Exam Question,” on my webpage on [Teaching Policies & Guides](#).

## Academic Honesty and Accommodations

**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 guidance on this topic, on the page “[Academic Misconduct](#).” Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and see their page on “[Quoting and Paraphrasing](#).”

**Accommodations:** If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Feb. 3<sup>rd</sup>. 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).

## Course Materials

**Textbooks:** 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, among other places, the UW Bookstore: [www.uwbookstore.com](http://www.uwbookstore.com). All these items are also on reserve at College Library.

### Required Items (3):

Keyser, Richard. *Course Pack for Legal Studies/History 262, Spring, 2022*: Parts I, II, and III to be released one at a time as they become assigned during the semester. They will be available at the Letters and Sciences Copy Center, 6102 Social Sciences (see: <https://copy.ls.wisc.edu/>).

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.

**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, which are texts written recently. These include the lectures (and your notes from them), the introductory material and essays in the Course Pack, and the introductory material in the books by Woloch and Martin. Then proceed to the primary sources, which are texts written during the period you are studying. These include laws, cases, constitutional debates, etc., and most are provided in the Course Pack. The primary sources are the most important and the most challenging readings.

## SCHEDULE

**\*Note:** the schedule below provides the weekly topics, the reading assignments, and the dates for papers and exams. These are all set and will not be changed. But the **full details for all of the course activities**, including such online activities as film clips, discussions, and quizzes, **will be updated and provided on a weekly basis** on the course website on Canvas, under the **Activity Guide for each Module**.

### I. The Nineteenth Century & Constitutional Revolution

Week 1, Tues. & Thur., Jan. 25 & 27. Law & Society in the Nineteenth Century.

- Course Pack: Module 1, ch. 1-2.

Week 2, Tues. & Thur., Feb. 1 & 3. Reconstruction: A Constitutional Revolution.

- Course Pack: Module 2, ch. 1-3.
- **Short Essay: Due Mon., Feb. 7.**

### II. Rights in the Progressive Era

Week 3, Tues. & Thur., Feb. 8 & 10. The Gilded Age: Industrial Revolution, Women's Rights, & Jim Crow.

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

Week 4, Tues. & Thur., Feb. 15 & 17. Progressive Reform, Police Power, & Freedom of Contract.

- Course Pack: Module 4, ch. 1-2.
- Woloch, pp. 3-4; 21-40; & docs. nos. 7-8, pp. 133-50.

Week 5, Tues. & Thur., Feb. 22 & 24. The Progressive Era: Results and Legacy.

- Course Pack: Module 5, ch. 1-2.
- Woloch, pp. 40-59; docs. nos. 9 & 11, pp. 150-51, 157-65.

- **Midterm Exam: Tues., March 1.**

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

Week 6, Thur., March 5 – Tues., March 8. Crime, Civil Liberties, & Civil Rights between the Wars

- Course Pack: Module 6, ch. 1-2.

Week 7, Thur., March 10 – Tues., March 22. The New Deal & Early Civil Rights Cases

- Course Pack: Module 7, ch. 1-2.
- Woloch, docs. 13-14, pp. 185-89.
- Martin, *Brown v. Board*, begin introduction, to WWII, pp. 3-19.

#### **Spring Break, March 12-20.**

Week 8, Thur., March 24 – Tues., March 29. WWII, Cold War, & Race Relations to *Brown*

- Course Pack: Module 8, ch. 1-3.
- Martin, *Brown v. Board*, continue introduction, from WWII to Truman, pp. 19-28; documents nos. 17-20 (from *Sweatt v. Painter* through *Briggs v. Elliott*), pp. 112-31.

Week 9, Thur., March 31 – Tues., April 5. *Brown v. Board* & the Civil Rights Movement.

- Course Pack: Module 9, ch. 1-2.
- Martin, *Brown v. Board*, finish introduction, pp. 1-3; 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."

- **Midterm Essay Due, Wed., April 6.**

### **IV. The Rights Revolution and Conservative Reaction**

Week 10, Thur., April 7 – Tues., April 12. *Brown's* Legacy & Later Civil Rights' Debates.

- Course Pack: Module 10, ch. 1-3.
- Martin, *Brown v. Board*, "The Legacy of *Brown*," pp. 217-25.

Week 11, Thur., April 14 – Tues., April 19. Personal Freedom: Rights Revolution, Abortion, & Feminism

- Course Pack: Module 11, ch. 1-3.

Week 12, Thur., April 21 – Tues., April 26. Same-Sex Rights, Religion, and Conservative Reaction.

- Course Pack: Module 12, ch. 1-2.

Week 13, Thur., April 28 – Tues., May 3. Conservative Reaction: Criminal Justice, the War on Drugs, and Federalism.

- Course Pack: Module 13, ch. 1-3.

Week 14, Thur., May 5. Conservative Reaction: Presidential Powers, National Security, and Gun Rights.

- Course Pack: Module 14, ch. 1-3.

- **Final Exam: Wed., May 11, 2:45 – 4:45 pm.**