

**UNIVERSITY OF CALIFORNIA, SAN DIEGO**  
**Department of History**  
**HIUS 151**  
**Spring Quarter 2018**

***AMERICAN LEGAL HISTORY: CIVIL WAR-PRESENT***  
**Solis 111**  
**MWF, 2-2:50**

***Professor Michael E. Parrish***  
***H&SS 6073***  
***Office hours: W, 1-2 or by appointment***  
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This course explores 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 emphasis upon 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 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*, 5th edition.

Grant Gilmore & Philip Bobbitt, *The Ages of American Law*, 2<sup>nd</sup> 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 book:**

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

### **Evaluations/Grades:**

**20% In class reading quizzes** Beginning in week two, each 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. A few make-up quizzes will be given during the quarter.

**35%: Mid-Term** in class for one hour on **Friday, May 4**. Bring Blue Books to class, but do not write on them or in them.

**45%: Final Exam** in class for three hours on **June 15, 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 such as email or Snapchat, etc.

I will post lecture slides on Tritoned each week. I will not Podcast lectures, however.

#### **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 5<sup>th</sup> 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:**

***Beginning reading Gilmore & Bobbitt, *Ages of American Law*, 2<sup>nd</sup> edition in Week I. Complete reading book over the next nine weeks. Relevant for final exam in June.***

### **WEEK I April 2-6: Origins of the Great Rebellion**

#### **April 2: Course Introduction**

#### **April 4: Tale of Two Constitutions**

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

Hall & Finkelman, pp. 252-265

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

#### **April 6: Lincoln & 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 E-reserves at Geisel.

*Ex parte Vallandigham*, E-reserves at Geisel

*Ex parte Milligan*, E-reserves at Geisel

### **WEEK II April 9-13: The First Reconstruction**

#### **April 9:**

Read 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments to the Constitution

Hall & Finkelman, 266-275

**April 11: Congress v. President Johnson**

Hall & Finkelman, pp. 266-275

**April 13: The Courts & the 14<sup>th</sup> Amendment**

Hall & Finkelman, pp. 275-291 (Slaughterhouse Cases)

White, Judicial Tradition, chapter 4 (recommended)

**WEEK III April 16-20: Race and Gender Relations**

**April 16: Native Americans**

Hall & Finkelman, pp. 294-303

**April 18: Asians**

Hall & Finkelman, pp. 303-318

**April 20: Women**

Hall & Finkelman, pp. 326-332, 340-343

**WEEK IV April 23-27: The Courts and the New Regulatory State**

**April 23: Rise of Substantive Due Process**

Hall & Finkelman, pp. 375-384; 384-386; 398-408

**April 25: Judicial Power and the Crisis of the 1890's**

Hall & Finkelman, pp. 369-375; 391-397

**April 27: Liberty of Contract & Its Critics**

Hall & Finkelman, pp. 411-419

White, Judicial Tradition, chapter 8 (recommended)

**WEEK V April 30-May 4: The Great War and the Origin of Modern Civil Liberties**

**April 30: Suppressing Dissent**

Hall & Finkelman, pp. 429-437

**May 2: Repression and Its Critics**  
**Hall & Finkelman, pp. 437-441**

**May 4: MID-TERM EXAM IN CLASS (Bring Blue Books)**

**WEEK VI May 7-11: The New Deal and the Constitutional Revolution of the 1930's**

**May 7: The Rise of Legal Liberalism**  
**Hall & Finkelman, pp. 472-474; 482-484**

**May 9: The Court and the New Deal**  
**Hall & Finkelman, pp. 485-499**  
**White, Judicial Tradition, chapter 9 (recommended)**

**May 11: The Constitutional Revolution**  
**Hall & Finkelman, pp. 499-506**  
**White, Judicial Tradition, chapter 10 (recommended)**

**WEEK VII May 14-18: Hot War, Cold War and Civil Liberties, Again**

**May 14: The "Good War"?**  
**Hall & Finkelman, pp. 441-442**

**May 16: Flag Salutes**  
**Hall & Finkelman, pp. 442-447**  
**White, Judicial Tradition, chapter 11 (recommended)**

**May 18: Relocation and Detention**  
**Hall & Finkelman, pp. 447-455**

**WEEK VIII May 21-25: The Warren & Burger Court Revolutions**

**May 21: The Second Reconstruction**  
**Hall & Finkelman, pp. 463-467; 507-529**  
**White, Judicial Tradition, chapter 14 (recommended)**

**May 23: Privacy, Reproductive Rights, Sexual Orientation**  
**Hall & Finkelman, pp. 530-557**  
**White, Judicial Tradition, chapter 15 (recommended)**

**May 25: Crime & Punishment**  
**Hall & Finkelman, pp. 571-576**

**WEEK IX May 28-June 1: The New Judicial Conservatism**

**May 28: Religious Liberty**  
**Hall & Finkelman, pp. 564-571; 704-707**  
**White, Judicial Tradition, chapter 16 (recommended)**

**May 30: The Commerce Power and the Tenth Amendment**  
**Hall & Finkelman, pp. 646-657**

**June 1: Political Questions and 2000 Election**  
**Hall & Finkelman, pp. 675-685**

**WEEK X June 4-8: 9/11 and the War on Terror**

**June 4: Terror, Liberty & the Presidency**  
**Hall & Finkelman, pp. 688-699**

**June 6: The Patriot Act: For and Against**  
**Hall & Finkelman, pp. 699-703**

**June 8: Enemy Combatants & Guantanamo Bay**  
**Hall & Finkelman, pp. 708-710**  
**White, Judicial Tradition, chapter 17 (recommended)**

***June 15: FINAL EXAMINATION, 3-6 P.M.***

