

**American Legal History  
University of Houston Law Center  
Fall 2022**

Martin J. Siegel, Adjunct Professor  
Telephone: (281) 772-4568  
Email: [mjsiegel@central.uh.edu](mailto:mjsiegel@central.uh.edu)

**Course Description:**

This class will examine major legal controversies and changes from the early Republic to the present, with a particular emphasis on how law, politics and society collided with and influenced each other in the 20th century. By studying recurring arguments over state vs. national power, who merits inclusion in the circle of legal and civil rights, and the balance between individual freedom and public authority in a changing society, we hope to explain how we got here – that is, to better understand today’s legal landscape.

Topics include the legal battle over slavery and secession, the 19th and early 20th century struggle for women’s rights and suffrage, legal attacks on Native Americans and immigrants, the *Lochner* era and the Constitutional Revolution of 1937, the postwar Red Scares and McCarthyism, the legal war on Jim Crow and the Warren Court’s expansion of individual rights, the conservative backlash to legal liberalism and the Bork and Thomas confirmations, Watergate and *U.S. v. Nixon*, the “War on Drugs” and mass incarceration, the struggle for LGBT rights, and many others.

Some classes will feature assigned, student-led discussions and debates over previous legal disputes and their modern analogs, such as judicial supremacy vs. popular constitutionalism (*Marbury*), populist presidents and their legal legacies (Andrew Jackson and Donald Trump), immigration regulation past and present (1920s and 2020s), proposals to expand the Supreme Court (1937 and 2020), law during wartime (*Korematsu*, *Dennis*, and the War on Terror), and more.

**Office Hours:**

If you’d like to make an appointment to speak outside of class, please feel free to email me at [mjsiegel@central.uh.edu](mailto:mjsiegel@central.uh.edu) so we can schedule a meeting.

**Assessment:**

Grades will be based on a paper (65%) and class participation (35%).

## Textbook:

Our textbook is Kermit L. Hall, Paul Finkelman, and James W. Ely, Jr., *American Legal History: Cases and Materials* (Oxford University Press, 5<sup>th</sup> ed. 2017) (“*Hall*”). Other readings will be distributed throughout the semester. Assigned opinions that don’t appear in *Hall* can be found on Oyez.org or Westlaw.

## Recording of Class:

Students may not record all or part of class, livestream all or part of class, or make or distribute screen captures without advance written consent of Professor Siegel. If you have or think you may have a disability such that you need to record class-related activities, please contact the Law Center’s Office of Student Services. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any person or on any other platform.

## Assignments by Class:

- |                            |  |
|----------------------------|--|
| <u>August 23, 2022:</u>    | Legal History: Who Cares?<br>Skim but no need to closely read <i>District of Columbia v. Heller</i> (majority and dissenting opinions).                      |
| <u>August 25, 2022:</u>    | Federalists vs. Republicans and <i>Marbury v. Madison</i> .<br><i>Hall</i> pp. 136-37, 147-50.   |
| <u>August 30, 2022:</u>    | Nationalists and Nullifiers.<br><i>Hall</i> pp. 151-70, 250-52, 295-300.   |
| <u>September 1, 2022:</u>  | Slavery and the Law.<br><i>Hall</i> pp. 227-48.  |
| <u>September 6, 2022:</u>  | Reconstruction, Jim Crow, and <i>Plessy v. Ferguson</i> .<br><i>Hall</i> pp. 266-68, 271-83.   |
| <u>September 8, 2022:</u>  | Women and Law in the 19 <sup>th</sup> and early 20 <sup>th</sup> Centuries and the Campaign for Suffrage.<br><i>Hall</i> pp. 322-36, 338-43, 417-19, 477-79. |
| <u>September 13, 2022:</u> | The Unwanted: Native Americans, Immigrants, and Eugenics.<br><i>Hall</i> pp. 300-12, <i>Buck v. Bell</i> .   |
| <u>September 15, 2022:</u> | The First Red Scare and Sacco and Vanzetti.<br><i>Hall</i> pp. 429-41, Readings to be Distributed.   |
| <u>September 20, 2022:</u> | Progressivism vs. the Court: The <i>Lochner</i> era.<br><i>Hall</i> pp. 371-78, 381-94, 396-417, 419-22.   |

- September 22, 2022: Court-Packing, the “Switch in Time that Saved Nine,” and the Constitutional Revolution of 1937.  
*Hall* pp. 482-503, *Wickard v. Filburn*.
- September 27, 2022: World War II and Personal Liberty: *Korematsu*, *Barnette*, and Jackson at Nuremberg.  
*Hall* pp. 441-55.
- September 29, 2022: The Second Red Scare: McCarthyism and the Law.  
*Hall* pp. 558-61, Readings to be distributed.
- October 4, 2022: The Legal War on Jim Crow.  
*Hall* pp. 462-71, 509-17.
- October 6, 2022: The Warren Court and the Individual Rights Revolution  
*Hall* pp. 530-32, 561-67, 571-76, *Reynolds v. Sims*.
- October 11, 2022: The Burgeoning Administrative State, Public Interest Reaction, and Conservative Backlash.  
*Hall* pp. 596-98, Readings to be distributed.
- October 13, 2022: The Growth of Tort Law and its Critics.  
*Hall* pp. 609-20.
- October 18, 2022: Vietnam and the Law.  
*Hall* pp. 659-62, Readings to be distributed.
- October 20, 2022: Watergate and *United States v. Nixon*.  
*Hall* pp. 662-65, Readings to be distributed.
- October 25, 2022: The Fight for Gender Equality in Law.  
*Hall* pp. 530, 536-39, Readings to be distributed.
- October 27, 2022: Emanations and Penumbras, the Battle over Abortion Law, and What Became of Constitutional Privacy.  
*Hall* pp. 532-36, *Washington v. Gluxberg*, *Troxel v. Granville*
- November 1, 2022: *Filartiga*, the Alien Tort Statute, and the Advent of International Human Rights Litigation.  
*Filartiga v. Pena-Irala*, Readings to be distributed.
- November 3, 2022: The Conservative Reaction to the Warren Court.  
*Hall* pp. 524-29, 646-57, Readings to be distributed.

- November 8, 2022: The Bork and Thomas Nominations and the Resulting Confirmation Wars.  
Readings to be distributed.
- November 10, 2022: The “War on Drugs” and Mass Incarceration.  
*Hall* pp. 575-76, Readings to be distributed.
- November 15, 2022: The 2000 Election, *Bush v. Gore*, and the Debate over a Politicized Supreme Court.  
*Hall* pp. 675-85.
- November 17, 2022: 9/11 and the War on Terror.  
*Hall* pp. 688-704, 708-10, Readings to be distributed.
- November 22, 2022: The Struggle for LGBT Rights.  
*Hall* pp. 539-44, *Bowers v. Hardwick*, *Obergefell v. Hodges*.
- November 29, 2022: The Lessons of Legal History.  
No reading.