

UNIVERSITY OF CALIFORNIA, SAN DIEGO
Department of History
HIUS 151
AMERICAN LEGAL HISTORY: CIVIL WAR-PRESENT
CBS 005
MWF, 2-2:50

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H&SS 6073
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This course will explore selected problems in the legal history of the United States from the period of the Great Rebellion (aka The Civil War) and Reconstruction to the present, with special attention to public law (i.e., constitutional developments), and the role of the legal profession, courts, legislatures, executives, and regulatory bodies.

Course Materials: Books may be purchased at the university bookstore or from on-line sellers. A few copies have been placed on physical reserve at Geisel Library. Articles and court cases for Week I are also available on reserve in Geisel or through JSTOR access in Geisel.

<http://reserves.ucsd.edu>

Required:

Hall, Finkelman & Ely, Jr., *American Legal History: Cases and Materials*, 4th edition.

Hall & Karsten, *The Magic Mirror: Law in American History*, 2nd edition
i>clicker for in class quizzes and discussions. Register your clicker at course website, Tritoned, <http://tritoned.ucsd.edu>. To set up a Tritoned account for the first time go to: <http://iwdc.ucsd.edu/students.shtml>

Recommended:

G. Edward White, *The American Judicial Tradition*, Expanded edition.

Evaluations/Grades:

10%: In class reading quizzes (Red Questions) Starting in week two, a Friday session will begin with an i>clicker quiz on the week's readings. You receive one point for participation; a second point for the correct answer. No make-up quizzes will be given.

10%: Discussion questions (Green Questions) Also beginning in week two, some sessions will begin with a discussion question on i>clicker. You earn one point for participation; there are no correct answers for a discussion question.

35%: Mid-Term in class for one hour on **Friday, February 10**. Bring Blue Books, but do not write on them or in them.

45%: Final Exam in class for three hours on **February 20, from 3-6 p.m.** Bring Blue Books, but do not write on them or in them.

Policies:

Electronic Etiquette

You may use laptops and other electronic devices in class for note taking and to consult readings, but respect other students by not using these devices for non-class applications.

Disability Access

Students who wish accommodation for an exam due to a disability must provide a current Authorization for Accommodation (AFA) letter from the Office for Students with Disabilities (OSD) located in University Center 202 behind Center Hall. Present this letter to me and to the OSD Liason officer (Sally Hargate) on the 5th floor of H&SS.

P/NP Grades/Make Up Exams

Students taking the course on a N/NP basis must at a minimum participate in 50% of the Red Quizzes, complete both the Mid-Term and

Final Exam and receive a final grade of C or above. Make-up exams are given only in cases of documented medical illness or a severe family crisis.

Reading & Lecture Assignments:

WEEK I: Constitutional Issues of the Great Rebellion

January 11: Tale of Two Constitutions

Constitution of Confederate States of America (Available on course reserves, Geisel; or Avalon Project, <http://avalon.law.yale.edu>)

Hall & Finkelman, pp. 252-261

Arthur Bestor, "The Civil War as Constitutional Crisis," *American Historical Review*, 69, No. 2 (1964), 327-352; Available on reserve at Geisel or through JSTOR in Geisel.

January 13: Presidential Power & Civil Liberties

Paul Finkelman, "Civil Liberties and Civil War: The Great Emancipator as Civil Libertarian," *Michigan Law Review*, 91-6 (1993), available on reserve at Geisel or through JSTOR in Geisel.

Ex parte Merryman, available on reserve at Geisel.

Ex parte Vallandigham, reserve at Geisel

Ex parte Milligan, reserve at Geisel

WEEK II: The First Reconstruction

January 16: MLK Holiday

Read 13th, 14th, and 15th Amendments to the Constitution over the Monday holiday.

January 18: Congress v. President

Hall & Finkelman, pp. 261-270

Hall & Karsten, pp. 158-164

January 20: The Courts & the 14th Amendment

Hall & Finkelman, pp. 270-286

White, *Judicial Tradition*, chapter 4 (recommended)

WEEK III: Race and Gender Relations

January 23: Native Americans

Hall & Finkelman, pp. 289-297

Hall & Karsten, pp. 164-167

January 25: Asians

Hall & Finkelman, pp. 297-311

January 27: Women

Hall & Finkelman, pp. 316-326, 334-336

Hall & Karsten, pp. 178-182

WEEK IV: The Courts and the New Regulatory State

January 30: Rise of Substantive Due Process

Hall & Finkelman, pp. 388-399

February 1: Judicial Power and the Crisis of the 1890's

Hall & Finkelman, pp. 383-388, 399-401

Hall & Karsten, pp. 257-260, 265-267

February 3: Liberty of Contract & Its Critics

Hall & Finkelman, pp. 402-410

Hall & Karsten, pp. 252-257, 260-265

White, Judicial Tradition, chapter 8 (recommended)

WEEK V: The Great War and the Origin of Modern Civil Liberties

February 6: Suppressing Dissent

Hall & Finkelman, pp. 414-428

Hall & Karsten, pp. 268-273

February 8: Repression and Its Critics

Hall & Finkelman, pp. 428-432

February 10: MID-TERM EXAM IN CLASS

WEEK VI: The New Deal and the Constitutional Revolution of the 1930's

February 13: The Rise of Legal Liberalism

Hall & Finkelman, pp. 463-476

Hall & Karsten, pp. 290-294

February 15: The Court and the New Deal

Hall & Finkelman, pp. 476-490

Hall & Karsten, pp. 295-306

White, *Judicial Tradition*, chapter 9 (recommended)

February 17: The Constitutional Revolution

Hall & Finkelman, pp. 490-496

Hall & Karsten, pp. 306-309, 346-347

White, *Judicial Tradition*, chapter 10 (recommended)

WEEK VII: Hot War, Cold War and Civil Liberties, Again

February 20: Presidents' Day Holiday

February 22: Flag Salutes

Hall & Finkelman, pp. 432-437

White, *Judicial Tradition*, chapter 11 (recommended)

February 24: Relocation and Detention

Hall & Finkelman, pp. 437-446, 540-544

Hall & Karsten, pp. 273-275, 348-349

WEEK VIII: The Warren & Burger Court Revolutions

February 27: The Second Reconstruction

Hall & Finkelman, pp. 453-458, 499-514

Hall & Karsten, pp. 362-369, 374-375

White, *Judicial Tradition*, chapter 14 (recommended)

March 1: Privacy and Reproductive Rights

Hall & Finkelman, pp. 518-525

Hall & Karsten, pp. 354-359

White, Judicial Tradition, chapter 15 (recommended)

March 3: Crime & Punishment

Hall & Finkelman, pp. 554-559

Hall & Karsten, pp. 359-362, 332

WEEK IX: The New Judicial Conservatism

March 6: Religious Liberty

Hall & Finkelman, pp. 550-554, 678-681

March 8: The Commerce Power and the Tenth Amendment

Hall & Finkelman, pp. 624-634

March 10: Political Questions and 2000 Election

Hall & Finkelman, pp. 651-661

WEEK X: 9/11 and the War on Terror

March 13: Terror, Liberty & the Presidency

Hall & Finkelman, pp. 661-673

March 15: The Patriot Act: For and Against

Hall & Finkelman, pp. 673-678

March 17: Enemy Combatants & Guantanamo Bay

Hall & Finkelman, pp. 682-683

March 20: FINAL EXAMINATION, 3-6 P.M.

