

## **Legal Studies/History 261**

### **American Legal History to the 1860s, Fall 2015**

**Social Sciences 6240, Tues.-Thur., 9:30 — 10:45 am**

**Prof. Richard Keyser, email: rkeyser@wisc.edu**

**Office Hours:** 7131 Soc Sci, Tues.-Thur., 2:30 – 4:00 pm, and by appointment.

This course surveys the development of American legal institutions and ideas down to the U.S. Civil War. After a review of the historical background in England, we will examine how law changed in colonial America, giving special attention to the growth of legal ideas leading up to and shaping the American Revolution, the drafting of the Constitution, and the early national period. Finally, we will explore how territorial expansion, democracy, and slavery shaped nineteenth-century American law. Throughout our goal will be to understand how law interacts with political, social, and cultural change, with a focus on the origins of our modern ideas about civil and constitutional rights.

**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:

Attendance and participation:	10%
Quizzes/homework	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 and for well-documented major illnesses or emergencies in the immediate family.

**Participation:** You should try to speak up often, and I will also try to call on students. 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 and Electronic Devices:** Due to the potential for distraction, these devices may not be used in class, except in cases of documented disabilities.

**Quizzes and Homework Assignments:** There will be occasional quizzes or short homework

assignments. The format will vary, but these exercises will consist mostly of short essay-like responses (usually of one page or less) 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](http://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](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](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 Sept. 15. 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](mailto: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 (Greene and Foner), and then proceed to the more focused secondary sources (the introductions in the Course Pack or in the books by Hall and Finkelman). Next, go on to the primary sources (the texts of laws and cases in the Course Pack, Hall, and Finkelman), which are the most important and the most challenging readings, and to which we will try to devote significant class time. The above steps will prepare you, finally, to get the most out of the interpretive essays in Hall (assigned beginning only after the midterm), which are key for understanding ongoing debates about the material. In fact it may be helpful to skim these essays as a first step, and then read them again more carefully at the end. You should read each assignment carefully, answer the reading questions, and if possible prepare your own short summary as a basis for class discussion (approx. 2 pages for each week's assignments).

**Course Pack (1) Required Books (4):** You need to acquire the Course Pack and the four 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. The Course Pack is available at the Copy Center in 6120 Social Sciences: <http://copy.ls.wisc.edu/>. 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 books are all available from, among other places, the UW Bookstore: [www.uwbookstore.com](http://www.uwbookstore.com). All the books and the course pack are also on reserve at College Library.

Keyser, Richard. *Course Pack for Legal Studies/History 261*. UW, 2015.

Greene, Jack. *The Constitutional Origins of the American Revolution*. New York: Cambridge University Press, 2011.

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

Hall, Kermit, and Timothy Huebner, eds., *Major Problems in American Constitutional History: Documents and Essays*, 2<sup>nd</sup> ed. Boston, MA: Wadsworth, 2010.

Finkelman, Paul. *Dred Scott V. Sandford: A Brief History with Documents*. New York: Bedford/ St. Martin's, 1997.

## SCHEDULE

Week 1, Thur., Sept. 3. Introduction. Law & Human Equality: Ideas vs. Practice.  
Course Pack, ch. 1, "Sources of Western Law," pp. 2-18. If you have not picked up the Course Pack yet, you may consult this week's readings on my website (part of UW's Legal Studies page), intro and parts 1-5: [http://www.ssc.wisc.edu/~rkeyser/?page\\_id=524](http://www.ssc.wisc.edu/~rkeyser/?page_id=524)

Week 2, Sept. 8-10. From Magna Carta to the Stuarts; Early Colonies.  
Greene, *Constitutional Origins*, Prologue, pp. 1-18.  
Course Pack, ch. 1.5, "Medieval Custom," ch. 2.1-6, "British History," pp. 16-33; begin ch. 3, "Early Colonies," pp. 44-49.

Week 3, Sept. 15-17. The Glorious Revolution in England and America.  
Greene, *Constitutional Origins*, ch. 1, pp. 19-45.  
Course Pack, ch. 2.6-8, "British History," pp. 32-43; & ch. 3, "Early Colonies" (all), pp. 44-55.

Week 4, Sept. 22-24. Anglo-American Political Culture and Colonial Expansion.  
Foner, *American Freedom*, begin ch. 1, pp. 3-12.  
Greene, *Constitutional Origins*, ch. 2, pp. 67-73, 101-03; ch. 3, pp. 104-06, 114-16, & 133-48.  
Course Pack, ch. 4, "Colonial Policies & Debates," parts I – III, pp. 56-65; ch. 5, "Locke's Second Treatise," pp. 72-81.

Week 5, Sept. 29 - Oct. 1. The Imperial Crisis and the Coming of the American Revolution.  
Foner, *American Freedom*, begin ch. 1, pp. 12-16.  
Greene, *Constitutional Origins*, ch. 4, pp. 149-86.  
Hall & Huebner, *ACH*, pp. 34-37.  
Course Pack, finish ch. 4, part IV, "Towards Rebellion," pp. 66-71.

### Midterm Exam: Tues., Oct. 6.

Week 6, Thur., Oct. 8. The Enlightenment and the Idea of Equality.  
Course Pack, last chapter: Hunt, *Human Rights*, intro, pp. 15-31; ch. 2-3, pp. 108-26.  
Course Pack, ch. 8, "Women," part I, pp. 99-102.

Week 7, Oct. 13-15. The Revolutionary Era: Ideas & Interests in the Constitution.  
Foner, *American Freedom*, finish ch. 1, pp. 12-28.  
Hall & Huebner, *ACH*, ch. 1, pp. 1-18 (Nedelsky; Semonche; & beginning of Kramer essay).  
Course Pack, ch. 7, "Lower Classes," pp. 91-98.

Week 8, Oct. 20-22. Declaring Rights and Debating the Constitution.  
Hall & Huebner, *ACH*, ch. 2, pp. 30-56 (docs. 4-8 are most important); & App. 1, pp. 557-67.  
Course Pack, ch. 8, "Women," part II-III, pp. 102-106.

Week 9, Oct. 27-29. Slavery, Citizenship, and the Constitution.

Hall & Huebner, *ACH*, ch. 2, pp. 57-74; & App. 1, pp. 557-67.

Course Pack, ch. 7, "Lower Classes," pp. 91-98.

Week 10, Nov. 3-5. Rights, Democracy, and Citizenship in the New Nation

Foner, *American Freedom*, ch. 2, pp. 29-45.

Hall & Huebner, *ACH*, ch. 3, pp. 76-83 (through doc. 2); 87-91 (docs. 4-5); 94-109.

Course Pack, ch. 8, "Women," parts III-IV, pp. 105-109.

**Essay Due: Tues., Nov. 10.**

Week 11, Thur., Nov. 12. Economic Growth, Law, and the Supreme Court.

Foner, *American Freedom*, ch. 3, pp. 47-58.

Hall & Huebner, *ACH*, ch. 4, pp. 110-116 (through doc. 1); 122-26 (doc. 4); & 130-44 (docs. 6-7 & Kramer essay).

Week 12, Nov. 17-19. Expansion and Race in the Jacksonian Era.

Course Pack: Hunt, *Human Rights*, ch. 5, pp. 186-96.

Foner, *American Freedom*, ch. 3, pp. 58-68.

Hall & Huebner, *ACH*, ch. 5, pp. 157-177 (docs. 1-6).

Week 13, Tues., Nov. 24. Slavery and the Constitution.

Finkelman, *Dred Scott*, Part I, pp. 1-52.

**Thanksgiving Break, Nov. 26-27.**

Week 14, Dec. 1-3. The *Dred Scott* Decision and the Confederacy's Secession.

Foner, *American Freedom*, ch. 4, pp. 69-94.

Finkelman, *Dred Scott*, Part II, ch. 1, "Opinions," pp. 55-77 (Taney); & 108-126 (Curtis).

Hall & Huebner, *ACH*, ch. 1, pp. 17-25 (Kramer essay); & ch. 6, pp. 192-196 (through doc. 1).

Week 15, Dec. 8-10. Civil War and Reconstruction: A Constitutional Revolution.

Foner, *American Freedom*, ch. 5, pp. 95-113.

Finkelman, *Dred Scott*, Part II, ch. 3, "Debate," pp. 169-82 (Douglass); & 201-04 (Lincoln).

Week 16, Tues., Dec. 15.

Hall & Huebner, *ACH*, ch. 6, pp. 201-207 (docs. 3-4); pp. 211-212 (doc. 6); & pp. 222-227 (McPherson essay).

**Final Exam: Tuesday, Dec. 22, 2:45 – 4:45 pm.**