Description: This is an introductory course examining the foundations of law in American society, historical and contemporary uses of law, and the conflict between individual freedom and government power. We will explore the nature of law and rules and the extent to which judges should have discretion to bend the rules for the sake of justice; whether the law should be used to enforce morality; and whether courts are an effective means for implementing social change. Specific topics include the jury system, gun control, police powers during a pandemic, rights of corporations, contracts, and torts. We draw on a variety of sources including film and literature, court cases, and historical and social science research.

Requirements: Grades will be based on: two exams (20 points each), quizzes and short assignments (30 points), a moot court paper of 6-8 pages (20 points), and class participation (10 points), which will be based on contributions to class discussion. Students are expected to come to class prepared to discuss the reading listed for that class. For every unexcused absence beyond 2, your grade will be reduced by 2 points. You should take notes of all the readings, of lectures, and of class discussions. As an incentive to take good notes, for the exams you will be permitted to use any notes you authored, but you will not be permitted to have access to the readings or to notes not authored by you. You should brief cases. A sample brief is online.

The default grading scale is 94-100 (A), 90<94 (A-), 87<90 (B+), 84<87 (B), 80<84 (B-), 77<80 (C+), 74<77 (C), 70<74 (C-), 67<70 (D+), 64<67 (D), 61<64 (D-), <61 (F). I may utilize a curve but only if doing so would yield a higher rather than a lower grade than what the student would earn using the default scale.

Honor Code: Students agree to adhere to the honor code, see http://www.fau.edu/honors/academics/honor-code/. If you have any doubts about what constitutes plagiarism or a violation of the honor code, consult with the professor beforehand.

Office Hours: TBA, or phone (799-8670) or email (tunick@fau.edu). Office location is HC 104.

Reading: The following books have been ordered: Herman Melville, Billy Budd; John Lott, More Guns, Less Crime; Adam Winkler, We the Corporations; Gerald Rosenberg, The Hollow Hope. Other readings are in Canvas. Be sure to bring to each class the reading for that day’s class as you will need to refer to it in class discussion.

Schedule: Specific topics and readings are listed in Canvas. Each topic has its own Module with background information and links to the reading, quizzes to help you understand the
material, and discussion boards. We will also have graded class debates. Be sure to check Canvas regularly.

I. Introduction: Types of law, sources of law, researching the law
1/11. Introduction: Public vs Private law; reading the law; researching the law
Rdg: Fountainebleau Hotel v. Forty-Five Twenty-Five, Inc.

II. Public Law
A. The U.S. Constitution

1/13. The U.S. legal system and U.S. Constitution
Rdg: U.S. Constitution; Winkler, We the Corporations, ch. 1

1/18: No class, Martin Luther King, Jr. Day

B. 2nd Amendment: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed"

1/20. Pre-Heller: the ‘collectivist’ reading of the 2nd Amendment
    Video excerpt of Black Panthers on gun regulation, from 'Berkeley in the 60s'

1/25. The Supreme Court’s about face: Heller, McDonald

1/27. The policy debate: what is the effect of gun control on crime?


C. Police Powers
1. Inequality and the law
2/1. Caroline Light, Stand Your Ground (Boston: Beacon Press, 2018)
2. Police powers during a pandemic (with moot court)

2/3 Rdg: Lochner v. New York

2/8 Rdg: West Coast Hotel Co. v. Parrish (1937); Williams v. Lee Optical; Comm v. Tewkesbury (1846); In re Goddard (1835); Tanner v. Albion (1843); Hissem v. Guran (1935); Beers v. Arkansas

2/10 Rdg:

2/15 Moot Court

3. Legal Moralism and paternalism

2/17: Rdg: World Bank Group, "Do Smokers Know their Risks and bear their Costs?", ch. 3 of Curbing the Epidemic: Governments and the Economics of Tobacco Control, available online; "NY Bans Transfats," Economist Nov. 25, 2006; "Georgia Man Fights Conviction as Molester" and "Husband sentenced for sex with girl, 13"

2/22. Is there a moral or legal duty to help others?


2/24. The case of Jeremy Strohmeyer

III. The philosophy of law: What is law? How are laws different from other sorts of commands? Is discretion in interpreting law desirable or dangerous? Is law autonomous from politics?
3/1. Theories of law

3/3. The Speluncean Explorers and the nature of law

3/8-3/10: No class due to spring break
3/15 Discretion in the law: Melville’s **Billy Budd**
Rdg: Melville, Billy Budd

3/17 Discretion in the law: should we make exceptions to rules, or go beyond statutes to arrive at justice?
Rdg: People v. Davis (286 N.Y.S. 2d 396, 1967); Riggs v. Palmer; Atwater v City of Lago, 532 U.S. 318 (2001), concerning custodial arrests for minor traffic offenses

3/22 Who should have discretion--Juries? The issue of jury nullification

### IV. Private Law

#### A. Contracts

3/24 Mills v. Wyman, 3 Pick. 207 (1826); Webb v. McGowin, 168 So. 196 (1936), Britton v. Turner, 6 N.H. 481 (1834); Garcia v. von Micsky, 602 F.2d 51 (1979); McDevitt v. Stokes, 192 S.W. 681 (1917)


#### B. Torts

3/31 Rdg: Troppi v. Scarf, 282 NYS 2d 858 (1967); Lange v. Hoyt, 114 Conn 590 (1932)

4/5 Rdg: (Privacy torts)

### V. Juries

4/7 Are juries equipped to resolve complex disputes?
Film: Twelve Angry Men (1957, dir. Lumet) (96 minutes).

4/12 Rdg: Stephen J. Adler, *The Jury: Disorder in the Court*, pp. 84-144
For those interested: Congressional Quarterly Researcher: The Jury System, [online](#)

### VI. Law and social change
Is law an effective tool for social change?
Rdg: Gerald Rosenberg, *The Hollow Hope*, ch. 1-5 (pp. 9-169)

Law as an instrument of social change (continued)
Rdg: Rosenberg, pp. 304-314.

**VII. Corporations and the law**

4/21 Rdg: Winkler

4/26 Rdg: Winkler

**Additional notes:**

**Policy on Accommodations:** In compliance with the Americans with Disabilities Act Amendments Act (ADAAA), students who require reasonable accommodations due to a disability to properly execute coursework must register with Student Accessibility Services (SAS) and follow all SAS procedures. SAS has offices across three of FAU’s campuses -- Boca Raton, SU 131 (561-297-3880); in Davie, LA 131 (954-236-1222); in Jupiter and all Northern Campuses, SR 111F (561-799-8585). Disability services are available for students on all campuses. For more information, please visit SAS website at www.fau.edu/sas/.

**Counseling and Psychological Services (CAPS) Center:** Life as a university student can be challenging physically, mentally and emotionally. Students who find stress negatively affecting their ability to achieve academic or personal goals may wish to consider utilizing FAU’s Counseling and Psychological Services (CAPS) Center. CAPS provides FAU students a range of services – individual counseling, support meetings, and psychiatric services, to name a few – offered to help improve and maintain emotional well-being. For more information, go to http://www.fau.edu/counseling/

**Code of Academic Integrity Policy Statement:** Students at Florida Atlantic University are expected to maintain the highest ethical standards. Academic dishonesty is considered a serious breach of these ethical standards, because it interferes with the university mission to provide a high quality education in which no student enjoys an unfair advantage over any other. Academic dishonesty is also destructive of the university community, which is grounded in a system of mutual trust and places high value on personal integrity and individual responsibility. Harsh penalties are associated with academic dishonesty. For more information, see University Regulation 4.001 and the WHC Academic Honor Code at http://www.fau.edu/honors/academics/honor-code.php.

**Classroom Etiquette Policy:** In order to enhance and maintain a productive atmosphere for education, personal communication devices such as smartphones are to be disabled during class.
**Attendance Policy:** Students are expected to attend all of their scheduled University classes and to satisfy all academic objectives as outlined by the instructor. The effect of absences upon grades is determined by the instructor, and the University reserves the right to deal at any time with individual cases of non-attendance. Students are responsible for arranging to make up work missed because of legitimate class absence, such as illness, family emergencies, military obligation, court-imposed legal obligations or participation in University-approved activities. Examples of University-approved reasons for absences include participating on an athletic or scholastic team, musical and theatrical performances and debate activities. It is the student’s responsibility to give the instructor notice prior to any anticipated absences and within a reasonable amount of time after an unanticipated absence, ordinarily by the next scheduled class meeting. Instructors must allow each student who is absent for a University-approved reason the opportunity to make up work missed without any reduction in the student’s final course grade as a direct result of such absence. Florida Atlantic University policies regarding incomplete grades can be found in the University Catalog. Late work is subject to a grade reduction.

*Updated May 25, 2020*