

**HISTORY OF AMERICAN LAW, 1877-2020**  
**(HIST-1169-401/AFRC-1169-401)**  
**SPRING 2024**

**SYLLABUS**

Professor: [Karen Tani](#), J.D., Ph.D. (History)

Teaching Assistants: Bryn Hines, Sheridan Macy, and Ethan Swift

Course website (Canvas page): <https://canvas.upenn.edu/courses/1771457>

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**Welcome! I am looking forward to getting to know you this semester and to introducing you to the subject that is my passion: U.S. Legal History.** This document provides essential information about the course. It covers what I hope you will learn from History 1169, what you should expect from me and my teaching assistants in the coming weeks, and what we expect of you.

Course overview [*jump to page 7 for the subject matter of particular class sessions*]

This course will introduce you to major themes in U.S. legal history from 1877 to the present. Topics include citizenship and immigration, federalism, public regulation of economic activity, lawyers and the legal profession, criminalization, social welfare provision, rights-claiming, and the changing roles and capacities of various branches of government (executive, legislative, judicial). Prominent through-lines include the inseparability of law and politics; the struggles of marginalized groups for recognition and inclusion; and shifting, competing understandings of liberty, equality, and justice. Judicial decisions will figure prominently in our discussions, but so, too, will other sources of law, including statutes, administrative regulations, and provisions of the U.S. Constitution. I hope that you will leave this course with a better grasp of how the U.S. legal system operates and how it has channeled power, resources, and opportunity over time. I hope, too, that this course enriches your understanding of U.S. history in ways that feel meaningful to you in the present.

Class Meetings

Our designated class meeting times are **Monday and Wednesday from 10:15 to 11:45 a.m. EST.**

We will convene in **ARCH 208**. This room is in the Arts, Research, and Culture House at 3601 Locust Walk.

Key Contact Information

Professor Karen Tani: [ktani@law.upenn.edu](mailto:ktani@law.upenn.edu)

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### Office Hours and Email Communication

Office hours are your opportunity to ask me and the TAs questions about the course material, our pedagogical choices, our own research interests, and anything else that comes up in class. We also welcome conversation about topics outside the course, such as your educational goals and challenges, your career aspirations, and your background. We are excited to get to know you!

- Professor Tani's office hours are **Wednesdays from 3-5 p.m. EST**. I will be available in my office in the law school (Golkin 223). The format is “open,” meaning anyone may drop in at any point during the designated time span. You may also meet with me by appointment, either in person or over Zoom. Appointments are the best option if you want to chat about something private or personal. Please don't hesitate to reach out!
- TA office hours are by appointment. Please email whichever TA you would like to meet with to set up a time to meet over Zoom or in person.

You may also ask questions over email (or via the messaging function on Canvas), within these guidelines:

- Logistical and administrative queries should go to the TAs.
- Questions or concerns about the substance of the course may be directed to the professor or to the TAs. But if at all possible, please try to ask these questions in office hours or after class rather than over email, so that you receive a timely response and so that we can make sure we understand the nature of your inquiry.

Please note that although we do our best to reply promptly to email, we may be offline in the evenings and for parts of the weekend.

### Course Materials

Your assigned readings will be a mix of primary and secondary sources. All readings will be posted on Canvas at least one week in advance (and probably earlier).

You do not need to use outside study aids to do well in this course and I do not expect you to consult any. If, for your own interest, you ever wish to read more deeply about a particular topic, please feel free to reach out and ask for suggestions. For students looking to refresh their understanding of U.S. history more generally, I recommend Eric Foner, *The Story of American Freedom* (W.W. Norton & Co., 1999) and Glenda Elizabeth Gilmore & Thomas J. Sugrue, *These United States* (W.W. Norton & Co., 2015).

### Course Requirements

I expect students to attend all class sessions and to do so having read the assigned materials. Attendance is a course requirement and will be monitored. I also understand the challenges of this moment and am prepared to excuse absences for a range of reasons, whether that is your obligation

to care for a sick family member or your need to recover from illness. [See below, “Accommodations.”] Please communicate with the TAs about any missed classes.

Other course requirements are: (1) completion of the “how to read a case” exercise; (2) completion of two short quizzes (approximately 15 minutes each) related to readings and lectures; (2) completion of an in-class midterm; (3) completion of two “Question and Discussion” postings on Canvas; and (4) completion of an in-person final exam (oral and written components). [See below, “Evaluation,” for more information]

## Evaluation

Final grades will be calculated according to the following percentages: attendance (5%) [we will take attendance, but there is no penalty for excused absences]; “Questions and Discussion” submissions (10%); quizzes and “how to read a case exercise” (20%); midterm (25%); final exam (40%).

Please do not interpret these percentages to mean that you may safely ignore a particular assignment or assessment. Failure to submit a midterm exam or a final exam will result in a failing grade for the course. Neglect of other requirements may make it difficult for you to pass.

Attendance: The TAs will keep a record of attendance. If you have to join a class late, you may wish to check in with them so that you are not marked “absent” that day.

“How to Read a Case” exercise: This short exercise, assigned at the beginning of the semester, is designed to help you understand how to read a legal case, both for purposes of understanding the document’s legal meaning and its historical significance.

Quizzes: Quizzes are designed to evaluate students’ knowledge of basic concepts and to reward students who are keeping pace with the class. For students who have attended class and completed the assigned readings, the questions should not be difficult and no additional preparation will be necessary.

Midterm: This will be a traditional in-class exam, with some short answer-style questions and then a broader, essay-type question. The goals of this exam are (1) to test your knowledge of discrete concepts from the first part of the course and (2) to evaluate your ability to articulate connections across topics, drawing on evidence from lectures and readings. I have scheduled the midterm for relatively early in the semester (Feb. 26) so that you will have ample time to receive feedback and make adjustments before the final.

“Questions and Discussion” assignment: For two class sessions (assigned at the start of the semester), students should complete a short “Questions and Discussion” submission on Canvas. A successful “Questions and Discussion” submission will (1) draw on the assigned readings to identify three fruitful questions for class discussion and (2) offer independent reflections on one of those questions. Please view this as a low-stakes assignment, meant to stimulate engagement and learning. For this reason, submissions will be graded on a simple 5-point scale (1 point for each question, 2 points for the discussion). You will lose points if your questions or discussion seem disconnected

from the readings (we want to see that you really engaged with them), but you will not lose points for lack of mastery (after all, that is what lecture is meant to teach!). I will be a stickler about punctuality, however, because I like to have a sense of your reactions to the readings before finalizing my lectures. ***The deadline for each “Questions and Discussion” submission is 24 hours before the start of the assigned class.*** Late submissions are eligible for only partial credit (and if submitted after the start of the relevant class will receive no credit).

Final exam: This exam will have a written component and an oral component. The written component will include short answers and a longer essay-type question. The goals of this exam are (1) to test your knowledge of discrete concepts from the course and (2) to evaluate your ability to articulate connections across topics and time periods, drawing on evidence from lectures and readings. The oral component will involve a short meeting with me or one of the TAs where we will have a conversation with you about a pre-circulated question.

Grade re-evaluation policy: The TAs and I want you to succeed in this course and aim to reward students who have met expectations. We realize, however, that sometimes you may disagree with our assessments of how well you have satisfied our standards. If you are in this position, we ask that you follow the procedure below:

- Please wait for a minimum of 24 hours after receiving the grade to seek an adjustment.
- To pursue an adjustment, please send the relevant TA a written explanation of why you think you deserve a different grade. There is no required length for these documents, but for situations other than a simple miscalculation, 2-3 paragraphs is probably appropriate. We thank you in advance for adopting a respectful tone in your submission.
- The TA will look over your appeal document and set up a meeting with you to discuss your concerns.
- If the TA is unable to resolve your concerns, you may forward your appeal to me (Professor Tani) for a final decision. Please note that by initiating this process, you are inviting “de novo” review of the disputed assignment– *i.e.*, a complete “do over” on the part of the evaluator. The result could be a grade that is lower, higher, or the same as the one initially received.

### Accommodations

I realize that making accommodations is part of ensuring fair educational opportunities. As you think about what you may need, please consult the following guidance:

- Occasionally missing class: If you know in advance that you will need to miss a class to observe a religious holiday or for a health- or disability-related reason\*, please email the TAs so that we know not to expect you in class that day and so we can give you an opportunity to catch up on what you missed. (\**You do not need to disclose the specific health or disability reason in detail.*) If you fall ill unexpectedly, let us know when you are able to do so. Absences for these reasons are excused, as are absences related to family emergencies. If you need to miss class more than

occasionally, this may affect your ability to pass the class and we should have a conversation as soon as this situation becomes apparent to you.

- Test-taking accommodations: For accommodations related to quizzes and exams, please direct your requests to the [Office of Student Disability Services](#) (SDS). These services are free and confidential. We will implement whatever accommodations SDS recommends.
- Other accommodations: For other accommodations (for example, involving the way in which material is presented and distributed), we welcome you to approach us directly, to consult SDS, or to do some combination of those things—whatever makes you feel most comfortable. If you approach us directly and we are not sure how to address the situation, we can work together to identify the appropriate support staff on campus.

### Classroom Expectations

Please eliminate phone, email, and other electronic distractions during class. In all other ways, please do your part to maintain a collegial and professional learning environment. In a class of this size, I will not monitor your behavior closely, but I will notice if you are distracting other students. And your course grade will likely suffer if you are not absorbing the material I am conveying in class.

### Recording and Distributing Course Content

I do not plan to record our class sessions. If you need to miss class for an excused reason and you want to know what you missed, please email me and the TAs. One of us will arrange to meet with you to talk about the relevant course material.

Personal recordings of lectures or class discussions are not permitted (unless necessary for accommodations purposes and approved by me). This policy exists to ensure the confidentiality of our classroom discussion and thereby facilitate the free exchange of ideas. It also helps ensure that course content will not end up being distributed beyond the class.

For similar reasons, I ask that you not copy or distribute slides, discussions threads, or other content from our Canvas site.

### A Reminder of Other Important School-Wide Policies and Resources

- I understand that your personal well-being may affect your ability to succeed in this class and that some of you may be facing acute emotional, social, financial, and other challenges. As you manage those challenges, keep in mind the resources available from Penn. A useful entry point is the “Wellness at Penn” [website](#).
- You deserve to learn in an environment that is free from harassment and discrimination. If your experience does not conform to Penn’s high standards, please know that resources are available to you. Consider as a starting point Penn’s [Sexual Misconduct Policy](#) and Penn’s policies regarding [equal opportunity, nondiscrimination, and diversity](#). These policies include information about how to raise concerns and initiate complaints.

- Please familiarize yourself with Penn’s [Code of Academic Integrity](#), even if you think you have a good idea of what it says. Under Penn’s policy, “[i]gnorance of the rules is no excuse” for a violation and the potential consequences are serious. Notably, the Code’s coverage extends beyond cheating and plagiarism to include “facilitating academic honesty,” taking “unfair advantage,” and other categories of behavior that may be unfamiliar to you.
- The policies of the University of Pennsylvania protect academic freedom, as defined in the [AAUP’s 1940 Statement of Principles](#). This statement has been endorsed by over 250 scholarly and educational organizations in the United States, and its principles are written into faculty handbooks nationwide, including [Penn’s](#). These principles exist to protect the integrity of research and teaching from interference by those who might seek to make universities serve private and political interests. They are founded on the idea that a university’s purpose is to generate new knowledge that can serve the common good in a democratic society, and that generating new knowledge requires free and open inquiry. To safeguard the university’s public mission, academic freedom entails: (1) The right of faculty members to full freedom in research, teaching, extramural speech (public speech on issues of general concern) and intramural speech (speech about the university itself, including criticism of it); and (2) the right of students to freedom in learning, which includes freedom of association and expression and freedom of inquiry in the classroom. For further information about academic freedom, see the [AAUP-Penn website](#).

### How This Course Fits into Your Penn Education

This course is one of the three required core courses for the [Minor in Legal Studies and History](#), which is jointly offered by the Wharton School and the College of Arts and Sciences. You could also count this class towards a [Major in History](#). And it is a useful course for anyone considering a future career in law.

If you enjoy legal history, you might also consider:

- HIST 1119 (formerly HIST 168): History of American Law to 1877
- HIST 1201: Foundations of Law
- HIST 2202: Taking Things: A History of Property and Law
- HIST 3202: Medieval Justice
- HIST 1110 (formerly HIST109): Hamilton's America: US History 1775-1800
- HIST 1166: A Nation of Immigrants Reconsidered
- HIST 1172: Bodies, Race and Rights: Sex and Citizenship in Modern America
- HIST 1733: Free Speech and Censorship
- HIST 1740: Capitalism, Socialism and Crisis in the 20th Century Americas
- HIST 2159: History of Family Separation
- HIST 3910: Immigration and the Making of US Law

Plan for the Course (draft – subject to change)

Class 1 [Jan. 22]	Introduction to the Course; Recap of the Main Themes of Reconstruction
Class 2 [Jan. 24]	“Problem” Populations and Federal Power: Mormons, Native Americans, and the Poor
Class 3 [Jan. 29]	Hardening Borders: Chinese Exclusion and the Rise of Jim Crow
Class 4 [Jan. 31]	American Empire: The Long Tail of the Insular Cases
Class 5 [Feb. 5]	The Right to Profit: Intellectual Property and the Provision of Public Goods
Class 6 [Feb. 7]	Making Capitalism Safe: The Law of Industrial Accidents
Class 7 [Feb. 12]	Law, Courts, and the Progressive Ideal
Class 8 [Feb. 14]	She, the People: The Regulation and Rights of Women
Class 9 [Feb. 19]	Policing Americanism in World War I and After
Class 10 [Feb. 21]	The First “New Federalism”: National Prohibition and Federal-State Grants-in-Aid
Class 11 [Feb. 26]	MIDTERM
Class 12 [Feb. 28]	The New Deal: A Constitutional Revolution?
End of the Drop Period [Feb. 27]	
SPRING BREAK	
Class 13 [Mar. 11]	World War II and Civil Liberties
Class 14 [Mar. 13]	The Cold War, the “Rule of Law,” and Desegregation
Class 15 [Mar. 18]	Anti-communism, the Administrative State, and the Rights-Bearing Poor
Class 16 [Mar. 20]	The Rights Revolution and Its Discontents
Class 17 [Mar. 25]	Abortion as a Constitutional Question
Class 18 [Mar. 27]	{Flex day}
Class 19 [Apr. 1]	Endangered Workers and Consumers: Recognition and Reform

Last day to withdraw from the course [Apr. 2]

Class 20 [Apr. 3]      Marriage Equality in the 1970s and Beyond

Class 21 [Apr. 8]      The Conservative Legal Movement

Class 22 [Apr. 10]     Disability and the Law: How Disability-based Discrimination Became Illegal

Class 23 [Apr. 15]     Reckoning with Sexual Harassment and Violence

Class 24 [Apr. 17]     The Closing of the Courts: The Counterrevolution Against Federal Litigation

Class 25 [Apr. 22]     The War on Crime and the Rise of “Mass Incarceration”

Class 26 [Apr. 24]     Gun Control and the Second Amendment

Class 27 [Apr. 29]     Law and the War on Terror

Class 28 [May 1]      “History and Tradition”: The Contemporary Significance of Legal History

[TBD May 6-14]:      Final Exam