**HIST 3318:** AMERICAN LEGAL AND CONSTITUTIONAL HISTORY, 1900 TO PRESENT

Fall 2015

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**Office Hours:** By appointment

**Time and Place of Class Meetings:** University Hall, Room 02

M-W-F, 1:00 p.m.-1:50 p.m.

**Description of Course Content:** HIST 3318 traces the adaptation of laws to changing social and economic needs with emphasis on the interrelations of law, public opinion, the legal profession, judiciary, and the political process. Topics include the transatlantic nature of American law, the failure of Reconstruction, developments in criminal and civil law, and the rise of constitutional law as a form of government policymaking. Special attention will be paid to subjects such as race, gender, sexual orientation, disability, and [critical legal studies](http://www.law.cornell.edu/wex/critical_legal_theory).

**Student Learning Outcomes:** During this course, students will learn how to:

• identify key events, peoples, individuals, terms, periods, and chronology of the legal history of the United States

• develop critical thinking skills by discussing the living nature of legal history, using primary sources to critique competing interpretations of the same historical events, explaining the nature of controversies in legal history

• synthesize diverse historical information and evidence related to broad themes of U.S. legal history and present this information in coherent, well-articulated, and well-substantiated analytical discussions and other written assignments

• develop the ability to connect choices, actions, and consequences to decision making by examining the motivations and actions of key figures in U.S. legal history

**Required Textbooks and Other Course Materials:** Hall, Kermit L. and Paul Finkelman. *American Legal History*: *Cases and Materials* (4th edition, 2011).

Friedman, Lawrence. *American Law in the 20th Century* (2002). (Available in “Course Materials” on Blackboard)

**Grading:** Your grade will consist of four components:

 **Midterm examination**: 33.3%

 **Final examination**: 33.3%

 **Case briefs (2)**: 33.3%

Because this is an upper-division course with a heavy reading load, it will only be as successful as the preparation and thoughtfulness of its participants. You are expected to read all of the required readings carefully before each class and come prepared to discuss those readings in class.

**Descriptions of major assignments and examinations:** The **midterm examination** and **final examination** consist of short-answer and essay questions.

The **case brief** (of which 3 will be turned in during the course of the semester) is a 4-6 page, 1.5-spaced document in which you will address the following points in a systematic manner for that week’s “assigned case”:

1) The relevant *facts* of the case.

2) The specific *holding* of the case, as announced by the writer of the majority opinion.

3) An analysis of the court’s *reasoning* in reaching its decision, making reference to important *precedents* that may have impelled this result.

4) A short discussion of the *dissent*, in situations where I advise you beforehand that such a discussion is warranted.

5) A detailed treatment of the case’s *historical significance*. This section should comprise at least 50% of your brief and consist of a careful summary of the social, political, and cultural impact of the case, as supported by citations from one of the required text for this classic or a scholarly article found using a searchable archive such as HeinOnline.

Since some—though by no means *all*—of you have enrolled in this course as a sort of “introduction” to the course of study offered at a law school, I will attempt to simulate the experience of *thinking like a lawyer* as nearly as I can while nonetheless still accounting for the competing (and certainly no less pressing) demands of *teaching you how to think about the past*.

**Course Schedule:**

*Week 1*

Lecture: Course policies / Introduction to Legal History

Reading: Natural Law,” Oliver Wendell Holmes, Jr. Available here: <http://teachingamericanhistory.org/library/index.asp?document=1438> (Recommended)

Joseph Hutcheson, “The Judgement Intuitive: The Function of the ‘Hunch’ in Judicial Decision”. Available here: <http://alh.houseofrussell.com/docs/hutcheson.html> (Recommended)

*Week 2*

Lecture: The Legal Profession

Reading: Friedman, pp. 29-44

August 28, 2014

Lecture: Legal Profession: Continued

Reading: Friedman, pp. 457-504

*Week 3*

Lecture: Civil Rights and Racial Justice

Reading: Hall, pp. 453-461, 499-506

Derrick Bell, “Brown v. Board of Education and the Interest-Convergence Dilemma,” available at <http://pscfiles.tamu.edu/links/div-com/bell-interest%20convergence.pdf> (also available in “Course Documents”)

Lecture: Civil Rights and Racial Justice: Continued

Reading: Irons, pp. 365-409

Case brief #1 (possible due date): Missouri ex rel. Gaines v. Canada, available at <http://www.law.cornell.edu/supremecourt/text/305/337>

*Week 4*

Lecture: Taxation and the Growth of the American Bureaucracy

Readings: Pollock v. Farmers Loan and Trust Co. (1895) available at <http://www.law.cornell.edu/supremecourt/text/157/429>

Amendment XVI, available at <http://www.law.cornell.edu/constitution/amendmentxvi>

Tax Rates Adjusted for Inflation, available at <http://taxfoundation.org/sites/taxfoundation.org/files/docs/fed_individual_rate_history_adjusted.pdf>

Lecture: Family Law and Family Life

Reading: Friedman, pp. 430-457

Note: “USA PATRIOT Act in Retrospect” lecture will be given later this semester

Case brief #2 (possible due date): Troxel v. Granville, available at <http://www.law.cornell.edu/supct/html/99-138.ZO.html>

*Week 5*

Lecture: The Switch in Time that Saved Nine

Reading: Irons, pp. 294-331

Case brief #3 (possible due date): United States v. Carolene Products, available at <http://www.law.cornell.edu/supremecourt/text/304/144>

Lecture: Crime and Criminal Justice

Readings: Friedman, pp. 80-111

Case brief #4: Miranda v. Arizona, available at <http://www.law.cornell.edu/supremecourt/text/384/436>

**FIRST EXAM – STUDY GUIDE DISTRIBUTED AT THE BEGINNING OF WEEK 5**

*Week 6*

Lecture: Disability and Citizenship

Readings: Buck v. Bell, available at <http://www.law.cornell.edu/supremecourt/text/274/200>

Douglas Baynton, “Defectives in the Land” (available in “Course Documents” on Blackboard)

Lecture: Crime and Criminal Justice: Continued

Reading: Friedman, pp. 205-251

Christopher Glazek, “Raise the Crime Rate,” available at <https://nplusonemag.com/issue-13/politics/raise-the-crime-rate/>

*Week 7*

Lecture: Science, Law, and the Body

Reading: Hall, pp. 559-571

Case brief #5: Cruzan v. Director, Missouri Department of Health, available at <http://www.law.cornell.edu/supremecourt/text/497/261>

Lecture: The Problem of Historical Interpretation

Reading: Adam Winkler, “The Secret History of Guns,” available at <http://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/>

*Week 8*

Video: Advise and Dissent (film)

Currently viewable online at <http://www.snagfilms.com/films/title/advise_and_dissent>

Lecture: A Divided Country

Reading: Hall, pp. 497-539

Video: Pat Buchanan, “1992 RNC Address” available at <http://www.americanrhetoric.com/speeches/patrickbuchanan1992rnc.htm>

Jesse Jackson, “1984 DNC Address” available at <http://www.americanrhetoric.com/speeches/jessejackson1984dnc.htm>

Lecture: A Divided Country: Continued

Reading: Robert Putnam, “Bowling Alone” available at <http://xroads.virginia.edu/~HYPER/DETOC/assoc/bowling.html>

Case brief #6: Roe v. Wade, available at <http://supreme.justia.com/cases/federal/us/410/113/case.html>

*Week 9*

Lecture: American Legal History and Judicial Politics

Reading: Bateman, “Why Supreme Court Justices Should Have to Run for Office,” <http://mic.com/articles/94724/why-supreme-court-justices-should-have-to-run-for-office>

Case brief #7: *Planned Parenthood v. Casey* (1992), available at <http://supreme.justia.com/cases/federal/us/505/833/case.html>

 “Clarence Thomas Confirmation Hearings,” available at <https://www.youtube.com/watch?v=G3n-Sa0B2s8>

Lecture: Gay, Lesbian, and Transgender Movements in the 20th Century

Reading: Bowers v. Hardwick, available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=478&invol=186>

Lawrence v. Texas, available at <http://www.law.cornell.edu/supct/html/02-102.ZS.html>

Case brief #8: Goodridge v. Department of Public Death (Massachusetts), available at <http://news.findlaw.com/cnn/docs/conlaw/goodridge111803opn.pdf>

*Week 10*

Lecture: Free Speech in the 20th Century

Reading: *Schenck v. United States* available at <http://supreme.justia.com/cases/federal/us/249/47/case.html> (read only Holmes opinion)

*Abrams v. United States* available at <http://supreme.justia.com/cases/federal/us/250/616/case.html> (read only Holmes dissent)

Lecture: Free Speech and Religious Freedom in the 21st Century

Reading: *Burwell v. Hobby Lobby Stores* (2014) available at <http://www.supremecourt.gov/opinions/13pdf/13-354_olp1.pdf>

Bateman, “Why Intent Shouldn’t Matter with Online Threats,” <http://america.aljazeera.com/opinions/2014/6/online-threats-internetfirstamendmentfacebooksupremecourt.html>

*Week 11*

Lecture: Sports and the Law
Reading: Taylor Branch, “The Shame of College Sports,” available at <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/>

Bateman, “The Myth of the Student-Athlete Will Prevail,” available at <http://america.aljazeera.com/opinions/2014/4/student-athlete-mythncaacollegesports.html>

Lecture: Terrorism and the Law

Reading: Hall, pp. 636-682

USA PATRIOT Act (2001), available at <http://epic.org/privacy/terrorism/hr3162.html> (skim only)

US Department of Justice, “The USA Patriot Act: Preserving Life and Liberty” available at <http://www.justice.gov/archive/ll/highlights.htm>

Case brief #9: Hamdi v. Rumsfeld, available <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=03-6696>

*Week 12*

Lecture: *Bush v. Gore* and Constitutional Law in the 21st Century

Case brief #10: *Bush v. Gore* (2000) available at <http://www.law.cornell.edu/supct/html/00-949.ZPC.html> (discuss *all* opinions)

Lecture: Obamacare and Legal History in the Making

Reading: National Federation of Independent Business v. Sebelius, available at <http://www.law.cornell.edu/supremecourt/text/11-393>

The Affordable Care Act (full text, but *skim*), available at <https://www.healthcare.gov/where-can-i-read-the-affordable-care-act/>

**SECOND EXAM – STUDY GUIDE DISTRIBUTED AT THE BEGINNING OF WEEK 12**

**NO CLASS THANKSGIVING BREAK**

*Final Week*

Lecture: Law School: Is It Right For Me?

Reading: Review of Brian Tamanaha’s *Failing Law Schools*, available at <http://www.newrepublic.com/book/review/failing-law-schools-how-to-fix-legal-education-brian-tamanaha-harvard-yale>

David Segal, “What They Don’t Teach Law Students: Lawyering,” available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=3&hp=&pagewanted=all&>

**NOTE : *As the instructor, I reserve the right to adjust this schedule in any way that serves the educational needs of the students enrolled in this course. --OLB***

***UTA NOTE TO STUDENTS****: You are expected to keep track of their performance throughout the semester and seek guidance from available sources (including the instructor) if your performance drops below satisfactory levels. A general rule of thumb is this: for every credit hour earned, you should spend 3 hours per week working outside of class. Beyond the time required to attend each class meeting, you should expect to spend at least an additional 9 hours per week of your own time in course-related activities, including reading required materials, completing assignments, preparing for exams, etc.*

**Make-up Exams**: In the event of a documented medical emergency, I will schedule a make-up examination for you that will take place during office hours.

**Grade Grievances**: Any appeal of a grade in this course must follow the procedures and deadlines for grade-related grievances as published in the current undergraduate catalog. For the full text of this policy, see <http://wweb.uta.edu/catalog/content/general/academic_regulations.aspx#10>.

**UTA Drop Policy:** Students may drop or swap (adding and dropping a class concurrently) classes through self-service in MyMav from the beginning of the registration period through the late registration period. After the late registration period, students must see their academic advisor to drop a class or withdraw. Undeclared students must see an advisor in the University Advising Center. Drops can continue through a point two-thirds of the way through the term or session. It is the student's responsibility to officially withdraw if they do not plan to attend after registering. **Students will not be automatically dropped for non-attendance**. Repayment of certain types of financial aid administered through the University may be required as the result of dropping classes or withdrawing. For more information, contact the Office of Financial Aid and Scholarships (<http://wweb.uta.edu/ses/fao>).

**Americans with Disabilities Act:** The University of Texas at Arlington is on record as being committed to both the spirit and letter of all federal equal opportunity legislation, including the *Americans with Disabilities Act (ADA)*. All instructors at UT Arlington are required by law to provide "reasonable accommodations" to students with disabilities, so as not to discriminate on the basis of that disability. Any student requiring an accommodation for this course must provide the instructor with official documentation in the form of a letter certified by the staff in the Office for Students with Disabilities, University Hall 102. Only those students who have officially documented a need for an accommodation will have their request honored. Information regarding diagnostic criteria and policies for obtaining disability-based academic accommodations can be found at [www.uta.edu/disability](http://www.uta.edu/disability) or by calling the Office for Students with Disabilities at (817) 272-3364.

**Academic Integrity:** All students enrolled in this course are expected to adhere to the UT Arlington Honor Code:

*I pledge, on my honor, to uphold UT Arlington’s tradition of academic integrity, a tradition that values hard work and honest effort in the pursuit of academic excellence.*

*I promise that I will submit only work that I personally create or contribute to group collaborations, and I will appropriately reference any work from other sources. I will follow the highest standards of integrity and uphold the spirit of the Honor Code.*

Violators will be disciplined in accordance with University policy, which may result in the student’s suspension or expulsion from the University.

**Student Support Services**:UT Arlington provides a variety of resources and programs designed to help students develop academic skills, deal with personal situations, and better understand concepts and information related to their courses. Resources include tutoring, major-based learning centers, developmental education, advising and mentoring, personal counseling, and federally funded programs. For individualized referrals, students may visit the reception desk at University College (Ransom Hall), call the Maverick Resource Hotline at 817-272-6107, send a message to resources@uta.edu, or view the information at [www.uta.edu/resources](http://www.uta.edu/resources).

**Electronic Communication:** UT Arlington has adopted MavMail as its official means to communicate with students about important deadlines and events, as well as to transact university-related business regarding financial aid, tuition, grades, graduation, etc. All students are assigned a MavMail account and are responsible for checking the inbox regularly. There is no additional charge to students for using this account, which remains active even after graduation. Information about activating and using MavMail is available at <http://www.uta.edu/oit/cs/email/mavmail.php>.

**Student Feedback Survey:** At the end of each term, students enrolled in classes categorized as lecture, seminar, or laboratory shall be directed to complete a Student Feedback Survey (SFS). Instructions on how to access the SFS for this course will be sent directly to each student through MavMail approximately 10 days before the end of the term. Each student’s feedback enters the SFS database anonymously and is aggregated with that of other students enrolled in the course. UT Arlington’s effort to solicit, gather, tabulate, and publish student feedback is required by state law; students are strongly urged to participate. For more information, visit <http://www.uta.edu/sfs>.

**Emergency Exit Procedures:** Should we experience an emergency event that requires us to vacate the building, students should exit the room and move toward the nearest exit, When exiting the building during an emergency, one should never take an elevator but should use the stairwells. Faculty members and instructional staff will assist students in selecting the safest route for evacuation and will make arrangements to assist handicapped individuals.

**Final Review Week:** A period of five class days prior to the first day of final examinations in the long sessions shall be designated as Final Review Week. The purpose of this week is to allow students sufficient time to prepare for final examinations. During this week, there shall be no scheduled activities such as required field trips or performances; and no instructor shall assign any themes, research problems or exercises of similar scope that have a completion date during or following this week *unless specified in the class syllabus*.