

HIUS 151: “Law & Liberty”

1/7/15 Edition (READINGS WILL BE ADDED/REMOVED DURING QUARTER)

American Legal History from 1865-Present

Winter 2015

Time: TuTh 5-6:20	Place: CSB 005
Professor: Kristopher Nelson, JD (ABD)	Office: HSS 1133
Email: krisnelson@ucsd.edu	Office Hours: Th 4-5 or by appointment: http://krisnelson.org/schedule

HIUS 151 will cover "liberty and the law," ranging from the supremacy of contract law in the nineteenth century; to the controversies of wiretapping, civil rights (race, gender, disability), and abortion in the twentieth; and ending with the NSA in the twenty-first. I do not expect you to be either a history major or a legal specialist. The class will mix discussion and argument and give students knowledge to make a difference in the world, not just in academia.

Required Text

Friedman, Lawrence M, *History of American Law*, Third Edition (2005). *Available at the UCSD Bookstore.*

Optional Text

Hall, Kermit L. and Peter Karsten, *The Magic Mirror: Law in American History*, Second Edition (2008). *Available at the UCSD Bookstore.*

Further Required Readings

Additional selected readings available via TED or online. ***Readings may be added or removed from the syllabus during the term, so pay attention.***

Note that some legal readings are dense. You will need to read smart, and look for the key elements and core ideas, rather than simply slowing down or trying to remember *everything*. You may find it helpful to discuss the readings with others in advance of the class. You may also find the Internet helpful (but be careful not to believe everything you read online).

Requirements

Participation (10%). In-class quizzes (25%, and your lowest two scores will be discarded). Midterm exam (25%). Final exam (40%). *Note: exams will be open book.*

Failure to complete any component with a passing grade will result in failing the class. For P/NP students, a C- is required for a passing grade.

Please come prepared with readings done **in advance** (except for the first week, when readings can be completed after lecture). **Quizzes** will occur randomly during the quarter and will generally be short and simple. They will emphasize the that day's readings and previous lectures. Starting the second week, **you must bring a quiz sheet with you to class in case there is a quiz** (see TED for printable version).

DETAILS OF THIS WILL BE DISCUSSED IN CLASS!

Electronic Devices

Unless given explicit permission, you may only take notes by hand in class, not on computer. I do not expect you to memorize or record details of my lectures; I expect you to gather key ideas and core concepts.

Why?

Recent research has shown greater retention when students take notes by hand.¹ (). My own experience also demonstrates much lower levels of in-class engagements when students interpose screens between themselves and the front of the classroom. More critically, recent studies have shown that use of laptops in class harms the learning *of surrounding students*.²

You may have electronic devices in class when referring to your electronically delivered readings when we are going through them (you may also print them out, of course).

¹ Mueller, Pam A., and Daniel M. Oppenheimer. "The Pen Is Mightier Than the Keyboard Advantages of Longhand Over Laptop Note Taking." *Psychological science* (2014): 0956797614524581.

² Sana, Faria, Tina Weston, and Nicholas J. Cepeda. "Laptop multitasking hinders classroom learning for both users and nearby peers." *Computers & Education* 62 (2013): 24-31.

Topics

The history of American law and legal institutions. This course examines race relations and law, the rise of big business, the origins of the modern welfare state during the Great Depression, the crisis of civil liberties produced by two world wars and McCarthyism, and the Constitutional revolution wrought by the Warren Court.

Week 1

Tuesday, Jan. 6: Introduction to American Law

- *Magic Mirror*, "Introduction," pp. 3-10 [TED]; "1789-1861," pp. 92-106 [optional]
- *History of American Law*, pp. 38-49, 50-53

Thursday, Jan. 8: Introduction to American Law (continued)

- *History of American Law*, pp. 92-106, 260-272, 279-292
- The United States Constitution and its amendments (especially 1-10 and the 14th) [find it online]
- The United States Court System, <http://www2.maxwell.syr.edu/plegal/scales/court.html>
- Overview of the State Court System (California), http://www.sccscourt.org/general_info/community/courtsystem.shtml [especially for the diagrams]

Week 2

Tuesday, Jan. 13: Post-Civil War and Reconstruction

- *History of American Law*, pp. 253-260
- *Magic Mirror*, "Law, Industrialization, and the Beginnings of the Regulatory State: 1860-1920," pp. 208-213, 222-223 (optional)
- Benedict (in Levy), "Constitutional History, 1865-1877," 128-139 [focus on pp. 128, 131-133, 135-138]; Wiecek (in Levy), "Chase Court (1864-1873)", pp. 140-149 [focus on pp. 140-142, 145-148]

Thursday, Jan. 15: Reconstruction (continued)

- *History of American Law*, pp. 260-272
- The 14th Amendment (read very closely and think about the language) [find it online]
- Hall, *Cases* (including the *Slaughterhouse Cases*, 83 U.S. 36, 73-74 (1873)), pp. 252-274 [focus on pp. 252-256, 257-260, 262, 267-271] and Wikipedia, http://en.wikipedia.org/wiki/Slaughter-House_Cases [skim]

Week 3

Tuesday, Jan. 20: The Gilded Age (Property)

- *History of American Law*, pp. 193-197
- *Magic Mirror*, "Law, Industrialization, and the Beginnings of the Regulatory State: 1860-1920," pp. 216-219, 221-227 [TED]
- *Magic Mirror*, "The Judicial Response to Industrialization: 1860-1920," pp. 247-252, 267 [optional]

- Zinn, “Robber Barons and Rebels”
<http://www.historyisaweapon.com/defcon1/zinnbaron11.html> [consider perspective and bias in this piece]

Thursday, Jan 22: Liberty of Contract

- *History of American Law*, pp. 203-206, 329-349, 404-407
- Ducat, “Life ... of Liberty of Contract,” pp. 440-460 (the *Slaughterhouse Cases* (1873) again and *Munn v. Illinois* (1877), *Allgeyer v. Louisiana* (1897), *Adair and Coppage* cases, and *Lochner v. New York* (1908))
- *Wabash v. Illinois*, 118 U.S. 557 (1886),
<http://fas-history.rutgers.edu/clemens/constitutional2/wabash.html> [condensed version]

Week 4: Growth of the Regulatory State

Tuesday, Jan. 27: Into the Progressive Era (and Tort)

- *History of American Law*, 222-225, 350-366, 516-623
- *Magic Mirror*, “Law, Industrialization, and the Beginnings of the Regulatory State: 1860-1920,” pp. 208-210 [TED], 214-222 [optional], 227-230 [TED]
- *Magic Mirror*, “The Judicial Response to Industrialization: 1860-1920,” pp. 251-253 [TED], 257-267 [optional]
- *A SELECTED TORT CASE OR TWO, TO BE DETERMINED*

Thursday, Jan. 29: New Deal (and Contracts)

- *History of American Law*, pp. 503-515, 548-553
- Parrish (Levy), “Constitutional History, 1933-1945,” pp. 227-238
- Ducat, “Life and Death of Liberty of Contract,” pp. 455-465 (*Lochner v. New York* (1905), *Muller v Oregon* (1908), *West Coast Hotels v. Parrish* (1937))
- Hall, *Cases*, pp. 459-467 [pp. 461-463 are optional]
- Hall, *Cases*, pp. 483-489 (*West Coast Hotels v. Parrish*, 300 U.S. 379 (1937))
- “Why Was *Lochner* Wrong?” by David A. Strauss, <http://www.jstor.org/stable/1600564>, pp. 373-386 [focus on pp. 373-375, 381-385]

Week 5

Tuesday, Feb. 3: War & Speech

- *History of American Law*, pp. 535-537
- *Magic Mirror*, “Origins of Judicial Protections of Civil Liberties and Civil Rights,” pp. 284-289 [TED]
- Waldrep (*Schenk v. United States*) pp. 77-82, (*Gobitis* and *Barnette*) pp. 131-137 (very condensed versions of the cases)
- *West Virginia State Board of Education vs. Barnette*, 319 U.S. 624 (1943) [the full case; don’t forget Frankfurter’s very important dissent and it’s connection to *Gobitis*]
- “Why Was *Lochner* Wrong?” by David A. Strauss, <http://www.jstor.org/stable/1600564>, pp. 373-386 [focus on 375-381, review the rest]

Thursday, Feb. 5: After WWII (McCarthyism, the Warren Court, hate speech)

MIDTERM HANDED OUT

- *History of American Law*, pp. 535-537

- *Magic Mirror*, “The Imperial Judiciary,” pp. 346-356 [optional]
- White (in Levy), “Warren Court (1953-1969),” pp. 279-293 [focus on pp. 279-280, 285-287, 292]
- *Brandenburg v. Ohio*, 395 U.S. 444 (1969) [short version to be provided]
- *Cohen v. California*, 403 U.S. 15 (1971)
- *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) [short version to be provided]

Week 6: Civil Rights (Race)

Tuesday, Feb. 10: Nineteenth Century

MIDTERM DUE

- *History of American Law*, pp. 381-389
- Slavery: *Magic Mirror*, pp. 157-164 [optional]; Hall, *Cases*, pp. 215-218; Hall, *Cases* (antebellum: *Dred Scott v. Sanford*), pp. 235-242
- Hall, *Cases*, pp. 252-274 [focus on pp. 256-259, 262-267, 271-274]
- *The Civil Rights Cases*, 109 U.S. 3 (1883),
http://en.wikipedia.org/wiki/Civil_Rights_Cases [Wikipedia]

Thursday, Feb. 12: Twentieth Century

- *History of American Law*, pp. 525-534
- *Magic Mirror*, pp. 363-371
- White (in Levy), “Warren Court (1953-1969),” pp. 279-293 [focus on pp. 279-285, 290-292]
- Segregation: Hall, *Cases* (*Plessy v. Ferguson*), pp. 273-282; Hall, *Cases* (*Brown v. Board of Education*), pp. 495-502

Week 7: Civil Rights (Sex/gender and Disability)

Tuesday, Feb. 17: Sex/gender

- *History of American Law*, pp. 373-381, 535-537
- *Magic Mirror*, pp. 371-374 (optional)
- Menand, “How women got in on the Civil Rights Act,”
http://www.newyorker.com/arts/critics/atlarge/2014/07/21/140721crat_atlarge_menand?currentPage=all
- Pregnancy Discrimination Act of 1978,
http://en.wikipedia.org/wiki/Pregnancy_discrimination [read United States part]
- *Erickson v. Bartell Drug*, 141 F.Supp.2d 1266 (2001),
http://scholar.google.com/scholar_case?case=14314912861265551887&hl=en&as_sdt=6&as_vis=1&oi=scholar
- Sex Discrimination at Work,
<http://www.equalrights.org/legal-help/know-your-rights/sex-discrimination-at-work/>

Thursday, Feb. 19: Disability

- “Disability Rights: The Overlooked Civil Rights Issue”
<http://dsq-sds.org/article/view/629/806>
- Americans with Disabilities Act of 1990,
http://en.wikipedia.org/wiki/Americans_with_Disabilities_Act_of_1990 [Wikipedia]

- California “Unruh Civil Rights Act”: <http://law.onecle.com/california/civil/51.html>
- “UNLAWFUL DISCRIMINATION - Your Rights & Remedies,” <http://oag.ca.gov/publications/CRhandbook/intro> [be ready to figure out how to proceed if you have particular kinds of problems and what law might apply]

Week 8

Tuesday, Feb. 24: Criminal Law and Due Process

- *History of American Law*, pp. 207-222, 567-575
- *Magic Mirror*, pp. 187-188, 195-197, 202-204, 205-207, 275-279, 328-333, 359-362, 376-378 [optional]
- Hall, *Cases*, pp. 548-554 (*Miranda v. Arizona*, 384 U.S. 436 (1966))
- “The Case of the Florida Drifter,” in *Quarrels*, pp. 335-350 (*Gideon v. Wainwright*)

Thursday, Feb. 26: The Right to Privacy (and Evidence)

- *History of American Law*, pp. 101-104 (evidence)
- *Magic Mirror*, “The Imperial Judiciary,” pp. 357-359
- White (in Levy), “Warren Court (1953-1969),” pp. 279-293 [focus on pp. 281-283, 287-292]
- “Why Was *Lochner* Wrong?” by David A. Strauss, <http://www.jstor.org/stable/1600564>, pp. 373-386 [review]
- *Weeks v. United States*, 232 U.S. 383 (1914)
- *Katz v. United States*, 389 U.S. 347 (1967) [edited version to be provided]

Week 9

Tuesday, March 3: The Right to Privacy (continued)

- *History of American Law*, pp. 444-449, 548-553
- *Griswold v. Connecticut*, 381 U.S. 479 (1965) [edited version to be provided]
- *Loving v. Virginia*, 388 U.S. 1 (1967) [edited version to be provided]
- *Roe v. Wade*, 410 U.S. 113 (1973) [edited version to be provided]

Thursday, March 5: Administrative Law (Sexual Assault on Campus)

- *History of American Law*, pp. 559-563
- White (in Levy), “Warren Court (1953-1969),” pp. 279-293 [focus on pp. 281-283, 287-292]

Week 10

Tuesday, March 10: Corporations & Intellectual Property

- *History of American Law*, pp. 390-403 (on corporations)
- *History of American Law*, pp. 325-328 (on IP)
- *CASES TO BE DETERMINED LATER*

Thursday, March 12: Conclusions and Projections

- Readings and specific topics to be determined later

Final Exam

Saturday, Aug 2: Final Exam Due by 11pm

Academic Integrity

Integrity of scholarship is essential for an academic community. The University expects that both faculty and students will honor this principle and in so doing protect the validity of University intellectual work. For students, this means that all academic work will be done by the individual to whom it is assigned, without unauthorized aid of any kind.

Disabilities and Accommodations

Students requesting accommodations for this course due to a disability must provide a current Authorization for Accommodation (AFA) letter issued by the Office for Students with Disabilities (OSD) which is located in University Center 202 behind Center Hall. Students are required to present their AFA letters to Faculty (please make arrangements to contact me privately) and to the OSD Liaison in the department in advance so that accommodations may be arranged.

Contact the OSD for further information:

858.534.4382 (phone)

osd@ucsd.edu(email)

<http://disabilities.ucsd.edu>(website)