Cleveland State Law Review

Volume 71 | Issue 2 Article

4-15-2023

The Role of Law in U.S. History Textbooks

Russ VerSteeg
New England Law | Boston

THE ROLE OF LAW IN U.S. HISTORY TEXTBOOKS

RUSS VERSTEEG*

ABSTRACT

This Article analyzes the references to law found in three standard U.S. History textbooks: (1) ALAN BRINKLEY, AMERICAN HISTORY CONNECTING WITH THE PAST 745 (McGraw-Hill Educ., 15th ed. 2015); (2) ERIC FONER, GIVE ME LIBERTY! AN AMERICAN HISTORY 461 (Steve Forman et al. eds., 5th ed. 2017); and (3) DAVID GOLDFIELD ET AL., THE AMERICAN JOURNEY: A HISTORY OF THE UNITED STATES (7th ed. Combined vol. 2014, 2011, 2008). The Article includes a quantitative analysis of topics (*i.e.*, tabulating the topics that appear most frequently in the texts arranged chronologically) as well as summaries of those topics. It also discusses and draws conclusions regarding the forces that have shaped the development of American legal history—in particular the complex relationships among interest groups, individual historical figures, executives, legislators, and judges.

* Professor Emeritus, New England Law | Boston (A.B., UNC-Chapel Hill; J.D., University of Connecticut School of Law). Thanks to Dana LoSasso, New England Law | Boston class of 2016, for exceptional assistance with historiographical sources. I would like to thank Barry Stearns, Research Librarian at New England Law | Boston. I'm also appreciative of the professional work done by the editors and staff at the *Cleveland State Law Review*; their contributions appreciably improved the Article. All errors and/or omissions, however, should be attributed to me, not those who provided research and editorial assistance.

CONTENTS

I. INTRODUCTION

No doubt, people acquire an interest in law and feel called to the legal profession for many reasons. Presumably, what high school and college students read in their history books is occasionally one factor that sparks an interest in law. The study of history provides fertile ground for exploration of many of law's most important topics. In addition to general inquiries regarding right and wrong, justice, equality, fairness, trial by jury, the establishment of governments, and the like, the study of history typically offers perspective regarding the intersection of myriad socioeconomic issues as they relate to law.

A couple of years ago, it occurred to me that it would be interesting to read a few U.S. History textbooks with an eye toward the way that those books treat legal topics.

I looked at several titles online and decided to focus on three: (1) ALAN BRINKLEY, AMERICAN HISTORY CONNECTING WITH THE PAST 745 (McGraw-Hill Educ., 15th ed. 2015); (2) ERIC FONER, GIVE ME LIBERTY! AN AMERICAN HISTORY 461 (Steve Forman et al. eds., 5th ed. 2017); and (3) DAVID GOLDFIELD ET AL., THE AMERICAN JOURNEY: A HISTORY OF THE UNITED STATES (7th ed. Combined vol. 2014, 2011, 2008).[1] Although it is not a simple matter to discover just how many high schools and/or colleges and universities use these particular textbooks, apparently a great many teachers and professors assign these three for their U.S. History classes. I purchased them in hardcopy and began reading them with a highlighter in hand, highlighting every passage that, in my opinion, related to law. I quickly discovered that I was highlighting a great deal.

As I read, I began to notice also that the authors mentioned certain legal topics more than others. As often happens when working on a project, one's ideas develop gradually and frequently move in directions not necessarily planned or anticipated. My original idea was that, by reading these textbooks with an eye toward analyzing their treatment of legal issues, I would be able to develop a hypothesis about the effect that the study of U.S. History in general and these books in particular might have in motivating or otherwise influencing high school and college students to consider legal careers (*e.g.*, attending law school). As I read, however, it occurred to me that such a hypothesis probably involved far too much subjectivity. Cause-and-effect analysis is often fraught with uncertainties. I suspect that there are many factors that influence young people's decisions to undertake legal careers. And I suspect that it is perhaps rather obvious that one such factor for some is an interest in law sparked in part by study in high school and/or college U.S. History classes. Classroom discussions wherein students exchange ideas and opinions, teachers' and professors' lectures, and textbook readings likely play key roles in many students' decisions to pursue careers in the legal profession. I suspect that a poll of law students, lawyers, legal assistants, judges, and others working in the law would support that supposition. Consequently, I think it is best to leave my initial hypothesis there—that is to acknowledge that there is probably some truth to it but also to acknowledge that an analysis of the treatment of legal topics in U.S. History textbooks is probably unlikely to serve as data tending to prove or disprove it.

The principal conclusion I drew from this research may, in retrospect, be obvious to serious students of the study of legal history. American law has and continues to change and adapt to new circumstances.[2] And those changes, by and large, have come about through a recognizable pattern of development. The textbooks' discussions of law and legal matters reveal that, when individuals and/or groups have perceived some imbalance or injustice, they have found ways to express their point of view to

---

[1] All three books bear relatively recent publication dates: 2014; 2015; and 2017. It is probably useful to remember that histories typically reflect the period of time during which they are written. *See* E. H. CARR, WHAT IS HISTORY? 5 (Penguin Classics 2018) (1961) ("When we attempt to answer the question, What is history?, our answer, consciously or unconsciously, reflects our own position in time, and forms part of our answer to the broader question, what view we take of the society in which we live.") [hereinafter "CARR, WHAT IS HISTORY?"]; *see also* MARC BLOCH, THE HISTORIAN'S CRAFT 35 (Peter Putnam, trans., Alfred A Knopf, Inc. 1953) ("[A] historical phenomenon can never be understood apart from its moment in time.").

[2] *See* BLOCH, *supra* note 1, at 46 ("[I]t is change which the historian is seeking to grasp.").

legislators, executives, and/or judges. In response to the concerns raised by the individuals or groups, the legislators, executives, and/or judges then either promulgate laws or interpret them in ways that take into account the points of view expressed by the individuals or groups. Typically, the promulgations or interpretations of legislators, executives, and/or judges then trigger reactions from other individuals or groups who, in turn, perceive an imbalance or injustice caused by the recent promulgations or interpretations. Those groups or individuals then reach out to the legislators, executives, and/or judges to voice their opinions about that perceived imbalance or injustice. In response, the legislators, executives, and/or judges then promulgate laws or interpret them in ways to take into account the concerns of the latest individuals or groups. And this process of advocacy, promulgation, and interpretation continues in a manner that creates a development of law.[3] The process moves slowly. Ideally the process, however, ultimately considers a variety of points of view and ultimately achieves balance and justice for all involved. It is useful to keep in mind that throughout all of this give-and-take, it is people—individuals, groups, legislators, executives, and judges who are communicating, thinking, analyzing, and probing for solutions to promote balance and justice.[4]

Part III of this Article provides a synopsis of macroscopic observations. Part IV contains the data collected in tabular form. Part V then, generally speaking, offers observations and comments regarding the data in their chronological context. More specifically, Part V also includes what I call "highlights" of the legal topics that receive the most discussion in the textbooks. The "highlights" Subparts offer brief summaries of the topics that quantitatively are in the top twelve of the twenty-three categories. In addition, I have occasionally included "highlights" for other topics that are not in the top dozen quantitatively. I summarize those topics because, although not quantitatively in the top twelve, I considered them qualitatively to warrant highlighting. Part VI briefly summarizes the findings and offers other reflections about them.

---

[3] This developmental process appears to support Professor Carr's observation: "The facts of history are indeed facts about individuals, but not about actions of individuals performed in isolation, and not about the motives, real or imaginary, from which individuals suppose themselves to have acted. They are facts about the relations of individuals to one another in society and about the special forces which produce from the actions of individuals results often at variance with, and sometimes opposite to, the results which they themselves intended." CARR, WHAT IS HISTORY?, *supra* note 1, at 64; *see also* CARR, WHAT IS HISTORY?, *supra* note 1, at 113–17 ("The study of history is a study of causes. The historian . . . continuously asks the question: Why?; and, so long as he hopes for an answer, he cannot rest. . . . Other people distinguish between different kinds of cause—mechanical, biological, psychological, and so forth—and regard historical cause as a category of its own. . . . Every historical argument revolves around the question of the priority of causes.").

[4] *See* BLOCH, *supra* note 1, at 26 ("Behind the features of landscape, behind tools or machinery, behind what appears to be the most formalized written documents, and behind institutions, which seem almost entirely detached from their founders, there are men, and it is men that history seeks to grasp. Failing that, it will be at best but an exercise in erudition. The good historian is like the giant of the fairy tale. He knows that wherever he catches the scent of human flesh, there his quarry lies.") (footnote omitted).

II. METHODOLOGY

What my reading did suggest, however, is that U.S. History textbooks discuss law a significant amount. As mentioned, while I read each text, I highlighted material that I considered to relate to law. There were some sentences and passages that one might say objectively deal with legal topics. For example, when a textbook discusses a Supreme Court case or legislation, such instances objectively relate to law. To be sure, however, there was also a certain degree of subjectivity involved in my work. Admittedly, I highlighted passages that indirectly relate to law, such as references to taxes, crime, historical figures who were lawyers, and abstractions like justice and liberty.[5] Thus, it is fair to say that I highlighted material that relates to law both directly/objectively and indirectly/subjectively. As regards the indirect/subjective notations, I tried my best to be consistent. If nothing else, the fact that I did all of the reading and highlighting on my own (*i.e.*, I did not use research assistants who might have had different subjective points of view), increases the likelihood that I used mostly the same subjective criteria when deciding whether material related to law. One thing that is clear is textbook authors write a lot about law. The sheer amount of legal discussion is certainly significant.[6]

After reading and highlighting each textbook, I then manually typed each highlighted passage. Next, I arranged each passage using legal categories. Categorization also involves subjectivity.[7] Simply deciding what to call each category (*i.e.*, the "labels") is subjective. In addition, deciding into which category and/or categories to put any given passage is subjective. Indeed, I put many passages into several categories. For example, a passage dealing with an aspect of constitutional law might also relate both to the treatment of African Americans and/or other minorities, and voting rights as well.[8] When I finished reading, highlighting, typing, and

---

[5] *See* CARR, WHAT IS HISTORY?, *supra* note 1, at 108 ("The practical content of hypothetical absolutes like equality, liberty, justice, or natural law varies from period to period, or from continent to continent.").

[6] *See* JAMES THOMSON SHOTWELL, AN INTRODUCTION TO THE HISTORY OF HISTORY 3 (James T. Shotwell ed. 1922) [hereinafter "SHOTWELL, HISTORY OF HISTORY"] ("We are dealing with historians, their methods, their tools and their problems; not with the so-called 'makers of history' except as materials for the historian, — not with battles and constitutions and 'historical' events, in and for themselves, but only where the historian has treated them. And it is his treatment rather than the events themselves which mainly interests us.").

[7] I am mindful of the precarious nature of creating categories. *See, e.g.*, BLOCH, *supra* note 1, at 147–48 ("It is the business of the historian to be always testing his classifications in order to justify their existence and, if it seems advisable, to revise them . . . For example, we have 'the history of the law.' The textbooks, always admirable tools of sclerosis, have popularized the term. But, what does it mean? A legal rule is a social norm, explicitly imperative, sanctioned by an authority capable of imposing respect by an exact system of compulsions and penalties."). *See also* MICHAEL BENTLEY, MODERN HISTORIOGRAPHY AN INTRODUCTION 91 (1999) ("Most observers agreed that researchers should look for common characteristics in the phenomena that they studied and try to form classifications—*Klassenbegriffe*—based on those perceptions.") [hereinafter "BENTLEY, MODERN HISTORIOGRAPHY"].

[8] *See, e.g.*, 2 ERIC FONER, GIVE ME LIBERTY! AN AMERICAN HISTORY 461 (Steve Forman et al. eds., 5th ed. 2017).

categorizing material from all three books, I had developed twenty-three categories and noted thousands of references in those categories. In addition to categorization by legal topic, I also arranged the material I had gathered into chronological periods. I divided my research into four major chronological periods, using major military conflicts (*i.e.*, wars) as dividing lines:

(1) Pre-Colonial through the Revolutionary War;

(2) Post-Revolutionary War through the Civil War;

(3) Post-Civil War through World War II; and

(4) Post-World War II to the Present.[9]

Hence, this Article examines the coverage of law and legal issues found in three U.S. History textbooks commonly used in schools. The three textbooks surveyed are aimed at either AP high school or entry-level college students. Although, as mentioned above, the research for this Article rests on a certain degree of subjectivity, but it does strive for a measure of empirical accountability. My goal has been to present my findings in as objective a fashion as possible. The sheer number of instances in the textbooks that relate to certain legal topics during any given period (*i.e.*, the degree to which authors emphasize those topics) may reflect simply the historical activity during the period under consideration. It is also likely that the number of references also reflects the degree of importance that the textbook authors assign—either consciously or subconsciously—to those legal topics.

III. SYNOPSIS OF PRELIMINARY OBSERVATIONS

When organizing the material, I grouped legal references into twenty-three legal categories/topics. The majority of categories are probably self-explanatory. There are a few, however, for which some explanation may be helpful. Category (2) Constitutional Law and Procedure includes matters dealing with the United States Constitution, state constitutions, as well as civil and criminal procedure (the latter of which there are very few references), and also references relating to government and political science. These topics are related to one another so closely that combining them is logical. A number of categories overlap to some extent. For example, there are instances where (6) Environmental, (7) Foreign Policy, (11) Marriage and Family, (12) Military, (15) Property, (19) Tax and (21) Trade and Commerce intersect.[10] As a

---

9 *See* BLOCH, *supra* note 1, at 183 ("Of course, we readily understand the potential charms of divisions regularly arranged according to empires, kings, or political regimes. Not only do they have the prestige which a long tradition associates with the exercise of power, 'with those deeds,' as Machiavelli puts it, 'which have the air of grandeur proper to acts of government or of the state'; but an accession, a revolution, has its chronological position determined to a year and even to a day. Now, the scholar loves close dating. He finds it both an appeasement to his instinctive horror of the vague and a great comfort to the conscience. He wants to have read and to have checked everything which concerns his subject. How much easier this will be if, standing before each file of archives with his calendar in his hand, he can divide them into categories: before, during, and after!").

10 FONER, *supra* note 8, at 51 (showing how dower rights intersected property and family law); ALAN BRINKLEY, AMERICAN HISTORY CONNECTING WITH THE PAST 745 (McGraw-Hill Educ., 15th ed. 2015) (showing how American foreign policy impacted the military's usage in the Korean War); *id.* at 766 (showing how the Sierra Club's opposition to the dam intersected

rule, when a reference relates to more than one category, I have included it in all of those categories rather than trying to assign it to just one. Category (9) Incidental includes mostly casual references such as those that merely mention that a particular individual was a lawyer. Category (17) Social Engineering admittedly could be subdivided. It includes a variety of topics such as child labor, infrastructure, citizenship, welfare, unemployment, sanitation, mental illness, alcohol, and others. And it would certainly be possible to separate (18) Slavery and African Americans into two categories. The principal difficulty with trying to do so would be to differentiate between laws dealing with the status of servitude versus laws that relate to the status of race. Like trying to untie the Gordian Knot, when considering the trajectory of law in U.S. history, this would prove to be a nearly impossible task. Consequently, for purposes of this Article, legal references that relate to either slave status or the racial status of African Americans are included in one group.[11] Below are the twenty-three categories arranged alphabetically:

(1) Civil Liberties and Human Rights

(2) Constitutional Law and Procedure

(3) Contracts

(4) Criminal Law

(5) Education

(6) Environmental

(7) Foreign Policy

(8) Immigration

(9) Incidental

(10) Labor (Organized)

(11) Marriage and Family

(12) Military

(13) Native Americans

(14) Other Minorities (*i.e.*, minorities other than African Americans, Native Americans, and women)

(15) Property

(16) Religion

(17) Social Engineering

---

environmental issues and the government's use of property); *see, e.g.*, FONER, *supra* note 8, at 623 (showing a Congressional act where tax and trade policy intersected).

11 *See* CARR, WHAT IS HISTORY?, *supra* note 1, at 174 ("[C]onsider the historical facts which in the last century and a half have caused slavery or racial inequality . . . — . . . once accepted as morally neutral or reputable—to be generally regarded as immoral.").

(18) Slavery and African Americans

(19) Tax

(20) Torts

(21) Trade and Commerce

(22) Voting and Elections

(23) Women

I counted 7,781 legal references in the three textbooks with 2,826 in Goldfield, 2,641 in Foner, and 2,314 in Brinkley. The topics that receive the most attention, and combined, account for over one-third (33.516%) of all legal references, are: Slavery and African Americans—920 total references (11.823%); Constitutional Law and Procedure—915 total references (11.759 %); and Trade and Commerce—773 total references (9.934 %).[12] It is not surprising that these should lead the list. Slavery and the struggles of African Americans for equality have been dominant themes in our history as a nation.[13] The creation of our Federal Constitution and issues related to governing and government policies have proved contentious and required legislation and adjudication.[14] And the evolution of capitalism and its need for economic controls has likewise tested our legal system time and again.[15] The only other categories that individually account for over 5% of the total references are: Foreign Policy—558 (7.171%); Tax—533 (6.850%); Property—491 (6.310%); Social Engineering—441 (5.667%); and Criminal Law—413 (5.307%). Civil Liberties and Human Rights—377 (4.845%) and Military—339 (4.356%) are the only two categories that are over 4% but under 5%. Nearly three-quarters of all legal references (74%) fall into these top-ten categories.[16] The remaining thirteen categories constitute only 26%, with only Native Americans—(3.585%); Women—(3.431%); and Voting and Elections—(3.007%) reaching more than 3% each.[17]

---

[12] It is quite clear that historians have been intently interested in the development of commercial law. *See, e.g.*, SHOTWELL, HISTORY OF HISTORY, *supra* note 6, at 66 ("History, in [the Euphrates], dawns for us, – since the rise of modern archæology, – with the scratches of those early scribes, noting the sales of a merchant . . . . From the days when Hammurabi dictated his despatches [sic] and had his laws inscribed, to the closing of the Persian era, the little lumps of clay, baked and sealed, were as important instruments in carrying on affairs as the armies of the kings or the goods of the merchants.").

[13] *Slavery and Freedom in American History and Memory*, YALE MACMILLAN CTR., https://glc.yale.edu/aces (last visited Sept. 29, 2022).

[14] *See* Susan Low Bloch & Maeva Marcus, *John Marshall's Selective Use of History in Marbury v. Madison*, 1986 WIS. L. REV. 301, 336 (1986) (demonstrating an instance where the Court had to adjudicate decision on how the government would function).

[15] *See* Cass R. Sunstein, *Constitutionalism After the New Deal*, 101 HARV. L. REV. 421, 422 (1987) (noting how the government's intervention into capitalism has tested the legal system).

[16] *See infra* Table 1.

[17] *See infra* Table 1.

IV. DATA COLLECTED

As just noted, although the textbooks contain thousands of references to legal topics, three topics—Slavery and African Americans, Constitutional Law and Procedure, and Trade and Commerce—predominate. Foreign Policy, Tax, Property, Social Engineering, and Criminal Law comprise the next most frequently occurring categories. The tables below represent both raw numbers and percentages.

TOPIC	GOLDFIELD		FONER		BRINKLEY		TEXTBOOK TOTALS	
	#	%	#	%	#	%	#	%
1. Slavery & African Americans	363	12.84	338	12.79	219	9.46	920	11.823
2. Constitutional Law & Procedure	344	12.17	291	11.01	280	12.10	915	11.759
3. Trade & Commerce	337	11.92	229	8.67	207	8.94	773	9.934
4. Foreign Policy	245	8.66	128	4.84	185	7.99	558	7.171
5. Tax	200	7.07	149	5.64	184	7.95	533	6.850
6. Property	189	6.68	171	6.47	131	5.66	491	6.310
7. Social Engineering	131	4.63	122	4.61	188	8.12	441	5.667
8. Criminal Law	100	3.53	150	5.67	163	7.04	413	5.307
9. Civil Liberties	114	4.03	186	7.04	77	3.32	377	4.845
10. Military	135	4.77	113	4.27	91	3.93	339	4.356
11. Native Americans	99	3.50	104	3.93	76	3.28	279	3.585
12. Women	90	3.18	110	4.16	67	2.89	267	3.431

TOPIC	GOLDFIELD		FONER		BRINKLEY		TEXTBOOK TOTALS	
13. Voting & Elections	93	3.29	76	2.87	65	2.80	234	3.007
14. Contracts	60	2.12	63	2.38	79	3.412	202	2.596
15. Religion	60	2.12	89	3.36	43	1.85	192	2.467
16. Education	60	2.12	80	3.02	48	2.07	188	2.416
17. Labor	58	2.05	47	1.77	38	1.64	143	1.837
18. Immigration	42	1.48	43	1.62	50	2.16	135	1.734
19. Incidental	30	1.06	32	1.21	56	2.42	118	1.516
20. Marriage & Family	22	.77	62	2.46	21	.90	108	1.387
21. Other Minorities	21	.74	32	1.21	19	.82	72	.925
22. Torts	20	.70	11	.41	13	.56	44	.565
23. Environmental	13	.46	12	.45	14	.60	39	.501

Table 1: Topics in descending order of references and percentages for all three textbooks.

TOPIC	GOLDFIELD	
	#	%
1. Slavery & African Americans	363	12.84
2. Constitutional Law & Procedure	344	12.17
3. Trade & Commerce	337	11.92
4. Foreign Policy	245	8.66

TOPIC	GOLDFIELD	
5. Tax	200	7.07
6. Property	189	6.68
7. Military	135	4.77
8. Social Engineering	131	4.63
9. Civil Liberties	114	4.03
10. Criminal Law	100	3.53
11. Native Americans	99	3.50
12. Voting & Elections	93	3.29
13. Women	90	3.18
14. Contracts	60	2.12
15. Education	60	2.12
16. Religion	60	2.12
17. Labor	58	2.05
18. Immigration	42	1.48
19. Incidental	30	1.06
20. Marriage & Family	22	.77
21. Other Minorities	21	.74
22. Torts	20	.70
23. Environmental	13	.46

Table 2: Topics in descending order of references and percentages for Goldfield's textbook.

TOPIC	FONER	
	#	%
1. Slavery & African Americans	338	12.79
2. Constitutional Law & Procedure	291	11.01
3. Trade & Commerce	229	8.67
4. Civil Liberties	186	7.04
5. Property	171	6.47
6. Criminal Law	150	5.67
7. Tax	149	5.64
8. Foreign Policy	128	4.84
9. Social Engineering	122	4.61
10. Military	113	4.27
11. Women	110	4.16
12. Native Americans	104	3.93
13. Religion	89	3.36
14. Education	80	3.02
15. Voting & Elections	76	2.87
16. Contracts	63	2.38
17. Marriage & Family	62	2.34
18. Labor	47	1.77
19. Immigration	43	1.62

TOPIC	FONER	
20. Incidental	32	1.21
21. Other Minorities	32	1.21
22. Environmental	12	.45
23. Torts	11	.41

Table 3: Topics in descending order of references and percentages for Foner's textbook.

TOPIC	BRINKLEY	
	#	%
1. Constitutional Law & Procedure	280	12.10
2. Slavery & African Americans	219	9.46
3. Trade & Commerce	207	8.94
4. Social Engineering	188	8.12
5. Foreign Policy	185	7.99
6. Tax	184	7.95
7. Criminal	163	7.04
8. Property	131	5.66
9. Military	91	3.93
10. Contracts	79	3.41
11. Civil Liberties	77	3.32
12. Native Americans	76	3.28

TOPIC	BRINKLEY	
13. Women	67	2.89
14. Voting & Elections	65	2.80
15. Incidental	56	2.42
16. Immigration	50	2.16
17. Education	48	2.07
18. Religion	43	1.85
19. Labor	38	1.64
20. Marriage & Family	21	.90
21. Other Minorities	19	.82
22. Environmental	14	.60
23. Torts	13	.56

Table 4: Topics in descending order of references and percentages for Brinkley's textbook.

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	29	55	26	110
Post-Revolution – Civil War	41	37	16	94
Post-Civil War – WWII	21	47	15	83
WWII – Present	23	47	20	90

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Total	114	186	77	377

Table 5.1: Topics in alphabetical order by time-period for all three textbooks.

CONSTITUTIONAL LAW & PROCEDURE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	63	59	89	211
Post-Revolution – Civil War	140	103	90	333
Post-Civil War – WWII	101	80	64	245
WWII – Present	40	49	37	126
Total	344	291	280	915

Table 5.2: Topics in alphabetical order by time-period for all three textbooks.

CONTRACTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	13	10	25	48
Post-Revolution – Civil War	17	19	11	47
Post-Civil War – WWII	24	27	36	87
WWII – Present	6	7	7	20
Total	60	63	79	202

Table 5.3: Topics in alphabetical order by time-period for all three textbooks.

CRIMINAL LAW	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	15	28	33	76
Post-Revolution – Civil War	26	27	26	79
Post-Civil War – WWII	39	52	61	152
WWII – Present	20	43	43	106
Total	100	150	163	413

Table 5.4: Topics in alphabetical order by time-period for all three textbooks.

EDUCATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	1	3	4
Post-Revolution – Civil War	6	12	13	31
Post-Civil War – WWII	21	30	13	64
WWII – Present	33	37	19	89
Total	60	80	48	188

Table 5.5: Topics in alphabetical order by time-period for all three textbooks.

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0
Post-Revolution – Civil War	0	0	0	0

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	2	0	1	3
WWII – Present	11	12	13	36
Total	13	12	14	39

Table 5.6: Topics in alphabetical order by time-period for all three textbooks.

FOREIGN POLICY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	22	7	18	47
Post-Revolution – Civil War	85	31	35	151
Post-Civil War – WWII	69	35	73	177
WWII – Present	69	55	59	183
Total	245	128	185	558

Table 5.7: Topics in alphabetical order by time-period for all three textbooks.

IMMIGRATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	3	1	5	9
Post-Revolution – Civil War	9	4	11	24
Post-Civil War – WWII	20	21	19	60
WWII – Present	10	17	15	42
Total	42	43	50	135

Table 5.8: Topics in alphabetical order by time-period for all three textbooks.

INCIDENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	2	5	8	15
Post-Revolution – Civil War	10	14	11	35
Post-Civil War – WWII	14	9	30	53
WWII – Present	4	4	7	15
Total	30	32	56	118

Table 5.9: Topics in alphabetical order by time-period for all three textbooks.

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0
Post-Revolution – Civil War	5	2	2	2

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	44	26	22	102
WWII – Present	9	9	14	32
Total	58	47	38	143

Table 5.10: Topics in alphabetical order by time-period for all three textbooks.

MARRIAGE & FAMILY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	6	17	12	35
Post-Revolution – Civil War	6	19	3	28
Post-Civil War – WWII	4	10	5	19
WWII – Present	6	19	1	26
Total	22	65	21	108

Table 5.11: Topics in alphabetical order by time-period for all three textbooks.

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	11	8	11	30
Post-Revolution – Civil War	24	15	4	43
Post-Civil War – WWII	53	54	51	158
WWII – Present	47	36	25	108

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Total	135	113	91	339

Table 5.12: Topics in alphabetical order by time-period for all three textbooks.

NATIVE AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	44	49	26	119
Post-Revolution – Civil War	30	33	30	93
Post-Civil War – WWII	23	19	12	54
WWII – Present	2	3	8	13
Total	99	104	76	279

Table 5.13: Topics in alphabetical order by time-period for all three textbooks.

OTHER MINORITIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0
Post-Revolution – Civil War	1	3	2	6
Post-Civil War – WWII	10	22	16	48
WWII – Present	10	7	1	18
Total	21	32	19	72

Table 5.14: Topics in alphabetical order by time-period for all three textbooks.

PROPERTY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	40	59	54	153
Post-Revolution – Civil War	80	53	42	175
Post-Civil War – WWII	57	49	27	133
WWII – Present	12	10	8	30
Total	189	171	131	491

Table 5.15: Topics in alphabetical order by time-period for all three textbooks.

RELIGION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	28	54	30	112
Post-Revolution – Civil War	16	20	6	42
Post-Civil War – WWII	6	7	4	17
WWII – Present	10	8	3	21
Total	60	89	43	192

Table 5.16: Topics in alphabetical order by time-period for all three textbooks.

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	2	1	12	15
Post-Revolution – Civil War	7	13	24	44

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	83	58	88	229
WWII – Present	39	50	64	153
Total	131	122	188	441

Table 5.17: Topics in alphabetical order by time-period for all three textbooks.

SLAVERY & AFRICAN AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	40	52	33	125
Post-Revolution – Civil War	128	115	65	308
Post-Civil War – WWII	146	104	77	327
WWII – Present	49	67	44	160
Total	363	338	219	920

Table 5.18: Topics in alphabetical order by time-period for all three textbooks.

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	51	41	43	135
Post-Revolution – Civil War	56	39	29	124
Post-Civil War – WWII	71	47	72	190

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	22	22	40	84
Total	200	149	184	533

Table 5.19: Topics in alphabetical order by time-period for all three textbooks.

TORTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	1	0	0	1
Post-Revolution – Civil War	0	2	0	2
Post-Civil War – WWII	17	6	13	36
WWII – Present	2	3	0	5
Total	20	11	13	44

Table 5.20: Topics in alphabetical order by time-period for all three textbooks.

TRADE & COMMERCE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	68	49	47	164
Post-Revolution – Civil War	81	46	42	169
Post-Civil War – WWII	139	92	77	308
WWII – Present	49	42	41	132
Total	337	229	207	773

Table 5.21: Topics in alphabetical order by time-period for all three textbooks.

VOTING & ELECTIONS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	14	4	18
Post-Revolution – Civil War	18	21	19	58
Post-Civil War – WWII	64	31	33	128
WWII – Present	11	10	9	30
Total	93	76	65	234

Table 5.22: Topics in alphabetical order by time-period for all three textbooks.

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	7	15	9	31
Post-Revolution – Civil War	27	34	13	74

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	42	32	31	105
WWII – Present	14	29	14	57
Total	90	110	67	267

Table 5.23: Topics in alphabetical order by time-period for all three textbooks.

V. PERIOD-BY-PERIOD HIGHLIGHTS

A. Overview

As might be expected, the textbooks address some topics more than others, depending on the period under consideration. It is perhaps self-evident that executive, legislative, and judicial activity becomes more intense when social pressure focuses attention on specific issues. For example, today climate change, abortion rights, voting rights, and gender and racial equality command a significant degree of local, state, and national attention.[18] Consequently, executives are currently issuing orders, legislators are proposing bills and passing laws, and courts are resolving disputes that relate to these issues.[19] Similarly, earlier periods in our nation's history have witnessed social pressures that have caused individuals working in our governmental branches (*i.e.*, the

[18] Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2243 (2022) (noting the Supreme Court's new position on abortion); Michael Morse, *The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida*, 109 CAL. L. REV. 1143, 1146 (2021) (using the example of expanding felon voting rights in Florida to show how voting rights may expand on a national scale); Andrew Das, *U.S. Soccer and Women's Players Agree to Settle Equal Pay Lawsuit*, N.Y. TIMES (Feb. 22, 2022), https://www.nytimes.com/2022/02/22/sports/soccer/us-womens-soccer-equal-pay.html (using the example of the U.S. Women's National Soccer Team fighting for equal pay as a sign of gender equality gaining national attention); 86 C.F.R. § 7009 (2021) (using the executive order as an example of how the newly inaugurated Biden Administration moved to protect racial equality); *see* Lisa Friedman & Coral Davenport, *Senate Ratifies Pact to Curb a Broad Category of Potent Greenhouse Gases*, N.Y. TIMES (Sept. 21, 2022), https://www.nytimes.com/2022/09/21/climate/hydrofluorocarbons-hfcs-kigali-amendment.html (using the example of the United States entering a treaty as a sign that climate change is gaining national attention).

[19] *Dobbs*, 142 S. Ct. at 2243 (noting the Supreme Court's new position on abortion); Sheryl Gay Stolberg & Erik Eckholm, *Virginia Governor Restores Voting Rights to Felons*, N.Y. TIMES (Apr. 22, 2016), https://www.nytimes.com/2016/04/23/us/governor-terry-mcauliffe-virginia-voting-rights-convicted-felons.html; Timothy Williams, *Virginia Approves the E.R.A., Becoming the 38th State to Back It*, N.Y. TIMES (Jan. 15, 2020), https://www.nytimes.com/2020/01/15/us/era-virginia-vote.html; 86 C.F.R. § 7009; *see* Friedman & Davenport, *supra* note 18.

executives, legislators, and judges) to use the legal machinery at their disposal in an effort to advance positions that they consider best.[20] What they consider best no doubt varies, depending on multiple factors. Although many would prefer to believe that executives, legislators, and judges use the legal machinery at their disposal in an effort to achieve both short-term and long-term just and fair results, cynics (and perhaps pragmatists) believe that there are some executives, legislators, and judges who act out of self-interest.[21] The history of American law provides opportunities for debate regarding the motives of those who occupy seats of power in our three branches of government.[22]

The sheer number of references to certain legal topics found in the textbooks during any given historical period suggests that many individuals and groups have felt a need for specific types of social change during those periods and sought means for change through the executive, legislative, and judicial branches.[23] And one interesting and important legal dynamic is the complex interplay among the various interest groups, executives, legislators, and judges.[24] To a significant degree, it is that interplay—an interplay that has both proactive and reactive elements—that has shaped and continues to shape the path of law in U.S. history.[25] The textbook authors shine light on that interplay and those social issues and provide commentary about them.[26] What happened and why comprise a great deal of the study of legal history.[27] Parts V.B.–V.E. below summarize the most prominent of those issues and the legal means by which our country has endeavored to address them. These topics appear in descending order of quantitative rank. Highlights are included for the top dozen in each time-period. Although the highlights, generally speaking, are limited to only the first twelve—quantitatively—as previously mentioned, a few highlight Subparts are written for topics that do not rank in the top twelve but that seem qualitatively significant. These highlight summaries endeavor merely to underscore some of the

---

20 *See* Clyde L. King, *Political Patronage Threatens Democracy*, 22 NAT'L MUN. REV. 496 (1933) (showing how earlier periods in our nation's history used social pressures to fill public office).

21 *Id.*

22 *See* Bertram M. Gross & Michael Springer, *A New Orientation in American Government*, 371 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 17 (1967) (demonstrating how debate pushes issues forward).

23 *See infra* Table 1 (number of mentions potentially showing movement towards change).

24 *See, e.g.*, BRINKLEY, *supra* note 10, at 64 (discussing the rise of "interest groups").

25 *See, e.g.*, *id.* at 44 (discussing relationship between Massachusetts Puritans and Colonial American government).

26 DAVID GOLDFIELD ET AL., THE AMERICAN JOURNEY: A HISTORY OF THE UNITED STATES (7th ed. Combined vol. 2014, 2011, 2008); FONER, *supra* note 8; *see generally* BRINKLEY, *supra* note 10, at 44.

27 *See, e.g.*, BRINKLEY, *supra* note 10, at 167 (discussing The Federalist Papers and their important contribution to American political theory).

most significant legal activity associated with each topic covered by the three textbooks.

B. Pre-Colonial Through Revolutionary War

1. Constitutional Law and Procedure

CONSTITUTIONAL LAW & PROCEDURE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	63	59	89	211

a. Highlights

During this period, a great number of references deal with matters of state. The colonists established government structures typically based on British models (*e.g.*, the Virginia House of Burgesses).[28] Massachusetts created a legislature comprised of an upper and lower house of representatives.[29] In 1774, representatives from the colonies coordinated to discuss and debate issues in the First Continental Congress.[30] Colonists structured their courts based on the European ones with which they were familiar.[31] And in the years leading up to the Revolutionary War, the textbooks emphasize the Colonists' discussions and debates regarding governmental philosophy.[32]

2. Trade and Commerce

TRADE & COMMERCE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	68	49	47	164

---

[28] *Id.* at 38 (describing formation of the House of Burgesses); *id.* at 49 (describing the charter for Carolina); *see id.* at 85 (describing the establishment of governments in colonial New England); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 37 (describing the Virginia company's creation of the first legislative body in English America, the House of Burgesses in 1619).

[29] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 45 (discussing the representative government established in Massachusetts).

[30] *See, e.g.*, *id.* at 137 (discussing the First Continental Congress in Philadelphia which met from September 5 to October 26, 1774).

[31] *See, e.g.*, *id.* at 55 ("By the mid-1680s, all the colonies had . . . judicial institutions based on English models.").

[32] BRINKLEY, *supra* note 10, at 91; *id.* at 144 (explaining the notion of "popular sovereignty"); *see, e.g.*, *id.* at 131 (describing the structure of the Declaration of Independence).

a. Highlights

Most business during this period—but not all—was associated with either agriculture or shipping.[33] Spanish, French, and British authorities tried to control commercial activities in North America.[34] Because a variety of corporate entities were involved in the creation and administration of the colonies, the textbooks mention British laws related to chartered companies,[35] monopolies,[36] joint stock companies,[37] and mercantilism.[38] The textbooks recount numerous British measures designed to control aspects of Colonial trade.[39] The Crown also attempted to maintain a tight grip

---

33 FONER, *supra* note 8, at 226 (discussing agriculture as "the foundation of American life"); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 137 ("[In the mid-seventeenth century,] New England's shipping industry . . . became the most profitable sector of New England's economy.").

34 BRINKLEY, *supra* note 10, at 27 (describing the English Navigation Acts passed in the 1660's, which "sharply restricted colonial trade with anyone else but England" and similar laws passed by other countries, such as Spain. And Brinkley states: "Indeed, so many traders from so many countries violated mercantile laws in the eighteenth century, and so many of them amassed great profits in the process, the mercantilist system gradually began to unravel."); *see, e.g.*, *id.* at 18 (describing Spanish policies in the seventeenth century, Brinkley notes that, "the government established rigid and restrictive regulations that required all trade with the colonies to go through a single Spanish port and only a few colonial ports . . .").

35 *See, e.g.*, BRINKLEY, *supra* note 10, at 22–23 (describing the chartered companies of sixteenth century England); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 30 ("Because the Crown claimed ownership of all English colonial possessions, merchants and gentlemen who wished to establish settlements in the New World had to petition King James I and his successors for royal charters.").

36 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 134 ("Merchants were outraged by a provision in the Tea Act that gave the company and its agents a monopoly on the sale of tea in the colonies.").

37 *See, e.g.*, *id*. at 36 (explaining that a joint-stock company was a "[b]usiness enterprise in which a group of stockholders pooled their money to engage in trade or to fund colonizing expeditions. Joint-stock companies participated in the founding of Virginia, Plymouth, and Massachusetts Bay colonies").

38 *See, e.g.*, BRINKLEY, *supra* note 10, at 60 (explaining mercantilist theory); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 87–88.

39 BRINKLEY, *supra* note 10, at 79–80; *id.* at 99 (discussing circumstances in the period shortly before the Revolutionary War); *see, e.g.*, *id.* at 61.

on currency in the colonies.[40] British legislation such as the Navigation Acts, Sugar Act of 1764,[41] and the Prohibitory Act[42] receive a great deal of attention.[43]

3. Property

PROPERTY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	40	59	54	153

a. Highlights

Historically speaking, physical expressions of property ownership are among the earliest forms of writing.[44] British assumptions about property laws dominated

40 *id.* at 110 ("The Currency Act of 1764 required the colonial assemblies to stop issuing paper money (a widespread practice during the war [i.e., the French and Indian War] and to retire on schedule all the paper money already in circulation."); *see, e.g.*, *id.* at 80; *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 123.

41 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 123.

42 *See, e.g.*, BRINKLEY, *supra* note 10, at 130 (in mid-1775, after the Second Continental Congress had expressed its dissatisfaction with King George's hostile tactics toward the colonies, England passed a Prohibitory Act, which "closed the colonies to all overseas trade and made no concessions to American demands except an offer to pardon repentant rebels. The British enforced the Prohibitory Act with a naval blockade of colonial ports").

43 *See, e.g.*, *id.* at 27.

44 SHOTWELL, HISTORY OF HISTORY, *supra* note 6, at 37 ("The earliest markings were largely aids to memory, such as are in use throughout the savage world, – scratches on sticks or leaves or bark of trees, runic signs, wampum belts, ensuring that both parties to an agreement remember alike, spreading news or recording it. One of the most important of such devices is the indication of rights of property by symbols denoting ownership. Thus, the Maoris of New Zealand marked their lands by wisps of grass on boundary trees. Trespassers knew that the inclosed [sic] spaces were taboo to all but the owner – by reason of curses, of which the wisp of grass was the symbol. A much more definite symbol of ownership would naturally be the representation of the proprietor's name, or that of his tribe. The common use of this was possibly long impeded by the fear that an enemy might secure such a name-picture for evil magic, – for if he secures your name and anything of yours, he can have power over you. In spite of such fear, – which must have hindered not only literature but the development of private property, – the use of totem signs is common to indicate the name of a tribe or clan. The earliest inscriptions, out of which grow the records of history, were, like these, mere monograms of names. They were, of course, the monograms of royal names, stamped on Egyptian stone or Babylonian brick, much as the letter boxes of England bear the symbol G. R. to indicate the reigning king. Such monograms, chiselled into the rock over five thousand years ago, retain for us the name of the reputed founder of the first dynasty of Egypt. Recovered only a few years ago, they prove to use that Menes of Memphis, that shadow figure which headed the long list of shadow kings, and was already legend by the days of Herodotus, was a real man. The first inscriptions of Babylonia are similar royal names and titles. They are historical records only by courtesy.").

Colonial America.[45] Most legal references to property relate to real property; for example, recording acts,[46] land use regulations,[47] the Headright System,[48] the Commons,[49] and primogeniture.[50]

4. Tax

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	51	41	43	135

a. Highlights

Even elementary school students are aware of the historical importance of the taxes imposed by the British on the American Colonies.[51] The colonists dealt with both their

45 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 62.

46 BRINKLEY, *supra* note 10. Although the textbooks don't use the precise wording "recording acts," they do mention a variety of land records that fall under the category of "recording acts." GOLDFIELD ET AL., *supra* note 26. *See generally*, FONER, *supra* note 8.

47 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 62.

48 FONER, *supra* note 8, at 48 (describing the new 1618 policies of the Virginia Company and its settlement at Jamestown, Foner writes: "[T]he company introduced the headright system, awarding fifty acres of land to any colonist who paid for his own or another's passage . . . In place of the governor's militaristic regime, a 'charter of grants and liberties' was issued, including the establishment of a House of Burgesses."); *see, e.g.*, BRINKLEY, *supra* note 10, at 38 (explaining the headright system in the Virginia Company colony); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 37 ("In 1616, the [Virginia] company instituted the headright system, giving 50 acres to anyone who paid his own way to Virginia and an additional 50 acres for each person (or 'head') he brought with him.").

49 *See, e.g.*, FONER, *supra* note 8, at 56 (explaining that, in Massachusetts, "[m]uch land remained in commons, either for collective use or to be divided among later settlers of the sons of the town's founders. Each town had its own Congregational Church. Each, according to a law of 1647, was required to establish a school, since the ability to read the Bible was central to Puritan belief.").

50 *See, e.g.*, BRINKLEY, *supra* note 10, at 86 (describing circumstances in colonial New England, Brinkley writes: "The English system of primogeniture—the passing of all inherited property to the firstborn son—did not take root in New England. Instead, a father divided his lands among all his sons. His control of this inheritance was one of the most effective means of exercising power over the male members of his family.").

51 *See, e.g.*, *id.* at 107–08 (explaining one factor that influenced England's imposition of taxes on the colonies in the period leading up to the Revolution, Brinkley writes: "[T]he government in London was running out of options in its effort to find a way to deal with its staggering war debt [i.e., debt incurred in the French and Indian War]. Landlords and merchants in England itself were objecting strenuously to increases in what they already considered excessively high

own local taxes as well as British taxes.[52] Colonial assemblies contested British taxing authority in the wake of a series of British-imposed taxes during the 1760's and early 1770's such as the 1764 Sugar Act,[53] 1765 Stamp Act,[54] 1767 Townshend Acts,[55] and 1773 Tea Act.[56] These and other British measures, such as the Intolerable Acts,[57] created an environment in which a growing number of colonists took the position that

---

taxes . . . only a system of taxation administered by London, the leaders of the empire believed, could effectively meet England's needs.").

[52] *Id.* at 110 (explaining that colonists from many different walks of life were antagonized by the taxes imposed by Grenville in the mid-1760's, including northern merchants, settlers in the northern backcountry, southern planters, ministers, lawyers, professors, and workers in towns); *see, e.g.*, *id.* at 100.

[53] *See, e.g.*, FONER, *supra* note 8, at 142 (explaining the situation in 1764 and the colonists' reactions to the Sugar Act, the Currency Act, and the Navigation Acts).

[54] BRINKLEY, *supra* note 10, at 112 (discussing the anger caused by the Stamp Act of 1765 among colonists); *see, e.g.*, *id.* at 110 ("Most momentous of all, the Stamp Act of 1765 imposed a tax on most printed documents in the colonies: newspapers, almanacs, pamphlets, deeds, wills, licenses."); *see also, e.g.*, FONER, *supra* note 8, at 142 ("The Stamp Act of 1765 was a new departure in imperial policy. For the first time, Parliament attempted to raise money from direct taxes in the colonies rather than through the regulation of trade. The act required all sorts of printed material produced in the colonies—such as newspapers, books, court documents, commercial papers, land deeds, almanacs—carry a stamp purchased from authorities. Its purpose was to help finance the operations of the empire, including the cost of stationing British troops in North America, without seeking revenue from colonial assemblies.").

[55] FONER, *supra* note 8, at 145–46 ("In 1767, the government in London decided to impose a new set of taxes on Americans, known as the Townshend Acts. They were devised by the Chancellor of the Exchequer (the cabinet's chief financial minister), Charles Townshend. In opposing the Stamp Act, some colonists had seemed to suggest that they would not object if Britain raised revenue by regulating trade. Taking them at their word, Townshend persuaded Parliament to impose new taxes on goods imported into the colonies and to create a new board of customs commissioners to collect them and suppress smuggling."); *see, e.g.*, BRINKLEY, *supra* note 10, at 114–15 (discussing the Mutiny Act of 1765 and the Townshend Duties, Brinkley notes that the colonists objected to these new import taxes because, "[t]heir purpose, Americans believed, was the same as that of the Stamp Act: to raise revenue from the colonists without their consent").

[56] BRINKLEY, *supra* note 10, at 118–19; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 134 ("[Lord] North's proposed solution [to bail out the financially troubled East India Company (a major British tea corporation on the verge of bankruptcy)] was the Tea Act of 1773. The measure made East India Company tea cheaper by exempting it from the duty normally collected as the tea was transshipped through Britain. For colonial consumers, the only tax that remained on the tea was the old Townshend duty. North assumed that the lure of cheaper tea would allow the colonists to accept the Townshend duty, and their increased purchases would save the beleaguered East India Company.").

[57] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 135 (discussing the Intolerable Acts, Coercive Acts, the Quartering Act, and the Quebec Act).

the British had no legal authority to tax the colonies.[58] Patrick Henry, the famous Virginia lawyer and Founding Father, who is best known for saying in 1775 "give me liberty, or give me death," advocated that only Virginia had the authority to tax Virginians; Parliament possessed no such authority.[59] Once the Revolutionary War began, the Patriots found themselves in a difficult situation because there was no federal authority in place for taxation.[60]

5. Slavery and African Americans

SLAVERY & AFRICAN AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	40	52	33	125

a. Highlights

Some discussion in the textbooks considers the origins of African American slavery.[61] By the time of Columbus's voyage, slavery had vanished from most of

---

[58] *See, e.g.*, FONER, *supra* note 8, at 143 ("Some opponents of the Stamp Act distinguished between 'internal' taxes like the stamp duty, which they claimed Parliament had no right to impose, and revenue legitimately raised through regulation of trade. But more and more colonists insisted that Britain had no right to tax them at all, since Americans were unrepresented in the House of Commons. 'No taxation without representation' became their rallying cry. Virginia's House of Burgesses approved four resolutions offered by the fiery orator Patrick Henry. They insisted that the colonists enjoyed the same 'liberties, privileges, franchises, and immunities' as residents of the mother country and that the right to consent to taxation was a cornerstone of 'British Freedom.'").

[59] *See, e.g.*, BRINKLEY, *supra* note 10, at 113 (summarizing Patrick Henry's Virginia Resolves, Brinkley writes: "Henry introduced a set of resolutions declaring that Americans possessed the same rights as the English, especially the right to be taxed only by their own representatives; that Virginians should pay no taxes except those voted by the Virginia assembly; and that anyone advocating the right of Parliament to tax Virginians should be deemed an enemy of the colony.").

[60] *Id.* at 151–52 ("Under the Articles [of Confederation], Congress remained the central—indeed the only—institution of national authority. Its powers expanded to give it authority to conduct wars and foreign relations and to appropriate, borrow, and issue money. But it did not have power to regulate trade, draft troops, or levy taxes directly on the people."); *see, e.g.*, *id.* at 131 (discussing that at the outset of the Revolutionary War, "Congress had no authority to levy taxes directly on the people; it had to requisition funds from the state governments").

[61] *Id.* at 21 ("When Portuguese sailors began exploring the coast of Africa in the fifteenth century, they too brought slaves—usually criminals and people captured in war—and took them back to Portugal, where there was a small but steady demand."); *id.* at 33 (informing that "[f]irst African slaves arrive in Spanish America" in 1602); *see, e.g.*, *id.* at 21 (describing African societies in about the fifteenth century, Brinkley states that slaves occupied the bottom tier of society, and were, "men and women who were put into bondage after being captured in wars or because of criminal behavior or unpaid debts").

Europe except as a form of criminal punishment.[62] At that time in Africa, captives of war, criminals, and debtors were the most likely individuals to be enslaved; yet for them slave status was only temporary and was not passed to their children.[63] Some seventeenth century slaves in the American colonies exercised an unusual and remarkable degree of legal autonomy.[64] For example, a Virginia slave, Anthony Johnson, married, had a family, purchased his and his family's freedom, and then was a successful litigant in court, and even owned slaves of his own.[65] The Dutch in North America held somewhat more liberal attitudes toward the legal status of slaves.[66] And the textbooks note differences between Spanish and English law regarding slavery; Spanish law was, like the Dutch, broad-minded compared to the more repressive English law.[67] Although the textbooks explain some legal aspects of indentured servitude,[68] most of the references to laws about slavery have to do with the legal status of slaves and slave codes.[69] For example, in the 1660's Virginia enacted a law

---

62 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 69 ("By the fifteenth century, slavery had all but disappeared in northern Europe except as punishment for serious crimes. English laws in particular protected the personal freedom of the king's subjects.").

63 *See, e.g.*, *id.* at 69 (describing circumstances circa 1700 and earlier: "African rulers occasionally enslaved and sold their own people as punishment for crimes, but most slaves were seized in raids on neighboring peoples.").

64 *See, e.g.*, *id.* at 74–75 ("[A]n ambitious black Virginian named Anthony Johnson . . . arrived in the colony in 1621 as a slave. Johnson's master allowed him to marry and start a family while he was still a slave and may even have allowed Anthony to purchase his and his family's liberty . . . Like white settlers, Johnson occasionally took his neighbors to court and even successfully sued them. He and his sons also owned slaves.").

65 *Id.*

66 *See, e.g.*, FONER, *supra* note 8, at 34 ("Even their [i.e., the Dutch colonists'] slaves possessed rights. Some enjoyed 'half-freedom'—they were required to pay an annual fee to the company and work for it when called upon, but they were given land to support their families. Settlers employed slaves on family farms or for household or craft labor, not on large plantations as in the West Indies.").

67 *See, e.g.*, *id.* at 82 ("Centuries before the voyages of Columbus, Spain had enacted a series of laws granting slaves certain rights relating to marriage, the holding of property, and access to freedom. These laws were transferred to Spain's American empire. They were often violated but nonetheless gave slaves opportunities to claim rights under the law. The law of slavery in English North America would become far more repressive than the Spanish empire, especially on the all-important question of whether avenues existed by which slaves could obtain freedom.").

68 *See, e.g.*, BRINKLEY, *supra* note 10, at 73 ("Masters were contractually obligated to free white servants after a fixed term of servitude."); *see also, e.g.*, FONER, *supra* note 8, at 44 (describing indentured servitude, Foner writes: "Like slaves, servants could be bought and sold, could not marry without the permission of their owner, were subject to physical punishment, and saw their obligation to labor enforced by the courts.").

69 BRINKLEY, *supra* note 10, at 74 ("In the early eighteenth century, colonial assemblies began to pass 'slave codes,' limiting the rights of blacks in law and ensuring almost absolute authority to white masters. One factor, and one factor only, determined whether a person was subject to

making the slave status of children dependent on the mother's status; this was the opposite of the ordinary legal presumption in Europe.[70] And in 1705 Virginia passed a slave code that functionally eviscerated any semblance of self-determination that slaves may have previously had.[71] In general, as was true in Virginia, all slave codes in the Southern colonies were extremely harsh, legally granting owners the right to treat slaves as little or nothing more than personal property.[72] Georgia presents an unusual situation. The founder, James Oglethorpe, initially established a colony that forbade slavery.[73] Nevertheless, by 1750 the colony changed its law to permit slavery.[74] There was a significant distinction between the northern versus southern

---

the slave codes: color."); GOLDFIELD ET AL., *supra* note 26, at 75 ("Repressive Laws and Slave Codes."); *see, e.g.*, BRINKLEY, *supra* note 10, at 56 ("Beginning in the 1660s, all the [Caribbean] islands enacted legal codes to regulate relations between masters and slaves and to give white people absolute authority over Africans. A master could even murder a slave with virtual impunity. There was little either in the law or in the character of the economy to compel planters to pay much attention to the welfare of their workers.").

70 *See, e.g.*, FONER, *supra* note 8, at 83 ("Not until the 1660s did the laws of Virginia and Maryland refer explicitly to slavery . . . A Virginia law of 1662 provided that in the case of a child one of whose parents was free and one slave, the status of the offspring followed that of the mother. [This provision not only reversed the European practice of defining a child's status through the father but also made the sexual abuse of slave women profitable for slave holders, since any children that resulted remained the owner's property].").

71 *See, e.g.*, *id.* at 85 ("Recognizing the growing importance of slavery, the House of Burgesses in 1705 enacted a new slave code. Slaves were property, completely subject to the will of their masters and, more generally, of the white community. They could be bought and sold, leased, fought over in court, and passed on to one's descendants. Henceforth, blacks and whites were tried in separate courts. No black, free or slave, could own arms, strike a white man, or employ a white servant. Virginia had changed from a 'society with slaves,' in which slavery was one system of labor among others, to a 'slave society,' where slavery stood at the center of the economic process.").

72 GOLDFIELD ET AL., *supra* note 26, at 52 (In the early 1700s: "As Carolina's slave population grew, planters dreaded the prospect of slave rebellion. To avert this nightmare, they enacted slave codes as harsh as those of the sugar islands. Thus, Carolina evolved instead into a racially divided society founded on the oppression of a black majority and permeated by fear."); *see, e.g.*, *id.* at 49 ("Masters considered them [i.e., slaves] property, often branding them like livestock and hunting them with bloodhounds when they ran away. Laws, sometimes called slave codes, declared slavery to be a lifelong condition that passed from slave parents to their children. Slaves had no legal rights and were under the complete control of their masters. Only rarely would masters who killed slaves face prosecution, and those found guilty were subject only to fines. Slaves, in contrast, faced appalling punishments even for minor offenses. Slaves who rebelled were burned to death.").

73 *See, e.g.*, BRINKLEY, *supra* note 10, at 59 (discussing initial prohibition of all Africans from Oglethorpe's colony).

74 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 73 ("Slavery grew rapidly in the southern colonies because it answered the labor needs of planters engaged in the commercial production of tobacco and rice. The demand for slaves became so powerful that it destroyed James Oglethorpe's plan to keep them out of Georgia, the last of England's mainland colonies, founded in 1732 . . . with slavery forbidden, any black person seen in Georgia would be immediately recognizable as a runaway. But when Georgia's colonists began to grow rice, they demanded

colonies.[75] For example, although legal in colonial New England, the laws regarding slavery permitted slaves to marry, to own property, to participate in court proceedings, and banned brutal corporal punishments by owners.[76]

6. Native Americans

NATIVE AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	44	49	26	119

a. Highlights

Many textual references to Native Americans and the law highlight the philosophical differences between Native Americans and British, French, and Spanish explorers and colonists.[77] In particular, the textbooks contrast attitudes regarding property and family.[78] A family law example was whether marriages between settlers and Native Americans should be legally recognized.[79] As for property, it soon became clear to Europeans that Native Americans held significantly different beliefs regarding the use and ownership of land.[80] Disparate legal concepts caused a great deal of

---

the right to have slaves. In 1750, the colony's founders reluctantly legalized slavery; by 1770, slaves made up nearly half of the colony's population.").

75 *See, e.g.*, FONER, *supra* note 8, at 112 ("With slaves so small a part of the population that they seemed to pose no threat to the white majority, laws [in the Middle Colonies and New England] were less harsh than in the South. In New England, where in 1770 the 15,000 slaves represented less than 3 percent of the region's population, slave marriages were recognized in law; the severe physical punishment of slaves was prohibited; and slaves could bring suits in court, testify against whites, and own property and pass it on to their children—rights unknown in the South.").

76 *Id.*

77 *See, e.g.*, *id.* at 10 ("Most . . . Indian societies were matrilineal . . . . Under English law, a married man controlled the family's property and a wife had no independent legal identity. In contrast, Indian women owned dwellings and tools, and a husband generally moved to live with the family of his wife.").

78 *See, e.g.*, BRINKLEY, *supra* note 10, at 10 (stating "[p]roperty in Iroquois society was inherited through the mother, and women occupied positions of great authority within the tribes" in the caption for illustration from 1734 French engraving of Iroquois women at work in upstate New York).

79 *See, e.g.*, FONER, *supra* note 8, at 21–22 ("Spanish authorities granted Indians certain rights within colonial society and looked forward to their eventual assimilation . . . As early as 1514, the Spanish government formally approved of such marriages [i.e., Spanish colonists and Indian women].").

80 *Id.* at 36 ("From the beginning, Dutch authorities recognized Indian sovereignty over the land and forbade settlement in any area until it had been purchased."); *id.* at 9 ("Families 'owned' the right to use the land, but they did not own the land itself. Indians saw land as a

friction between Europeans and Native American tribes.[81] Spanish settlers adopted specific legal devices such as the *encomienda*[82] system and *repartimiento* that significantly affected Native Americans.[83] Europeans took advantage of tribes in a number of ways—for example, the "Walking Purchase of 1737."[84] Because of many

common resource, not an economic commodity. There was no market in real estate before the coming of Europeans."); *see, e.g.*, *id.* at 11 ("Europeans invoked the Indians' distinctive pattern of land use and ideas about property to answer the awkward question raised by a British minister at an early stage of England's colonization: 'By what right or warrant can we enter into the land of these Savages, take away their rightful inheritance from them, and plant ourselves in their places?' While the Spanish claimed title to land in America by right of conquest and papal authority, the English, French, and Dutch came to rely on the idea that Indians had not actually 'used' the land and thus had no claim to it."); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 61–62.

81 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 62 ("As their numbers grew, the colonists acquired Indian lands and displaced native inhabitants. Because Indians owned land collectively, only their leaders had the authority to negotiate sales. Settlers, however, sometimes bought land from individual Indians who had no right to sell it. Because land transfers were usually arranged through interpreters and recorded in English, Indians were not always fully informed of the terms of sale. Even Indians who willingly sold land grew resentful as colonists approached them for more. Native peoples could also be forced to sell land to settle debts to English creditors. Settlers occasionally obtained land by fraud. Some colonists simply settled on Indian lands and appealed to colonial governments for help when the Indians objected. Land speculators amplified this kind of unrest as they sought to acquire land as cheaply as possible and sell it for as much as they could. Finally, colonists often seized Indian lands in the aftermath of war, as befell, among many others, the Pequots in 1637 in Connecticut, and in Carolina, the Tuscaroras in 1713 and the Yamasees in 1715. In each case, settlers moved onto land left vacant after colonial forces killed, captured, and dispersed native peoples. This hunger for land by the colonists generated relentless pressure on native peoples, and the pattern of mutual suspicion and territorial competition that developed would be difficult to alter.").

82 *See, e.g.*, *id.* at 59 (discussing circumstances around 1750: "One important method of labor control was the encomienda. *Encomiendas*, granted to influential Spaniards in New Mexico, gave these colonists the right to collect tribute from the native peoples living on a specific piece of land. The tribute usually took the form of corn, blankets, and animal hides. It was not supposed to include forced labor, but often did.").

83 *See, e.g.*, FONER, *supra* note 8, at 24 ("Largely because of Las Casas's efforts, Spain in 1542 promulgated the New Laws, commanding that Indians no longer be enslaved. In 1550, Spain abolished the *encomienda* system, under which the first settlers had been granted authority over conquered Indian lands with the right to extract forced labor from the native inhabitants. In its place, the government established the *repartimiento* system, whereby residents of Indian villages remained legally free and entitled to wages, but were still required to perform a fixed amount of labor each year. The Indians were not slaves—they had access to land, were paid wages, and could not be bought and sold.").

84 *See, e.g.*, *id.* at 96 ("The infamous Walking Purchase of 1737 brought the fraudulent dealing so common in other colonies to Pennsylvania. The Lenni Lenape Indians agreed to cede a tract of land bounded by the distance a man could walk in thirty-six hours. To their amazement, Governor James Logan hired a team of swift runners, who marked out an area far in excess of what the Indians had anticipated. By 1760, when Pennsylvania's population, a mere 20,000 in 1700, had grown to 220,000, Indian-colonist relations, initially the most harmonious in British North America, had become poisoned by suspicion and hostility.").

complications concerning conflicts related to Native American land and the westward movement of settlers, the British Crown issued the Proclamation of 1763, which among other things, forbade settlement west of the Appalachians and Indian land sales to private persons.[85] During this period, we also see the beginnings of what later develops into a recurring theme; namely, the inequitable treatment of Native Americans in treaties.[86]

7. Religion

RELIGION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	28	54	30	112

a. Highlights

Historians have long recognized a close nexus between religion and law.[87] Because one principal reason that many Europeans initially came to North America was injustice based on religious beliefs,[88] it is not surprising that the textbooks devote

85 FONER, *supra* note 8, at 133; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 121–22 ("[T]he king issued the Proclamation of 1763. The measure aimed to pacify Indians by prohibiting white settlement west of the ridgeline of the Appalachian Mountains. Colonists who had already moved to the western side of the Proclamation line were required 'forthwith to remove themselves' back to the east . . . .").

86 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 121–22 (discussing Congress' use of threatened military force to coerce Native Americans into a series of treaties).

87 *See, e.g.*, SHOTWELL, HISTORY OF HISTORY, *supra* note 6, at 93 ("[The book of Deuteronomy] is more law than history, but the history had to accommodate itself to the law; and [the book of Deuteronomy] is responsible for the transformation of the figure of Moses from that of a prophet and seer to that of the greatest lawgiver of antiquity, a transformation which was completed by the next and last of the four main contributions to the Pentateuch."); *see also* HERBERT J. MULLER, THE USES OF THE PAST: PROFILES OF FORMER SOCIETIES, 51–52 (1952) ("Less conspicuous but still pervasive is religious prejudice, the exclusiveness that has distinguished Western civilization from all others except Islam. Despite the growth of tolerance, most Christians still assume that theirs is the only true religion, and that their Christian duty is to convert the rest of the world. The rest of the world, which happens to include the great majority of mankind, still resents this assumption; and in the light of religious history it does look like an arrogant assumption . . . . This religious self-righteousness is both cause and symptom of a general cultural chauvinism . . . . With its technological triumphs, however, Western culture has been able to achieve an unprecedented domination of all other cultures, and to express an almost unprecedented contempt for them. The early stages of this domination involved such savagery as the extermination of Indians and enslavement of Negroes, who were thereupon called savages. The later stages involved an economic exploitation that was less atrocious but more offensive because of the increasingly sanctimonious talk about the white man's burden, and the constant insistence on his moral and religious superiority.").

88 BRINKLEY, *supra* note 10, at 53 (discussing the Quakers in the late seventeenth century in England, Brinkley remarks that, "[m]any were jailed"); *see, e.g.*, *id.* at 25 (mentioning that

considerable attention to law and religion. The very legal foundation of several colonies was based on strict adherence to a particular set of religious precepts.[89] Some like Carolina simply insisted on adherence to Christian theology.[90] Law frequently addressed conflicts among Catholics, Protestants, Quakers, and Jews.[91] The activities of Roger Williams[92] in the 1630s and the Maryland Toleration Act of 1649[93] feature prominently.[94] The legal troubles of Ann Hutchinson—whose religious beliefs resulted in a conviction of sedition in Massachusetts—make their way into all of the textbooks.[95] Although a minority of colonies adhered to the principle of separation of

---

sixteenth century English law: "[O]utlawed unauthorized religious meetings, required all subjects to attend regular services, and levied taxes to support the established church.").

89 *See, e.g.*, BRINKLEY, *supra* note 10, at 44 (describing the Puritan society of the Massachusetts Bay colony in the seventeenth century, Brinkley writes: "The government . . . protected the ministers, taxed the people (members and non-members alike) to support the church, and enforced the law requiring attendance at services.").

90 *See, e.g.*, *id*. at 49 (describing the charter for Carolina, Brinkley writes: "The charter of the colony guaranteed religious freedom to everyone who would worship as a Christian.").

91 *Id*. at 59 ("They [i.e., the founders of the colony of Georgia] also excluded Catholics for fear they might collude with their coreligionists in the Spanish colonies to the south."); *id*. at 90 (describing the circumstances in colonial America, Brinkley remarks: "Nowhere could they [i.e., Jews] vote or hold office. Only in Rhode Island could they practice their religion openly."); *see, e.g.*, *id*. at 40 (explaining that in the mid-seventeenth century in Maryland, "[a]t one point, the Protestant majority barred Catholics from voting and repealed the Toleration Act"); *see also* FONER, *supra* note 8, at 69 ("When Quakers appeared in Massachusetts, colonial officials had them whipped, fined, and banished. In 1659 and 1660, four Quakers who returned from exile were hanged. When Charles II, after the restoration of the monarchy in 1660, reaffirmed the Massachusetts charter, he ordered the colony to recognize the 'liberty of conscience' of all Protestants.").

92 *See, e.g.*, FONER, *supra* note 8, at 60 ("Roger Williams, who arrived in Massachusetts in 1631, . . . soon began to insist that its congregation withdraw from the Church of England and that church and state be separated. Williams believed that any law-abiding citizen should be allowed to practice whatever form of religion he chose."); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 45 ("Massachusetts spun off other colonies as its population expanded in the 1630s and dissenters ran afoul of its intolerant government. Roger Williams, who founded Rhode Island, was one of these religious dissenters.").

93 GOLDFIELD ET AL., *supra* note 26, at 40; *see, e.g.*, FONER, *supra* note 8, at 70 ("After years of struggle between the Protestant planter class and the Catholic elite, Maryland in 1649 adopted an Act Concerning Religion (or Maryland Toleration Act), which institutionalized the principle of toleration that had prevailed from the colony's beginning. All Christians were guaranteed the 'free exercise' of religion. Although the Act did not grant this right to non-Christians, it did, over time, bring some political stability to Maryland. The law was also a milestone in the history of religious freedom in America."); *see also, e.g.*, BRINKLEY, *supra* note 10, at 40 ("In the mid-seventeenth century in Maryland: At one point, the Protestant majority barred Catholics from voting and repealed the Toleration Act.").

94 FONER, *supra* note 8, at 70.

95 GOLDFIELD ET AL., *supra* note 26, at 45 ("[Massachusetts] Colony magistrates arrested her [i.e., Anne Hutchinson] and tried her for sedition—that is, for advocating the overthrow of

church and state (*e.g.*, New Jersey, Rhode Island, and Pennsylvania),[96] an understanding of religious toleration gradually developed during the Colonial period.[97]

8. Civil Liberties

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	29	55	26	110

a. Highlights

Many of the discussions relating to civil liberties refer to the rights associated with being British.[98] The colonists believed that they were entitled to the same rights as British citizens and expressed grave concern when they perceived that they did not.[99]

government. The court found her guilty and banished her. With many of her followers, she moved to Rhode Island, where Roger Williams had proclaimed a policy of religious toleration. Other followers returned to England or moved north to what became in 1679 the colony of New Hampshire."); *see, e.g.*, BRINKLEY, *supra* note 10, at 45 ("Hutchinson's followers were numerous and influential enough to prevent Winthrop's reelection as governor in 1636, but the next year he returned to office and put her on trial for heresy. . . . [S]he was convicted of sedition and banished as 'a woman not fit for our society.'").

96 FONER, *supra* note 8, at 95.

97 *See, e.g.*, *id*. at 95 ("Apart from New Jersey (formed from East and West Jersey in 1702), Rhode Island, and Pennsylvania, the colonies did not adhere to a modern separation of church and state. Nearly every colony levied taxes to pay the salaries of ministers of an established church, and most barred Catholics and Jews from holding public office. But increasingly, de facto toleration among Protestant denominations flourished. By the mid-eighteenth century, dissenting Protestants in most colonies had gained the right to worship as they pleased and own their churches, although many places still barred them from holding public office and taxed them to support the official church.").

98 BRINKLEY, *supra* note 10, at 53 ("[I]n 1701, shortly before he departed for England for the last time, Penn agreed to a Charter of Liberties for the colony. The charter established a representative assembly (consisting, alone among the English colonies, of only one house), which greatly limited the authority of the proprietor."); *see, e.g.*, *id.* at 38 (describing Jamestown, Virginia, Brinkley writes: "The company promised the colonists the full rights of Englishmen (as provided in the original charter of 1606), and end to the strict and arbitrary rule of the communal years, and even a share in self-government."); *see also* FONER, *supra* note 8, at 67.

99 *See, e.g.*, FONER, *supra* note 8, at 77 ("Many New York colonists, meanwhile, began to complain that they were being denied the 'liberties of Englishmen,' especially the right to consent to taxation. In 1683, the duke of York agreed to call an elected assembly whose first act was to draft a Charter of Liberties and Privileges. The charter required that elections be held every three years among male property owners and the freemen of New York City; it also

The textbooks emphasize the continued British disregard for Colonial civil liberties in the years leading up to the Revolutionary War.[100] Another common theme is the hypocrisy of the colonists' treatment of women, African Americans, and Native Americans.[101] The textbooks note the importance of equality[102] and popular sovereignty.[103] Freedom of expression, however, is unique because it is something of which the British were not particularly fond.[104] In 1734, the trial of John Peter Zenger provided strong evidence that the American courts were beginning to appreciate the ideal of freedom of the press far more than the British.[105] At the doorstep of the Revolutionary War, Thomas Jefferson and other leaders emphasized the importance of natural rights as the basis for freedom.[106]

---

reaffirmed traditional English rights such as trial by jury and security of property, as well as religious toleration for all Protestants.").

100 BRINKLEY, *supra* note 10, at 114 (discussing the legislative program of Charles Townshend, chancellor of the exchequer, Brinkley explains that the colonists resisted "the Mutiny [or Quartering] Act of 1765, which required the colonists to provide quarters and supplies for the British troops in America" because they considered the Act both "another assault on their liberties" as well as "another form of taxation without consent").

101 *Id*. at 129 ("At the same time that revolutionaries were celebrating the 'rights of man,' they were consolidating enslavement of African Americans, depriving Loyalists (American colonists who supported the British during the Revolution) of rights and property, barring women from participation in public life, and denying Indian tribes the limited rights the British had accorded them.").

102 *Id*. at 150 (explaining some of the concepts that significantly influenced those responsible for establishing new systems of government in the wake of the Revolutionary War, Brinkley writes: "Another crucial part of the ideology was the concept of equality . . . There would be no equality of condition, but there would be equality of opportunity.").

103 *Id*. at 144 (explaining the notion of "popular sovereignty," Brinkley writes: "Locke argued that political authority did not derive from the divine right of kings or the inherited authority of aristocracies but, rather, from the consent of the governed. A related enlightenment idea was the concept of individual freedom, which challenged the traditional belief that governments had the right to prescribe the way that people act, speak, and even think.").

104 *See, e.g.*, FONER, *supra* note 8, at 122 ("[F]reedom of expression was not generally considered one of the ancient rights of Englishmen. The phrase 'freedom of speech' originated in Britain during the sixteenth century. A right of legislators, not ordinary citizens, it referred to the ability of members of Parliament to express their views without fear of reprisal, on the grounds that only in this way could they effectively represent the people. Outside of Parliament, free speech had no legal protection. A subject could be beheaded for accusing the king of failing to hold 'true' religious beliefs, and language from swearing to criticism of the government exposed a person to criminal penalties.").

105 *See, e.g.*, *id*. at 123.

106 *See, e.g.*, *id*. at 191 ("As the crisis deepened, Americans increasingly based their claims not simply on the historical rights of Englishmen, but on the more abstract language of natural rights and universal freedom. The first Continental Congress defended its action by appealing to the 'principles of the English constitution,' the 'liberties of free and natural-born subjects within the realm of England,' and the 'immutable law of nature.' John Locke's theory of natural

9. Criminal Law

CRIMINAL LAW	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	15	28	33	76

a. Highlights

Although many colonies adopted a number of the basic features of criminal law and procedure from their English roots (*e.g.*, trial by jury), the textbooks mention certain differences such as more informal procedures and the public character of many forms of criminal punishments like the ducking stool and stocks.[107] Quite a few of the criminal references simply state that certain well-known individuals were arrested and imprisoned for their conduct.[108] The Salem Witch Trials in the 1680's and 1690's receive a great deal of attention in the textbooks.[109]

rights offered a powerful justification for colonial resistance, as did Thomas Jefferson's A Summary View of the Rights of British America, written in 1774. Americans, Jefferson declared, were 'a free people claiming their rights, as derived from the laws of nature, and not as the gift of their chief magistrate.'").

107 *See, e.g.*, BRINKLEY, *supra* note 10, at 96 ("Although the American legal system adopted most of the essential elements of the English system, including such rights as trial by jury, significant differences had already become well established. Pleading and court procedures were simpler in [colonial] America than in England, and punishments were different. Instead of the gallows or prison, colonists more commonly resorted to the whipping post, the branding iron, the stocks, and (for 'gossipy' women) the ducking stool.").

108 *Id*. at 53 (noting that William Penn "was imprisoned in England for debt and died in poverty in 1718"); *see, e.g.*, *id*. at 31 ("In 1603, when James I succeeded Elizabeth to the throne, Raleigh was accused of plotting against the king, stripped of his monopoly, and imprisoned for more than a decade.").

109 *Id*. at 86–87 (describing the trials); *id*. at 90–91 (describing a variety of points of view articulated by historians and the playwright Arthur Miller (The Crucible) regarding "The Witchcraft Trials"); *see, e.g.*, *id*. at 86 (recounting the hysteria of the Salem, Massachusetts witch trials in the 1680's and 1690's, Brinkley notes: "Nineteen residents of Salem were put to death before the trials ended in 1692."). GOLDFIELD ET AL., *supra* note 26, at 100–01; *see also, e.g.*, FONER, *supra* note 8, at 89–90.

10. Contracts

CONTRACTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	13	10	25	48

a. Highlights

All three textbooks discuss the importance of the Mayflower Compact[110] and the institution of indentured servitude.[111] Although they do not address the abstract technicalities of underlying contract doctrine, they do recount some of the salient terms and conditions of both the Mayflower Compact itself as well as the typical features of indentured servitude contracts.[112]

11. Foreign Policy

FOREIGN POLICY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	22	7	18	47

a. Highlights

Because a number of European nations established settlements in North America during this period, it is logical that the textbooks would discuss some of the international aspects of their interrelationships.[113] Much of the legal positioning

110 FONER, *supra* note 8, at 54 ("Before landing, the Pilgrim leaders drew up the Mayflower Compact, in which the adult men going ashore agreed to obey 'just and equal laws' enacted by representatives of their own choosing. This was the first written frame of government in what is now the United States."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 43 ("To prevent the [Massachusetts Bay] colony from disintegrating into factions before the ship had even landed, the leaders drafted the Mayflower Compact [in 1620]. This document bound all signers to abide by the decisions of the majority.").

111 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 33 (defining an indentured servant as follows: "An individual—usually male but occasionally female—who contracted to serve a master for seven years in return for payment of the servant's passage to America. Indentured servitude was the primary labor system of the Chesapeake colonies for most of the seventeenth century.").

112 BRINKLEY, *supra* note 10, at 42.

113 *See, e.g.*, FONER, *supra* note 8, at 33 ("In 1624, the Dutch West India Company, which had been awarded a monopoly of Dutch trade with America, settled colonists on Manhattan Island.").

among the various European nations involved trade.[114] It was common for persons who sought to undertake financial activities in the New World to be required to seek authorization from Europe.[115] Other notable international aspects connected to law implicated issues such as religion and immigration.[116] In the decades leading up to the Revolutionary War, legal facets of the evolving status of the British colonies with Parliament and the Crown receive considerable attention.[117] This dynamic is apparent especially as it relates to a number of legal topics such as the imposition of taxes[118] and the infringement of personal rights (*e.g.*, the Intolerable Acts and the Coercive Acts),[119] which have been addressed earlier when summarizing other topics.

12. Marriage and Family

MARRIAGE & FAMILY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	6	17	12	35

114 *See, e.g.*, BRINKLEY, *supra* note 10, at 61 (discussing the Navigation Acts of the mid-seventeenth century).

115 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 30 ("Because the Crown claimed ownership of all English colonial possessions, merchants and gentlemen who wished to establish settlements in the New World had to petition King James I and his successors for royal charters.").

116 *See, e.g.*, BRINKLEY, *supra* note 10, at 75–76 ("But in the first years of the eighteenth century, Parliament prohibited Ulster from exporting to England the woolens and other products that had become the basis of the northern Irish economy; at the same time, the English government virtually outlawed the practice of the Presbyterian religion in Ulster and insisted on conformity with the Anglican Church. After 1710, moreover, the long-term leases of many Scots-Irish expired; English landlords doubled and even tripled the rents.").

117 *See, e.g.*, *id*. at 100 ("Resistance to imperial authority centered in the colonial legislatures. By the 1750s, the American assemblies had claimed the right to levy taxes, make appropriations, approve appointments, and pass laws for their respective colonies. Their legislation was subject to veto by the governor or the Privy Council. But the assemblies had leverage over the governor through their control of the colonial budget, and they could circumvent the Privy Council by repassing disallowed laws in slightly altered form. The assemblies came to look upon themselves as little parliaments, each practically as sovereign within its colony as Parliament itself was in England.").

118 *See, e.g.*, *id*. at 107–08 (explaining one factor that influenced England's imposition of taxes on the colonies in the period leading up to the Revolution, Brinkley writes: "[T]he government in London was running out of options in its effort to find a way to deal with its staggering war debt [i.e., debt incurred in the French and Indian War]. Landlords and merchants in England itself were objecting strenuously to increases in what they already considered excessively high taxes . . . . Only a system of taxation administered by London, the leaders of the empire believed, could effectively meet England's needs.").

119 FONER, *supra* note 8, at 149; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 135.

a. Highlights

All three textbooks devote some attention to the legal aspects of families. Some of these references deal with family laws relating to African tribes[120] and Native Americans.[121] To a certain degree, religion overlaps with family law during this period in part because religious beliefs influenced family power dynamics.[122] This was especially true among the Puritans.[123] Similarly, property law also intersected with family law. For example, widows became legal property owners upon their husbands' death.[124] Thus, the textbooks document topics such as dower,[125]

120 *See, e.g.*, BRINKLEY, *supra* note 10, at 21 (describing African societies in about the fifteenth century, Brinkley states: "African societies tended to be matrilineal—which means that people traced their heredity through, and inherited property from, their mothers rather than their fathers. When a couple married, the husband left his own family to join the family of his wife.").

121 *Id*. at 93.

122 *Id.* at 302.

123 FONER, *supra* note 8, at 56 ("The ideal Puritan marriage was based on reciprocal affection and companionship, and divorce was legal. Yet within the household, the husband's authority was absolute."); *see, e.g.*, *id.* at 55 ("[Puritans had] a belief in male authority within the household as well as an adherence to the common-law tradition that severely limited married women's legal and economic rights.").

124 GOLDFIELD ET AL., *supra* note 26, at 47 ("In the mid-17th century: In New England, as in other colonies and England itself, women were assumed to be legally and economically dependent on the men in their families. Since fewer New England marriages were shortened by the early death of a spouse, fewer New England women experienced widowhood, the one time in their lives when they might enjoy legal independence and exercise control over property."); *see, e.g.*, *id.* at 42 (discussing life in the Chesapeake colonies circa 1700 the authors write: "Many women would be widows at some point in their lives, which gave them temporary control over the family property. Husbands often arranged for their widows to manage their estates until the eldest son reached 21. Few women received land outright, and if widows remarried, their new spouses usually took control of the estates left by their first husbands. As in England itself, the Chesapeake colonies accorded women little formal authority within society.").

125 *See, e.g.*, FONER, *supra* note 8, at 51.

coverture,[126] and *feme sole*. In addition, the textbooks mention differences based upon national origin, such as the Dutch[127] and Spanish.[128]

13. Women

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	7	15	9	31

14. Military

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	11	8	11	30

126 *See, e.g.*, *id*. at 12–13 ("According to the widespread legal doctrine known as 'coverture,' when a woman married, she surrendered her legal identity, which became 'covered' by that of her husband. She could not own property or sign contracts in her own name, control her wages if she worked, write a separate will, or, except in the rarest if circumstances, go to court seeking a divorce.").

127 *See, e.g.*, *id*. at 34 ("Women in the Dutch settlement enjoyed far more independence than in other colonies. According to Dutch law, married women retained their separate legal identity. They could go to court, borrow money, and own property. Men were used to sharing property with their wives.").

128 BRINKLEY, *supra* note 10, at 20.

15. Voting and Elections

VOTING & ELECTIONS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	14	4	18

a. Highlights

During this period significant voting restrictions were commonplace. As a rule, only white men who owned certain amounts of property could legally vote.[129] Race, gender, and property qualifications were the norm.[130]

16. Incidental

INCIDENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	2	5	8	15

17. Social Engineering

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	2	1	12	15

129 *Id*. at 40.

130 *See, e.g.*, FONER, *supra* note 8, at 118–19 ("Suffrage requirements varied from colony to colony, but as in Britain the linchpin of voting laws was the property qualification. Its purpose was to ensure that men who possessed an economic stake in society and the independence of judgment that supposedly went with it determined the policies of the government. Slaves, servants, tenants, adult sons living in the homes of their parents, the poor, and women all lacked a 'will of their own' and were therefore ineligible to vote.").

18. Immigration

IMMIGRATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	3	1	5	9

19. Education

EDUCATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	1	3	4

20. Torts

TORTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	1	0	0	1

21. Environmental

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0

22. Labor

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0

23. Other Minorities

OTHER MINORITIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Pre-Colonial – Revolution	0	0	0	0

C. Post-Revolutionary War Through Civil War

1. Constitutional Law and Procedure

CONSTITUTIONAL LAW & PROCEDURE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution– Civil War	140	103	90	333

a. Highlights

Because the years immediately after the Revolutionary War witnessed the writing of the Constitution,[131] the Bill of Rights,[132] and the establishment of the United States Supreme Court[133] with Chief Justice John Marshall at the helm, the textbooks devote

---

131 BRINKLEY, *supra* note 10, at 162–63 (discussing the outlines of Edmund Randolph's proposal for a national government "consisting of a supreme Legislative, Executive, and Judiciary," and the "Virginia Plan" and the "New Jersey Plan"—plans which offered different compositions and means of representation for the legislative branch); *id*. at 164 (explaining how the Founding Fathers resolved one of the thorniest problems regarding legislative representation for the national government (the so-called "Great Compromise")) (Brinkley writes: "The proposal called for a legislature in which the states would be represented in the lower house on the basis of population. Each slave would count as three-fifths of a free person in determining the basis for determining both representation and direct taxation. . . The committee proposed that in the upper house, the states should be represented equally with two members apiece. The proposal broke the deadlock. On July 16, 1787, the convention voted to accept the compromise."); *see, e.g.*, *id.* at 159 (discussing in chapter 6 "The Constitution And The New Republic" the background, debates, and different points of view regarding the writing of the Constitution and its meaning).

132 *Id*. at 168 ("Congress approved twelve amendments on September 25, 1789; ten of them were ratified by the states by the end of 1791. What we know as the Bill of Rights is these first ten amendments to the Constitution. Nine of them placed limitations on Congress by forbidding it to infringe on certain basic rights: freedom of religion, speech, and the press; immunity from arbitrary arrest; trial by jury; and others. The Tenth Amendment reserved to the states all powers except those specifically withheld from them or delegated to the federal government."); *see, e.g.*, *id*. ("Its [i.e., the first Congress's] most important task was drafting a bill of rights.").

133 *See, e.g.*, *id*. ("On the subject of the federal courts, the Constitution said only: 'The judicial power of the United States shall be vested in one Supreme Court, and in such inferior

many pages to telling the story of how the Founding Fathers created the Constitution, the first ten Amendments,[134] and how the Marshall Court laid the foundation for the Court's role in the American legal landscape.[135] Establishing a written constitution was important.[136] Some of the most prominent Marshall Court decisions include:

courts as Congress may from time to time ordain and establish.' It was left to Congress to determine the number of Supreme Court judges to be appointed and the kinds of lower courts to be organized. In the Judiciary Act of 1789, Congress provided for a Supreme Court of six members, with a chief justice and five associate justices; thirteen district courts with one judge apiece; and three circuit courts of appeal, each to consist of one of the district judges sitting with two of the Supreme Court justices. In the same act, Congress gave the Supreme Court the power to make the final decision in cases involving the constitutionality of state laws.").

134 *See, e.g.*, *id*. ("Congress approved twelve amendments on September 25, 1789; ten of them were ratified by the states by the end of 1791. What we know as the Bill of Rights is these first ten amendments to the Constitution. Nine of them placed limitations on Congress by forbidding it to infringe on certain basic rights: freedom of religion, speech, and the press; immunity from arbitrary arrest; trial by jury; and others. The Tenth Amendment reserved to the states all powers except those specifically withheld from them or delegated to the federal government.").

135 *See, e.g.*, *id*. at 223 ("John Marshall served as chief justice of the United States from 1801 to 1835, and he dominated the Court more fully than anyone else before or since. More than anyone but the framers themselves, he molded the development of the Constitution: strengthening the judicial branch at the expense of the executive and legislative branches, increasing the power of the federal government at the expense of the states, and advancing the interests of the propertied and commercial classes."); *see also, e.g.*, *id*. at 224 ("The decisions of the Marshall Court established the primacy of the federal government over the states in regulating the economy and opened the way for an increased federal role in promoting economic growth. They protected corporations and other private economic institutions from local government interference. They were, in short, highly nationalistic decisions, designed to promote the growth of a strong, unified, and economically developed United States.").

136 *Id*. at 150 (regarding the establishment of governments following the Revolutionary War, Brinkley notes: "The first and perhaps most basic decision about the character of government was that the constitutions were to be written down, because Americans believed the vagueness of England's unwritten constitution had produced corruption. The second decision was that the power of the executive, which Americans believed had grown too great in England, must be limited . . . . [T]he executive and legislative branches of government would remain wholly separate.")

Marbury v. Madison (1803);[137] *Fletcher v. Peck* (1810);[138] *McCulloch v. Maryland* (1819);[139] *Dartmouth College v. Woodward* (1819);[140] and, *Gibbons v. Ogden* (1824).[141] After Marshall's death in 1835, the Court continued interpreting the Constitution as novel issues arose in cases such as *Charles River Bridge v. Warren Bridge* (1837).[142] In the decades leading up to the Civil War, constitutional

---

[137] Marbury v. Madison, 5 U.S. 137 (1803); *see, e.g.*, BRINKLEY, *supra* note 10, at 195–96 (explaining the famous 1803 Supreme Court case *Marbury v. Madison*, the case that established/confirmed the Supreme Court's authority to determine the constitutionality of acts of Congress, Brinkley writes: "The original judiciary Act of 1789 had given the Court the power to compel executive officials to act in such matters as the delivery of commissions, and it was on that basis that Marbury had filed his suit. But the Court ruled that Congress had exceeded its authority in creating that statute: that the Constitution had defined the powers of the judiciary and that the legislature had no right to expand them. The relevant section of the 1789 act was therefore void. In seeming to deny its own authority, the Court was in fact radically enlarging it. The justices had repudiated a relatively minor power (the power to force the delivery of a commission) by asserting a vastly greater one (the power to nullify an act of Congress).").

[138] Fletcher v. Peck, 10 U.S. 87 (1810).

[139] McCulloch v. Maryland, 17 U.S. 316 (1819); *see, e.g.*, BRINKLEY, *supra* note 10, at 224 ("[I]n McCulloch v. Maryland (1819), Marshall confirmed the 'implied powers' of Congress by upholding the constitutionality of the Bank of the United States. The Bank had become so unpopular in the South and the West that several states tried to drive branches out of business by outright prohibition or by confiscatory taxes. This case presented two constitutional questions: Could Congress charter a bank? And if so, could individual states ban it or tax it? Daniel Webster, one of the Bank's attorneys, argued that establishing such an institution came within the 'necessary and proper' clause of the Constitution and that the power to tax involved a 'power to destroy.' If the states could tax the Bank at all, Webster said, they could 'tax it to death.' Marshall adopted Webster's words in deciding for the Bank.").

[140] Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819); *see, e.g.*, BRINKLEY, *supra* note 10, at 224 ("In overturning the act of the legislature [i.e., in Dartmouth College v. Woodward (1819)] and the decisions of the New Hampshire courts, the justices also implicitly claimed for themselves the right to override the decisions of state courts."); *see also id*. at 228 under "Significant Events."

[141] Gibbons v. Ogden, 22 U.S. 1 (1824); *see, e.g.*, BRINKLEY, *supra* note 10, at 224 ("In the case of Gibbons v. Ogden (1824), the Court strengthened Congress's power to regulate interstate commerce. The state of New York had indirectly granted Aaron Ogden the business of carrying passengers across the river between New York and New Jersey. But Thomas Gibbons, with a license granted under an act of congress, began competing with Ogden for ferry traffic. Ogden brought suit against him and won in the New York courts. Gibbons appealed to the Supreme Court. The most important question facing the justices was whether Congress's power to give Gibbons a license to operate his ferry superseded the state of New York's power to grant Ogden a monopoly. Marshall claimed that the power of Congress to regulate interstate commerce (which, he said, included navigation) was 'complete in itself' and might be 'exercised to its utmost extent.' Ogden's state-granted monopoly, therefore, was void.").

[142] Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837); *see, e.g.*, BRINKLEY, *supra* note 10, at 244 (describing in some detail the case Charles River Bridge v. Warren Bridge, Brinkley concludes: "The decision reflected one of the cornerstones of the Jacksonian ideal: that the key to democracy was an expansion of economic opportunity, which would not occur

interpretation became increasingly important. For example, John C. Calhoun's advocacy of the states' power to nullify federal legislation—the nullification doctrine—caused controversy.[143] And the debate over the constitutionality of slavery and the admission of new states as slave or free were significant among the causes of the Civil War.[144]

2. Slavery and African Americans

SLAVERY & AFRICAN AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	128	115	65	308

a. Highlights

Shortly after the Revolution, the legality of slavery became one of the most, if not the most, controversial social and legal issues in America.[145] Northern states began abolishing it as early as 1777,[146] and in 1782 even Virginia relaxed restrictions on manumission.[147] New England states in particular were opposed to slavery, although,

---

if older corporations could maintain monopolies and choke off competition from newer companies.").

143 *See, e.g.*, BRINKLEY, *supra* note 10, at 236 ("Drawing from the ideas of Madison and Jefferson and their Virginia and Kentucky Resolutions of 1798–1799 and citing the Tenth Amendment to the Constitution, Calhoun argued that since the federal government was a creation of the states, the states—not the courts or Congress—were the final arbiters of the constitutionality of federal laws. If a state concluded that Congress had passed an unconstitutional law, then it could hold a special convention and declare the federal law null and void within the state. The nullification doctrine—and the idea of using it to nullify the 1828 tariff—quickly attracted broad support in South Carolina.").

144 *See, e.g.*, *id*. at 354 (discussing the "Compromise of 1850," Brinkley writes: "As a result of his [i.e., Stephen Douglas] efforts, by mid-September Congress had enacted and the president had signed all the components of the compromise. The Compromise of 1850, unlike the Missouri Compromise thirty years before, was not a product of widespread agreement on common national ideals. It was, rather, a victory of bargaining and self-interest. Still, members of Congress hailed the measure as a triumph of statesmanship; and Millard Fillmore, signing it, called it a just settlement of the sectional problem, 'in its character final and irrevocable.'").

145 *Id*. at 151.

146 GOLDFIELD ET AL., *supra* note 26, at 173; *see, e.g.*, FONER, *supra* note 8, at 188.

147 *See, e.g.*, BRINKLEY, *supra* note 10, at 151 (describing circumstances immediately following the Revolutionary War, Brinkley writes: "In areas where slavery was already weak—in New England where there had never been many slaves, and in Pennsylvania, where the Quakers opposed slavery—it was abolished relatively early. Even in the South, there were some pressures to amend or even eliminate the institution; every state but South Carolina and Georgia prohibited further importation of slaves from abroad, and South Carolina banned the slave trade during the war. Virginia passed a law encouraging manumission (the freeing of slaves).").

because of their strong ties to ship-building and other aspects of shipping plantation crops, the New England economy benefitted from it, albeit indirectly.[148] The polarizing debate that pitted North against South played out in the form of constitutional drafting (*e.g.*, the three-fifths clause),[149] legislation (*e.g.*, 1787 Northwest Ordinance and 1790 Southwest Ordinance,[150] 1808 slave importation ban,[151] 1820 Missouri Compromise,[152] the gag-rules of 1836 and 1844,[153] 1850

---

148 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 201 ("New Englanders found slavery incompatible with the natural-rights philosophy that had emerged during the Revolution and gradually began to abolish it in the 1780s (though they remained profitably tied to slavery through shipping plantation crops).").

149 *See, e.g.*, BRINKLEY, *supra* note 10, at 164, 167.

150 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 185.

151 BRINKLEY, *supra* note 10, at 304 (stating that in 1808, "the international slave trade became illegal in America . . ."); *see, e.g.*, FONER, *supra* note 8, at 205–06 ("The Constitution's slavery clauses were compromises, efforts to find a middle ground between the institution's critics and defenders. Taken together, however, they imbedded slavery more deeply than ever in American life and politics. The slave trade allowed a commerce condemned by civilized society—one that had been suspended during the War of Independence—to continue until 1808. On January 1, 1808, the first day that Congress was allowed under the Constitution, it prohibited the further importation of slaves."); *see also* BRINKLEY, *supra* note 10, at 308 ("Although federal law had prohibited the importation of slaves from 1808 on, some continued to be smuggled into the United States as late as the 1850s when the supply of slaves had become inadequate.").

152 FONER, *supra* note 8, at 288–89; *see, e.g.*, BRINKLEY, *supra* note 10, at 222–23 (regarding the "Missouri Compromise," Brinkley explains: "[T]he Senate agreed to combine the Maine and Missouri proposals [i.e., for statehood] into a single bill. Maine would be admitted as a free state, Missouri as a slave state. Then Senator Jesse B. Thomas of Illinois proposed an amendment prohibiting slavery in the rest of the Louisiana Purchase territory north of the southern boundary of Missouri (the 36° 30' parallel). Congress adopted the Thomas amendment."); *see also* GOLDFIELD ET AL., *supra* note 26, at 244–45.

153 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 269 ("Southern congressmen responded by demanding that free speech be repressed in the name of southern white security. The enemy, they were convinced, was fanaticism, and nearly all agreed with Francis Pickens of South Carolina that they 'must meet it and strangle it in its infancy.' The strangling took the form of the gag rule, a procedural device whereby antislavery petitions were automatically tabled with no discussion. The gag rule was first passed in 1836 and was renewed in a series of raucous debates through 1844. Only the votes of some three-fourths of the northern Democrats enabled the southern minority to have its way. With Van Buren's reluctant support, the gag rule became a Democratic Party measure, and it identified the Democrats as a pro-southern party in the minds of many northerners.").

Fugitive Slave Act,[154] the Compromise of 1850,[155] 1854 Kansas-Nebraska Act[156]), and litigation (*e.g.*, 1841 *United States v. Schooner Amistad*,[157] 1842 *Prigg v.*

---

154 GOLDFIELD ET AL., *supra* note 26, at 375–76; FONER, *supra* note 8, at 380; *see, e.g.*, BRINKLEY, *supra* note 10, at 355 ("Northern opposition to the Fugitive Slave Act intensified quickly after 1850, when southerners began appearing in northern states to pursue people they claimed were fugitives. Mobs formed in some northern cities to prevent enforcement of the law, and several northern states also passed their own laws barring the deportation of fugitive slaves.").

155 BRINKLEY, *supra* note 10, at 354 (discussing the "Compromise of 1850," Brinkley writes: "As a result of his [i.e., Stephen Douglas's] efforts, by mid-September Congress had enacted and the president had signed all the components of the compromise. The Compromise of 1850, unlike the Missouri Compromise thirty years before, was not a product of widespread agreement on common national ideals. It was, rather, a victory of bargaining and self-interest. Still, members of Congress hailed the measure as a triumph of statesmanship; and Millard Fillmore, signing it, called it a just settlement of the sectional problem, 'in its character final and irrevocable.'"); *see, e.g.*, FONER, *supra* note 8, at 379 ("Senator Henry Clay offered a plan with four main provisions that came to be known as the Compromise of 1850. California would enter the Union as a free state. The slave trade, but not slavery itself, would be abolished in the nation's capital. A stringent new law would allow southerners to reclaim runaway slaves. And the status of slavery in the remaining territories acquired from Mexico would be left to the decision of the local white inhabitants. The United States would also agree to pay off the massive debt Texas had accumulated while independent.").

156 *See, e.g.*, FONER, *supra* note 8, at 381–82 ("Unlike the lands taken from Mexico, Kansas and Nebraska lay in the nation's heartland, directly in the path of westward migration. Slavery, moreover, was prohibited there under the terms of the Missouri Compromise, which Douglas's [i.e., Illinois Senator Stephen A. Douglas] bill would repeal. In response, a group of anti-slavery congressmen issued the *Appeal of Independent Democrats*. It arraigned Douglas's bill as a 'gross violation of a sacred pledge,' part and parcel of 'an atrocious plot' to convert free territory to a 'dreary region of despotism, inhabited by masters and slaves' . . . . Thanks to Douglas's energetic leadership, the Kansas-Nebraska Act became law in 1854."); *see also* BRINKLEY, *supra* note 10, at 355–56.

157 *See, e.g.*, BRINKLEY, *supra* note 10, at 309 (When Cuban slaves seized control of the ship *Amistad* in 1839, "at the request of a group of abolitionists, former president John Quincy Adams went before the Supreme Court to argue that they should be freed. Adams argued that the foreign slave trade was illegal and thus the *Amistad* rebels could not be returned to slavery. The Court accepted his argument in 1841, and most of the former slaves were returned to Africa, with funding from American abolitionists. Two years later [*i.e.,* after the *Amistad* seizure], in 1841, another group of slaves revolted on board a ship and took control of it—this time an American vessel bound from Norfolk, Virginia, to New Orleans—and steered it (and its 135 slaves) to the British Bahamas, where slavery was illegal and the slaves were given sanctuary."); *see* United States v. Schooner Amistad, 40 U.S. 518, 518 (1841).

Pennsylvania,[158] 1857 *Dred Scott v. Sandford*[159]). Southern states enacted slave codes to tighten the grip of plantation owners' powers.[160] Meanwhile, transportation improvements facilitated a westward migration of population and a rapid geographic expansion of the United States via the establishment of territories and states.[161] Consequently, new territories and states confronted the question of whether to permit slavery.[162] During the Civil War, the Union executive and legislative branches took legal steps towards establishing equality for African Americans.[163] Perhaps the most famous example is President Lincoln's Emancipation Proclamation.[164] Before that, however, Congress had passed the Confiscation Act (1861), "which declared that all slaves used for 'insurrectionary' purposes (that is, in support of the Confederate military effort) would be considered freed."[165]

---

158 *See, e.g.*, BRINKLEY, *supra* note 10, at 334 ("Later, after the Supreme Court (in *Prigg v. Pennsylvania* 1842) ruled that states need not aid in enforcing the 1793 law requiring the return of fugitive slaves to their owners, abolitionists secured the passage of 'personal liberty laws' in several northern states. These laws forbade state officials to assist in the capture and return of runaways. Above all, the antislavery societies petitioned Congress to abolish slavery in places where the federal government had jurisdiction—in the territories and in the District of Columbia—and to prohibit the interstate slave trade. But political abolitionism had severe limits. Few members of the movement believed that Congress could constitutionally interfere with a 'domestic' institution such as slavery within the individual states themselves."); *see* Prigg v. Pennsylvania, 41 U.S. 539, 539 (1842).

159 *See, e.g.*, BRINKLEY, *supra* note 10, at 358–59 (discussing the *Dred Scott* case); *see* Dred Scott v. Sandford, 60 U.S. 393, 393 (1856).

160 GOLDFIELD ET AL., *supra* note 26, at 290; *see, e.g.*, BRINKLEY, *supra* note 10, at 303.

161 *See, e.g.*, BRINKLEY, *supra* note 10, at 217 ("In 1807, Jefferson's secretary of the treasury, Albert Gallatin, proposed that revenues from the Ohio land sales should help finance a National Road from the Potomac River to the Ohio River. Both Congress and the president approved."); *see also id.* at 246 ("Between 1835 and 1837, the government sold nearly 40 million acres of public land, nearly three-fourths of it to speculators, who purchased large tracts in hopes of reselling them at a profit. These land sales, along with revenues the government received from the tariff of 1833, created a series of substantial federal budget surpluses . . . .").

162 *See, e.g.*, BRINKLEY, *supra* note 10, at 222 ("When Missouri applied for admission to the Union as a state in 1819, slavery was already well established there. Representative James Tallmadge Jr. of New York proposed an amendment to the Missouri statehood bill that would prohibit the further introduction of slaves into Missouri and provide for the gradual emancipation of those already there."); *see also id.* at 353.

163 *See generally id.* at 372–73.

164 *Id.*

165 *Id.* at 372 ("In 1861, Congress passed the Confiscation Act, which declared that all slaves used for 'insurrectionary' purposes (that is, in support of the Confederate military effort) would be considered freed. Subsequent laws in the spring of 1862 abolished slavery in Washington D.C, and in the western territories, and compensated owners. In July 1862, Radicals pushed through Congress the second Confiscation Act, which again declared free the slaves of persons aiding and supporting insurrection (whether or not the slaves themselves were doing so) and

3. Property

PROPERTY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	80	53	42	175

a. Highlights

Thomas Jefferson was instrumental in changing Virginia's inheritance laws (*e.g.*, entail and primogeniture) to better reflect the practical realities of an abundance of property in America that was vitally different from English law.[166] William Henry Harrison "was largely responsible for the passage in 1800 of the so-called Harrison Land Law, which enabled white settlers to acquire farms from the public domain on much easier terms than before."[167] Because France and Spain laid claim to significant tracts of land in North America, some of the discussions about the legal aspects of the young nation's acquisition of property also concerns foreign relations.[168] The Louisiana Purchase of 1803 in particular raised numerous legal issues.[169] Like the

which also authorized the president to employ African Americans, including freed slaves, as soldiers.").

166 *See, e.g.*, FONER, *supra* note 8, at 176–77 ("Like many other Americans of his generation, Thomas Jefferson believed that to lack economic resources was to lack freedom. Among his achievements included laws passed by Virginia abolishing entail (the limitation of inheritance to a specified line of heirs to keep an estate within a family) and primogeniture (the practice of passing a family's land entirely to the eldest son). These measures, he believed, would help prevent the rise of a 'future aristocracy.'").

167 BRINKLEY, *supra* note 10, at 205.

168 *See, e.g.*, *id.* at 174 (In 1795, Thomas Pinckney negotiated a treaty with Spain: "Spain recognized the right of Americans to navigate the Mississippi to its mouth and to deposit goods at New Orleans for reloading on oceangoing ships; agreed to fix the northern boundary of Florida where Americans had always insisted it should be, along the 31st parallel; and required Spanish authorities to prevent the Indians in Florida from launching raids across the border."); *see also id.* at 198 ("Under the secret Treaty of San Ildefonso of 1800 between the French and the Spanish, France regained title to Louisiana, which included almost the whole of the Mississippi Valley to the west of the river, plus New Orleans near its mouth.").

169 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 229 ("Jefferson, the strict constructionist, now turned pragmatist. Despite the lack of any specific authorization in the Constitution for the acquisition of foreign territory or the incorporation as U.S. citizens of the 50,000 French and Spanish descendants then living in Louisiana, he accepted Napoleon's deal. The Louisiana Purchase doubled the size of the United States and offered seemingly endless space to be settled by yeomen farmers. It also opened up another frontier for slaveholders in the lower Mississippi Valley. Jefferson was willing, as the Federalists had been when they were in power, to stretch the Constitution to support his definition of the national good. Conversely, it was now the Federalists, fearful of further decline in their political power, who relied on a narrow reading of the Constitution in a futile attempt to block the Louisiana acquisition."); *see also* BRINKLEY, *supra* note 10, at 199–200.

Louisiana Purchase, which was obtained from France technically through a treaty, America acquired Florida by means of a treaty with Spain.[170] The country's movement west caused conflict and also the need to make deals with England[171] and Mexico.[172] During this period, westward expansion was such a significant phenomenon that, in Alistair Cooke's book, *Alistair Cooke's America*, he entitled an entire chapter, "Gone West."[173] Both federal and state governments sold land to speculators and others.[174] Governments also financed transportation projects to facilitate the movement of both people and goods westward.[175] This was also a period

---

[170] *See, e.g.*, BRINKLEY, *supra* note 10, at 222 ("Under the provisions of the Adams-Onis Treaty of 1819, Spain ceded all of Florida to the United States and gave up as well its claim to territory north of the 42nd parallel in the Pacific Northwest. In return, the American government gave up its claims to Texas.").

[171] *See, e.g.*, *id.* at 343 ("Control of what was known as Oregon Country, in the Pacific Northwest, was another major political issue in the 1840s. Its half-million square miles included the present states of Oregon, Washington, and Idaho, parts of Montana and Wyoming, and half of British Columbia. Both Britain and the United States claimed sovereignty in the region—the British on the basis of explorations in the 1790s by George Vancouver, a naval officer; the Americans on the basis of simultaneous claims by Robert Gray, a fur trader. Unable to resolve their conflicting claims diplomatically, they agreed in an 1818 treaty to allow citizens of each country equal access to the territory."); *see also id.* at 347 ("On June 15, 1846, the Senate approved a treaty [between the U.S. and Britain] that fixed the boundary [between Oregon and Canada] at the 49th parallel, where it remains today.").

[172] *See, e.g.*, *id.* at 350 ("On February 2, 1848, [Nicholas] Trist reached agreement with the new Mexican government on the Treaty of Guadalupe Hidalgo, by which Mexico agreed to cede California and New Mexico to the United Sates and acknowledged the Rio Grande as the boundary of Texas. In return, the United States promised to assume any financial claims its new citizens had against Mexico and to pay the Mexicans $15 million . . . The president submitted the Trist treaty to the Senate, which approved it by a vote of 38 to 14."); *see also id.* at 355 ("But in 1853 [President Franklin Pierce's secretary of war, Jefferson] Davis sent James Gadsden, a southern railroad builder, to Mexico, where he persuaded the Mexican government to accept $10 million in exchange for a strip of land that today comprises part of Arizona and New Mexico and that would have facilitated a southern route for the transcontinental railroad. The so-called Gadsden Purchase only accentuated the sectional rivalry [i.e., between the North and South].").

[173] ALISTAIR COOKE, ALISTAIR COOKE'S AMERICA 155 (1973, 2002). *See also* BENTLEY, MODERN HISTORIOGRAPHY, *supra* note 7, at 96–97.

[174] GOLDFIELD ET AL., *supra* note 26, at 343; *see, e.g.*, FONER, *supra* note 8, at 255 ("Some western migrants became 'squatters,' setting up farms on unoccupied land without clear legal title. Those who purchased land acquired it either from the federal government, at the price, after 1820, of $1.25 per acre payable in cash or from land speculators on long-term credit . . . National boundaries made little difference to territorial expansion—in Florida, and later in Texas and Oregon, American settlers rushed in to claim land under the jurisdiction of foreign countries (Spain, Mexico, and Britain) or Indian tribes, confident that American sovereignty would soon follow in their wake . . . Although Jackson withdrew [from West Florida and Louisiana], Spain, aware that it could not defend the territory, sold it to the United States in the Adams-Onis Treaty of 1819 negotiated by John Quincy Adams.").

[175] *See, e.g.*, BRINKLEY, *supra* note 10, at 217 ("In 1807, Jefferson's secretary of the treasury, Albert Gallatin, proposed that revenues from the Ohio land sales should help finance a National Road from the Potomac River to the Ohio River. Both Congress and the president approved.");

when the United States Patent Office began protecting inventions; many helped to facilitate the progress of farmers and businesses.[176]

4. Trade and Commerce

TRADE & COMMERCE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	81	46	42	169

a. Highlights

In the period immediately after the American Revolution, a number of factors created a fragile and unstable American economy.[177] Among the first legal issues relating to commerce that the new nation confronted was the question—ultimately answered in the affirmative—whether the Constitution authorized Congress to establish a national bank.[178] The legality of the national bank persisted as a politically-charged issue well into the nineteenth century.[179] As was the case with property laws,

see also id. at 246 ("Between 1835 and 1837, the government sold nearly 40 million acres of public land, nearly three-fourths of it to speculators, who purchased large tracts in hopes of reselling them at a profit. These land sales, along with revenues the government received from the tariff of 1833, created a series of substantial federal budget surpluses . . . .").

176 *See, e.g.*, *id.* at 270 ("The great technological advances in American industry owed much to American inventors, as the patent records of the time make clear. In 1830, the number of inventions patented was 544; by 1850, the figure had risen to 993; and in 1860, it stood at 4,778."); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 317 ("After 1815, U.S. manufacturers began to close the technological gap with Britain by drawing on the versatile skills of U.S. mechanics. Mechanics experimented with new designs, improved old ones, and patented inventions that found industrial applications outside their own crafts.").

177 *See generally* GOLDFIELD ET AL., *supra* note 26, at 179–80.

178 *See, e.g.*, *id.* at 210 ("They [i.e., opponents of Hamilton's plan for a national bank] argued that the Constitution did not explicitly authorize Congress to charter a bank or any other corporation. The bank bill passed Congress on a vote that divided along sectional lines. And with Washington's signature on the bill, Hamilton's bank was chartered for twenty years. Congress also passed a hefty 25 percent excise tax on distilled liquor. Little, however, of Hamilton's plan to promote manufacturing survived the scrutiny of the agrarian opposition. Tariff duties were raised moderately in 1792, but no funds were forthcoming to accelerate industrial development."); *see also* FONER, *supra* note 8, at 224; *see also* BRINKLEY, *supra* note 10, at 170.

179 *See, e.g.*, BRINKLEY, *supra* note 10, at 242–43 ("[Henry] Clay, [Noah] Webster and other advisers persuaded Biddle to apply to Congress in 1832 for a bill to renew the Bank's [i.e., the Bank of the United States] charter. That was four years ahead of the date the original charter was scheduled to expire . . . Congress passed the recharter bill; [President] Jackson, predictably, vetoed it; and the Bank's supporters in Congress failed to override the veto."); *see also id.* at 247–49.

laws affecting business responded to the needs of westward expansion.[180] Laws controlled aspects of funding for transportation such as canals, railroads, bridges, roads, and steamboats.[181] The federal and state governments subsidized transportation and investors with taxes and bonds, and by granting corporations exclusive franchises.[182] Tariffs and taxes affected business decisions as did the Embargo Act of 1807 by which Congress banned American ships from sailing to foreign ports.[183] States passed laws that shielded corporate investors from liability (*i.e.*, limited corporate liability laws).[184] The United States Supreme Court played a major role in the development of business laws in landmark cases such as *Fletcher v. Peck* (1810)[185] (involving freedom of contract),[186] *Dartmouth College v. Woodward* (1819)

---

180 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 308–09 ("Both national and state government supported the transportation revolution. Given the high construction costs and uncertain profits, investors were leery of risking their scarce capital in long-term transportation projects. State legislatures stepped in and furnished some 70 percent of the funding for canals and about half of all railroad capital. The federal government provided engineers for railroad surveys, lowered tariffs on iron used in rail construction, and granted subsidies to the railroads in the form of public land.")

181 *Id.*

182 *Id.*

183 *See, e.g.*, FONER, *supra* note 8, at 241 ("To Jefferson, the economic health of the United States required freedom of trade with which no foreign government had the right to interfere. American farmers needed access to markets in Europe and the Caribbean. Deciding to use trade as a weapon, in December 1807 he persuaded Congress to enact the Embargo Act, a ban on all American vessels sailing for foreign ports. For a believer in limited government, this was an amazing exercise of federal power . . . Just before his term ended, in March 1809, Jefferson signed the Non-Intercourse Act, banning trade only with Britain and France but providing that if either side rescinded its edicts against American shipping, commerce with that country would resume.").

184 *See, e.g.*, BRINKLEY, *supra* note 10, at 464 ("Under the laws of incorporation passed in many states in the 1830s and 1840s, business organizations could raise money by selling stock to members of the public . . . ."); *see also id.* at 268 ("Corporations began to develop rapidly in the 1830s, when some legal obstacles to their formation were removed. Previously, a corporation could obtain a charter only by a special act of the state legislature—a cumbersome process that stifled corporate growth. By the 1830s, however, states were beginning to pass general incorporation laws, under which a group could secure a charter merely by paying a fee. The new laws also permitted a system of limited liability, which meant that individual stockholders risked losing only the value of their own investment if a corporation should fail, and that they were not liable (as they had been in the past) for the corporation's larger losses.").

185 *See* Fletcher v. Peck, 10 U.S. 87, 128 (1810).

186 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 241 ("Under Chief Justice John Marshall, the Supreme Court had long supported the nationalist perspective Republicans began to champion after the war [i.e., the War of 1812]. Two principles defined Marshall's jurisprudence: the primacy of the Supreme Court in all matters of constitutional interpretation and the sanctity of contractual property rights. In *Fletcher v. Peck* (1810), for example the Court ruled that a Georgia law voiding a land grant made by an earlier legislature—on the grounds that it had involved massive fraud—violated the constitutional provision barring any state from 'impairing

(involving state charters and contracts),[187] *McCulloch v. Maryland* (1819) (involving Congressional authority to charter a national bank and the legality of states to tax federal entities),[188] *Gibbons v. Ogden* (1824) (involving the federal government's control over interstate commerce),[189] and *Charles River Bridge v. Warren Bridge* (1837) (involving the limits of monopolies).[190] The 1830's and 1840's saw a dramatic increase in the number of patents issued.[191] And in 1862, Congress authorized and subsidized the transcontinental railroad.[192]

5. Foreign Policy

FOREIGN POLICY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	85	31	35	151

a. Highlights

As a new nation, the United States immediately had to begin managing diplomatic relations with other governments.[193] Consequently, the textbooks note numerous

---

the obligation of contracts.' Marshall held that despite the fraud, the original land grant constituted an unbreakable legal contract.").

187 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 241 ("Out of the political limelight since the Burr trial in 1807, the Court was thrust back into it by two controversial decisions in 1819. The first involved Dartmouth College and the attempt by the New Hampshire legislature to amend its charter in the direction of greater public control over this private institution. In *Dartmouth College v. Woodward*, the Court ruled that Dartmouth's original royal charter of 1769 was a contract protected by the Constitution. Therefore, the state of New Hampshire could not alter the charter without the prior consent of the college. By sanctifying charters, or acts of incorporation, as contracts, the Court prohibited the states from interfering with the rights and privileges they had bestowed on private corporations."); *see* Dartmouth College v. Woodward, 17 U.S. 518, 554 (1819).

188 McCulloch v. Maryland, 17 U.S. 316, 317 (1819); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 241 (discussing *McCulloch v. Maryland*).

189 Gibbons v. Ogden, 22 U.S. 1, 72 (1824).

190 Charles River Bridge v. Warren Bridge, 36 U.S. 420, 545–46 (1837); BRINKLEY, *supra* note 10, at 244; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 309–10 (discussing *Gibbons v. Ogden* and *Charles River Bridge v. Warren Bridge*).

191 *See supra* note 176; *see also, e.g.*, BRINKLEY, *supra* note 10, at 465 ("Singer patented a sewing machine in 1851 and created I.M. Singer and Company, one of the first modern manufacturing corporations.").

192 *See, e.g.*, BRINKLEY, *supra* note 10, at 453 ("But beginning in the 1860s, a great new network of railroad lines developed, spearheaded by the transcontinental routes Congress had authorized and subsidized in 1862.").

193 *Id.* (In 1795, Thomas Pinckney negotiated a treaty with Spain: "Spain recognized the right of Americans to navigate the Mississippi to its mouth and to deposit goods at New Orleans

instances regarding the relationship between law and foreign relations.[194] As might be expected, much of this activity involved questions of international law and treaty negotiations.[195] Thus, foreign relations' legal questions often related in some manner to land, borders, admiralty, and the military.[196] For example, President Washington appointed Chief Justice of the Supreme Court, John Jay, to negotiate a treaty with Britain in 1794.[197] In 1795, Thomas Pinkney negotiated a treaty with Spain regarding navigation on the Mississippi and the northern boundary of Florida.[198] A treaty with France cemented the famous Louisiana Purchase.[199] Complex questions relating to admiralty and international law presented themselves when dealing with England and France while those nations were at war in the beginning of the nineteenth century.[200] Other treaties of note during this period include: the Treaty of Ghent that concluded the War of 1812;[201] the Adams-Onis Treaty of 1819 with Spain, by which the United

---

for reloading on oceangoing ships; agreed to fix the northern boundary of Florida where Americans had always insisted it should be, along the 31st parallel; and required Spanish authorities to prevent the Indians in Florida from launching raids across the border."); *see also id.* at 174 (To negotiate a treaty with Great Britain in 1794, "Hamilton persuaded Washington to name a special commissioner to England, John Jay, chief justice of the United States Supreme Court . . . ."); *see generally id.* at 172.

194 *See, e.g.*, *id.*

195 *See, e.g.*, *id.*

196 *Id.* at 199; *id.* at 203; *see, e.g.*, *id.*

197 *See, e.g.*, *id.*, at 174 (explaining that to negotiate a treaty with Great Britain in 1794, "Hamilton persuaded Washington to name a special commissioner to England, John Jay, chief justice of the United States Supreme Court . . .").

198 *See, e.g.*, *id.* (discussing that in 1795, Thomas Pinckney negotiated a treaty with Spain: "Spain recognized the right of Americans to navigate the Mississippi to its mouth and to deposit goods at New Orleans for reloading on oceangoing ships; agreed to fix the northern boundary of Florida where Americans had always insisted it should be, along the 31st parallel; and required Spanish authorities to prevent the Indians in Florida from launching raids across the border.").

199 *See, e.g.*, *id.* at 199 ("[Robert] Livingston and James Monroe, whom Jefferson had sent to Paris to assist negotiations, had to decide first whether they should even consider making a treaty for the purchase of the entire Louisiana Territory, since they had not been authorized by the government to do so. But fearful that Napoleon might withdraw the offer, they decided to proceed without further instructions from home. After some haggling over the price, Livingston and Monroe signed the agreement on April 30, 1803.").

200 *See, e.g.*, *id.* at 203 (describing the tense international situation in the wake of the Battle of Trafalgar between France and England in 1805, Brinkley explains: "American ships were caught between Napoleon's decrees and Britain's orders in council. If they sailed directly for the European continent, they risked being captured by the British navy; if they sailed by way of a British port, they risked seizure by the French. Both of the warring powers were violating America's rights as a neutral nation.").

201 *See, e.g.*, *id.* at 210–11 ("In the negotiations [of the Treaty of Ghent to conclude the War of 1812], the Americans gave up their demand for a British renunciation of impressment and for the cession of Canada to the United States. The British abandoned their call for the creation

States acquired Florida and areas of the Pacific Northwest (but forfeiting claims to Texas);[202] the Webster-Ashburton Treaty of 1842, which established the United States-Canadian border;[203] the Treaty of Wang Hya of 1844 that secured favorable trading and other relations with China;[204] and in 1848, the Treaty of Guadalupe Hidalgo with Mexico, wherein the United States acquired California and New Mexico and established the Rio Grande as the boundary separating Texas from Mexico.[205] When British seized and burned the American vessel *Caroline* (with mostly Canadians aboard but killing an American) in 1837, the matter created an international incident that ultimately found resolution in a New York Court.[206] In addition, President

---

of an Indian buffer state in the Northwest. The negotiators referred other disputes to arbitration. Hastily drawn up, the treaty was signed on Christmas Eve 1814. It was named the Treaty of Ghent after the Dutch city in which it was signed. Other settlements followed the Treaty of Ghent and contributed to a long-term improvement in Anglo-American relations. A commercial treaty in 1815 gave Americans the right to trade freely with England and much of the British Empire. The Rush-Bagot agreement of 1817 provided for mutual disarmament on the Great Lakes; eventually (although not until 1872) the Canadian-American boundary became the longest 'unguarded frontier' in the world.").

202 *See, e.g.*, *id.* at 222 ("Under the provisions of the Adams-Onis Treaty of 1819, Spain ceded all of Florida to the United States and gave up as well its claim to territory north of the 42nd parallel in the Pacific Northwest. In return, the American government gave up its claims to Texas.").

203 *See, e.g.*, *id.* at 251 (discussing that since the boundary between Maine and Canada had been disputed ever since the Treaty of 1783, in 1842 Secretary of State Webster of the Tyler Administration negotiated the Webster-Ashburton Treaty, which "established a firm northern boundary between the United States and Canada along the Maine-New Brunswick border that survives to this day . . .").

204 *See, e.g.*, *id.* (In the early 1840's, Caleb Cushing traveled to as a commissioner of the United States "to China to negotiate a treaty giving the United States some part in the China trade. In the Treaty of Wang Hya, concluded in 1844, Cushing secured most-favored-nation provisions giving Americans the same privileges as the English. He also won for Americans the right of 'extraterritoriality'—the right of Americans accused of crimes in China to be tried by American, not Chinese, officials. In the next ten years, American trade with China steadily increased.").

205 *See, e.g.*, *id.* at 350 ("On February 2, 1848, [Nicholas] Trist reached agreement with the new Mexican government on the Treaty of Guadalupe Hidalgo, by which Mexico agreed to cede California and New Mexico to the United Sates and acknowledged the Rio Grande as the boundary of Texas. In return, the United States promised to assume any financial claims its new citizens had against Mexico and to pay the Mexicans $15 million . . . . The president submitted the Trist treaty to the Senate, which approved it by a vote of 38 to 14.").

206 *See, e.g.*, *id.* at 250 (explaining that after British authorities seized the American ship *Caroline* (which had been chartered by rebellious Canadians) in 1837 "and burned it, killing one American in the process . . . Authorities in New York . . . arrested a Canadian named Alexander McLeod and charged him with the murder of the American who had died in the incident. The British government . . . insisted that McLeod could not be accused of murder because he had acted under official orders. The prisoner was under New York jurisdiction and had to be tried in the state courts, a peculiarity of American jurisprudence that the British did

Monroe's famous Monroe Doctrine (1823) proclaimed that the United States considered itself entitled to all land in the "American continents," sending a clear message to Europeans—keep away.[207]

6. Tax

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	56	39	29	124

a. Highlights

Admittedly, taxes played a prominent role in driving the colonists into rebellion.[208] After the new nation successfully broke free from England, taxes and tariffs immediately began to occupy a place in debate.[209] Americans first focused attention on alcohol and imports.[210] By the dawn of the nineteenth century, politicians sought public support for revenue production by reducing domestic taxation in favor

not seem to understand. A New York jury did what Webster could not: it diffused the crisis by acquitting McLeod").

207 *See, e.g.*, *id.* at 225 ("In 1823, [President James] Monroe) . . . announced a policy that would ultimately be known (beginning some thirty years later) as the 'Monroe Doctrine,' even though it was primarily the work of John Quincy Adams. 'The American continents,' Monroe declared, ' . . . are henceforth not to be considered as subjects for future colonization by any European powers.' The United States would consider any foreign challenge to the sovereignty of existing American nations as an unfriendly act. At the same time, he proclaimed, 'Our policy in regard to Europe . . . is not to interfere in the internal concerns of any of its powers.'").

208 *See generally id.* at 112–15 (discussing taxes on colonists in relation to the Stamp Act and the Townshend program).

209 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 207 ("The Tariff Act of 1789 was designed primarily to raise revenue, not to protect American manufacturers by keeping out foreign goods with high duties. It levied a duty of 5 percent on most imported goods but imposed tariffs as high as 50 percent on a limited number of items, such as steel, salt, cloth, and tobacco. The debate on the Tariff act provoked some sectional sparring. Manufacturers, who were concentrated in the North, wanted high tariffs for protection against foreign competition. In contrast, farmers and southern planters wanted low tariffs to keep down the cost of the manufactured goods they purchased."); *see also* BRINKLEY, *supra* note 10, at 161.

210 BRINKLEY, *supra* note 10, at 189 ("Among the first acts of the new Congress when it met in 1789 were two tariff bills giving preference to American ships in American ports, helping to stimulate an expansion of domestic shipping."); *see, e.g.*, *id.* at 170 ("Hamilton proposed two new kinds of taxes. One was an excise to be paid by distillers of alcoholic liquors, a tax that would fall most heavily on the whiskey distillers of the backcountry, especially in Pennsylvania, Virginia, and North Carolina—small farmers who converted part of their corn and rye crop into whiskey. The other was a tariff on imports, which not only would raise revenue but also would protect American manufacturing from foreign competition.").

of customs duties and protectionist tariffs.[211] In fact, protest over certain tariffs played a key role in the nullification crisis; South Carolina wanted to nullify tariffs.[212]

7. Civil Liberties

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution–Civil War	41	37	16	94

a. Highlights

Given that one of the primary causes of the Revolution was British oppression of civil liberties, it is not unsurprising that Americans in the late eighteenth century were especially sensitive to any potential abridgment of them.[213] The first Congress acted quickly to write and pass the Bill of Rights.[214] At the close of the century, however, Americans did begin infringing such rights, when Congress passed the Alien and Sedition Acts.[215]

---

211 *Id.* at 227 (discussing a tariff on imported goods in 1828 (so-called "tariff of abominations"), supported by President John Quincy Adams); *see, e.g.*, *id.* at 195 ("Under Washington and Adams, the Republicans believed, the government had been needlessly extravagant. Yearly federal expenditures had almost tripled between 1793 and 1800. Hamilton had, as he had intended, increased the public debt and created an extensive system of internal taxation, including the hated whiskey excise tax. The Jefferson administration moved deliberately to abolish all internal taxes, leaving customs duties and the sale of western lands as the only sources of revenue for the government."); *see also id.* at 216 ("In 1816, protectionists in Congress won passage of a tariff law that effectively limited competition from abroad on a wide range of items, the most important of which was cotton cloth.").

212 *See, e.g.*, *id.* at 237 ("In 1832, finally, the controversy over nullification produced a crisis. A congressional tariff bill was passed that offered South Carolinians no relief from the 1828 'tariff of abominations.' Almost immediately, the state legislature summoned a state convention, which voted to nullify the tariffs of 1828 and 1832 and to forbid the collection of duties within the state.").

213 *See generally id.* at 130–31.

214 *See, e.g.*, *id.* at 168 ("Congress approved twelve amendments on September 25, 1789; ten of them were ratified by the states by the end of 1791. What we know as the Bill of Rights is these first ten amendments to the Constitution. Nine of them placed limitations on Congress by forbidding it to infringe on certain basic rights: freedom of religion, speech, and the press; immunity from arbitrary arrest; trial by jury; and others. The Tenth Amendment reserved to the states all powers except those specifically withheld from them or delegated to the federal government.").

215 *See, e.g.*, *id.* at 176 (discussing "some of the most controversial legislation in American history; the Alien and Sedition Acts," Brinkley writes: "The Alien Act placed new obstacles in the way of foreigners who wished to become American citizens, and it strengthened the president's hand in dealing with aliens.").

8. Native Americans

NATIVE AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	30	33	30	93

a. Highlights

As Americans migrated west, the United States Government confronted difficulties with Native American tribes.[216] The new federal government took a decidedly aggressive posture to push tribes off their lands.[217] Beginning in the 1780's, Congress used pressure tactics to acquire significant acreage by means of numerous treaties.[218] Although there were many dimensions to the conflicts, one core issue was that Native Americans held beliefs about property and the environment that were fundamentally different from those held by early Americans.[219] The Government took advantage of this philosophical discrepancy and, via treaties, time and again claimed Indian lands for the United States.[220] All three branches of government at both the federal and state levels played prominent roles regarding legal relations with Native Americans.[221] Even state legislatures controlled aspects of tribes within their

216 *See generally id.* at 166 ("The Constitution of 1789 was a document that established a democratic republic for white people, mostly white men. Indians and African Americans, the two largest population groups sharing the lands of the United States with Anglo-Americans, enjoyed virtually none of the rights and privileges provided to the white population. Native Americans had at least the semblance of a legal status within the nation, through treaties that assured them lands that would be theirs forever. But most of these treaties did not survive for long, and Indians found themselves driven farther and farther west with little of the protection that the government had promised them."); *see generally id.* at 172–73.

217 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 183.

218 *Id.*

219 *See generally* BRINKLEY, *supra* note 10, at 205–07.

220 *Id.* at 218 ("A series of treaties in 1815 wrested more land from the Indians."); *id.* at 239 (discussing a treaty, which "had ceded tribal lands in Illinois to the United States," Brinkley states that "Black Hawk and his followers refused to recognize the legality of the agreement, which a rival tribal faction had signed"); *id.* at 241 ("Like other tribes, the Seminoles had agreed under pressure to a settlement (the 1832-1833 treaties of Payne's Landing), by which they ceded their lands to the government and agreed to move to Indian Territory within three years."); *id.* (explaining the terms of Indian Removal at the end of the 1830's, Brinkley writes: "The tribes had ceded over 100 million acres of eastern land to the federal government; they had received in return about $68 million and 32 million acres in the far less hospitable lands west of the Mississippi between the Missouri and Red Rivers."); *see, e.g.*, *id.* at 206 ("By 1807, the United States had extracted from reluctant tribal leaders' treaty rights to eastern Michigan, southern Indiana, and most of Illinois. Meanwhile, in the Southwest, white Americans were taking millions of acres from other tribes in Georgia, Tennessee, and Mississippi.").

221 BRINKLEY, *supra* note 10, at 239–40.

borders.[222] Congress enacted legislation that displaced tribes and eroded their freedoms (*e.g.*, 1830 Indian Removal Act,[223] 1851 Bureau of Indian Affairs—assignment to reservations).[224] And the Supreme Court weighed in more than once, producing a mixed bag of results (*e.g.*, 1823 *Johnson v. McIntosh* ("rights of occupancy"),[225] 1831 *Cherokee Nation v. Georgia* (Native Americans are considered "wards" of the United States),[226] and 1832 *Worcester v. Georgia* (only the United States Government may contract with tribes).[227] President Andrew Jackson's hostility—even before his presidency—is notorious.[228] In 1851, the Bureau of Indian Affairs pressured Plains Indians (*i.e.*, mostly Sioux) to agree to the Fort Laramie Treaty, which established both financial compensation for the tribes as well as new boundaries.[229] At best, the Fort Laramie Treaty was a temporary solution to the problem. And shortly thereafter, when Stephen Douglas proposed federal legislation regarding the path of a proposed transcontinental railroad in the Nebraska territory, President Franklin Pierce took steps to oust tribes who occupied land in that path.[230]

---

222 *See, e.g.*, *id.* at 239 ("[T]he legislatures of Georgia, Alabama, and Mississippi began passing laws to regulate the tribes remaining in their states. They received assistance in these efforts from Congress, which in 1830 passed the Removal Act (with Jackson's approval) to appropriate money to finance federal negotiations with the southern tribes aimed at relocating them to the West. The president quickly dispatched federal officials to negotiate nearly a hundred new treaties with the remaining tribes . . . . Most tribes . . . ceded their lands in return for token payments.").

223 BRINKLEY, *supra* note 10, at 241 (explaining the terms of Indian Removal at the end of the 1830's, Brinkley writes: "The tribes had ceded over 100 million acres of eastern land to the federal government; they had received in return about 68 million and 32 million acres in the far less hospitable lands west of the Mississippi between the Missouri and Red Rivers."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 261–62.

224 *See, e.g.*, BRINKLEY, *supra* note 10, at 448 ("In 1851, each tribe was assigned its own defined reservation, confirmed by separate treaties—treaties often illegitimately negotiated with unauthorized 'representatives' chosen by whites, people known sarcastically as 'treaty chiefs.'").

225 Johnson v. M'Intosh, 21 U.S. 543, 574 (1823).

226 Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831).

227 Worcester v. Georgia, 31 U.S. 515, 41–42 (1832); BRINKLEY, *supra* note 10, at 239; *see, e.g.*, FONER, *supra* note 8, at 302–03 (discussing these significant cases).

228 BRINKLEY, *supra* note 10, at 240 ("When the chief justice announced the decision in *Worcester v. Georgia*, [President] Jackson reportedly responded with contempt, 'John Marshall has made his decision,' he was reported to have said, 'Now let him enforce it.' The decision was not enforced."); *see, e.g.*, FONER, *supra* note 8, at 244 (March 1814: "[Andrew Jackson] dictated terms of surrender that required the Indians, hostile and friendly alike, to cede more than half their land, over 23 million acres in all, to the federal government.").

229 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 352.

230 *See, e.g.*, *id.* at 380–81.

9. Criminal Law

CRIMINAL LAW	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution–Civil War	26	27	26	79

a. Highlights

The textbooks mention criminal law primarily either by recounting specific incidents or by discussing certain regions of the country,[231] individuals, or groups who sought to implement reforms.[232] Famously, Aaron Burr was acquitted of treason charges in 1807.[233] The Mormon founder, Joseph Smith, was criminally charged shortly before he was killed by a mob.[234] Henry David Thoreau's civil disobedience put him in jail.[235] John Brown's notorious raid on Harper's Ferry sent him and his accomplices to the gallows.[236] There were international criminal incidents like the one involving the American ship, the *Caroline*, where British, Canadian, and American interests presented difficult criminal and jurisdictional questions.[237] In the South,

231 *See, e.g.*, *id.* at 201 ("New Englanders perceived government as a divine institution with a moral responsibility to intervene in people's lives . . . . Their courts were also far more likely than those elsewhere to punish individuals for crimes against public order (like failing to observe the Sabbath properly) and sexual misconduct.").

232 *See, e.g.*, *id.* at 331.

233 BRINKLEY, *supra* note 10, at 201–02; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 230 ("Burr was tried for treason in 1807, and Jefferson made extraordinary efforts to secure his conviction. He was saved by the insistence of Chief Justice Marshall that the Constitution defined treason only as waging war against the United States by the rendering of aid to its enemies. The also required the direct testimony of two witnesses to an 'overt act' of treason for conviction. Lacking such witnesses, the government failed to prove its case, and Burr was acquitted.").

234 *See, e.g.*, BRINKLEY, *supra* note 10, at 320 ("In 1844, however, Joseph Smith [i.e., the founder of the Church of Jesus Christ of Latter-Day Saints, the Mormons] was arrested, charged with treason (for allegedly conspiring against the government to win foreign support for a new Mormon colony in the Southwest), and imprisoned in Carthage, Illinois.").

235 *See, e.g.*, *id.* at 349 ("Henry David Thoreau was so horrified by the war that he refused to pay taxes (which he said financed the conflict) and spent time in jail.").

236 *See, e.g.*, *id.* at 360 (discussing John Brown's raid on Harper's Ferry, Virginia, Brinkley notes: "He was promptly tried in a Virginia court for treason against the state, found guilty, and sentenced to death. He and six of his followers were hanged.").

237 *See, e.g.*, *id.* at 250.

slave patrols kept a lookout for runways and disruptive African Americans.[238] Criminal justice was rough; some still settled scores by dueling with pistols and lynchings.[239] In addition to specific—sometimes sensational—recounting of specific criminal events, the textbooks also mention systemic changes during this period.[240] For example, Foner notes: "In colonial America, crime had mostly been punished by whipping, fines, or banishment. *** During the 1830s and 1840s, Americans embarked on a program of institution building—jails for criminals, poorhouses for the destitute, asylums for the insane, and orphanages for children without families."[241] Various groups who perceived that alcohol caused crime began pressuring lawmakers to curtail its legality.[242] Dorthea Dix and other reformers advocated for the need to change the criminal system, in part, by moving towards improved rehabilitation rather than punishment.[243]

10. Women

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	27	34	13	74

a. Highlights

All three textbooks note Abigail Adams's famous letter to her husband, wherein she admonished him to be certain that the federal government took steps to protect the

238 *Id.* at 310.

239 *Id.* at 424.

240 FONER, *supra* note 8, at 345.

241 *Id.*; *see, e.g.*, BRINKLEY, *supra* note 10, at 326.

242 *See, e.g.*, BRINKLEY, *supra* note 10, at 322 (noting that one factor that motivated the temperance societies of the mid-nineteenth century was that alcohol was "responsible for crime").

243 FONER, *supra* note 8, at 355; GOLDFIELD ET AL., *supra* note 26, at 328; *see, e.g.*, BRINKLEY, *supra* note 10, at 326 (discussing various reform movements of the early nineteenth century).

interests of women.[244] The Revolution itself did not elevate women's legal status.[245] Women sought legal and social equality with men through a variety of means.[246] For example, they worked for the right to buy and sell property, the right to divorce, the right to work, the right to inherit, and the right to vote.[247] New Jersey's Constitution of 1776 actually allowed women who owned assets of fifty pounds or more (*i.e.*, a minimum property requirement) and those who were divorced to vote.[248] When amended in 1807, however, the new state constitution repealed that right of suffrage.[249] "In 1789, Massachusetts required that its public schools serve females as

---

244 GOLDFIELD ET AL., *supra* note 26, at 161; *see, e.g.*, FONER, *supra* note 8, at 168 ("In March 1776, a few months before the Second Continental Congress declared American independence, Abigail Adams wrote her best-known letter to her husband . . . . She went on to urge Congress, when it drew up a 'Code of Laws' for the new republic, to 'remember the ladies.' All men, she warned, 'would be tyrants if they could.' It was the leaders of colonial society who initiated resistance to British taxation . . . . At a time when so many Americans—slaves, indentured servants, women, Indians, apprentices, propertyless men—were denied full freedom, the struggle against Britain threw into question many forms of authority and inequality . . . . [S]he resented the 'absolute power' husbands exercised over their wives.").

245 *See, e.g.*, BRINKLEY, *supra* note 10, at 148 ("The Revolution did little to change any . . . legal customs. In some states, it did become easier for women to obtain divorces. And in New Jersey, women obtained the right to vote (although that right was repealed in 1807). Otherwise, there were few advances and some setbacks—including widows' loss of the right to regain their dowries from their husbands' estates. That change left many widows without any means of support and was one of the reasons for the increased agitation for female education: such women needed a way to support themselves.").

246 *See* GOLDFIELD ET AL., *supra* note 26, at 201 ("Liberalized divorce laws in New England also allowed a woman to seek legal separation from an abusive or unfaithful spouse.").

247 *Id.*; BRINKLEY, *supra* note 10, at 283 (describing circumstances in the early nineteenth century, Brinkley writes: "Women had long been denied many legal and political rights enjoyed by men; within the family, the husband and father had traditionally rules, and the wife and mother had generally bowed to his demands and desires. It had long been practically impossible for most women to obtain divorces, although divorces initiated by men were often easier to arrange. (Men were also far more likely than women to win custody of children in case of a divorce.) In most states, husbands retained almost absolute authority over both the property and persons of their wives. Wife beating was illegal in only a few areas, and the law did not acknowledge that rape could occur within marriage.").

248 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 172 ("Gender-specific language, including terms such as 'men,' 'Freemen,' 'white male inhabitants,' and 'free white men,' explicitly barred women from voting in almost all state constitutions of the 1770s. Only the New Jersey constitution of 1776 defined suffrage, the right to vote, in gender-free terms—extending it to all adults 'worth fifty pounds.' As a result, until 1807, when the state legislature changed the constitution, propertied women including widows and single women, enjoyed the right to vote in New Jersey. The Revolution otherwise did bring women a few limited gains. They benefited from slightly less restrictive divorce laws and gained somewhat greater access to educational and business opportunities.").

249 *Id.*

well as males. Other states, although not all, soon followed."[250] In addition to Abigail Adams, in the late eighteenth century, some individuals such as Mary Wollstonecraft in England and Judith Sargent Murray in America began publicly advocating for women's rights through their writings.[251] The legal situation for women, nevertheless, remained mostly stagnant at the turn of the century.[252] In the first half of the nineteenth century groups of women met and formed coalitions seeking gender equality.[253] The 1848 Seneca Falls Convention promoted legal and social equality for women.[254] The Utopian societies like Shakers, New Harmony, and the Oneida Community influenced the perceptions of many regarding the legal status of women.[255] In the decades preceding the Civil War, a handful of states passed legislation that protected women's property rights (*i.e.*, the so-called married women's property laws),[256] and by 1860,

---

250 BRINKLEY, *supra* note 10, at 182.

251 *See, e.g.*, FONER, *supra* note 8, at 230.

252 BRINKLEY, *supra* note 10, at 283; *see, e.g.*, FONER, *supra* note 8, at 168 (describing circumstances in the early nineteenth century, Foner writes: "Married women still could not sign independent contracts or sue in their own names, and not until after the Civil War did they, not their husbands, control the wages they earned.").

253 BRINKLEY, *supra* note 10, at 276, 327; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 325 ("American Female Moral Reform Society: Organization founded in 1839 by female reformers that established homes for refuge for prostitutes and petitioned for state laws that would criminalize adultery and the seduction of women.").

254 BRINKLEY, *supra* note 10, at 328 (Brinkley reproduces a portion of Elizabeth Cady Stanton's *A History of Women's Suffrage*, which quotes "The Declaration of Sentiments, Seneca Falls Convention, 1848," stating that "all men and women are created equal," and "we insist that . . . [women] have immediate admission to all the rights and privileges which belong to them as citizens of the United States."); GOLDFIELD ET AL., *supra* note 26, at 334; FONER, *supra* note 8, at 356; *see, e.g.*, BRINKLEY, *supra* note 10, at 330 (discussing the Seneca Falls Convention of 1848, Brinkley writes: "Out of the meeting emerged a 'Declaration of sentiments' (patterned on the 1776 Declaration of Independence), which stated that 'all men and women are created equal,' that women no less than men have certain inalienable rights. Their most prominent demand was for the right to vote, thus launching a movement for woman suffrage that would continue until 1920.").

255 FONER, *supra* note 8, at 340 ("Some [utopian communities in the early nineteenth century] prohibited sexual relations between men and women altogether; others allowed them to change partners at will. But nearly all insisted that the abolition of private property must be accompanied by an end to men's 'property' in women."); *id.* at 343; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 329 ("In worldly as well as spiritual terms, women enjoyed an equality in Shaker life that the outside world denied them. For this reason, twice as many women as men joined the Shakers . . . John Humphrey Noyes, a graduate of Dartmouth who studied for the ministry at Yale, established the Oneida Community in upstate New York in 1848. He attracted more than 200 followers with his perfectionist vision of plural marriage, community nurseries, group discipline, and common ownership of property.").

256 *See, e.g.*, FONER, *supra* note 8, at 358.

New York enacted legislation to elevate women's ability to contract, earn higher wages, and own property.[257]

11. Voting and Elections

VOTING & ELECTIONS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	18	21	19	58

a. Highlights

As might be expected, much of the discussion regarding voting and election laws during this period relates to the expansion of voting rights for African Americans and women.[258] Regarding African American suffrage, one of the more striking facts is that even the majority of northern states did not permit free blacks to vote.[259] A number of states abolished property ownership as a voting requirement.[260] All states admitted to the Union after the original thirteen adopted voting laws with reduced or no property requirements.[261] After 1800, only Maine allowed African Americans to vote upon

---

257 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 334 ("By 1860, fourteen states had granted women greater control over their property and wages, most significantly under New York's Married Women's Property Act of 1860. The act established women's legal right to control their own wage income and to sue fathers and husbands who tried to deprive them of their wages.").

258 *See supra* Parts V.C.2., V.C.10.

259 GOLDFIELD ET AL., *supra* note 26, at 253; *see, e.g.*, BRINKLEY, *supra* note 10, at 280–81 (describing circumstances during the 1840's, Brinkley writes: "In most parts of the North, blacks could not vote, could not attend public schools, indeed could not use any of the public services available to white residents.").

260 BRINKLEY, *supra* note 10, at 231; *see, e.g.*, FONER, *supra* note 8, at 281–82 ("The challenge to property qualifications for voting, begun during the American Revolution, reached its culmination in the early nineteenth century. Not a single state that entered the Union after the original thirteen required ownership of property to vote. In the older states, by 1860, all but one had ended the property requirements for voting (though several continued to bar persons accepting poor relief, on the grounds that they lacked genuine independence).").

261 BRINKLEY, *supra* note 10, at 231 ("[B]eginning even before Jackson's election [i.e., 1828], the rules governing voting began to expand. Changes came first in Ohio and other new states of the West, which, on joining the Union, adopted constitutions that guaranteed all adult white males the right to vote and gave all voters the right to hold public office."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 253 ("Six states, Indiana, Mississippi, Illinois, Alabama, Missouri, and Maine, entered the Union between 1816 and 1821, and none of them required voters to own property. Meanwhile, proponents of suffrage liberalization won major victories in the older states. Constitutional conventions in Connecticut in 1818 and Massachusetts and New York in 1821 eliminated property requirements for voting. By the end of the 1820s, near universal white male suffrage was the norm everywhere except Rhode Island, Virginia, and Louisiana.").

entering the Union, and at the turn of the eighteenth to the nineteenth century, both Kentucky and Maryland rescinded their voting rights.[262] At the beginning of the Civil War, only five states permitted African Americans to vote.[263] Several western states experimented with suffrage for women in the latter stages of the nineteenth century before the issue took on national importance.[264]

12. Contracts

CONTRACTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	17	19	11	47

a. Highlights

One reason for the multiple references to contract law that appear in the textbooks is that two important cases that reached the Marshall Supreme Court concerned the authority of states to become involved with private agreements.[265] *Fletcher v. Peck* (1810)[266] and *Dartmouth College v. Woodward* (1819)[267] both addressed aspects of that issue.[268] After Marshall's death, with Roger Taney as Chief Justice, the Court again faced another case that, among other things, required an analysis of contract law in *Charles River Bridge v. Warren Bridge* (1837).[269] Other references to contract law

---

262 *Voting Rights in Kentucky, 1792–1799 - Free Negro, Mulatto, Indian Males*, NOTABLE KY. AFR. AM. DATABASE, https://nkaa.uky.edu/nkaa/items/show/2999 (Sept. 16, 2017).

263 Nicholas Mosvick, *On This Day, the 15th Amendment Is Ratified*, NAT'L CONST. CTR., https://constitutioncenter.org/blog/on-this-day-the-15th-amendment-is-ratified (Feb. 3, 2022).

264 BRINKLEY, *supra* note 10, at 560.

265 *Id.* at 233.

266 Fletcher v. Peck, 10 U.S. 87, 128 (1810).

267 Trs. of Dartmouth Coll. v. Woodward, 17 U.S. 518, 625 (1819).

268 BRINKLEY, *supra* note 10, at 223–24 ("*Dartmouth College v. Woodward* (1819) further expanded the meaning of the contract clause of the Constitution. Having gained control of the New Hampshire state government, Republicans tried to revise Dartmouth college's charter (granted by King George III in 1769) to convert the private college into a state university . . . . The Court ruled for Dartmouth. The decision placed important restrictions on the ability of state governments to control corporations."); *see, e.g.*, *id.* at 223 ("Committed to promoting commerce, the Marshall Court staunchly defended the inviolability of contracts. In *Fletcher v. Peck* (1810), which arose out of a series of notorious land frauds in Georgia, Marshall held that a land grant was a valid contract and could not be repealed even if corruption was involved.").

269 Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 536 (1837); *see, e.g.*, BRINKLEY, *supra* note 10, at 244.

involve matters such as slave owners renting slaves to others[270] and contracts for miners during the Gold Rush.[271]

13. Social Engineering

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	7	13	24	44

14. Military

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	24	15	4	43

a. Highlights

In 1798, Congress created the Department of the Navy.[272] And in 1812, following a court martial, Andrew Jackson executed soldiers who had deserted.[273] Once the Civil War began, Northern and Southern legislators enacted conscription legislation—the Confederacy in 1862 and the Union in 1863.[274] And in 1864, the South made reenlistment mandatory.[275] Meanwhile, President Lincoln brashly used his executive

270 *See, e.g.*, BRINKLEY, *supra* note 10, at 306 ("Even the poorest whites tended to prefer working on farms to doing ordinary labor, and so masters often hired out slaves for such tasks. Slaves on contract worked in mining and lumbering (often far from cities); but others worked on the docks and on construction sites, drove wagons, and performed other unskilled jobs in cities and towns. Slave women and children worked in the region's few textile mills. Particularly skilled workers such as blacksmiths or carpenters were also hired out.").

271 *See, e.g.*, BRINKLEY, *supra* note 10, at 351 (explaining the contracts that a number of Forty-niners entered into in order to finance their travel to California in pursuit of the gold rush, Brinkley notes: "Emigration brokers loaned many migrants money for passage to California, which the migrants would pay off out of their earnings there.").

272 BRINKLEY, *supra* note 10, at 351; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 217.

273 BRINKLEY, *supra* note 10, at 227.

274 *See, e.g.*, *id.* at 370.

275 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 406 ("As war fever gripped North and South, volunteers on both sides rushed to join, quickly filling the quotas of both armies. By early spring of 1862, however, the Confederate government was compelled to order the first general draft in American history. It required three years' service for men between 18 and 35 (a range later expanded from 17 to 50). In 1864, the Confederate Congress added a compulsory reenlistment provision.").

powers, making military decisions that resulted in many questioning his authority regarding military law.[276]

15. Religion

RELIGION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	16	20	6	42

16. Incidental

INCIDENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	10	14	11	35

17. Education

EDUCATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	6	12	13	31

18. Marriage and Family

MARRIAGE & FAMILY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	6	19	3	28

276 *See, e.g.*, BRINKLEY, *supra* note 10, at 370–71.

19. Immigration

IMMIGRATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	9	4	11	24

20. Other Minorities

OTHER MINORITIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	1	3	2	6

21. Torts

TORTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	0	2	0	2

22. Labor

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	5	2	2	2

23. Environmental

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Revolution – Civil War	0	0	0	0

D. Post-Civil War Through World War II

1. Slavery and African Americans

SLAVERY & AFRICAN AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	146	104	77	327

a. Highlights

The decades immediately following the Civil War witnessed efforts during Reconstruction to blend freed African Americans into the rest of American society.[277] Among its first post-war steps toward providing legal assistance for African Americans, in 1865, Congress established the Freedmen's Bureau.[278] While President Andrew Johnson tried to limit the rights of African Americans,[279] Congress passed the Thirteenth, Fourteenth, and Fifteenth Amendments providing a legal framework to assimilate them.[280] In the wake of the Thirteenth Amendment, southern state legislators enacted Black Codes designed to limit the freedom of African Americans.[281] Responding to the Black Codes, Congress then passed the Civil Rights Act of 1866, and then the Fourteenth and Fifteenth Amendments, enacting respectively the privileges and immunities and equal protection clauses and voting rights.[282] It was then that white private-interest groups, such as the KKK, resorted to

---

277 BRINKLEY, *supra* note 10, at 404–05, 407–09; *see, e.g.*, *id.* at 400 (describing Reconstruction as, "a small but important first step in the effort by former slaves to secure civil rights and economic power. Reconstruction did not provide African Americans with either legal protections or the material resources to assure them real equality. When it came to an end, finally, in the late 1870s, the freed slaves found themselves abandoned by the federal government to face a system of economic peonage and legal subordination. Yet for all its shortcomings, Reconstruction did help African Americans create institutions and legal precedents that in the twentieth century would become the basis for their efforts to win freedom and equality").

278 *See, e.g.*, *id.* at 402 ("In March 1865, Congress established the Freedmen's Bureau, an agency of the army directed by General Oliver O. Howard. The Freedmen's Bureau distributed food to millions of former slaves. It established schools staffed by missionaries and teachers who had been sent to the South by Freedmen's Aid Societies and other private church groups in the North . . . . It had authority to operate for only one year; and in any case it was far too small to deal effectively with the enormous problems facing Southern society.").

279 *Id.* at 404 (describing Andrew Johnson, who became president after Lincoln's assassination, Brinkley writes: "He was . . . [o]penly hostile to the freed slaves and unwilling to support any plans that guaranteed them civil equality or enfranchisement.").

280 *See id.* at 404–06.

281 *See, e.g.*, *id.* at 405.

282 *Id.* at 405–06.

violence as a means to further suppress African American freedoms.[283] Congress countered with the KKK (Enforcement) Acts of 1870 and 1871.[284] During the last decades of the nineteenth century and the first of the twentieth, southern states passed myriad Jim Crow laws (*i.e.*, laws that functionally legalized racial segregation), leading groups and individuals to turn to the courts to sort out the legality of contradictory federal and state legislation.[285] By the 1890's, a number of southern states had enacted franchise restrictions like poll taxes, property qualifications, literacy tests, and grandfather clauses designed to curb the voting rights of African Americans.[286] Initially, United States Supreme Court decisions such as *Plessy v. Ferguson* (1896),[287] *Williams v. Mississippi* (1898),[288] and *Cummings v. Bd. Of Ed.* (1899)[289] upheld some of those state Jim Crow and voting rights restrictions.[290] It was not until the second decade of the twentieth century that the United States Supreme Court began to strike down southern constraints (*e.g.*, *Guinn v. United States*

---

283 *See, e.g.*, *id.* at 408 (captioning the illustration entitled "New Orleans Riot": "On July 30, 1866, a violent conflict took place outside the Mechanics Institute in New Orleans. Whites attacked blacks parading outside the building where a reconvened Louisiana Constitutional Convention was being held. The states Radical Republican had called for the Convention because they were angered by the legislature's enactment of the Black Codes that restricted the rights of African Americans to travel and work. An estimated thirty-eight people were killed and forty-six wounded, most of them African American."); *see also id.* at 425 ("Those involved in lynchings often saw their actions as a legitimate form of law enforcement; and indeed, some victims of lynchings had in fact committed crimes. But lynchings were also a means by which whites controlled the black population through terror and intimidation.").

284 *See, e.g.*, *id.* at 414.

285 *See, e.g.*, *id.* at 428 (describing, in the chapter summary entitled "Looking Back," the experience of African Americans after Reconstruction: "The result was a form of economic bondage, driven by debt, only scarcely less oppressive than the legal bondage of slavery." He also notes that: "[I]n the 1890s and early twentieth century . . . white southerners erected an elaborate legal system of segregation (the 'Jim Crow' laws). The promise of the great Reconstruction amendments to the Constitution—the Fourteenth and Fifteenth—remained largely unfulfilled in the South as the century drew to its close."); *see also* BRINKLEY, *supra* note 10, at 429 under "Significant Events"; *see also* MULLER, *supra* note 87, at 50 ("[W]e have also developed stronger prejudices than any other civilization, raised new barriers to understanding and community. The ugliest example is racial prejudice.").

286 BRINKLEY, *supra* note 10, at 423.

287 Plessy v. Ferguson, 163 U.S. 537, 551–52 (1896).

288 Williams v. Mississippi, 170 U.S. 213, 225 (1898).

289 Cumming v. Richmond Cty. Bd. of Educ., 75 U.S. 528, 545 (1899).

290 *See, e.g.*, BRINKLEY, *supra* note 10, at 422–24.

(1915)[291]—voiding Oklahoma's grandfather clause, and *Buchanan v. Warley* (1917)[292]—striking Louisville, Kentucky's residential segregation).[293]

2. Trade and Commerce

TRADE & COMMERCE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	139	92	77	308

a. Highlights

The growth of American businesses during this period is legendary.[294] Industries like railroads, banking, oil, gas, and steel are prominent examples.[295] All three branches of local, state, and federal governments tried to influence that growth either by facilitating or curbing it.[296] States passed measures intended to increase corporate efficiency and vitality.[297] During the Civil War, Congress had begun subsidizing

291 Guinn v. United States, 238 U.S. 347, 367–68 (1915).

292 Buchanan v. Warley, 245 U.S. 60, 82 (1917).

293 *See, e.g.*, BRINKLEY, *supra* note 10, at 566 ("[T]he new organization [i.e., the NAACP] led the drive for equal rights, using as its principal weapon lawsuits in the federal courts. Within less than a decade, the NAACP had begun to win some important victories. In *Guinn v. United States* (1915), the Supreme Court supported its position that the grandfather clause in an Oklahoma law was unconstitutional. (The statute denied the vote to any citizen whose ancestors had not been enfranchised in 1860). In *Buchanan v. Worley* (1917), the Court struck down a Louisville, Kentucky law requiring residential segregation.").

294 BRINKLEY, *supra* note 10, at 459; *see, e.g.*, FONER, *supra* note 8, at 476–77 ("Between the end of the Civil War and the early twentieth century, the United States underwent one of the most rapid and profound economic revolutions any country has ever experienced . . . [T]he federal government . . . enacted high tariffs that protected American industry from foreign competition, granted land to railroad companies to encourage construction, and used the army to remove Indians from western lands desired by farmers and mining companies."); *see also* MULLER, *supra* note 87, at 335 ("For all classes, however, the central source of corruption is the sacred profit motive. It is a constant menace to justice, fraternity, integrity, sincerity, or simple decency.").

295 *See, e.g.*, BRINKLEY, *supra* note 10, at 453 ("But beginning in the 1860s, a great new network of railroad lines developed, spearheaded by the transcontinental routes Congress had authorized and subsidized in 1862.").

296 *See, e.g.*, BRINKLEY, *supra* note 10, at 452 (describing circumstances in the aftermath of the transcontinental railroad project, which was completed in 1869, Brinkley writes: "State governments encouraged railroad development by offering financial aid, favorable loans, and more than 50 million acres of land (on top of the 130 million acres the federal government had already provided). Although operated by private corporations, the railroads were essentially public projects.").

297 BRINKLEY, *supra* note 10, at 464 ("Under the laws of incorporation passed in many states in the 1830s and 1840s, business organizations could raise money by selling stock to members

western expansion of the Transcontinental Railroad and also passed National Banking Acts.[298] It continued that subsidization in the 1880's and, in 1887, established the Interstate Commerce Commission.[299] Meanwhile, small farmers encountered difficulties obtaining loans with terms that were realistic for them to be able to repay in a timely manner.[300] American innovators took advantage of patent laws to improve market dominance (*e.g.*, telegraph, electric light, telephone).[301] And Congress

---

of the public; after the Civil War, one industry after another began to do so. At the same time, affluent Americans began to consider the purchase of stock a good investment even if they were not involved in the business whose stock they were purchasing. What made the practice appealing was that investors had only 'limited liability'—that is, they risked only the amount of their investments; they were not liable for any debts the corporation might accumulate beyond that."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 514 (discussing the development of corporate law in the latter half of the nineteenth century: "A corporation is an association of individuals that is legally authorized to act as a fictional 'person' and thus relieves its individual members of certain legal liabilities. A key feature of a corporation is the separation of ownership from management. A corporation can raise capital by selling ownership shares, or stock, to people who have no direct role in running it. The corporation had two major advantages over other forms of business organization that made it attractive to investors. First, unlike a partnership, which dissolves when a partner dies, a corporation can outlive its founders. This durability permits long-term planning. Second, a corporation's officials and shareholders are not personally liable for its debts. If it goes bankrupt, they stand to lose only what they have invested in it.").

298 *See, e.g.*, BRINKLEY, *supra* note 10, at 368–69 ("The National Bank Acts of 1863-1864 created a new national banking system. Existing or newly formed banks could join the system if they had enough capital and were willing to invest one-third of it in government securities. In return, they could issue U.S. Treasury notes as currency. The new system eliminated much of the chaos and uncertainty in the nation's currency and created a uniform system of national bank notes.").

299 FONER, *supra* note 8, at 501 ("In 1887, in response to public outcries against railroad practices, Congress established the Interstate Commerce Commission (ICC) to ensure that the rates railroads charged farmers and merchants to transport their goods were 'reasonable' and did not offer more favorable treatment to some shippers. The ICC was the first federal agency intended to regulate economic activity, but since it lacked the power to establish rates on its own—it could only sue companies in court—it had little impact on railroad practices."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 581 ("With the support of both major parties, Congress in 1887 passed the Interstate Commerce Act. The act prohibited rebates, discriminatory rates, and pooling and established the Interstate Commerce Commission (ICC) to investigate and prosecute violations. The ICC was the first federal regulatory agency."). *See generally* BRINKLEY, *supra* note 10, at 518–20.

300 BRINKLEY, *supra* note 10, at 455 (describing circumstances in the late nineteenth century, Brinkley writes: "Since sources of credit in the West and South were few, farmers had to take loans on whatever terms they could get, often at interest rates ranging from 10 to 25 percent. Many farmers had to pay these loans back in years when process were dropping and currency was becoming scarce. Increasing the volume of currency eventually became an important agrarian demand."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 491.

301 BRINKLEY, *supra* note 10, at 618; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 513.

implemented a number of measures relating to currency and monetary policy,[302] imposed protective tariffs, and began exercising its interstate commerce authority.[303] In the late nineteenth century, when the public began expressing concern over child labor, state legislators began taking steps to address those concerns.[304] Presidents, Congress, and the courts engaged in constant skirmishes that tested the limits of and eventually shaped the contours of marketplace competition under United States law.[305] In 1890, Congress took steps to rein in the conspiratorial and monopolistic practices of large corporations when it passed the Sherman Antitrust Act and later other regulations.[306] The United States Supreme Court initially favored business in cases such as *United States v. E.C. Knight* (1895)[307] and *Lochner v. New York* (1905).[308] The three decades that preceded World War II witnessed an uptick in

---

302 *See, e.g.*, BRINKLEY, *supra* note 10, at 530 ("The Republicans then enacted the Currency, or Gold Standard, Act of 1900, which confirmed the nation's commitment to the gold standard by assigning a specific gold value to the dollar and requiring all currency issued by the United States to hew to that value.").

303 *See* BRINKLEY, *supra* note 10, at 530.

304 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 517.

305 BRINKLEY, *supra* note 10, at 517 ("[S]entiment was rising in favor of legislation to curb the power of trusts. By the mid-1880s, fifteen western and southern states had adopted laws prohibiting combinations that restrained competition."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 515 ("[C]oncerns [about large corporate trusts] eventually prompted the state and federal governments to respond with antitrust and other regulatory laws.").

306 FONER, *supra* note 8, at 501 ("Congress passed the Sherman Antitrust Act, which banned all combinations and practices that retrained free trade. But the language was so vague that the act proved almost impossible to enforce. Weak as they were, these laws helped establish the precedent that the national government could regulate the economy to promote the public good."); BRINKLEY, *supra* note 10, at 518; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 581 ("In 1890, Congress enacted the Sherman Antitrust Act with only a single vote in opposition. But this near unanimity concealed real differences over the desirability and purpose of the law. Although it emphatically prohibited any combination in restraint of trade (an attempt to restrict competition), the law was vaguely written and too weak to prevent abuses. The courts further weakened the act, and presidents of both parties made little effort to enforce it. Essentially still unfettered, large corporations remained a threat in the eyes of many Americans.").

307 United States v. E.C. Knight Co., 156 U.S. 1, 16–17 (1895); FONER, *supra* note 8, at 504; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 590 ("[I]n *United States v. E.C. Knight Company*, the Court gutted the Sherman Antitrust Act by ruling that manufacturing, as opposed to commerce, was beyond the reach of federal regulation.").

308 Lochner v. New York, 198 U.S. 45, 47–48 (1905); *see, e.g.*, FONER, *supra* note 8, at 503–04 ("In a 1905 case that became almost as notorious as *Dred Scott*, the Supreme Court in *Lochner v. New York* voided a state law establishing ten hours per day or sixty per week as the maximum hours of work for bakers. By this time, the Court was invoking 'liberty' in ways that could easily seem absurd. In one case, it overturned as a violation of 'personal liberty' a Kansas law prohibiting 'yellow dog' contracts, which made nonmembership in a union a condition of employment. In another, it struck down state laws requiring payment of coal miners in money rather than paper usable only at company-owned stores. Workers, observed one union leader

business law activity in all three branches of government.[309] Presidents Theodore Roosevelt[310] and Howard Taft[311] aggressively pursued businesses with antitrust laws.[312] "In 1906, Congress passed the Hepburn Act, giving the [Interstate Commerce Commission] the power to examine railroads' business records and to set reasonable rates, a significant step in the development of federal intervention in the corporate economy. That year . . . also saw the passage of the Pure Food and Drug Act."[313] In 1909, Congress passed the Sixteenth Amendment (ratified in 1913), authorizing a federal income tax, and then passed the Federal Reserve Act (1913)[314] and the Clayton Act (strengthening antitrust law) (1914).[315] In 1913, President Wilson pushed through the Underwood-Simmons Tariff Act[316] and the Federal Reserve Act.[317] Wilson continued his efforts to shape American business in 1914 by backing the Federal Trade

---

John P. Mitchell, could not but feel that 'they are being guaranteed the liberties they do not want and denied the liberty that is of real value to them.'").

309 *See* FONER, *supra* note 8, at 571.

310 GOLDFIELD ET AL., *supra* note 26, at 621–22; BRINKLEY, *supra* note 10, at 571; *see, e.g.*, FONER, *supra* note 8, at 571 ("Soon after assuming office, Roosevelt shocked the corporate world by announcing his intention to prosecute under the Sherman Antitrust Act the Northern Securities Company . . . In 1904, the Supreme Court ordered Northern Securities dissolved, a major victory for the antitrust movement.").

311 *See, e.g.*, FONER, *supra* note 8, at 572–73 ("Although temperamentally more conservative than Roosevelt, [President] Taft pursued antitrust policy even more aggressively. He persuaded the Supreme Court in 1911 to declare John D. Rockefeller's Standard Oil Company (one of Roosevelt's 'good' trusts) in violation of the Sherman Antitrust Act and to order its breakup into separate marketing, producing, and refining companies. The government also won a case against American Tobacco, which the Court ordered to end pricing policies that were driving smaller firms out of business.").

312 *See id.* at 571.

313 *Id.*

314 *See, e.g.*, BRINKLEY, *supra* note 10, at 579–80.

315 *Id.* at 580.

316 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 624–25 ("Wilson gained approval of important laws. Wilson turned first to the traditional Democratic goal of reducing the high protective tariff, the symbol of special privileges for industry. He forced through the Underwood-Simmons Tariff Act of 1913, the first substantial reduction in duties since before the Civil War. The act also levied the first income tax under the recently ratified Sixteenth Amendment. Conservatives condemned the 'revolutionary' tax, but it was designed simply to compensate for lower tariff rates. The top tax rate paid by the wealthiest was a mere 7 percent.").

317 *See, e.g.*, *id.* at 625 ("Wilson next reformed the nation's banking and currency system, which was inadequate for a modernizing economy. Wilson skillfully maneuvered a compromise measure through Congress, balancing the demands of agrarian progressives for government control with bankers' desire for private control. The Federal Reserve Act of 1913 created twelve regional Federal Reserve banks that, although privately controlled, were to be supervised by the Federal Reserve Board, appointed by the president. The law also provided for a flexible national currency and improved access to credit.").

Commission Act.[318] During the 1920's, President Harding's Supreme Court maintained a posture that generally favored business at the expense of workers.[319] And, by administrative appointments and other influence, President Calvin Coolidge also supported business interests.[320] Many have hypothesized that the pro-business legal actions and in-actions during the Harding, Coolidge, and Hoover presidencies account for much of the blame for the Great Depression.[321] When Congress passed legislation creating the Reconstruction Finance Corporation and Federal Home Loan Bank System in 1932, those actions turned out to be too-little-too-late.[322] President Franklin Roosevelt famously spearheaded the Emergency Banking Act[323] and began

---

318 *See, e.g.*, *id.* at 625 ("Wilson endorsed the creation of the Federal Trade Commission (FTC) to oversee business activity and prevent illegal restrictions on competition The Federal Trade Commission Act of 1914 dismayed many of Wilson's early supporters . . . .").

319 BRINKLEY, *supra* note 10, at 621; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 693 ("Harding reshaped the Supreme Court into a still more aggressive champion of business. He named the conservative William Howard Taft as chief justice and matched him with three other justices. All were, as one of them proclaimed, sympathetic to business leaders 'beset and bedeviled with vexatious statutes, prying commissions, and government intermeddling of all sorts.' The Court struck down much of the government economic regulation adopted during the Progressive Era, invalidated restraints on child labor and minimum wage law for women, and approved restrictions on labor unions.").

320 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 693–94 ("Like Harding, Coolidge installed business supporters in the regulatory agencies. To chair the Federal Trade Commission, he appointed an attorney who condemned the agency as 'an instrument of oppression and disturbance and injury instead of help to business . . . This attitude, endorsed by the Supreme Court, aided the mergers that occurred after 1925. The Wall Street Journal crowed, 'Never before here or anywhere else, has a government been so completely fused with business.'").

321 GOLDFIELD ET AL., *supra* note 26, at 717; *see, e.g.*, FONER, *supra* note 8, at 640–41 ("Some administration remedies, like the Smoot-Hawley Tariff, which Hoover signed with some reluctance in 1930, made the economic situation worse. Raising the already high taxes on imported goods, it inspired similar increases abroad, further reducing international trade.").

322 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 641 ("By 1932, Hoover had to admit that voluntary action had failed to stem the Depression. He signed laws creating the Reconstruction Finance Corporation, which loaned money to failing banks, railroads, and other businesses, and the Federal Home Loan Bank System, which offered aid to homeowners threatened with foreclosure. Having vetoed previous bills to create employment through public-works projects like road and bridge construction, he now approved a measure appropriating nearly $2 billion for such initiatives and helping to fund local relief efforts. These were dramatic departures from previous federal economic policy.").

323 BRINKLEY, *supra* note 10, at 662–63; *see, e.g.*, FONER, *supra* note 8, at 647 ("On March 9, [Congress] . . . rushed to pass the Emergency Banking Act, which provided funds to shore up threatened institutions. Further measures soon followed that transformed the American financial system. The Glass-Steagall Act barred commercial banks from becoming involved in the buying and selling of stocks. Until its repeal in the 1990s, the law prevented many of the irresponsible practices that had contributed to the stock market crash. The same law established the federal Deposit Insurance Corporation (FDIC), a government system that insured the accounts of individual depositors. Together these measures rescued the financial system and greatly increased the government's power over it.").

his New Deal.[324] And in one of the most celebrated confrontations pitting branches of government at odds with one another, while President Roosevelt and Congress passed business legislation designed to alleviate some of the Depression's hardships, the Supreme Court struck down one piece of legislation after another.[325] "The Fair Labor Standards Act of 1938 established the first national minimum wage and a 40-hour workweek for all workers engaged in interstate commerce, and it set strict limitations on child labor."[326]

3. Constitutional Law and Procedure

CONSTITUTIONAL LAW & PROCEDURE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	101	80	64	245

324 *See, e.g.*, FONER, *supra* note 8, at 647–48; BRINKLEY, *supra* note 10, at 663, 668; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 726 (containing, on Table 25.1 Major Laws of the Hundred Days, the name of several laws and summarizes each law's objective: "Emergency Banking Act Stabilized the private banking system; Agricultural Adjustment Act Established a farm recovery program based on production controls and price supports; Emergency Farm Mortgage Act provided for the refinancing of farm mortgages; National Industrial Recovery Act established a national recovery program and authorized a public works program; Federal Emergency Relief Act established a national system of relief; Home Owners Loan Act protected home owners from mortgage foreclosure by refinancing home loans; Glass-Steagall Act separated commercial and investment banking and guaranteed bank deposits; Tennessee Valley Authority Act established the TVA and provided for the planned development of the Tennessee River Valley; Civilian Conservation Corps Act established the CCC to provide work relief on reforestation and conservation projects; Farm Credit Act expanded agricultural credits and established the Farm Credit Administration; Securities Act required full disclosure from stock exchanges; Wagner-Peyser Act created a U.S. Employment Service and encouraged states to create local public employment offices"); *see also* BRINKLEY, *supra* note 10, at 684 (listing (in graphic) "Major Legislation of the New Deal" year-by-year from 1933 to 1939).

325 *See, e.g.*, FONER, *supra* note 8, at 652 ("In 1935, the Supreme Court, still controlled by conservative Republican judges who held to the nineteenth-century understanding of freedom as liberty of contract, began to invalidate key New Deal laws. First came the NRA, declared unconstitutional in May in a case brought by the Schechter Poultry Company of Brooklyn, which had been charged with violating the code adopted by the chicken industry. In a unanimous decision, the Court declared the NRA unlawful because in its codes and other regulations it delegated legislative powers to the president and attempted to regulate local businesses that did not engage in interstate commerce. In January 1936, the AAA fell in *United States v. Butler* [297 U.S. 1 (1936)], which declared it an unconstitutional exercise of congressional power over local economic activities. Having failed to end the Depression or win judicial approval, the First New Deal ground to a halt. Meanwhile, pressures were mounting outside Washington that propelled the administration toward more radical departures in policy."); *see also* BRINKLEY, *supra* note 10, at 663, 666.

326 GOLDFIELD ET AL., *supra* note 26, at 742.

a. Highlights

Many of the textbooks' references relating to Constitutional Law at this time also relate to other topics including Slavery and African Americans, Women, and Voting and Elections.[327] This is especially true when it comes to Reconstruction.[328] In 1868, when Andrew Johnson became the first United States president to be impeached, Congress for the first time tested the Constitution's apparatus for that complicated legal process.[329] Shortly thereafter, the disputed presidential election of 1876 provided another novel test, as Congress searched for an appropriate method of resolving an issue of such great importance.[330]

4. Social Engineering

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	83	58	88	229

a. Highlights

This category encompasses a wide variety of topics that concern numerous ways that individuals and groups have used the legal system in an effort to acquire certain societal benefits that often promote a degree of equality and fairness. Historians often refer to the period from the final decade of the nineteenth century through the first two decades of the twentieth as the "Progressive Era"—a time when an array of activists pressed for local, state, and federal legislation intended to bring about dramatic social changes.[331] Because much of the social engineering legal activity during this period overlaps with other topics such as tax, crime, voting, women's rights, and organized

327 *See generally* BRINKLEY, *supra* note 10, at 404–05.

328 *See, e.g.*, *id.* at 404–05.

329 *See, e.g.*, *id.* at 407.

330 *See, e.g.*, *id.* at 415–16 (describing circumstances relating to the disputed presidential election of 1876, Brinkley writes: "The Constitution had established no method to determine the validity of disputed returns. It was clear that the decision lay with Congress, but it was not clear with which house or through what method. (The Senate was Republican, the House Democratic.) Members of each party naturally supported a solution that would yield them the victory. Finally, late in January 1877, Congress tried to break the deadlock by creating a special electoral commission to judge the disputed votes. The commission would be composed of five senators, five representatives, and five justices of the Supreme Court. The congressional delegation would consist of five Republicans and five Democrats. The Court delegation would include two Republicans, two Democrats, and an independent. But the independent seat ultimately went to a justice whose real sympathies were with the Republicans. The commission voted along straight party lines, 8 to 7, awarding every disputed vote to Hayes. Congress accepted their verdict on March 2. Two days later, Hayes was inaugurated.").

331 *See, e.g.*, *id.* at 559.

labor, some of those matters are addressed in Subparts below.[332] However, because a significant amount of social engineering relates directly to civil liberties and to tort law, it will be useful to consider legal activities related to those topics within the scope of this one.[333]

This period of United States history saw a significant amount of legislative and judicial activity related to civil liberties.[334] As is often the case, there was a distinct connection between criminal law and civil liberties, as legislators sought to shape behavior by criminalizing conduct that they deemed socially undesirable.[335] During the Civil War, President Lincoln had tested some limits when he suspended the writ of habeas corpus.[336] Indeed, during wartime, executives and legislators frequently push the boundaries of civil liberties, occasionally overstepping them.[337] In 1917, Congress passed the Espionage Act, and in 1918, the Sedition Act.[338] In 1919 and 1920, the Justice Department's Palmer Raids targeted socialists and other left-leaning persons for deportation.[339] To mount a means of legal response to Palmer and those bent on suppression, in 1920, Felix Frankfurter and others formed the American Civil

---

332 *See generally id.* at 560.

333 *See generally id.* at 554.

334 *See, e.g.*, *id.* at 611 ("The heavy-handed actions of the federal government after the war created a powerful backlash . . . [I]t led to an organization committed to protecting civil liberties: the National Civil Liberties Bureau, launched in 1917, which in 1920 was renamed the American Civil Liberties Union (ACLU), which remains a prominent institution today. At the same time, members of the Supreme Court—most notably Justice Oliver Wendell Holmes and Louis Brandeis—gradually moved toward a strong position of defense of unpopular speech.").

335 *See, e.g.*, *id.* at 567 ("Many progressives considered the elimination of alcohol from American life a necessary step in restoring order to society. Scarce wages vanished as workers spent hours in the saloons. Drunkenness spawned violence, and occasionally murder, within urban families. Working-class wives and mothers hoped through temperance to reform male behavior and thus improve women's lives. Employers too, regarded alcohol as an impediment to industrial efficiency; workers often missed time on the job because of drunkenness or came to the factory intoxicated. Critics of economic privilege denounced the liquor industry as one of the nation's most sinister trusts. And political reformers, who (correctly) looked on the saloon as one of the central institutions of the urban machine, saw an attack on drinking as part of an attack on the bosses . . . Gradually, th[e] demand grew to include the complete prohibition of the sale and manufacture of alcoholic beverages.").

336 *See, e.g.*, FONER, *supra* note 8, at 431 ("In one of his most controversial actions, . . . [President Lincoln] issued a temporary suspension of the writ of habeas corpus, the constitutional protection against illegal imprisonment. Suspending it allowed the government to arrest suspected Confederate agents and hold them indefinitely, a procedure sanctioned by the Constitution 'when in cases of rebellion or invasion the public safety may require it.' The suspension became permanent in September 1862 and was used primarily in the border states to detain those suspected of trading with the enemy, defrauding the War Department, or evading the draft.").

337 *See, e.g.*, *id.* at 594–95.

338 *See, e.g.*, *id.*

339 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 682–83.

Liberties Union.[340] Numerous state legislatures in the 1920's passed "criminal syndicalism" laws.[341] The Hollywood film industry decided to police itself with the Motion Picture Production Code ("Hays Code").[342] Among the other executive and legislative efforts that threatened civil liberties, many of which were ultimately tested and sometimes overturned in the courts, were: (1) laws passed in states such as Tennessee criminalizing the teaching of evolution;[343] (2) United States Customs officials seized copies of James Joyce's *Ulysses* but the Customs Court (later affirmed by Augustus Hand's Second Circuit decision) ruled that it was not obscene;[344] (3) in 1938, the House of Representatives established its infamous House Un-American Activities Committee;[345] (4) Congress passed the Smith Act in 1940; (5) the Nineteenth Amendment (*i.e.*, the Prohibition) was passed in 1917, ratified in 1919,

---

340 *See, e.g.*, BRINKLEY, *supra* note 10, at 611 ("An unexpected result of postwar [i.e., post-World War I] turmoil was the emergence of a vigorous defense of civil liberties that not only discredited the Red Scare, but helped give new force of the Bill of Rights as well. The heavy-handed actions of the federal government after the war created a powerful backlash . . . . And it led to an organization committed to protecting civil liberties: the National Civil Liberties Bureau, launched in 1917, which in 1920 was renamed the American Civil Liberties Union (ACLU), which remains a prominent institution today. At the same time, members of the Supreme Court – most notably Justices Oliver Wendell Holmes and Louis Brandeis—gradually moved toward a strong position of defense of unpopular speech. The clash of 'fighting faiths,' Holmes wrote in a dissent in 1920, was best resolved 'by free trade in ideas—that the best test of truth is . . . the competition of the market.' This and other dissents eventually became law as other justices committed themselves to a robust defense of speech, however popular."); *see also* CARR, WHAT IS HISTORY?, *supra* note 1, at 171 ("Pregnant failures are not unknown in history. History recognizes what I may call 'delayed achievement': the apparent failures of today may turn out to have made a vital contribution to the achievement of tomorrow—prophets born before their time.").

341 *See, e.g.*, FONER, *supra* note 8, at 595–96.

342 *See, e.g.*, *id.* at 624 ("In 1930, the film industry adopted the Hays Code, a sporadically enforced set of guidelines that prohibited movies from depicting nudity, long kisses, and adultery, and barred scripts that portrayed clergymen in a negative light or criminals sympathetically.").

343 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 706–07.

344 *See, e.g.*, FONER, *supra* note 8, at 623–24 ("Wartime repression continued into the 1920s. Artistic works with sexual themes were subjected to rigorous censorship. The Postal Service removed from the mails books it deemed obscene. The Customs Service barred works by the sixteenth-century French satirist Rabelais, the modern novelist James Joyce, and many others from entering the country. A local crusade against indecency made the phrase 'Banned in Boston' a term of ridicule among upholders of artistic freedom. Boston's Watch and Ward Committee excluded sixty-five books from the city's bookstores, including works by the novelists Upton Sinclair, Theodor Dreiser, Earnest and Hemmingway.").

345 *See, e.g.*, FONER, *supra* note 8, at 672–73 ("In 1938, the House of Representatives established the House Un-American Activities Committee to investigate disloyalty. Its expansive definition of 'un-American' included communists, labor radicals, and the left of the Democratic Party, and its hearings led to the dismissal of dozens of federal employees on charges of subversion. Two years later, Congress enacted the Smith Act, which made it a federal crime to 'teach, advocate, or encourage' the overthrow of the government.").

and repealed in 1933; and, (6) President Roosevelt's 1942 Executive Order 9066—later upheld by the United States Supreme Court in *Korematsu v. United States* (1944).[346] President Roosevelt's New Deal brought one of the most significant pieces of legislation of the twentieth century—the Social Security Act.[347]

American tort law changed dramatically during this period.[348] For example, in 1873, Oliver Wendell Holmes revised *Kent's Commentaries on American Law*, and in 1881, published his monumental treatise *The Common Law*, in which he developed theoretical constructs for "intent," "fault," and the concept of "acting at one's peril."[349] Courts explored the complex theory of "negligence" and began adopting notions of strict liability and products liability.[350] Nevertheless, although judges and legal theorists revolutionized tort law at this time, the textbooks do not actually discuss the theoretical transformations but rather recount a number of specific instances involving the relationship between law and workplace injuries, such as industrial accidents in meat packing,[351] sweatshops, railroads, mining,[352] and logging.[353] Activists lobbied for local, state, and federal legislation to enhance occupational safety and improved working conditions.[354] These efforts often involved labor

---

346 Korematsu v. United States, 323 U.S. 214, 217 (1944); *see, e.g.*, FONER, *supra* note 8, at 699–700.

347 *See, e.g.*, BRINKLEY, *supra* note 10, at 672–73.

348 *See, e.g.*, *id.* at 675.

349 *See generally* OLIVER WENDELL HOLMES, JR., THE COMMON LAW (1881).

350 *Id.* at Lecture III.

351 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 516.

352 *See, e.g.*, *id.* at 552 ("Hydraulic mining washed away hillsides, depositing debris in canyons and valleys to a depth of 100 feet or more, clogging rivers and causing floods, and burying thousands of acres of farmland. Such damage provoked an outcry and eventually led to government regulation . . . . Mining corporations, moreover, did little to protect miners' health or safety. Miners died in cave-ins, explosions, and fires, or from the great heat and poisonous gases in underground mines. Others contracted silicosis, lead poisoning, or other diseases or were crippled or killed by machines.").

353 *See generally* GOLDFIELD ET AL., *supra* note 26, at 553–54 ("Loggers were crushed by falling trees or maimed by crosscut saws, mill hands worked over giant, unprotected saw blades and inhaled sawdust 12 hours a day. In Washington, the industry had five times more fatal accidents than any other.").

354 *See generally* BRINKLEY, *supra* note 10, at 563 ("And despite considerable resistance from many factory owners . . . [Dr. Alice Hamilton] did bring such problems [i.e., workplace pollution, including lead poisoning, chemical waste, and ceramic dust] to public attention and, in some states at least, inspired legislation to require manufacturers to solve them. In 1912, the federal government created the Public Health Service, which was charged with preventing such occupational diseases as tuberculosis, anemia, and carbon dioxide poisoning, which were common in the garment industry and other trades."); *see also id.* at 563 ("Under . . . [Robert M. LaFollette's] leadership the Wisconsin progressives . . . passed laws to regulate the workplace and provide compensation for laborers injured on the job.").

organizations[355] and citizen groups.[356] Progressives championed child labor laws and workers' compensation laws.[357] The notorious Triangle Shirtwaist Company fire in 1911 that killed 123 women and girls and twenty-three men in New York City prompted changes to laws involving factory inspections and fire codes.[358] And in addition to workplace safety concerns, largely due to crowded conditions in large cities, local and state lawmakers began to recognize the need for legislation designed to enhance public health.[359]

5. Tax

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	71	47	72	190

a. Highlights

With the national economy in disarray after the Civil War, Congress set to work in an effort to establish tax policies that would generate revenue in an equitable

355 *See generally* GOLDFIELD ET AL., *supra* note 26, at 552 ("Unions also promoted miners' interests by striking against wage cuts and campaigning for mine safety. They convinced states to pass mine safety laws and, beginning in the 1880s, to appoint mine inspectors. The chief role of these state officials was, in the words of a Colorado inspector, to decide 'How far should an industry be permitted to advance its material welfare at the expense of human life?'").

356 *See generally* BRINKLEY, *supra* note 10, at 564 ("Between 1911 and 1913, thanks to political pressure from labor groups such as the newly formed Union Labor Party, California passed a child-labor law, a workmen's compensation law, and a limitation on working hours for women. Union pressures contributed to the passage of similar laws in many other states as well.").

357 *Id.*

358 *See also* FONER, *supra* note 8, at 547 ("After the Triangle Shirtwaist Company fire in NYC March 25, 1911, when 146 women and girls lost their lives, efforts to organize the city's workers accelerated, and the state legislature passed new factory inspection laws and fire safety codes."); *see generally* GOLDFIELD ET AL., *supra* note 26, at 601 ("Such conditions were gruesomely illustrated in 1911, when a fire killed 146 workers, most of them young women, trapped inside the factory of the Triangle Shirtwaist Company in New York because management had locked the exits. The United States had the highest rate of industrial accidents in the world. Half a million workers were injured and 30,000 killed at work each year. These terrible conditions cried out for reform.").

359 GOLDFIELD ET AL., *supra* note 26, at 607 ("Those who staffed the settlement houses in the late 19th and 20th centuries campaigned for stricter building codes to improve slums, better urban sanitation systems to enhance public health, public parks to revive the urban environment, and laws to protect women and children."); *see generally id.* ("In 1901, the New York Tenement House Law incorporated . . . [Lawrence Veiller's] proposals to limit the size of tenements and require toilet facilities, ventilation, and fire protection and became a model for other cities.").

manner.[360] By the 1870's, however, governments seemed intent on reducing taxes and spending to levels that bordered on absurdity in some instances.[361] One factor that contributed to the growth of the textile industry in the post-war South was low taxes.[362] In the 1880's, the executive and legislative branches carried on their own debate over tariffs; the debate was so significant that it influenced the 1888 presidential election.[363] Tariffs remained an important national issue for decades.[364] Around the turn of the century, when countries such as New Zealand and France instituted progressive taxation,[365] activists and legislators in the United States began considering significant tax reforms.[366] In 1909, Congress passed the Sixteenth Amendment (ratified in 1913), which empowered Congress to institute an income tax.[367] And shortly after taking office, President Woodrow Wilson's Congress managed both to lower tariffs and pass a progressive income tax.[368] After World War

---

360 *See, e.g.*, BRINKLEY, *supra* note 10, at 418.

361 *See generally id.* at 418 (discussing matters in the mid–late 1870s, Brinkley writes, "[V]irtually all the new Democratic regimes lowered taxes, reduced spending, and drastically reduced states services—including many of the most important accomplishments of Reconstruction. In one state after another, for example, state support public school systems was reduced or eliminated. 'Schools are not a necessity,' an economy-conscious governor of Virginia commented.").

362 *See generally id.* at 419 (describing circumstances in the mid–late 1870s, Brinkley writes, "Now textile factories appeared in the South itself—many of them drawn to the South from New England by the abundance of water power, the ready supply of cheap labor, the low taxes, and the accommodating conservative governments.").

363 *Id.* at 517.

364 *See generally id.* at 530 ("Within weeks of his inauguration [i.e., President William McKinley in 1897], the administration won approval of the Dingley Tariff, raising duties to the highest point in American history.").

365 *See also id.* at 563 ("French reformers pressed in the 1890s for factory regulation, assistance to the elderly, and progressive taxation."); *see generally id.* at 562 ("New Zealand's dramatic experiments in factory regulation, woman suffrage, old–age pensions, progressive taxation, and labor arbitration gradually found counterparts in many other nations.").

366 *See, e.g.*, *id.* at 578; *see generally id.* at 563 ("Under his [i.e., Robert M. LaFollette's] leadership the Wisconsin progressives won approval of direct primaries, initiatives, and referendums. They regulated railroads and utilities. They passed laws to regulate the workplace and provide compensation for laborers injured on the job. They instituted graduated taxes on inherited fortunes, and they nearly doubled state levies on railroads and other corporate interests.").

367 *See, e.g.*, *id.* at 759.

368 *See generally id.* at 579 ("Wilson's first triumph at president was the fulfillment of an old Democratic (and progressive) goal: a substantial lowering of the protective tariff. The Underwood–Simmons Tariff provided cuts substantial enough, progressive believed, to introduce real competition into American markets and thus to help break the power of trusts. To make up for the loss of revenue under the new tariff. Congress approved a graduated income tax, which the recently adopted Sixteenth Amendment to the Constitution now permitted. This

I, tax policy became a divisive issue.[369] High taxes initially raised government revenues[370] but Republican administrations during the 1920's reversed course.[371] And some contend that protectionist tariffs contributed to the onset of the Great Depression.[372] By the time President Hoover proposed an increase in income taxes, the United States was already in the depths of the Great Depression.[373]

6. Foreign Policy

FOREIGN POLICY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	69	35	73	177

a. Highlights

Given that both World War I and World War II fall within this period, it is understandable that legal aspects of both foreign policy and the military receive attention in the textbooks. And as might be expected, the two topics frequently overlap.[374] The United States acquired a great deal of territory from foreign governments and also entered into negotiations regarding special relationships with other independent nations.[375] Therefore, the textbooks discuss many legal issues

first modern income tax imposed a 1 percent tax on individuals and corporations earning more than $4,000 a year, with rate ranging up to 6 percent on annual incomes over $500,000.").

369 *See, e.g.*, *id.* at 596.

370 *See generally id.* at 596 ("At the same time, new taxes were bringing in an additional sum of nearly $10 billion—some from levies on the 'excess profits' of corporations, much from new, steeply graduated income and inheritance taxes that ultimately rose as high as 70 percent in some brackets.").

371 *See generally id.* at 637 ("Secretary of the Treasury Andrew Mellon, a wealthy steel and aluminum tycoon, devoted himself to working for substantial reductions in taxes on corporate profits, personal incomes, and inheritances. Largely because of his efforts, Congress cut them all by more than half. Mellon also worked closely with President Coolidge after 1924 on a series of measures to trim dramatically the already modest federal budget.").

372 *See generally id.* at 643 ("Other explanations includes the rise of protectionism (increased by the ill-advised Smoot-Hawley Tariff of 1931, which stifled international trade) . . . .").

373 *See, e.g.*, *id.* at 656.

374 *See id.* at 656.

375 *See, e.g.*, *id.* at 413, 543; *see, e.g.*, *id.* at 537, 543, 544–45; *see also id.* at 536 ("A provisional government, dominated by Americans 'who constituted less than 5 percent of the populations of the islands', immediately sent a delegation to Washington to negotiate a treaty of annexation. But the debate continued until 1898, when the Republicans returned to power and approved the agreement.").

regarding diplomacy and international relations.[376] For example, the negotiations that led to the construction of the Panama Canal involved some failures and several adjustments.[377] The United States, allies, and opponents in the world wars and other armed conflicts engaged in a multitude of agreements before, during, and at the close of those wars and conflicts.[378] These multi-party agreements, by definition, implicated international law.[379] In the years immediately preceding World War II, in particular, the United States and other nations, including Germany, France, and Great Britain, engaged in international legal and diplomatic arrangements.[380] And as the world wars drew to a close and immediately thereafter, agreements among allied leaders and multi-national treaties secured the terms and conditions of surrender and the international landscape.[381]

---

376 *See, e.g.*, *id.* at 534, 548, 585.

377 *See generally id.* at 618–19 ("Roosevelt dispatched John Hay, his secretary of state, to negotiate an agreement with Columbian diplomats in Washington that would allow construction [of the Panama Canal] without delay. Under heavy American pressure, the Columbian charge d'affaires, Thomas Herren, unwisely signed the agreement giving the United States perpetual rights to a six-mile-wide "canal zone" across Columbia. The outrage Columbian senate refused to ratify it . . . . Roosevelt recognized Pana as an independent nation. The new Panamanian government quickly agreed to the terms the Columbian senate had rejected.").

378 *See, e.g.*, *id.* at 723.

379 *See, e.g.*, *id.* at 688; *see generally id.* at 594 ("Faced with the invasion of their own country, German military leaders now began to seek an armistice—an immediate cease—fire that would, they hoped, serve as prelude to negotiations among the belligerents. Pershing wanted to drive on into Germany itself; but other allied leaders, after first insisting on terms that made the agreement little different from a surrender, accepted the German proposal. On November 11, 1918, the Great War shuddered to a close.").

380 *See, e.g.*, *id.* at 691; *see also id.* at 691 ("In November 1933, therefore, Soviet foreign minister Maxim Litvinov reached an agreement with President Roosevelt in Washington: the Soviets would cease their propaganda efforts in the United States and protect American citizens in Russia; in return, the United States would recognize the Soviet regime."); *see also id.* at 695 ("On September 29 [1938], Hitler met with the leaders of France and Great Britain at Munich in an effort to resolve the crisis. The French and British agreed to accept the German demands for Czechoslovakia in return for Hitler's promise to expand no farther. 'This is the last territorial claim I have to make in Europe,' the Fuhrer solemnly declared."); *see also id.* at 695 ("In March 1939, Hitler occupied the remaining areas of Czechoslovakia, violating the Munich agreement unashamedly. And in April, he began issuing threats against Poland. At that point, both Britain and France gave assurances to the Polish government that they would come to its assistance in case of an invasion . . . . [Stalin] signed a nonaggression pact with Hitler in August 1939, freeing the Germans for the moment from the danger of a two-front war.").

381 *See also* FONER, *supra* note 8, at 608 ("Japan proposed to include in the character of the new League of Nations a clause recognized the equality of all people, regardless of race."); *see also id.* at 707 ("At the Potsdam conference, the Allied leaders established a military administration for Germany and agreed to place top Nazi leaders on trial for war crimes."); *see also* GOLDFIELD ET AL., *supra* note 26, at 708; *see generally* FONER, *supra* note 8, at 607 ("Despite Wilson's pledge of peace without territorial acquisitions or vengeance, the Versailles Treaty was a harsh document that all but guaranteed future conflict in Europe. Lloyd George persuaded Wilson to agree to a clause declaring Germany morally responsible for the war and

7. Military

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	53	54	51	158

a. Highlights

By the 1890's, the pension payments for Union soldiers imposed a significant burden on the federal budget.[382] Congress addressed several matters related to the military in the years immediately before both World War I and World War II.[383] As war in Europe got underway in 1914, President Wilson and Americans were forced to confront a host of complex questions about international law and conflict.[384] In 1917, to prepare for war, Congress passed the Selective Service Act,[385] the Espionage Act, and in 1918, in an attempt to curb opposition to the war effort, the Sedition Act.[386] In 1924, Congress passed a measure to pay World War I veterans a $1,000 bonus—the money to be released beginning in 1945; later a significant conflict arose when some veterans actually marched on Washington demanding payment earlier.[387] In the mid-1930's, Congress passed a series of Neutrality Acts, intending to avoid entering the war in Europe.[388] In May 1940, Congress allocated one billion dollars in defense

setting astronomical reparations payments 'they were variously estimated at between $33 billion and $56 billion', which crippled the German economy.").

382 *See generally* FONER, *supra* note 8, at 499 ("By 1893, a lavish system of pensions for Union soldiers and their widows and children consumed more than 40 percent of the federal budget.").

383 *See, e.g.*, *id.* at 585, 589; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 670; *see also* FONER, *supra* note 8, at 589 ("Under the Selective Service Act of May 1917, 24 million men were required to register with the draft.").

384 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 661–62; *see generally* FONER, *supra* note 8, at 585 ("When war broke out in 1914 [in Europe], President Wilson proclaimed American neutrality.").

385 *See, e.g.*, BRINKLEY, *supra* note 10, at 592; *see generally* FONER, *supra* note 8, at 589 ("Under the Selective Service Act of May 1917, 24 million men were required to register with the draft.").

386 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 670.

387 *See generally* BRINKLEY, *supra* note 10, at 657 ("In 1924, Congress had approved the payment of a $1,000 bonus to all who served in World War I, the money to be paid beginning in 1945. Protestors, who wanted the bonus paid sooner, camped out in Washington, and promised to stay until Congress approved legislation to pay the bonus. Some of the veterans departed in July, after Congress voted down their proposal. Many, however, remained where they were.").

388 *See, e.g.*, BRINKLEY, *supra* note 10, at 693; *see generally* FONER, *supra* note 8, at 680 ("Beginning in 1935, lawmakers passed a series of Neutrality Acts that banned travel on

spending, most earmarked for construction of planes.[389] Then, in September, it passed the Burke-Wadsworth Act, requiring all men ages 21-35 to register for the draft.[390] President Roosevelt signed it on September 16.[391] And in 1941, repealing much of the Neutrality Acts, Congress passed the Lend-Lease Act, allowing the United States to supply armaments and military equipment to the Allies.[392] Following the United States' entry into World War II, President Roosevelt and Congress found it necessary to pass a variety of laws to address a multiplicity of domestic issues that arose during wartime.[393] For example, "[t]he federal government ended voluntary enlistment in 1942, relying entirely on the draft for manpower."[394] And in one of President Roosevelt's most controversial acts, he issued Executive Order 9066 on February 19, 1942, which laid the foundation for Japanese internment camps.[395] Finally, as the war neared its end, on June 22, 1944, President Roosevelt signed into law the Servicemen's Readjustment Act of 1944—commonly known as the G.I. Bill.[396]

---

belligerents' ships and sale of arms to countries at war. These policies, Congress hoped, would allow the United States to avoid the conflicts over freedom of the seas that had contributed to involvement in World War I.").

389 *See generally* BRINKLEY, *supra* note 10, at 697–98 ("On May 16 [1940], he [i.e., President Roosevelt] asked Congress for an additional $1 billion for defense 'much of it for the [698] construction of an enormous new fleet of warplanes' and received it quickly.").

390 50 U.S.C. Pub. L. 76–783, 54 Stat. 885.

391 *See generally* BRINKLEY, *supra* note 10, at 698 ("Congress was aware of the change and was becoming more willing to permit expanded American assistance of the Allies. It was also becoming more concerned about the need for internal preparations for war, and in September it approved the Burke-Wadsworth Act, inaugurating the first peacetime military draft in American history.").

392 *See, e.g.*, BRINKLEY, *supra* note 10, at 699; *see generally* FONER, *supra* note 8, at 681 ("At Roosevelt's urging, Congress passed the Lend-Lease Act, which authorized military aid so long as countries promised somehow to return it all after the war. Under the law's provisions, the United States funneled billions of dollars' worth of arms to Britain and China, as well as the Soviet Union, after Hitler renounced his nonaggression pact and invaded that country in June 1941. FDR also froze Japanese assets in the United States, halting virtually all trade between the countries, including the sales of oil vital to Japan.").

393 *See, e.g.*, FONER, *supra* note 8, at 688; *see generally id.* at 687 ("World War II also transformed the role of the national government. FDR created federal agencies like the War Production Board, the War Manpower Commission, and the Office of Price Administration to regulate the allocation of labor, control the shipping industry, establish manufacturing quotas, and fix wages, prices, and rents.").

394 *See, e.g.*, *id.* at 686.

395 *See generally id.* at 698 ("[T]he military persuaded FDR to issue Executive Order 9066. Promulgated in February 1942, this ordered the relocation of all persons of Japanese descent from the West Coast.").

396 *See, e.g.*, *id.* at 692–93.

8. Criminal Law

CRIMINAL LAW	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	39	52	61	152

a. Highlights

Shortly after the Civil War, Congress passed two "Enforcement Acts" that were designed to provide federal district attorneys with the authority to punish those responsible for various kinds of racially discriminatory activities.[397] The textbooks mention some criminal activity that involved high-profile government officials, such as the Crédit Mobilier scandal,[398] Tammany Hall,[399] and Teapot Dome.[400] The population growth in large, crowded cities created environments which bred criminal activity.[401] As was mentioned, during this period there was an overlap between civil

397 *See, e.g.*, BRINKLEY, *supra* note 10, at 414.

398 *See generally id.* at 412–13 ("The heads of Credit Mobilier had used their positions as Union Pacific stockholders to steer large fraudulent contracts to their construction company, thus bilking the Union Pacific 'and the federal government, which provided large subsidies to the railroad' of millions. To prevent investigations, the directors had given Credit Mobilier stock to key members of Congress . . . Benjamin H. Bistow, Grant's third treasury secretary, discovered that some of his officials and a group of distillers operating as a 'whiskey ring' were cheating the government out of taxes by filing false reports.").

399 *See generally id.* at 500 ("The most famously corrupt city boss was William M. Tweed, boss of New York City's Tammany Hall in the 1860s and 1870s, whose excesses finally landed him in jail in 1872.").

400 *See, e.g.*, BRINKLEY, *supra* note 10, at 636; *see generally* FONER, *supra* note 8, at 622 ("[President Warren] Harding also surrounded himself with cronies who used their offices for private gain. Attorney General Harry Daugherty accepted payments not to prosecute accused criminals. The most notorious scandal involved the Secretary of the Interior, Albert Fall, who accepted nearly $500,000 from private businessmen to whom he leased government oil reserves at Teapot Dome, Wyoming. Fall became the first cabinet member in history to be convicted of a felony.").

401 *See also* BRINKLEY, *supra* note 10, at 507 (describing circumstances during the late nineteenth century, Brinkley writes: "Opponents also noted correctly that saloons were sometimes places of crime, violence and prostitution—an entryway into the dark underworld of urban life."); *see generally id.* at 499 ("Poverty and crowding naturally bred crime and violence. Much of it was relatively minor, the work of pickpockets, con artists, swindlers, and petty thieves. But some was more dangerous.").

liberties and criminal law (*e.g.*, Haymarket Square,[402] the Sedition Act,[403] the Espionage Act,[404] Prohibition,[405] the film industry's Hays Code[406]). The Progressive Era witnessed numerous efforts to enact laws controlling the arts, dance, music, sports, sexual activity, and birth control.[407] In addition, the textbooks mention a number of other matters related to criminal law, such as the rise of the KKK and lynchings,[408]

---

402 *See generally id.* at 481 (describing the aftermath of the Haymarket Square bombing incident May 1, 1886, in Chicago when, "someone threw a bomb that killed seven officers and injured sixty-seven other people", Brinkley writes: "Chicago officials finally rounded up eight anarchists and charged them with murder, on the grounds that their statements had indicted whoever had hurled the bomb. All eight scapegoats were found guilty after a remarkably injudicious trial. Seven were sentenced to death. One of the condemned committed suicide, four were executed, and two had their sentences commuted to life imprisonment.").

403 *See generally id.* at 602 ("More repressive were two measures of 1918: the Sabotage Act of April 20 and the Sedition Act of May 16. These bills expanded the meaning of the Espionage Act to make illegal any public expression of opposition to the war; in practice, it allowed officials to prosecute anyone who criticized the president or the government. The most frequent targets of the new legislation 'and one of the reasons for its enactment in the first place' were such anticapitalist groups 'and antiwar' groups [sic] as the Socialist Party and the Industrial Workers of the World [IWW].").

404 *See generally id.* ("The Espionage Act of 1917 gave the government new tools with which to respond to . . . reports [of dissent]. It created stiff penalties for spying, sabotage, or obstruction of the war effort 'crimes that were often broadly defined'; and it empowered the Post Office Department to ban 'seditious' material from the mail.").

405 *See generally id.* at 631 ("When the prohibition of the sale and manufacture of alcohol went into effect in January 1920, it had the support of most members of the middle class and most of those who considered themselves progressives. Within a year, however, it had become clear that the 'noble experiment,' as its defenders called it, was not working well. Prohibition did substantially reduce drinking, at least in some regions of the country. But it also produced conspicuous and growing violations that made the law an almost immediate source of disillusionment and controversy.").

406 *See supra* text accompanying note 342.

407 *See also* BRINKLEY, *supra* note 10, at 625 ("Birth control devices began to find a large market among middle-class women, even though some techniques remained illegal in many states (and abortion remained illegal nearly everywhere."); *see generally* GOLDFIELD ET AL., *supra* note 26, at 612 ("Condemning movie theaters as 'recruiting stations of vice,' progressives successfully campaigned to prohibit unaccompanied children from theatres and to establish censorship boards that cut from films any hint of smoking, drinking, or other 'improper' behavior. Chicago in 1906 banned any films depicting 'crime, criminals, and immoral scenes which appeal to small boys and weak-minded adults.' Reacting against ragtime music and suggestive dances, the Juvenile Protective Association and other progressive organizations publicized 'Rules for Correct Dancing' and persuaded cities to regulate dance halls.").

408 *See also* BRINKLEY, *supra* note 10, at 428 (discussing the anti-lynching movement, Brinkley writes: "Its goal was a federal anti-lynching law, which would allow the national government to do what state and local governments in the South were generally unwilling to do: punish those responsible for lynchings."); *see generally id.* at 425 (describing circumstances during the late nineteenth century, Brinkley writes: "Those involved in lynchings often saw their actions as a legitimate form of law enforcement; and indeed, some victims of lynchings

organized crime, and general lawlessness and rough justice[409] in the West (*e.g.*, gambling and prostitution).[410] Efforts to criminalize prostitution were not limited to the West (*e.g.*, the federal Mann Act of 1910).[411] As has been noted,[412] it was in the early twentieth century that prohibitionists pushed for the adoption of laws—and ultimately a constitutional amendment—criminalizing alcohol.[413] Unfortunately, Prohibition Era caused a significant growth in organized crime that subsequently has become the source of legend.[414] In addition to the criminalization of alcohol, in 1914, Congress passed the Harris Act, "prohibiting the distribution and use of narcotics for other than medical purposes."[415] Although the federal government prosecuted those responsible for violence against African Americans, there were also instances involving questionable prosecutions of African Americans by racist elements, especially in the South—such as the Scottsboro case.[416]

---

had in fact committed crimes. But lynchings were also a means by which whites controlled the black population through terror and intimidation.").

409 *See generally id.* at 441 (describing circumstances in mining boomtowns of the West during the latter portion of the nineteenth century, Brinkley writes: "When the situation became intolerable in a community, those members interested in order began enforcing their own laws, through vigilante committees, an unofficial system of social control used earlier in California. Vigilantes were unconstrained by the legal system. Some vigilantes continued to operate as private 'law' enforcers after the creation of regular governments.").

410 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 555; *see, e.g.*, BRINKLEY, *supra* note 10, at 436.

411 *See generally* GOLDFIELD ET AL., *supra* note 26, at 611 ("Reformers also sought to suppress the 'social evil' of prostitution . . . The response to prostitution was typical of progressivism: investigation and exposure, reliance on experts—boards of health, medical groups, clergy—for recommendations, and enactment of new laws. State and municipal legislation abolished the 'red light' districts previously tolerated, and federal law, the Mann Act of 1910, prohibited the interstate transport of women 'for immoral purposes.'").

412 *See supra* Part V.D.4.

413 *See generally* GOLDFIELD ET AL., *supra* note 26, at 611 ("[P]rohibitionists campaigned for local and state laws against the manufacture and sale of alcohol. Beginning in 1907, they proved increasingly successful, especially in the South and Midwest. By 1917, twenty-six states had prohibition laws. Congress then approved the Eighteenth Amendment. Ratified in 1919, it made prohibition the law of the land.").

414 *See, e.g.*, BRINKLEY, *supra* note 10, at 631.

415 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 611.

416 *See, e.g.*, BRINKLEY, *supra* note 10, at 646.

9. Property

PROPERTY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	57	49	27	133

a. Highlights

Immediately after the Civil War, the federal government tried to find ways to make land available to freed slaves.[417] With limited success, the Freedmen's Bureau famously offered "40 acres & a mule."[418] President Andrew Johnson, however, tended to support the plantation owners' claims.[419] Because of the country's continued westward expansion and the conflicts that arose because of it, legal issues relating to real property surged.[420] Congress had passed the Homestead Act in 1862, which promised 160 acres for individuals who worked the land for five years.[421] Now, Congress busied itself with new measures designed to facilitate ownership of and access to land for both individuals and corporations.[422] For example, Congress passed the Timber Culture Act of 1873 (offering the potential of an additional 160 acres under certain conditions), the Desert Land Act of 1877 (640 acres at $1.25/acre with a requirement of irrigation), and the Timber & Stone Act of 1878 ($2.50/acre).[423] In 1872, it created Yellowstone National Park and then in the 1890's other national parks

417 *See id.* at 409–12.

418 *See, e.g.*, *id.* at 409–10.

419 *See, e.g.*, BRINKLEY, *supra* note 10, at 404 ("Whereas Johnson helped white Southerners to return to their land, he did little in support of the former slaves. Although freedmen had been given their liberty, holding on to it proved difficult. Many freedmen who returned to work for white planters found themselves almost like slaves again. Johnson offered no help. 'Are not our rights as free people and good citizens of the United States to be considered?' asked a petition against the president. It was a long time before freedmen truly found liberty.").

420 Hannah L. Anderson, *That Settles It: The Debate and Consequences of the Homestead Act of 1862*, 45 HIST. TCHR. 117, 120 (2011).

421 BRINKLEY, *supra* note 10, at 437–38; *see, e.g.*, *id.* at 368 ("The Homestead Act of 1862 permitted any citizen or prospective citizen to claim 160 acres of public land and to purchase it for a small fee after living on it for five years.").

422 *See, e.g.*, *id*. at 438.

423 *Id.*

and wildlife preserves.[424] Congress enacted the Forest Reserve Act (1891),[425] the Forest Management Act (1897),[426] and the National Reclamation (Newlands) Act (1902).[427] As president, Theodore Roosevelt took an active role in both domestic and international land management and acquisition.[428] He was instrumental in adding land to the National Forest System[429] and the Panama Canal (1902).[430] The years from 1870-1910 saw a significant increase in the number of United States patents issued (*e.g.*, the telephone patent in March 1876).[431]

---

[424] *See, e.g.*, *id*. at 575 ("Congress created the first national park—Yellowstone, in Wyoming, in 1872—and had authorized others in the 1890s: Yosemite and Sequoia in California, and Mount Rainier in Washington State. Roosevelt added land to several existing parks and also created new ones: Crater Lake in Oregon, Mesa Verde in Utah, Platt in Oklahoma, and Wind Cave in South Dakota.").

[425] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 619 ("Conservationists achieved early victories in the Forest Reserve Act (1891) and the Forest Management Act (1897), which authorized the federal government to withdraw timberlands from development and to regulate grazing, lumbering, and hydroelectric sites in the forests . . . .").

[426] *Id.*

[427] BRINKLEY, *supra* note 10, at 575 ("In 1902, the president [i.e., Theodore Roosevelt] backed the National Reclamation Act, better known as the Newlands Act (named for its sponsor, Nevada senator Francis Newlands). The Newlands Act provided federal funds for the construction of dams, reservoirs, and canals in the West—projects that would open up new lands for cultivation and (years later) provide cheap electric power."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 619–20 ("[T]he 1902 National Reclamation Act . . . established what became the Bureau of Reclamation. Its engineers were to construct dams, reservoirs, and irrigation canals, and the government was to sell the irrigated lands in tracts no larger than 160 acres.").

[428] *See, e.g.*, BRINKLEY, *supra* note 10, at 574–75.

[429] *See, e.g.*, *id*. at 574 ("Using executive powers, he [i.e., President Theodore Roosevelt] restricted private development of millions of acres of undeveloped government land—most of it in the West—by adding them to the previously modest national forest system. When conservatives in Congress restricted his authority over public lands in 1907, Roosevelt and his chief forester, Gifford Pinchot, seized all the forests and many of the water power sites still in the public domain before the bill became law.").

[430] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 650 ("In 1902, Congress directed Roosevelt to purchase the French company's claims for $40 million and build the Canal in Panama if Columbia ceded a strip of land across the isthmus on reasonable terms. Otherwise, Roosevelt was to negotiate with Nicaragua for the alternative route.").

[431] BRINKLEY, *supra* note 10, at 618 ("Scottish-born inventor and scientist Alexander Graham Bell received a patent for his invention of the telephone on March 7, 1876."); *see, e.g.*, *id*. at 513 ("In the late nineteenth century, the United States changed from technology borrower to a technology innovator. By 1910, a million patents had been issued in the United States, 900,000 of them after 1870.").

10. Voting and Elections

VOTING & ELECTIONS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	64	31	33	128

a. Highlights

The aftermath of the Civil War brought changes to election and voting laws.[432] Constitutional amendments granted voting rights to African American men.[433] Southern state legislatures responded with poll taxes, property qualifications, literacy tests, and the like.[434] "Fighting and intimidation were so commonplace at the polls that one state supreme court ruled in 1887 that they were 'acceptable' features of elections."[435] The Supreme Court then was left to strike a balance between the Constitution and those state restrictions.[436] State legislatures passed more voter suppression laws again in the 1890's.[437] The Seventeenth Amendment (1913) changed the way that state senators are elected from a vote by state legislatures (Article 1, § 3 of the Constitution) to a popular vote.[438] And the Nineteenth Amendment (1920) gave voting rights to women.[439] On a smaller scale, during the Progressive Era, activists introduced the initiative, the referendum,[440] and, as early as the 1890's, most

---

[432] *See, e.g.*, BRINKLEY, *supra* note 10, at 407 ("In the ten states of the South that were reorganized under the congressional plan, approximately one-fourth of the white males were at first excluded from voting or holding office . . . But the government soon lifted most suffrage restrictions so that nearly all white males could vote.").

[433] *See, e.g.*, *id*. at 406.

[434] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 499.

[435] *Id*. at 570.

[436] *See, e.g.*, BRINKLEY, *supra* note 10, at 423–24.

[437] FONER, *supra* note 8, at 565 ("But the Progressive era also witnessed numerous restrictions on democratic participation, most strikingly the disenfranchisement of blacks in the South . . . . New literacy tests and residency and registration requirements, common in northern as well as southern states, limited the right to vote among the poor. In the eyes of many Progressives, the 'fitness' of voters, not their absolute numbers, defined a functioning democracy."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 593 ("After the elections of 1894 and 1896: The Democrats' disenfranchisement laws, directed at discontented poor whites as well as poor blacks, further undermined the Populists in the South.").

[438] *See, e.g.*, FONER, *supra* note 8, at 565 ("Democracy was enhanced by the Seventeenth Amendment (1913)—which provided that U.S. senators be chosen by popular vote rather than by state legislatures . . . .").

[439] *See, e.g.*, BRINKLEY, *supra* note 10, at 560.

[440] *Id.* at 563 ("Under his [i.e., Robert M. LaFollette's] leadership the Wisconsin progressives won approval of direct primaries, initiatives, and referendums."); *see, e.g.*, *id*. at 562 ("Two of

states implemented the Australian ballot, which "provided for official ballots and secret voting, freeing voters from intimidation and discouraging vote buying and other corruption."[441] Nevertheless, well into the first decades of the twentieth century, legislators—especially in southern states—continued to craft new laws designed to hamper the voting rights of African Americans and the poor.[442]

11. Women

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	42	32	31	105

a. Highlights

During this period, the major legal topic regarding women treated in the textbooks is the fight for suffrage.[443] The textbooks note that western states were the first to permit women to vote.[444] At the turn of the century, women increased their pressure

---

the most important changes were innovations first proposed by Populists in the 1890s: the initiative and the referendum. The initiative allowed reformers to circumvent state legislatures by submitting new legislation directly to the voters in general elections. The referendum provided a method by which actions of the legislature could be returned to the electorate for approval. By 1918, more than twenty states had enacted one or both of these reforms.").

441 GOLDFIELD ET AL., *supra* note 26, at 615.

442 *See, e.g.*, *id*. at 615–17 ("In the South, Democrats—progressive and conservative alike—eliminated not only black voters but also many poor white voters from the electorate through poll taxes, literacy tests, and other restrictions. Republicans in the North adopted educational or literacy tests in ten states, enacted strict registration laws, and gradually abolished the right of aliens to vote. These restrictions reflected both the progressives' anti-immigrant prejudices and their obsessions with social control with purifying politics an 'improving' the electorate. Such electoral reforms reduced the political power of ethnic and working-class Americans, often stripping them of their political rights and means of influence.").

443 BRINKLEY, *supra* note 10 at 559–60; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 574 ("Women also sought power and influence through associational politics. Susan B. Anthony and others formed groups to lobby Congress and state legislatures for constitutional amendments extending the right to vote to women. The leading organizations merged in 1890 as the National American Woman Suffrage Association.").

444 BRINKLEY, *supra* note 10, at 443 ("Wyoming was the first state in the Union to guarantee woman suffrage . . . ."); *id.* ("Women won the vote earlier in the West than they did in the rest of the nation, although for different reasons in different places. In Utah, the Mormons granted women suffrage in an effort to stave off criticism of their practice of polygamy. In some places, women won suffrage before statehood to swell the electorate to the number required by Congress. In others, women won the vote by persuading men that they would help bring a 'moral' voice into the politics of the region and strengthen the sense of community in the West."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 574 ("Despite the opposition of male politicians of both major parties, suffragists had succeeded by the mid-1890s in gaining full

on the legal system in an effort to find equality.[445] In addition to voting rights, women pressed other legal matters, such as issues relating to work (*e.g.*, wages),[446] assistance for children's health care,[447] and reproductive rights.[448] In 1908, the United States Supreme Court held that states may limit working hours for women (*Muller v. Oregon*).[449] During World War I, many women took jobs that soldiers had left behind.[450] Immediately after the war, however, "state legislatures passed laws

---

woman suffrage in four western states—Wyoming, Colorado, Idaho, and Utah—and partial suffrage (the right to vote in school elections) in several other states, east and west.").

445 BRINKLEY, *supra* note 10, at 558–59 (describing the women's club movement at the dawn of the twentieth century); *see, e.g.*, *id.* at 555 (describing circumstances during the transition from the late nineteenth into the twentieth century, Brinkley writes: "Both by custom and by active barriers of law and prejudice, American women found themselves excluded from most of the merging professions . . . . A few women managed to establish themselves as physicians, lawyers, engineers, scientists, and corporate managers in the early 1900s.").

446 *See, e.g.*, *id*. at 478 ("Advocates of a minimum wage law for women created a sensation when several women testified at a hearing in Chicago that low wages and desperate poverty had driven them to prostitution. (The testimony was not, however, sensational enough for the Illinois legislature, which promptly defeated the bill.)").

447 BRINKLEY, *supra* note 10, at 626 ("Women activists won a significant triumph in 1921, when they helped secure passage in Congress of a measure in keeping with the traditional feminists' goal of securing 'protective' legislation for women: the Sheppard-Towner Act. It provided federal funds to states to establish prenatal and child health-care programs . . . . In 1929, Congress terminated the program."); *see, e.g.*, FONER, *supra* note 8, at 568 ("Laws providing for mothers' pensions (state aid to mothers of young children who lacked male support) spread rapidly after 1910. These maternalistic reforms rested on the assumption that the government should encourage women's capacity for bearing and raising children and enable them to be economically independent at the same time.").

448 BRINKLEY, *supra* note 10, at 625 ("Birth control devices began to find a large market among middle-class women, even though some techniques remained illegal in many states (and abortion remained illegal nearly everywhere)."); *see, e.g.*, FONER, *supra* note 8, at 561 (Circa 1916: "By forthrightly challenging the laws banning contraceptive information and devices, Margaret Sanger, one of eleven children of an Irish-American working-class family, placed the birth control movement at the heart of the new feminism.").

449 Muller v. Oregon, 208 U.S. 412 (1908); *see, e.g.*, FONER, *supra* note 8, at 568–69 ("In 1908, in the landmark case of *Muller v. Oregon*, Louis D. Brandeis filed a brief citing scientific and sociological studies to demonstrate that because they had less strength and endurance than men, long hours of labor were dangerous for women, while their unique ability to bear children gave the government a legitimate interest in their working conditions. Persuaded by Brandeis's argument, the Supreme Court unanimously upheld the constitutionality of an Oregon law setting maximum working hours for women. Thus, three years after the notorious *Lochner* decision invalidating a New York law limiting the working hours of male bakers . . . , the Court created the first large breach in 'liberty of contract' doctrine. But the cost was high: at the very time that women in unprecedented numbers were entering the labor market and earning college degrees, Brandeis's brief and the Court's opinion solidified the view of women workers as weak, dependent, and incapable of enjoying the same economic rights as men. By 1917, thirty states had enacted laws limiting the hours of labor of female workers.").

450 *See, e.g.*, BRINKLEY, *supra* note 10, at 598.

prohibiting women from working in many of the occupations they had successfully filled during the war. By 1919, half of the women newly employed in heavy industry during the war were gone; by 1920, women constituted a smaller proportion of the workforce than they had in 1910."[451] The suffrage movement culminated with the Nineteenth Amendment in 1920.[452] And after passage of the Nineteenth Amendment, Wisconsin put into place an equal rights statute, while other states changed their laws to allow women to serve as jurors and to earn pay equal to that of men.[453] Legally speaking, New Deal programs provided some gains but also caused some setbacks for women.[454] "Despite demands by the League of Women Voters and the Women's Trade Union League for 'equal pay for equal work and equal opportunity for equal ability regardless of sex,' many NRA [National Recovery Administration] codes mandated lower wage scales for women than for men, which officials justified as reflecting long-established customs."[455]

12. Labor

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	44	26	22	102

451 GOLDFIELD ET AL., *supra* note 26, at 679.

452 *See, e.g.*, BRINKLEY, *supra* note 10, at 611 ("On August 26, 1920, the Nineteenth Amendment, guaranteeing women the right to vote, became part of the Constitution . . . . Because of woman suffrage, members of Congress—concerned that women would vote as a bloc on the basis of women's issues—passed the Sheppard-Towner Maternity and Infancy Act in 1921, one of the first pieces of federal welfare legislation that provided funds for supporting the health of women and infants. Concern about the women's vote also appeared to create support for the 1922 Cable Act, which granted women the rights of U.S. citizenship independent of their husbands' status, and for the proposed (but never ratified) 1924 constitutional amendment to outlaw child labor.").

453 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 694 ("In 1920, both major parties endorsed many of the goals of the new League of Women Voters. Within a year, many states had granted women the right to serve on juries, several enacted equal-pay laws, and Wisconsin adopted an equal-rights law.").

454 *See* BRINKLEY, *supra* note 10, at 682.

455 GOLDFIELD ET AL., *supra* note 26, at 736; *see also, e.g.*, FONER, *supra* note 8, at 665 ("Most New Deal programs did not exclude women from benefits (although the CCC restricted its camps to men). But the ideal of the male-headed household powerfully shaped social policy. Since paying taxes on one's wages made one eligible for the most generous Social security programs—old age pensions and unemployment insurance—they left most women uncovered, because they did not work outside the home. The program excluded the 3 million mostly female domestic workers altogether.").

a. Highlights

Although organized labor began making noise earlier, it was during the Post-Civil War to WWII Era that it gained traction.[456] In addition to workers joining forces in efforts to improve working conditions and pay, the Progressive Era was a time when individuals and groups advocated for sensible legislation regarding child labor.[457] During the Great Depression, the Roosevelt administration championed legislation such as the National Recovery Act to benefit organized labor.[458] And after the Supreme Court pulled the teeth from that law, Congress enacted the Wagner Act in

456 *See* BRINKLEY, *supra* note 10, at 478.

457 *Id*. at 581 ("[President] Wilson was sponsoring measures that expanded the powers of the national government in important ways. In 1916, for example, he supported the Keating-Owen Act, the first federal law regulating child labor. The measure prohibited the shipment of goods produced by underage children across state lines, thus giving an expanded importance to the constitutional clause assigning Congress the task of regulating interstate commerce. The president similarly supported measures that used federal taxing authority as a vehicle for legislating social change. After the Court struck down Keating-Owen, a new law attempted to achieve the same goal by imposing a heavy tax on the products of child labor. (The Court later struck it down too.) And the Smith-Lever Act of 1914 demonstrated another way in which the federal government could influence local behavior; it offered matching federal grants to support agricultural extension education. Over time, these innovative uses of government overcame most of the constitutional objections and became the foundation of a long-term growth in federal power over the economy."); *see, e.g.*, *id*. at 478 ("Under pressure of outraged public opinion, thirty-eight state legislatures passed child-labor laws in the late nineteenth century; but these laws were of limited impact. Sixty percent of child workers were employed in agriculture, which was typically exempt from the laws. Such children often worked twelve-hour days picking or hoeing in the fields. And even for children employed in the factories, the laws merely set a minimum age of twelve years and a maximum workday of ten hours, standards that employers often ignored.").

458 *See, e.g.*, *id*. at 666 ("Section 7(a) of the National Industrial Recovery Act promised workers the right to form unions and engage in collective bargaining and encouraged many workers to join unions for the first time. But Section 7(a) contained no enforcement mechanisms. Hence recognition of unions by employers (and thus the significant wage increases the unions were committed to winning) did not follow. The Public Works Administration (PWA) established in 1933 to administer the National Industrial Recovery Act's spending programs, only gradually allowed the $3.3 billion in public works funds to trickle out. Not until 1938 was the PWA budget pumping an appreciable amount of money into the economy.").

1935.[459] Emboldened by the Wagner Act, organized labor initiated strikes,[460] some of which resulted in bloodshed.[461]

13. Contracts

CONTRACTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	24	27	36	87

14. Civil Liberties

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	21	47	15	83

459 *See, e.g.*, *id*. at 670 ("The Supreme Court decision in 1935 to strike down the National Industrial Recovery Act also invalidated Section 7(a) of the act, which guaranteed workers the right to organize and bargain collectively. A group of progressives in Congress led by Senator Robert F. Wagner of New York introduced what became the National Labor relations Act of 1935. The new law, popularly known as the Wagner Act, provided workers with a crucial enforcement mechanism missing from the 1933 law; the National Labor relations Board (NLRB), which would have power to compel employers to recognize and bargain with legitimate unions.").

460 *See, e.g.*, *id*. at 671 ("The growing labor militancy first became obvious in 1934, when recently organized workers (many of them inspired by the collective bargaining provisions of the National Industrial Recovery Act) demonstrated a new assertiveness. It was soon clear, however, that without stronger legal protection, most organizing drives would end in frustration. Once the Wagner Act became law, the search for more-effective forms of organization rapidly gained strength in labor ranks.").

461 *See, e.g.*, *id*. at 671 (discussing protests and strikes by steel workers in Chicago on Memorial Day 1937, Brinkley observes: "When they attempted to march peacefully (and legally) toward the steel plant, police opened fire on them. Ten demonstrators were killed; another ninety were wounded. Despite a public outcry against the 'Memorial Day Massacre,' the harsh tactics of Little Steel companies succeeded. The 1937 strike failed.").

15. Education

EDUCATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	21	30	13	64

16. Immigration

IMMIGRATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	20	21	19	60

a. Highlights

Congress and the states passed a number of immigration measures primarily aimed at limiting the entry of Chinese, Japanese, and Mexicans.[462] Examples of federal legislation include: the Naturalization Act (1870);[463] Chinese Exclusion Act

462 *See* MULLER, *supra* note 87, at 50 ("More common in history is the prejudice of nationalism, based on the universal 'in-group' feeling. It is not simply an ugly sentiment, or a refuge for scoundrels. It has inspired high ideals of duty, devotion to the common welfare, sacrifice for the greater good. It has fertilized Western culture with a rich variety of national traditions. Yet the historic claim to national sovereignty, with the sentiment of devotion to one's country right or wrong and the natural conclusion that it is practically always right, is now an apparent anachronism.").

463 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 528 (explaining that late nineteenth century nativists warned of the dangers of mass immigration: Such sentiments generated proposals to restrict foreign immigration . . . "In 1870, the Republican-dominated Congress passed the Naturalization Act, which limited citizenship to 'white persons and persons of African descent.' The act was specifically intended to prevent Chinese from becoming citizens, a ban not lifted until 1943, but it affected other Asian groups also.").

(1882);[464] Geary Act (1892);[465] Emergency Immigration Act (1921);[466] and, National Origins Act (1924).[467] Interest groups such as the Immigration Restriction League (founded in 1894) advocated for restrictive laws.[468] In the initial two decades of the twentieth century, California and federal authorities took significant steps to bar, limit, or otherwise restrict access to Japanese and Chinese immigration.[469] California legislators went so far as to pass laws that restricted the ability of Japanese

---

464 BRINKLEY, *supra* note 10, at 437; FONER, *supra* note 8, at 529–30 ("Beginning in 1882 with the Chinese Exclusion Act, Congress temporarily excluded all immigrants from China from entering the country. Although non-whites had long been barred from becoming naturalized citizens, this was the first time that race had been used to exclude an entire group of people. Congress renewed the restriction ten years later and made it permanent in 1902. Chinese in the United States were required to register with the government and carry identification papers or face deportation . . . . In 2012, Congress passed a Resolution of Regret apologizing for the exclusion laws and acknowledging their role in exacerbating racial discrimination."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 528 ("The Chinese Exclusion Act of 1882, passed following another decade of anti-Chinese pressure, made the Chinese the only ethnic group in the world that could not immigrate freely into the United States.").

465 *Geary Act* (1892), IMMIGRATION HISTORY, https://immigrationhistory.org/item/geary-act/ (last visited Sep. 29, 2022, 9:31 PM) (aiming to limit the immigration of Chinese persons by both expanding the Federal government's power to enforce immigration laws and requiring existing Chinese-Americans to participate in a green card-style system of documentation verification on threat of deportation).

466 *See, e.g.*, BRINKLEY, *supra* note 10, at 631 ("In 1921, Congress passed an emergency immigration act, establishing a quota system by which annual immigration from any country could not exceed 3 percent of the number of persons of that nationality who had been in the United States in 1910. The new law cut immigration from 800,000 to 300,00 in any single year, but nativists remained unsatisfied and pushed for a harsher law.").

467 BRINKLEY, *supra* note 10, at 631–32 ("The National Origins Act of 1924 strengthened the exclusionist provision of the 1921 law. It banned immigration from east Asia entirely. That provision deeply angered the Japanese, who understood that they were the principal target; Chinese immigration had been illegal since 1882. The law also reduced the quota for Europeans from 3 percent to 2 percent.") . . . Five years later, a further restriction set a rigid limit of 150,000 immigrants a year."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 703 ("National Origins Act of 1924. Law sharply restricting immigration on the basis of immigrants' national origins and discriminating against southern and eastern Europeans and Asians.").

468 GOLDFIELD ET AL., *supra* note 26, at 528; *see, e.g.*, FONER, *supra* note 8, at 528–29 ("Founded in 1894 by a group of Boston professionals, the Immigration Restriction League called for reducing immigration by barring the illiterate from entering the United States. Such a measure was adopted by Congress early in 1897 but was vetoed by President Cleveland. Like the South, northern and western states experimented with ways to eliminate undesirable voters.").

469 FONER, *supra* note 8, at 529 ("Beginning in 1909, as part of the enforcement of Chinese exclusion, all Chinese in the United States were required to carry a government-issued certificate, the first widespread use of photographs as proof of identity."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 646 ("Gentlemen's Agreement: A diplomatic agreement in 1907 between Japan and the United States curtailing but not abolishing Japanese immigration.").

to buy land.[470] Laws enacted during the 1920's drastically restricted immigration.[471] Some challenges to these laws reached the Supreme Court, such as *Fong Yue Ting v. United States* (1893) (upholding requirements that Chinese carry documents showing proof of legal entry)[472] and *United States v. Wong Kim Ark* (1898) (holding that, because Wong Kim Ark was born in the United States, he was a United States citizen, even though his parents were Chinese Citizens residing in the United States).[473] In 1942, Congress experimented with legislation providing limited rights for Mexican workers (Bracero Program).[474]

17. Native Americans

NATIVE AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War–WWII	23	19	12	54

a. Highlights

The textbooks discuss numerous legal problems of Native Americans during this time.[475] The nation's continued westward expansion triggered conflicts among white

---

[470] *See, e.g.*, BRINKLEY, *supra* note 10, at 620 ("In the wake of the Chinese Exclusion Acts of the late nineteenth century, Japanese immigrants increasingly took the place of the Chinese in menial jobs in California . . . . Many of the . . . Japanese immigrants enjoyed significant economic success—so much so that California passed laws in 1913 and 1920 to make it more difficult for them to buy land.").

[471] *See, e.g.*, FONER, *supra* note 8, at 629.

[472] *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *see, e.g.*, FONER, *supra* note 8, at 530–31("[I]n its decision in *Fong Yue Ting v. United States* (1893), the Court authorized the federal government to expel Chinese aliens without due process of law. In his dissent, Justice David J. Brewer acknowledged that the power was now directed against a people many Americans found 'obnoxious.' But 'who will say,' he continued 'it will not be exercised tomorrow against other classes and other people?' Brewer proved to be an accurate prophet. In 1904, the Court cited *Fong Yue Ting* in upholding a law barring anarchists from entering the United States, demonstrating how restrictions on the rights of one group can become precedent for infringing on the rights of others.").

[473] United States v. Wong Kim Ark, 169 U.S. 649 (1898); *see, e.g.*, FONER, *supra* note 8, at 530 ("In *United States v. Wong Kim Ark* (1898), the Court ruled that the Fourteenth Amendment awarded citizenship to children of Chinese immigrants born on American soil. Yet the justices also affirmed the right of Congress to set racial restrictions on immigration.").

[474] *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 766 ("In the 1930s, western states had tried to deport Mexican nationals who were competing for scarce jobs. In 1942, however, the United States and Mexico negotiated the *bracero* program, under which the Mexican government recruited workers to come to the United States on six- to twelve-month contracts.").

[475] BRINKLEY, *supra* note 10, at 453 (informing that the Dawes Act gradually eliminated tribal land ownership); *id*. at 682 (providing that Native Americans were often relegated to unwanted lands which white settlers did not, or could not, cultivate); *id*. at 716 (explaining that

settlers, the military, and Native Americans.[476] To address these conflicts, Congress negotiated treaties and legislated.[477] More than once, the Supreme Court ruled on these matters.[478] Generally speaking, during the closing decades of the 19th century, governmental actions bullied Native Americans, while the first decades of the 20th century gradually witnessed a more enlightened attitude.[479] The Fort Laramie Treaty of 1868 established reservation territory for the Sioux and promised financial compensation.[480] The Bureau of Indian Affairs established boarding schools where educators sought to convert Native American youth to white/European culture.[481] Perhaps the most debilitating legal blow to the rights and freedoms of Native Americans occurred when Congress passed the Dawes Act (1887).[482] The Dawes Act

---

efforts to restore tribal autonomy through the Indian Reorganization Act were undermined by the new focus on national unity prompted by the Second World War); *see, e.g.*, *id.* at 448 (explaining that on the order of the "Indian Peace Commission," Native Americans moved en masse to two primary reservations following inequitable treaty negotiations).

476 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 547 ("[I]n 1872, the Northern Pacific Railroad began to build westward on a route that would violate Sioux territory.").

477 *See, e.g.*, *id*. at 545–46.

478 *Ex parte Crow Dog*, 109 U.S. 556 (1883), *superseded*, 822 F.20 460 (holding that a federal court had no jurisdiction to try a case which had been tried by a tribal council already); *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (holding that Congress' plenary power gave the Legislature the authority to unilaterally abrogate treaty obligations between the U.S. and Native American tribes); *United States v. Winans*, 198 U.S. 371 (1905) (holding that specific native treaties protected Native Americans' hunting and fishing rights); *see generally* United States v. Cook, 86 U.S. (19 Wall.) 591 (1873), *superseded*, 463 U.S. 206 (holding that the land on which native American reservations were located was owned by the United States government and not the tribes themselves).

479 BRINKLEY, *supra* note 10, at 682 (explaining that the emergence of Joseph Collier in the 1920's was a signifying event in the shift toward more enlightened federal policies with respect to Native Americans and that Collier promoted legislation which effectively restored some tribal land rights); *see, e.g.*, *id.* at 448 (giving examples of poor government policy and management essentially pushing Native Americans from their land).

480 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 546 ("Describing white actions as 'uniformly unjust,' a federal peace commission in 1868 negotiated the Treaty of Fort Laramie, in which the United States abandoned military posts and trails on Sioux territory, one of the few times Indians forced whites to retreat. The United States also guaranteed the Sioux permanent ownership of the western half of South Dakota and the right to inhabit and hunt in the Powder River country of Wyoming and Montana, an area henceforth closed to all white people.").

481 *See, e.g.*, FONER, *supra* note 8, at 492 ("In 1871, Congress eliminated the treaty system that dated back to the revolutionary era, by which the federal government negotiated agreements with Indians as if they were independent nations. The federal government also pressed forward with its assault on Indian culture. The Bureau of Indian Affairs established boarding schools where Indian children, removed from the 'negative' influences of their parents and tribes, were dressed in non-Indian clothes, given new names, and educated in white ways.").

482 *See, e.g.*, *id*. at 492 ("The crucial step in attacking 'tribalism' came in 1877 with the passage of the Dawes Act, named for Senator Henry L. Dawes of Massachusetts, chair of the Senate's Indian affairs Committee. The act broke up the land of nearly all tribes into small

completely reorganized Native American property rights and significantly changed their ability to continue cultural traditions.[483] After the massacre at Wounded Knee Creek, South Dakota (1890), a military court absolved the soldiers who were responsible for the killings.[484] In 1901, Congress granted United States citizenship to all Native Americans in Oklahoma; in 1919, it did the same for Native Americans who had served in World War I, and then ultimately granted citizenship to all Native Americans in 1924.[485] Then, under Franklin Roosevelt, it passed the Indian Reorganization (Wheeler-Howard) Act of 1934, which, in part, reversed policies of the Dawes Act.[486]

18. Incidental

INCIDENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	14	9	30	53

parcels to be distributed to Indian families, with the remainder auctioned off to white purchasers. Indians who accepted the farms and 'adopted the habits of civilized life' would become full-fledged American citizens . . . . Overall, according to one estimate, between 1776 and today, via the 'right of discovery,' treaties, executive orders, court decisions, and outright theft, the United States has acquired over 1.5 billion acres from Native Americans, an area twenty-five times as large as Great Britain.").

483 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 548–49.

484 *See, e.g.*, FONER, *supra* note 8, at 493 ("On December 29, 1890, [U.S. government] soldiers opened fire on [Indian] Ghost Dancers encamped near Wounded Knee Creek in South Dakota, killing between 150 and 200 Indians, mostly women and children. The Wounded Knee massacre was widely applauded in the press. An army court of inquiry essentially exonerated the troops and their commander, and twenty soldiers were awarded the Medal of Honor, a recognition of exceptional heroism in battle, for their actions at Wounded Knee.").

485 *See, e.g.*, FONER, *supra* note 8, at 493 ("By 1900, the Indian population had fallen to 250,000, the lowest point in American history. Of that number, roughly 53,000 had become American citizens by accepting land allotments under the Dawes Act. The following year, Congress granted citizenship to 100,000 residents of Indian Territory (in present-day Oklahoma). The remainder would have to wait until 1919 (for those who fought in World War I) and 1924 (when Congress made all Indians American citizens).").

486 *See, e.g.*, *id.* at 666–67 ("Overall, the Depression and New Deal had a contradictory impact on America's racial minorities. Under Commissioner of Indian Affairs John Collier, the administration launched an Indian New Deal. Collier ended the policy of forced assimilation and allowed Indians unprecedented cultural autonomy. He replaced boarding schools meant to eradicate the tribal heritage of Indian children with schools on reservations, and dramatically increased spending on Indian health. He secured passage of the Indian Reorganization Act of 1934, ending the policy, dating back to the Dawes Act of 1887, of dividing Indian lands into small plots for individual families and selling off the rest. Federal authorities once again recognized Indians' right to govern their own affairs.").

19. Other Minorities

OTHER MINORITIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	10	22	16	48

20. Torts

TORTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	17	6	13	36

21. Marriage and Family

MARRIAGE & FAMILY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	4	10	5	19

22. Religion

RELIGION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	6	7	4	17

23. Environmental

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
Post-Civil War – WWII	2	0	1	3

E. Post-World War II to the Present

1. Foreign Policy

FOREIGN POLICY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	69	55	59	183

a. Highlights

The Cold War that ensued after the Second World War created an environment in which the United States—and the world—found it necessary to devote tremendous efforts to international diplomacy.[487] Among the first steps was the creation of the United Nations.[488] President Truman promoted what came to be known as the "Truman Doctrine," targeted primarily at promoting democracy throughout the world.[489] A related policy under Truman was the Marshall Plan, aimed at providing aid for post-war Europe.[490] Also, in the late 1940's, the United States negotiated with European powers to establish practical plans for post-war Germany,[491] and then took

---

487 BRINKLEY, *supra* note 10, at 737.

488 *See, e.g.*, *id.* at 735 (discussing the February 1945 conference at Yalta, where Stalin, Roosevelt, and Churchill met: "These agreements became the basis of the United Nations charter, drafted at a conference of fifty nations beginning April 25, 1945, in San Francisco. The U.S. Senate ratified the charter in July by a vote of 80 to 2 (in striking contrast to the slow and painful defeat it had administered to the charter of the League of Nations twenty-five years before).").

489 *See, e.g.*, *id.* at 737 (discussing the Truman Doctrine, Brinkley quotes Truman's own words, describing it as a "policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures." Brinkley adds that Truman, "requested $400 million—part of it to bolster the armed forces of Greece and Turkey, another part to provide economic assistance to Greece. Congress quickly approved the measure").

490 *Id.* at 738 ("In April [1948], Congress approved the creation of the Economic Cooperation Administration, the agency that would administer the Marshall Plan, as it became known. Over the next three years, the Marshall plan channeled over $12 billion of American aid into Europe, helping to spark a substantial economic revival. By the end of 1950, European industrial production had risen 64 percent, communist strength in the member nations had declined, and opportunities for American trade had revived."); *see, e.g.*, *id.* (explaining the Marshall Plan, Brinkley writes: "In June 1947, therefore Secretary of State George C. Marshall announced a plan to provide economic assistance to all European nations (including the Soviet Union) that would join in drafting a program for recovery.").

491 *See, e.g.*, *id.* at 739 (discussing matters regarding Germany in mid-1948, Brinkley writes; "Truman reached an agreement with England and France to merge the three western zones of occupation into a new West German republic (which would include the former American, British, and French sectors of Berlin, even though that city lay well within the East German zone.")).

a leading role in the creation of the North Atlantic Treaty Organization (NATO).[492] Armed conflicts in Korea,[493] Vietnam,[494] and the Middle East[495] required intense efforts to achieve peaceful closure.[496] The two superpowers, the United States and the Soviet Union, engaged in intense and extensive negotiations focused on the creation and use of nuclear weapons.[497] At the close of the 1970's, the Soviet Union invaded Afghanistan and Iranians took hostages at the United States Embassy;[498] both of these

---

[492] *Id.* at 750 (mentioning "the Marshall Plan," and writes: "The United States and Western Europe formed a strong and enduring alliance, NATO, to defend Europe against possible Soviet advances."); *see, e.g.*, *id.* at 740 ("On April 4, 1948, twelve nations signed an agreement establishing the North Atlantic treaty Organization (NATO) and declaring that an armed attack against one member would be considered an attack against all.").

[493] *See, e.g.*, *id.* at 745 ("On June 27, 1950, the president [i.e., Truman] appealed to the United Nations to intervene [in the Korean conflict].").

[494] *Id.* at 826; *see, e.g.*, *id.* at 795.

[495] *Id.* at 840 ("Carter's greatest achievement was his success in arranging a peace treaty between Egypt and Israel . . . . On March 26, 1979, Begin and Sadat returned together to the White House to sign a formal peace treaty—known as the Camp David accords—between their two nations."); *id.* at 878 ("With former rival Hillary Clinton as his secretary of state, Obama sought peace between Israel and Palestine—an effort that, like all previous ones, was extraordinarily difficult. They sought to improve relations with many nations that the Iraq War had damaged, and built new international trade opportunities."); *see, e.g.*, *id.* (captioning the photo: "SIGNING THE CAMP DAVID ACCORDS Jimmy Carter experienced many frustrations during his presidency, but his successful efforts in 1978 to negotiate a peace treaty between Israel and Egypt was his finest hour. Egyptian president Anwar Sadat and Israeli prime minister Menachem Begin join Carter here in the East Room of the White House in March 1979 to sign the accords.").

[496] *Id.* at 746, 826, 840.

[497] *Id.* at 838 ("In late 1974, [President] Ford met with Soviet premier Leonid Brezhnev at Vladivostok in Siberia and signed an arms control accord that was to serve as the basis for SALT II, thus achieving a goal the Nixon administration had long sought. Meanwhile in the Middle East, Henry Kissinger helped produce a new accord, by which Israel agreed to return large portions of the occupied Sinai to Egypt."); *id.* at 851 ("But in 1988, after Reagan and Gorbachev exchanged cordial visits to each other's capitals, the two superpowers signed a treaty eliminating American and Soviet intermediate-range nuclear forces (INF) from Europe—the most significant arms control agreement of the nuclear age."); *id.* at 852 ("[President Bush] reached a series of significant agreements with the Soviet Union in its waning years. The United States and the Soviet Union moved rapidly toward even more far-reaching arms reduction agreements."); *see, e.g.*, *id.* at 827 ("In 1969, American and Soviet diplomats met in Helsinki, Finland to begin talks on limiting nuclear weapons. In 1972, they produced the first Strategic Arms Limitation Treaty (SALT I), which froze the nuclear missiles (ICBMs) of both sides at present levels.").

[498] *See, e.g.*, *id.* at 841 ("Days later, on November 4, an armed group of militants invaded the American embassy in Teheran, seized the diplomats and military personnel inside, and demanded the return of the shah to Iran in exchange for their freedom. Fifty-three Americans remained hostages in the embassy for over a year. Only weeks after the hostage seizure, on

incidents triggered the need for the United States to pursue conflict resolutions against a backdrop of international law.[499] In January 1991, the United States undertook military operations in Iraq, which ultimately concluded in less than two months.[500] President Bill Clinton took steps to facilitate trade by means of multi-national trade deals, such as NAFTA and GATT.[501] In addition to war, weapons, and trade, global recognition of environmental concerns also led to international agreements.[502]

2. Slavery and African Americans

SLAVERY & AFRICAN AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	49	67	44	160

a. Highlights

This has been an exceptionally active time for race-related legal matters.[503] Dynamic individuals such as Dr. Martin Luther King and Rosa Parks[504] and various

December 27, 1979, Soviet troops invaded Afghanistan, the mountainous Islamic nation lying between the USSR and Iran.").

499 *See, e.g.*, *id.* (explaining that after revolutionaries in Iran took hostages in the American Embassy there and after the USSR invaded Afghanistan, President Carter, "imposed a series of economic sanctions on the Russians, canceled American participation in the 1980 summer Olympic Games in Moscow, and announced the withdrawal of SALT II from Senate consideration").

500 *See, e.g.*, *id.* at 853 ("On February 28 [1991], Iraq announced its acceptance of allied terms for a cease-fire, and the brief Persian Gulf War came to an end.").

501 *See, e.g.*, *id.* at 857 ("Clinton was a committed advocate of free trade and a proponent of many aspects of what came to be known as globalism. He made that clear through his strong support of a series of new and controversial free-trade agreements. After a long and difficult battle, he won approval of the North American Free Trade Agreement (NAFTA), which eliminated most trade barriers among the United States, Canada, and Mexico. Later he won approval of other far-reaching trade agreements negotiated in the General Agreement on Trade and Tariffs (or GATT).").

502 *See, e.g.*, *id.* at 867 ("In 1997, representatives of the major industrial nations met in Kyoto, Japan, and agreed to a broad treaty to reduce carbon emissions to slow or reverse global warming. Republicans in Congress prevented ratification of this treaty in the United States. The United States again refused to participate in this global initiative during the presidency of George W. Bush, who argued that doing so would place too great of an economic burden on the country. Barack Obama, too, has done little about global warming. Without the participation of the United States and China, another country that has not signed the Kyoto Protocol, most environmentalists consider the treaty to be dead.").

503 *See, e.g.*, FONER, *supra* note 8, at 760.

504 *See, e.g.*, BRINKLEY, *supra* note 10, at 773 ("The *Brown* decision helped spark a growing number of popular challenges to segregation in the South. On December 1, 1955, Rosa Parks,

citizen groups (*e.g.*, SNCC, SCLC, NAACP) raised public consciousness.[505] The textbooks recount Dr. King's work in places like Birmingham, Montgomery, and Selma, as well as, of course, his famous "I have a dream" speech at the March on Washington (1963).[506] Harry Truman, Dwight Eisenhower,[507] George Wallace, John Kennedy,[508] Lyndon Johnson, Richard Nixon and other executives pushed their own diverse agendas.[509] Although Congress failed to act on President Truman's ambitious civil rights proposals, his 1948 Executive Order desegregated the United States military.[510] Nevertheless, at the half-century, legal aspiration and social reality remained at a distance from one another.[511] Immediately following the Supreme

---

an African American woman, was arrested in Montgomery Alabama, when she refused to give up her seat on a Montgomery bus to a white passenger.").

505 *See, e.g.*, *id.* at 791.

506 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 835–39.

507 *See, e.g.*, BRINKLEY, *supra* note 10, at 773 ("Pressure from the courts, from northern liberals, and from African Americans themselves also speeded the pace of racial change in other areas . . . President Eisenhower completed the integration of the armed forces, attempted to desegregate the federal workforce, and in 1957 signed a civil rights act (passed without active support from the White House, by a Democratic Congress) providing federal protection for African Americans who wished to register to vote. It was a weak bill, with few mechanisms for enforcement, but it was the first civil rights bill of any kind to win passage since the end of Reconstruction, and it served as a signal that the executive and legislative branches were beginning to join the judiciary in the federal commitment to the 'Second Reconstruction.").

508 *Id.* at 787 (In the aftermath of the Wallace confrontation at the University of Alabama and the murder of NAACP official Medgar Evers, Brinkley remarks: "Days later, he [i.e., President Kennedy] introduced a series of new legislative proposals prohibiting segregation in 'public accommodations' (stores, restaurants, theaters, hotels), barring discrimination in employment, and increasing the power of the government to file suits on behalf of school integration. To generate support for the legislation, and to dramatize the power of the growing movement, more than 200,000 demonstrators marched down the mall in Washington, D.C., in August 1963 and gathered before the Lincoln Memorial for the greatest civil rights demonstration in the nation's history."); *see, e.g.*, *id.* at 786 ("John Kennedy had long been sympathetic to the cause of racial justice, but he was hardly a committed crusader . . . . His administration set out to contain the racial problem by expanding enforcement of existing laws and supporting litigation to overturn existing segregation statutes, hoping to make modest progress, without creating politically damaging divisions.").

509 *See, e.g.*, FONER, *supra* note 8, at 779, 811.

510 *See, e.g.*, *id.* at 727.

511 *See, e.g.*, *id.* at 760 ("In the South, evidence of Jim Crow abounded—in separate public institutions and the signs 'white' and 'colored' at entrances to buildings, train carriages, drinking fountains, restrooms, and the like. In the North and West, the law did not require segregation, but custom barred blacks from many colleges, hotels, and restaurants, and from most suburban housing . . . In 1950, seventeen southern and border states and Washington, D.C., had laws requiring racial segregation of public schools, and several others permitted local districts to impose it. In northern communities housing patterns and school district lines created de facto segregation—separation in fact if not in law.").

Court's ruling in *Brown v. Board of Education* (1954),[512] 101 southern members of Congress published their "Southern Manifesto, which asserted that the Court decision was unconstitutional."[513] President Eisenhower federalized the National Guard during racial tensions in Little Rock, Arkansas in 1957.[514] Governor Wallace famously, literally blocked the entrance of four black students at the University of Alabama in 1963.[515] President Johnson's political acumen played a key role in the passage of both the Civil Rights Act (1964)[516] and the Voting Rights Act (1965).[517] And President Nixon pushed for more public school integration and affirmative action.[518] Although southern legislatures continued manufacturing Jim Crow laws, as mentioned, the

---

512 *See, e.g.*, BRINKLEY, *supra* note 10, at 772–73; *see generally* 347 U.S. 483 (1954).

513 GOLDFIELD ET AL., *supra* note 26, at 834.

514 *See, e.g.*, FONER, *supra* note 8, at 765–68 ("Thanks to the efforts of Senate majority leader Lyndon B. Johnson, who hoped to win liberal support for a run for president in 1960, Congress in 1957 passed the first national civil rights law since Reconstruction. It targeted the denial of black voting rights in the South, but with weak enforcement provisions it added few voters to the rolls. President Eisenhower failed to provide moral leadership. He called for Americans to abide by the law, but he made it clear that he found the whole civil rights issue distasteful. In 1957, however, after Governor Orval Faubus of Arkansas used the National Guard to prevent the court-ordered integration of Little Rock's Central High School, Eisenhower dispatched federal troops to the city. In the face of a howling mob, soldiers of the 101st Airborne Division escorted nine black children into the school. Events in Little Rock showed that in the last instance, the federal government would not allow the flagrant violation of court orders.").

515 *See, e.g.*, BRINKLEY, *supra* note 10, at 787 ("Governor George Wallace—who had won election in 1962 pledging staunch resistance to integration—pledged to stand in the doorway of a building at the University of Alabama to prevent the court-ordered enrollment of several black students.").

516 BRINKLEY, *supra* note 10, at 787; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 841 ("The law prohibited segregation in public accommodations, such as hotels, restaurants, theaters, and parks, and outlawed employment discrimination on federally assisted projects. It also created the Equal Employment Opportunity Commission (EEOC) and included gender in the list of categories protected against discrimination, a provision whose consequences were scarcely suspected in 1964.").

517 BRINKLEY, *supra* note 10, at 788; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 841–42 ("The Voting Rights Act that he [i.e., President Johnson] signed on August 6, 1965, outlawed literacy tests and provided for federal voting registrars in states where registration turnout in 1964 was less than 50 percent of the eligible population. It applied initially in seven southern states. Black registration in these states jumped from 27 percent to 55 percent within the first year. In 1975, Congress extended coverage to Hispanic voters in the Southwest. The act required new moderation from white leaders, who had to satisfy black voters, and opened the way for black and Latino candidates to win positions at every level of state and local government. By opening the political process to previously excluded citizens, the Voting Rights Act was as revolutionary and far-reaching as the Nineteenth Amendment, which guaranteed women the right to vote, and the Labor Relations Act of 1935, which recognized labor unions as the equals of corporations.").

518 *See, e.g.*, FONER, *supra* note 8, at 812.

United States Congress passed civil rights and voting rights laws.[519] And the Supreme Court's decisions tackled issues such as housing discrimination (*Shelly v. Kraemer* (1948)[520]), school integration (*Sweatt v. Painter* (1950)[521] and *Brown v. Bd. Of Ed.* (1954)[522]), school busing (*Swann v. Charlotte-Meckenburg Bd. Ed.* (1971)[523]), and affirmative action (*Univ. California v. Bakke* (1978)[524]). More recently, the textbooks note the Texas court case *Hopwood v. Texas* (1996)[525] and the Supreme Court's decisions (*Gratz v. Bollinger*[526] and *Grutter v. Bollinger* (2003)[527]) involving

---

519 *See, e.g.*, BRINKLEY, *supra* note 10, at 805 ("It [i.e., the decade of the 1960s] saw the emergence of a sustained and enormously powerful civil rights movement that won a series of important legal victories, including two civil rights acts that dismantled the Jim Crow system constructed in the late nineteenth and early twentieth centuries . . . . The civil rights movement ended legalized segregation and disenfranchisement, but it also awakened expectations of social and economic equality that laws alone could not provide.").

520 BRINKLEY, *supra* note 10, at 744; *see, e.g.*, 334 U.S. 1 (1948); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 786–87 ("In an important decision in the case of *Shelly v. Kraemer* (1948), the Supreme Court held that clauses in real estate deeds that forbid selling or renting to minorities could not be enforced in the courts. The president also ordered 'equality of treatment and opportunity' in the armed services in July 1948.").

521 *See, e.g.*, FONER, *supra* note 8, 761 ("But in 1950, the Supreme Court unanimously ordered Herman Sweatt admitted to the University of Texas Law School [*Sweatt v. Painter*] even though the state had established a 'school' for him in a basement containing three classrooms and no library."); *see generally* 339 U.S. 629 (1950).

522 *See, e.g.*, BRINKLEY, *supra* note 10, at 772–73 (Large section entitled "THE *BROWN* DECISION AND "MASSIVE RESISTANCE"); *see generally* 347 U.S. 483 (1954).

523 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 863 ("In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the U.S. Supreme Court held that cross-town busing was an acceptable solution to the de facto segregation that resulted from residential patterns within a single school district. When school officials around the country failed to achieve racial balance, federal judges ordered their own busing plans . . . . Because the Supreme Court also ruled that busing programs normally stopped at school-district boundaries, suburbs with independent school districts escaped school integration."); *see generally* 402 U.S. 1 (1971).

524 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 937–38 ("The landmark court case about affirmative action was University of California v. Bakke (1978). Alan Bakke was an unsuccessful applicant to the medical school at the University of California at Davis. He argued that the university had improperly set aside 16 of 100 places in its entering class for minority students, thereby engaging in reverse discrimination against white applicants. In a narrow decision, the U.S. Supreme Court ordered Bakke admitted because the only basis for his rejection had been race. At the same time, the Court stated that race or ethnicity could legally be one of several factors considered in college and university admissions as long as a specific number of places were not reserved for minorities."); *see generally* 438 U.S. 265 (1978).

525 *See generally* 78 F.3d 932 (5th Cir. 1996).

526 *See generally* 539 U.S. 244 (2003).

527 *See generally* 539 U.S. 306 (2003).

affirmative action.[528] The textbooks also discuss *Shelby County v. Holder* (2013),[529] when the Supreme Court radically weakened voting rights protections that had been created by the Voting Rights Act of 1965.[530] The public spotlight has continued to shine intensely on legal race issues in recent years. Although all three textbooks were published before the murder of George Floyd, they do discuss criminal cases brought in the wake of other emotionally charged killings of black males such as Trayvon Martin, Eric Garner, and Michael Brown.[531]

3. Social Engineering

SOCIAL ENGINEERING	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	39	50	64	153

a. Highlights

This has been a period during which individuals and groups have sought equality. Immediately after Victory over Japan Day, President Truman began pushing reforms that he called his "Fair Deal."[532] After the 1946 mid-term elections, the Republican Congress began deconstructing social programs built by Roosevelt and Truman.[533] The Taft-Hartley Act (1947) and other state anti-union legislation weakened organized labor.[534] But after his reelection in 1948, Truman was able to persuade Congress to raise the minimum wage and to improve Social Security.[535] President Eisenhower

528 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 938–39.

529 570 U.S. 529, 530 (2013).

530 *See, e.g.*, FONER, *supra* note 8, at 906–07.

531 *See, e.g.*, *id.*

532 *See, e.g.*, BRINKLEY, *supra* note 10, at 742 ("Days after the Japanese surrender, Truman submitted to Congress a twenty-one-point domestic program outlining what he later termed the "Fair Deal." It called for an expansion of Social Security benefits, the raising of the legal minimum wage to 65 cents an hour, a program to ensure full employment through aggressive use of federal spending and investment, a permanent Fair Employment Practices Act, public housing and slum clearance, long-range environmental and public works planning, and government promotion of scientific research. Weeks later he added other proposals: federal aid to funding for the St. Lawrence Seaway, nationalization of atomic energy, and, perhaps most important, national health insurance—a dream of welfare-state liberals for decades, but one deferred in 1935 when the Social Security act was written.").

533 *Id.*

534 *See, e.g.*, *id.* at 758 ("The 1947 Taft-Hartley Act and the state 'right-to-work' laws that it enacted made it more difficult to form (or even sustain) many unions.").

535 *See, e.g.*, *id.* at 743–44 (noting that after Truman's election in 1948, "Congress raised the legal minimum wage from 40 cents to 75 cents an hour. It approved an important expansion of the Social Security system, increased benefits by 75 percent and extending them to 10 million additional people. And it passed the National Housing Act of 1949, which provided for the

influenced Congress to pass the Federal Highway Act in 1956, which facilitated domestic travel and transportation.[536] In 1961, Congress passed housing legislation and provided infrastructure grants for cities.[537] The Johnson administration succeeded in garnering the votes in Congress to pass Medicare,[538] Medicaid,[539] and other Great Society programs to benefit the disadvantaged and elderly.[540] Similarly, the Nixon

---

construction of 810,000 units of low-income housing, accompanied by long-term rent subsidies").

536 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 815 ("The Eisenhower administration also revolutionized American transportation. By the early 1950s, Americans were fed up with roads designed for Model A Fords: They wanted to enjoy their new V-8 engines and the 50 million new cars sold between 1946 and 1955. The solution was the Federal Highway Act of 1956, creating a national system of 41,000 miles of interstate and defense highways. The legislation wrapped a program to build 41,000 miles of freeways in the language of the Cold War. The roads would be wide and strong enough for trucks hauling military hardware; they were also supposed to make it easy to evacuate cities in case of a Soviet attack."); *see, e.g.*, BRINKLEY, *supra* note 10, at 757.

537 *See, e.g.*, *id.* at 785 ("The Housing Act of 1961 offered $4.9 billion in federal grants to cities for the preservation of open spaces, the development of mass-transit systems, and the subsidization of middle-income housing.").

538 *See, e.g.*, *id.* at 784 ("For the first time since the 1930s, the federal government took steps in the 1960s to create new social welfare programs. The most important of these, perhaps, was Medicare: a program to provide federal aid to the elderly for medical expenses. Its enactment in 1965 came at the end of a bitter, twenty-year debate between those who believed in the concept of national health assistance and those who denounced it as 'socialized medicine.'").

539 *See, e.g.*, *id.* ("In 1966, Johnson steered to passage the Medicaid program, which extended federal medical assistance to welfare recipients and other indigent people of all ages.").

540 *See, e.g.*, FONER, *supra* note 8, at 784–85 ("After his landslide victory of 1964, Johnson outlined the most sweeping proposal for governmental action to promote the general welfare since the New Deal. Johnson's initiatives of 1965-1967, known collectively as the Great Society, provided health services to the poor and elderly in the new Medicaid and Medicare programs and poured federal funds into education and urban development. New agencies, such as the Equal Employment Opportunity Commission, the National Endowment for the Humanities and for the Arts, and a national public broadcasting network, were created. These measures greatly expanded the powers of the federal government, and they completed and extended the social agenda (with the exception of national health insurance) that had been stalled in Congress since 1938. Unlike the New Deal, the Great Society was a response to prosperity, not depression. The mid-1960s was a time of rapid economic expansion, fueled by increased government spending and a tax cut on individuals and businesses initially proposed by Kennedy and enacted in 1964. Johnson and Democratic liberals believed that economic growth made it possible to fund ambitious new government programs and to improve the quality of life."); *see also, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 843 ("TABLE 28.3 GREAT SOCIETY LEGISLATION AND PROGRAMS" "Health Care Medicare (1965) Medicaid (1965)" "Education Head Start (1965/1966) Upward Bound (1965) Elementary and Secondary Education Act (1965) Higher Education Act (1965) Teacher Corps (1965-1981)" "Transportation Department of Transportation (1966) National Highway Traffic Safety Administration (1966/1970)" "Consumer Protection Fair Packing and Labeling Act (1966)" "Employment and Antipoverty Office of Economic Opportunity (1964-1981) Job Corps (1964) VISTA [Americorps] (1964) Community Action Program (1964) Model Cities (1964-1974)").

administration shepherded Aid for Families with Dependent Children ("AFDC") though Congress.[541] In 1990, Congress passed the Americans with Disabilities Act ("ADA").[542] Under President Clinton, Congress significantly changed the federal welfare system.[543] Although the Obama administration cajoled Congress into passing the Affordable Care Act,[544] the Tea Party Republicans promoted their own social agenda.[545] In response to the 2008 financial crisis, President Obama found ways to enhance infrastructure, jobs, and education.[546] It was during President Obama's second term that the mass murder at Sandy Hook Elementary School occurred—an event that, once again, prompted efforts by some to enact stricter gun-control laws.[547]

---

541 *See, e.g.*, FONER, *supra* note 8, at 811–12 ("Perhaps Nixon's most startling initiative was his proposal for a Family Assistance Plan, or 'negative income tax,' that would replace Aid to Families with Dependent Children (AFDC) by having the federal government guarantee a minimum income for all Americans. Originally a New Deal program that mainly served the white poor, welfare had come to be associated with blacks, who by 1970 accounted for nearly half the recipients . . . . A striking example of Nixon's willingness to break the political mold, his plan to replace welfare with a guaranteed annual income failed to win approval by Congress.").

542 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at G-1 ("[The] Americans with Disabilities Act [was signed into law in July 1990] and banned discrimination against physically handicapped persons in employment, transportation, and public accommodations."); *see, e.g.*, FONER, *supra* note 8, at 867.

543 *See, e.g.*, BRINKLEY, *supra* note 10, at 858 ("As the [1996 presidential] election approached, Congress passed several important bills. It raised the legal minimum wage for the first time in more than a decade. And it passed a welfare reform bill, which President Clinton somewhat reluctantly signed, that marked the most important change in aid to the poor since the Social Security Act of 1935. The bill ended the fifty-year federal guarantee of assistance to families with dependent children and turned most of the responsibility for allocating federal welfare funds (now greatly reduced) to the states. Most important, it shifted the bulk of welfare benefits away from those without jobs and toward support for low-wage workers.").

544 *See, e.g.*, FONER, *supra* note 8, at 900; *see, e.g.*, BRINKLEY, *supra* note 10, at 878; *see also id.* at 879 ("One of Obama's greatest legislative achievements—the Affordable Care Act—also survived a challenge to its constitutionality in the Supreme Court's 2012 decision in *National Federation of Independent Business v. Sebelius* [567 U.S. 519 (2012].").

545 *See, e.g.*, *id.* at 878 ("Although the Tea Party could not stop passage of the Affordable Care Act, they used their opposition to spearhead their overall conservative agenda: deficit reduction, tax reduction, and smaller government . . . . The Tea Party contributed to the strong polarization of the federal government that resulted in a great deal of legislative gridlock, including a shutdown of many federal services and operations from October 1 to 16, 2013, when Congress did not vote to provide the necessary funds.").

546 *See, e.g.*, *id.* ("The Obama stimulus package, announced in 2009, included tax cuts, expanded unemployment benefits, and increased spending on education, infrastructure, police, health care, and job creation. The total funding for all of these programs reached $787 billion. Though controversial and passed by only a slight margin in Congress, in 2014 most economists agree that the stimulus measures saved the economy from catastrophe.").

547 *See, e.g.*, *id.* at 880 (Photo caption: "President Barack Obama speaks at a memorial service for the 26 people killed on December 16, 2012 by a gunman at the Sandy Hook Elementary School. His subsequent attempts at gun control reform were blocked by the House

The LGBTQ+ community has encountered resistance, but the textbooks discuss some legal progress.[548] For example, in the 1970's, gay and lesbian groups "began to elect local officials, persuaded many states to decriminalize homosexual relations, and succeeded in convincing cities with large gay populations to pass antidiscrimination laws."[549] More recently, in 1996, the Supreme Court struck down a Colorado anti-gay constitutional amendment in *Romer v. Evans*,[550] and in 2015, in *Obergefell v. Hodges*,[551] the Supreme Court held that the Constitution protects same-sex marriage.[552]

4. Trade and Commerce

TRADE & COMMERCE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	49	42	41	132

a. Highlights

Legal issues relating to business have continued to provoke controversy.[553] After World War II, President Truman promoted his "Fair Deal" policies for corporate America but encountered difficulties dealing with Congress's aversion to organized

---

of Representatives whose majority argued for the right of Americans to keep and bear arms without interference from the government.").

548 *Id.* at 818 (describing circumstances in the early 1990s, Brinkley writes: "And laws prohibiting discrimination on the basis of sexual preference were making slow, halting progress at the local level. In 1993, . . . President Bill Clinton's effort to lift the ban on gays and lesbians serving in the military met a storm of criticism from members of Congress and from within the military itself."); *see, e.g.*, *id.* at 817 ("Another important liberation movement that made gains in the 1960s was the effort by homosexuals to win political and economic rights and, equally important, social acceptance.").

549 FONER, *supra* note 8, at 814.

550 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 915 ("A culturally conservative issue with great popular appeal in the early 1990s was an effort to prevent states and localities from protecting homosexuals against discrimination. Under the slogan 'No special rights,' antigay measures passed in Cincinnati, Colorado, and communities in Oregon in 1993 and 1994, only to have the Supreme Court overturn the Colorado law in *Romer v. Evans* (1996). It is important to note that public support for lesbian and gay civil rights varied among issues, with strong support for equal employment opportunity and much less for making marriage available to same-sex couples, although these attitudes changed substantially in the twenty-first century. Support also varied based on whether the issues were framed in terms of specified rights for gays or in terms of the right of everyone to be free from government interference with personal decisions, such as living arrangements and sexual choices."); *see generally* 517 U.S. 620 (1996).

551 Obergefell v. Hodges, 576 U.S. 644 (2015).

552 *See, e.g.*, FONER, *supra* note 8, at 892.

553 *See, e.g.*, BRINKLEY, *supra* note 10, at 742.

labor (*e.g.*, the Taft-Hartley Act of 1947).[554] He encountered more difficulties in 1952 when, in *Youngstown Sheet & Tube Co. v. Sawyer*,[555] the Supreme Court held that the president lacked authority to take control of steel mills when the workers were striking.[556] President Nixon imposed wage and price restrictions.[557] Several presidential administrations (*e.g.*, Carter,[558] Reagan,[559] George H.W. Bush,[560]

---

554 *See, e.g.*, FONER, *supra* note 8, at 725–26 ("Congress turned aside Truman's Fair Deal program. It enacted tax cuts for wealthy Americans and, over the president's veto, in 1947 passed the Taft-Hartley Act, which sought to reverse some of the gains made by organized labor in the past decade. The measure authorized the president to suspend strikes by ordering an eight-day 'cooling-off period,' and it banned sympathy strikes and secondary boycotts (labor actions directed not at an employer but at those who did business with him). It outlawed the closed shop, which required a worker to be a union member when taking up a job, and authorized states to pass 'right-to-work' laws, prohibiting other forms of compulsory union membership. It also forced union officials to swear that they were not communists. Over time, as population and capital investment shifted to states with 'right-to-work' laws like Texas, Florida, and North Carolina, Taft-Hartley contributed to the decline of organized labor's share of the nation's workforce.").

555 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

556 *See, e.g.*, BRINKLEY, *supra* note 10, at 746 ("In 1952, during a nationwide steel strike, Truman seized the steel mills, citing his powers as commander in chief. But in a 6 to 3 decision, the Supreme Court ruled that the president had exceeded his authority, and Truman was forced to relent.").

557 *See, e.g.*, *id.* at 832 ("In the summer of 1971, Nixon imposed a ninety-day freeze on all wages and prices at their existing levels. Then, in November, he launched what he called Phase II of his economic plan: mandatory guidelines for wage and price increases to be administered by a federal agency.").

558 *See, e.g.*, FONER, *supra* note 8, at 823–24 ("In the hope that increased competition would reduce prices, his [i.e., President Carter's] administration enacted deregulation in the trucking and airline industries. In 1980, with Carter's approval, Congress repealed usury laws—laws that limit how much interest lenders can charge—allowing credit card companies to push their interest rates up to 20 percent or even higher.").

559 FONER, *supra* note 8, at 837; GOLDFIELD ET AL., *supra* note 26, at 887 ("The heart of the 1980s revolution was the Economic Recovery and Tax Act of 1981 (ERTA), which reduced personal income tax rates by 25 percent over three years. The explicit goal was to stimulate business activity by lowering taxes overall and slashing rates for the rich. Cutting the government's total income by $747 billion over five years, ERTA meant less money for federal programs and more money in the hands of consumers and investors to stimulate growth."); BRINKLEY, *supra* note 10, at 845 ("Ronald Regan linked his campaign to the spreading tax revolt by promising substantial tax cuts."); *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 882 ("The 1980s saw both benefits and setbacks with the institution of supply-side, or 'trickle-down' economics, largely gained through tax breaks for corporations and wealthy individuals and deregulation.").

560 BRINKLEY, *supra* note 10, at 852; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 886 ("After pledging no new taxes in his campaign, Bush backed into a tax increase in 1990. A strong leader might have justified the taxes to the nation, but voters found it hard to forget the president's waffling and attempts to downplay the importance of the decision.").

Clinton,[561] George W. Bush[562]) worked to adjust corporation laws and corporate tax policies in different directions. The volatile economics and consequent corporate financial instability of the 1980's[563] and 1990's prompted a variety of legal responses, including, for example, an increase in the federal minimum wage.[564] Growth in new technologies and the increasingly global nature of business in the second half of the twentieth century and the beginning of the twenty-first prompted changes to the legal landscape.[565] For example, the George W. Bush and Clinton administrations piloted NAFTA though Congress.[566] Deregulation such as the repeal of the 1933 Glass-Steagall Act (1999) and questionable business and banking activities played roles in causing the financial crisis in 2008.[567] That crisis, in turn, prompted Congress's

---

561 *See, e.g.*, BRINKLEY, *supra* note 10, at 857 ("In 1992, President Clinton's budget, included a substantial tax increase on the wealthiest Americans, a large reduction in many areas of government spending, and a major expansion of tax credits to low-income working people.").

562 GOLDFIELD ET AL., *supra* note 26, at 941; *see, e.g.*, FONER, *supra* note 8, at 879 ("In 2001, he [i.e., President Bush] persuaded Congress to enact the largest tax cut in American history. With the economy slowing, he promoted the plan as a way of stimulating renewed growth. In keeping with the 'supply-side' economic outlook embraced twenty years earlier by Ronald Reagan, most of the tax cuts were directed toward the wealthiest Americans, on the assumption that they would invest the money they saved in taxes on economically productive activities.").

563 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 888 ("With the deregulation of financial markets, corporate consolidations and mergers flourished. Corporate raiders raised money with 'junk bonds'—high-interest, high-risk securities—and snapped up profitable and cash-rich companies that could be milked of profits and assets. The merger mania channeled capital into paper transactions rather than investments in new equipment and products. Another effect was to damage the economics of small and middle-sized communities by transferring control of local companies to outside managers. In the short term, the national economy boomed in the mid-1980s. Deregulated credit, tax cuts, and massive deficit spending on defense fueled exuberant growth.").

564 *See, e.g.*, BRINKLEY, *supra* note 10, at 858 ("As the [1996 presidential] election approached, Congress passed several important bills. It raised the legal minimum wage for the first time in more than a decade.").

565 *See, e.g.*, *id.* at 868 ("The opponents of globalization were mostly agreed on the targets of their discontent: not just free-trade agreements, but also the multinational institutions that policed and advanced the global economy. Among them were the World Trade Organization, which monitored the enforcement of the GATT treaties of the mid-1990s; the International Monetary Fund, which controlled international credit and exchange rates; and the World Bank, which made money available for development projects in many countries.").

566 BRINKLEY, *supra* note 10, at 857; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 931.

567 BRINKLEY, *supra* note 10, at 877 ("By 2008, the nation was facing its worst financial crisis since the Great Depression. For years, financial institutions had been developing new credit instruments intended to make borrowing easier and cheaper, which lured millions of people into taking on large and risky mortgages . . . . These business practices were made possible with the repeal of the Glass-Steagall Act in 1999. Glass-Steagall had been passed in 1933 to prevent irresponsible banking practices by mandating layers of government oversight designed to catch fraud and risky investment strategies."); *see, e.g.*, FONER, *supra* note 8, at 857 ("Many stock frauds stemmed from the repeal in 1999 of the Glass-Steagall Act, a New Deal

passage of the Emergency Economic Stabilization Act in 2008, which created the Troubled Asset Relief Program ("TARP").[568] The Obama administration then continued to provide economic relief by advancing additional stimulus legislation and regulatory measures.[569]

5. Constitutional Law and Procedure

CONSTITUTIONAL LAW & PROCEDURE	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	40	49	37	126

a. Highlights

The Supreme Court was extremely active during this time.[570] And as is often the case, its rulings typically called for Constitutional interpretation as well as either approving or striking down legislation or executive actions that concerned broader topics such as criminal law and procedure, the rights of African Americans, social engineering, the military, commerce, education, and the rights of women.[571] For example, when steel workers went on strike, President Truman claimed that, as Commander in Chief, he had the authority to take control of the steel mills; the Supreme Court, however, ruled that he did not.[572] The Court construed the

measure that separated commercial banks, which accept deposits and make loans, from investment banks, which invest in stocks and real estate and take larger risks.").

568 *See, e.g.*, BRINKLEY, *supra* note 10, at 877 ("Both the Bush administration and eventually the Obama administration won congressional support for $750 billion in the form of the Troubled Asset Relief Program (TARP) to shore up tottering financial institutions.").

569 BRINKLEY, *supra* note 10, at 878 ("The Obama stimulus package, announced in 2009, included tax cuts, expanded unemployment benefits, and increased spending on education, infrastructure, police, health care, and job creation. The total funding for all of these programs reached $787 billion. Though controversial and passed by only a slight margin in Congress, in 2014 most economists agree that the stimulus measures saved the economy from catastrophe."); *see, e.g.*, FONER, *supra* note 8, at 900–01 ("Another far-reaching piece of legislation followed in June 2010. This was a law to overhaul regulation of the financial industry so as to prevent a repetition of the abuses that had led to the economic crash. It subjected to public oversight the huge market in derivatives—exotic financial instruments that were basically bets that some element of the economy would fail; limited banks' speculative investments; and established a Consumer Protection Agency to stop predatory lending and fees by banks, credit card companies, and mortgage companies. The law marked an end to several decades when banks had been given a free hand to engage in any practice, honest or dishonest, they deemed profitable.").

570 *See* BRINKLEY, *supra* note 10, at 828–29.

571 *Id.*

572 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); *see, e.g.*, BRINKLEY, *supra* note 10, at 746.

Constitution as forbidding many types of religious activities in public institutions (*e.g.*, public schools) and as permitting abortion.[573] Before the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,[574] *Roe v. Wade* established the circumstances under which abortion was legal.[575] In one of the most controversial decisions of the young twenty-first century, the Supreme Court ruled in *Citizens United v. Federal Election Commission*[576] that corporations must be treated as individuals for purposes of campaign contributions.[577] Congress became deeply involved in Constitutional issues because of the Watergate scandal during President Nixon's second term.[578]

6. Military

MILITARY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	47	36	25	108

a. Highlights

During this period, because of America's military involvements in Korea, Vietnam, the Cold War, the Middle East in general, and Iraq, Iran, and Afghanistan in particular, presidents, their administrations, Congress, citizens, and the courts used the legal system in an effort to achieve their objectives—objectives that were sometimes disparate. In 1944, Congress had passed the GI Bill.[579] That legislation profoundly

---

573 *See, e.g.*, BRINKLEY, *supra* note 10, at 843 ("For some evangelicals, Christianity formed the basis for a commitment to racial and economic justice and to world peace . . . . Particularly alarming to them [i.e., Evangelicals with other points of view] were Supreme Court decisions eliminating religious observance from schools, and, later, the decision guaranteeing women the right to an abortion.").

574 Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

575 Roe v. Wade, 410 U.S. 113 (1973); *see, e.g.*, BRINKLEY, *supra* note 10, at 866 ("For those who favored allowing women to terminate unwanted pregnancies, the Supreme Court's decision in *Roe v. Wade* (1973) had seemed to settle the question . . . . [T]he Catholic Church itself lent its institutional authority to the battle against legalized abortion . . . . Fetuses, they [i.e., anti-abortion activists] claimed, were human beings who had a 'right to life' from the moment of conception.").

576 Citizens United v. Fed. Elec. Comm'n, 558 U.S. 310 (2010).

577 *See, e.g.*, BRINKLEY, *supra* note 10, at 878 ("The impact of money on politics became mainstream news in 2010 with the Supreme Court decision in *Citizens United v. Federal Election Commission*. In the case, the conservative-leaning court ruled that government couldn't limit campaign–related expenditures from corporations or unions.").

578 *See, e.g.*, *id* at 832–33 (discussing the situation in a major section entitled "THE WATERGATE CRISIS").

579 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 785 ("The Servicemen's Readjustment Act of 1944 was designed to ease veterans back into the civilian mainstream. Popularly known as the GI Bill of Rights, it was one of the federal government's most successful public assistance

affected the educational and economic opportunities for World War II veterans in the post-war era. Congress enacted several laws shortly after World War II that directly affected the military.[580] In 1946, Congress passed the McMahon/Atomic Energy Act, which created the Atomic Energy Commission.[581] In 1947, the sweeping National Security Act restructured the United States armed services and created the National Security Council and the Central Intelligence Agency.[582] Congress established a new draft system in 1948.[583] In 1948, it passed the Selective Service Act, requiring peacetime draft registration.[584] In 1949, the Truman administration made the United States a founding member of NATO.[585] After the USSR successfully launched the satellite Sputnik in 1958, Congress passed the National Defense Education Act to promote science education.[586] During the United States' involvement in Vietnam, in 1964 Congress passed the Gulf of Tonkin Resolution, granting exceptional authority to the president regarding military decision making.[587] The Vietnam era also brought

---

programs. Rather than pay cash bonuses to veterans, as after previous wars, Congress tied benefits to specific public goals. The GI Bill guaranteed loans of up to $2,000 for buying a house or farm or starting a business, a substantial sum at a time when a new house cost $6,000. The program allowed millions of veterans to attend college with money for tuition and books plus monthly stipends.").

580 *Id.* at 799.

581 *See, e.g.*, *id.* ("In 1946, advocates of civilian control had won a small victory when Congress established the Atomic Energy Commission (AEC). The AEC tried to balance research on atomic power with continued testing of new weapons.").

582 BRINKLEY, *supra* note 10, at 738–39; *see, e.g.*, *id.* at 796–97 ("The National Security Act of 1947 created the Central Intelligence Agency (CIA) and the National Security Council (NSC). The CIA handled intelligence gathering and covert operations. The NSC assembled top diplomatic and military advisers in one committee. In 1949, legislation also created the Department of Defense to oversee the army, navy, and air force (independent from the army since 1947).").

583 *See, e.g.*, BRINKLEY, *supra* note 10, at 738 ("In 1948, at President Truman's request, Congress approved a new military draft and revived the Selective Service System.").

584 *Id.* ("In 1948, at President Truman's request, Congress approved a new military draft and revived the Selective Service System.").

585 *See, e.g.*, FONER, *supra* note 8, at 717 ("[In 1949], the United States, Canada, and ten western European nations established the North Atlantic Treaty Organization (NATO), pledging mutual defense against any future Soviet attack . . . . The Soviets formalized their own eastern European alliance, the Warsaw Pact, in 1955.").

586 *See, e.g.*, *id.* at 752–53 ("When the Soviets launched Sputnik, the first artificial earth satellite, in 1957, the administration responded with the National Defense Education Act, which for the first time offered direct federal funding to higher education.").

587 *See, e.g.*, BRINKLEY, *supra* note 10, at 796 ("By a vote of 416 to 0 in the House and 88 to 2 in the Senate, Congress hurriedly passed the Gulf of Tonkin Resolution, which authorized the president to 'take all necessary measures' to protect American forces and 'prevent further aggression' in Southeast Asia. The resolution became, in Johnson's view at least, an open-ended legal authorization for escalation of the conflict.").

with it young men who resisted the military draft and consequently legislation calculated to punish them.[588] In 1971, after the New York Times began publishing articles based on the Pentagon Papers about the numerous falsehoods perpetrated by several administrations—including Truman, Eisenhower, Kennedy, and Johnson—and United States involvement in Vietnam, the Supreme Court, in *New York Times v. United States*,[589] decided that the First Amendment protected the publications.[590] Also, in 1971, Lieutenant William Calley was convicted for his involvement in the killing of hundreds of Vietnamese civilians.[591] And in 1973, Congress passed another measure designed to strike a new balance of power among the governmental branches—the War Powers Act.[592] President Clinton's policy of "Don't Ask, Don't Tell" relaxed the military's posture regarding homosexuals in the armed forces.[593] And in the wake of the terrorist attacks on September 11, 2001, Congress passed the Patriot Act, which, as was the case with similar legislation during previous wars, tested the legality of the government's power to limit the rights and liberties of individuals.[594]

---

588 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 853 ("Draft resistance provided a direct avenue for protest against the war. Some young men burned the small paper cards that indicated their selective service classification, causing Congress to enact steep penalties for the act. Several thousand moved to Canada, to spend a decade or more in exile. Thousands of others described their religious and ethical opposition to the war in applications for conscientious-objector classification. Much smaller numbers went to jail for refusing to cooperate in any way with the Selective Service System.").

589 N.Y. Times v. United States, 403 U.S. 713 (1971).

590 *See, e.g.*, FONER, *supra* note 8, at 817 ("In 1971, the [*New York*] *Times* began publishing the Pentagon Papers, a classified report prepared by the Defense Department that traced American involvement in Vietnam back to World War II and revealed how successive presidents had misled the American people about it. In a landmark freedom-of-the-press decision, the Supreme Court rejected Nixon's request for an injunction to halt publication.").

591 BRINKLEY, *supra* note 10, at 826 ("The trial and conviction in 1971 of Lieutenant William Calley, who was charged with overseeing a massacre of more than 300 unarmed South Vietnamese civilians, attracted wide public attention."); *see, e.g.*, FONER, *supra* note 8, at 816–17 ("In 1969, the New York Times published details of the My Lai massacre of 1968, in which a company of American troops killed some 350 South Vietnamese civilians. After a military investigation, one soldier, Lieutenant William Calley was found guilty of directing the atrocity. (The courts released him from prison in 1974).").

592 *See, e.g.*, FONER, *supra* note 8, at 817 ("In 1973, Congress passed the War Powers Act. The most vigorous assertion of congressional control over foreign policy in the nation's history, it required the president to seek congressional approval for the commitment of American troops overseas.").

593 *See, e.g.*, *id.* at 848 ("In his first two years in office, Clinton . . . modified the military's strict ban on gay soldiers, instituting a 'Don't ask, don't tell' policy by which officers would not seek out gays for dismissal from the armed forces.").

594 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 943–44.

7. Criminal Law

CRIMINAL LAW	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	20	43	43	106

a. Highlights

The textbooks discuss salient criminal activity and trials. For example, they all note the infamous spy trials of Alger Hiss[595] and the Rosenbergs.[596] During the 1960's, the Supreme Court decided cases that affected the constitutional rights of the accused, such as *Gideon v. Wainwright* (1963),[597] *Escobedo v. Illinois* (1964),[598] and *Miranda v. Arizona* (1966).[599] The Watergate scandal introduced the American public to criminal conduct at the highest level of our government.[600] "Rising urban crime rates [in the 1970's] reinforced demands for law and order and attacks on courts considered too lenient toward criminals."[601] President George H.W. Bush continued a Republican pattern of promoting strict criminal drug laws.[602] When President Bill Clinton was impeached in 1998, the Senate for only the second time in the nation's

595 BRINKLEY, *supra* note 10, at 748; *see, e.g.*, FONER, *supra* note 8, at 731 ("Whittaker Chambers, an editor at *Time* magazine, testified before UUAC that during the 1930s, Alger Hiss, a high-ranking State Department official, had given him secret government documents to pass to agents of the Soviet Union. Hiss vehemently denied the charge, but a jury convicted him of perjury and he served five years in prison. A young congressman from California and a member of HUAC, Richard Nixon, achieved national prominence because of his dogged pursuit of Hiss.").

596 BRINKLEY, *supra* note 10, at 748–49; *see, e.g.*, FONER, *supra* note 8, at 731–32.

597 Gideon v. Wainwright, 372 U.S. 335 (1963).

598 Escobedo v. Illinois, 378 U.S. 478 (1964).

599 Miranda v. Arizona, 384 U.S. 436 (1966); *see, e.g.*, BRINKLEY, *supra* note 10, at 829 ("In *Gideon v. Wainwright* (1963), the Court ruled that every felony defendant was entitled to a lawyer regardless of his or her ability to pay. In *Escobedo v. Illinois* (1964), it ruled that a defendant must be allowed access to a lawyer before questioning by the police. In *Miranda v. Arizona* (1966), the Court confirmed the obligation of authorities to inform a criminal suspect of his or her rights.").

600 *See, e.g.*, FONER, *supra* note 8, at 818; BRINKLEY, *supra* note 10, at 832–33 (discussing the scandal in a major section entitled "THE WATERGATE CRISIS").

601 FONER, *supra* note 8, at 827.

602 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 896 ("Bush tripled the federal drug control budget and stepped up efforts to stop the flow of illegal drugs across the border. Longer sentences and mandatory jail time meant that half of federal inmates in 1990 were in for drug crimes.").

history served as a jury in the trial of a president.[603] The textbooks recount other criminal incidents like those involving organized labor,[604] race riots,[605] Rodney King (1992),[606] domestic terrorism at Waco (1993),[607] the World Trade Center (1993),[608] Oklahoma City (1995), and gun violence such as Columbine (1999),[609] plus the infamous murders of celebrities (*e.g.*, Tupac Shakur and the Notorious B.I.G).[610] This

---

603 *See, e.g.*, BRINKLEY, *supra* note 10, at 859 ("The House Judiciary Committee and then, on December 19, 1998, the full House, approved two counts of impeachment: lying to the grand jury and obstructing justice. The matter then moved to the Senate, where a trial of the president—the first since the trial of Andrew Johnson in 1868—began in early January [1999]. The trial ended with a decisive acquittal of the president.").

604 *See, e.g.*, *id.* at 758 ("In 1957, the powerful Teamsters Union became the subject of a congressional investigation, and its president, David Beck ultimately stepped down to be replaced by Jimmy Hoffa, whom government investigators pursued for nearly a decade before finally winning a conviction against him (for tax evasion) in 1967."); *see also, e.g.*, *id.* ("Tony Boyle . . . [head of the United Mine Workers] was ultimately convicted of complicity in the 1969 murder of the leader of a dissident faction within the union.").

605 *See, e.g.*, *id.* at 790 (discussing the Watts riots (Los Angeles) and other urban race riots in other cities in the summer 1965 and mid-1960s, Brinkley wrote: "To many white Americans, however, the lesson of the riots was the need for stern measures to stop violence and lawlessness.").

606 *See, e.g.*, FONER, *supra* note 8, at 866–67 ("The continuing frustration of urban blacks exploded in 1992 when an all-white suburban jury found four Los Angeles police officers not guilty in the beating of black motorist Rodney King, even though an onlooker captured their assault on videotape. The deadliest urban uprising since the New York draft riots of 1863 followed. Some fifty-two people died, and property damage approached $1 billion. Many Latino youths, who shared blacks' resentment over mistreatment by the police, joined in the violence. The uprising suggested that despite the civil rights revolution, the nation had failed to address the plight of the urban poor.").

607 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 924 ("On April 19, 1993, federal agents raided the fortified compound of the Branch Davidian cult outside Waco after a 51-day siege. The raid triggered a fire, probably set from inside, that killed more than 80 people.").

608 BRINKLEY, *supra* note 10, at 872; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 924 ("On the second anniversary of the Waco raid, Timothy McVeigh packed a rented truck with explosive materials and detonated it in front of the federal office building in downtown Oklahoma City, presumably as revenge against what he considered an oppressive government. The blast collapsed the entire front of the none-story building and killed 169 people.").

609 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 924 ("In April 1999, two high school students in Littleton, Colorado took rifles and pipe bombs into Columbine High School to kill 12 classmates, a teacher, and themselves; schools in Arkansas and Oregon experienced similar terror from gun-wielding students.").

610 *See, e.g.*, BRINKLEY, *supra* note 10, at 868–69 (explaining in the section entitled "PATTERNS OF POPULAR CULTURE" subtitled "RAP": "Scandals erupted over controversial lyrics—Ice T's 'Cop Killer,' which some critics believed advocated murdering police; and the sexually explicit lyrics of 2 Live crew and other groups, which critics accused of advocating violence against women . . . . Some rappers got caught up in highly publicized trouble with the law. Several—including two of rap's biggest stars, Tupac Shakur and the

was also a period when the science of DNA became an accepted form of evidence in criminal trials.[611]

8. Civil Liberties

CIVIL LIBERTIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	23	47	20	90

a. Highlights

Immediately after World War II, a number of Nazis were tried in an international court for human rights violations, and the United Nations issued its Universal Declaration of Human Rights.[612] Nevertheless, in the wake of the war, many Americans expressed concern about the proliferation of communism.[613] In 1946, President Truman issued Executive Order 9835, requiring the FBI to investigate the personal lives and conduct of hundreds of thousands of federal employees.[614] "In 1947, less than two weeks after announcing the Truman Doctrine, the president established a loyalty review system that required government employees to demonstrate their patriotism without being allowed to confront accusers or, in some

Notorious B.I.G.—were murdered . . . . Chuck D and other successful rappers use their music to exhort young black men to avoid drugs and crime, to take responsibility for their children, and get an education.").

611 *See, e.g.*, *id.* at 863 ("DNA testing, therefore, makes it possible to identify individuals through their blood, semen, skin, or even hair. It plays a major role in criminal investigations, among other things.").

612 *See, e.g.*, FONER, *supra* note 8, at 723 ("After the war, the victorious Allies put numerous German officials on trial before special courts at Nuremberg for crimes against humanity. For the first time, individuals were held directly accountable to the international community for violations of human rights. The trials resulted in prison terms for many Nazi officials and the execution of ten leaders. In 1948, the UN General Assembly approved the Universal Declaration of Human Rights, drafted by a committee chaired by Eleanor Roosevelt. It identified a broad range of rights to be enjoyed by people everywhere, including freedom of speech, religious toleration, and protection against arbitrary government, as well as social and economic entitlements like the right to an adequate standard of living and access to housing, education, and medical care.").

613 *See* BRINKLEY, *supra* note 10, at 747.

614 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 805 ("President Truman responded to the Republican landslide in 1946 with Executive Order 9835 in March 1947, initiating a loyalty program for federal employees . . . . It authorized the attorney general to prepare a list of 'totalitarian, Fascist, Communist, or subversive' organizations and made membership or even 'sympathetic association' with such group's grounds for dismissal. The loyalty program applied to approximately 8 million Americans working for the federal government or defense contractors; similar state laws affected another 5 million.").

cases, knowing the charges against them."[615] Among other consequences of the concern over communism were the passage by Congress of the McCarran Internal Security Act in 1950,[616] the conduct of the House Un-American Activities Committee (HUAC),[617] and the bullying behavior of Wisconsin Senator Joseph McCarthy in the early 1950's.[618] States and municipalities created their own mini-versions of HUAC to investigate suspected communists and communist sympathizers.[619] The protests of the 1960's and 1970's opposing the war in Vietnam—especially the on-campus protests by college students—raised legal issues regarding freedom of speech.[620] Freedom of speech was also tested when *The New York Times* published the Pentagon Papers.[621] The Patriot Act, passed after the terrorist attacks of September 11, 2001, also empowered law enforcement to access a significant amount of private information through electronic surveillance.[622]

---

615 FONER, *supra* note 8, at 730.

616 BRINKLEY, *supra* note 10, at 748 ("In 1950, Congress passed the McCarran Internal Security Act, requiring all communist organizations to register with the government. Truman vetoed the bill. Congress easily overrode his veto."); *see, e.g.*, FONER, *supra* note 8, at 736–37.

617 BRINKLEY, *supra* note 10, at 748; *see, e.g.*, FONER, *supra* note 8, at 731 ("Also in 1947, the House Un-American Activities Committee (HUAC) launched a series of hearings about communist influence in Hollywood. . . . But ten 'unfriendly witnesses' refused to answer the committee's questions about their political beliefs or to 'name names' (identify individual communists) on the grounds that the hearings violated the First Amendment's guarantees of freedom of speech and political association. The committee charged the Hollywood Ten, who included prominent screenwriters Ring Lardner Jr. and Dalton Trumbo, with contempt of Congress, and they served jail terms of six months to a year.").

618 BRINKLEY, *supra* note 10, at 750; *see, e.g.*, FONER, *supra* note 8, at 733 ("The nationally televised Army-McCarthy hearings revealed McCarthy as a bully who browbeat witnesses and made sweeping accusations with no basis in fact . . . . After the hearings ended, the Republican-controlled Senate voted to 'condemn' McCarthy for his behavior.").

619 *See, e.g.*, FONER, *supra* note 8, at 733 ("States created their own committees, modeled on HUAC, that investigated suspected communists and other dissenters. States and localities required loyalty oaths of teachers, pharmacists, and members of other professions, and they banned communists from fishing, holding a driver's license, and, in Indiana, working as professional wrestlers.").

620 *See, e.g.*, BRINKLEY, *supra* note 10, at 809 ("A 1964 dispute at the University of California at Berkley over the rights of students to engage in political activities on campus gained national attention. The Free Speech Movement, as it called itself, created turmoil at Berkley as students challenged campus police, occupied administrative offices, and produced a strike in which nearly three-quarters of the Berkley students participated. The immediate issue was the right of students to pass out literature and recruit volunteers for political causes on campus.").

621 *See, e.g.*, BRINKLEY, *supra* note 10, at 826 ("The [Nixon] administration went to court to suppress the documents [i.e., the Pentagon Papers], but the Supreme Court finally ruled that the press had the right to publish them."); *see* FONER, *supra* note 8, at 483.

622 *See, e.g.*, BRINKLEY, *supra* note 10, at 885 ("In the immediate aftermath of the attacks [of September 11, 2001], Congress rushed to pass the USA Patriot Act, a mammoth bill (it ran more than 300 pages) that few members of the House or Senate actually read. It conferred

9. Education

EDUCATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	33	37	19	89

a. Highlights

One reason why law has significantly intersected with the topic of Education subsequent to World War II is that an appreciable amount of legislation and litigation relating to racial issues has played out in the context of funding for and access to schools.[623] Legal issues related to religion and Constitutional concerns also played out in the context of education. For example, "*In Engel v. Vitale* (1962),[624] the Court ruled that public schools could not require children to start the school day with group prayer. *Abington Township v. Schempp* (1963)[625] prohibited devotional Bible reading in the schools."[626] President George W. Bush pushed his Congress to enact legislation known as "No Child Left Behind," which tied certain federal school funding to students' test scores.[627]

unprecedented powers on law enforcement agencies charged with preventing the new, vaguely defined crime of 'domestic terrorism,' including the authority to wiretap, spy on citizens, open letters, read e-mail, and obtain personal records from third parties like universities and libraries without the knowledge of the suspect. At least 5,000 foreigners with Middle Eastern connections were rounded up and more than 1,200 arrested. Many with no link to terrorism were held for months, without either a formal charge or a public notice of their fate.").

623 *See, e.g.*, *id.* at 784–85, 789, 828–29.

624 Engel v. Vitale, 370 U.S. 421 (1962).

625 Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963).

626 GOLDFIELD ET AL., *supra* note 26, at 820 ("Such decisions alarmed many evangelicals; within two decades, school prayer would be a central issue in national politics.").

627 *See, e.g.*, BRINKLEY, *supra* note 10, at 876 (discussing President George W. Bush's years, Brinkley writes: "Also controversial was one of Bush's most significant domestic accomplishments, an education bill known as 'No Child Left Behind,'" which tied federal funding in schools to the success of students in taking standardized tests. Some educators and parents favored No Child Left Behind, but many others felt that students spent too many hours in the classroom learning how to take tests rather than think for themselves.").

10. Tax

TAX	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	22	22	40	84

a. Highlights

Immediately following the 1946 mid-term elections, the Republican Congress took steps to reduce taxes—especially on the wealthy.[628] Congress implemented new fuel and other taxes associated with the automotive industry to pay for the 1956 Federal Highway Act.[629] Both the Kennedy and Johnson administrations initially worked to cut taxes.[630] And although the social programs begun in the 1960's provided benefits for many, some speculate that one factor that caused inflation in the 1970's was the failure to increase taxes to pay for those programs.[631] In the late 1970's, a number of citizen groups clamored for tax reductions.[632] The Reagan administration worked to

---

628 *See, e.g.*, *id.* at 742 ("The new Republican Congress quickly moved to reduce government spending and chip away at New Deal reforms. The president bowed to what he claimed was the popular mandate to lift most remaining wage and price controls, and Congress moved further to deregulate the economy. Inflation rapidly increased . . . . [T]he Republican Congress refused to appropriate funds to aid education, increase Social Security, or support reclamation and power projects in the West. It defeated a proposal to raise the minimum wage. It passed tax measures that cut rates dramatically for high income families and moderately for those with lower incomes. Only vetoes by the president finally forced a more progressive bill.").

629 *See, e.g.*, *id.* at 774 ("The program was to be funded through a highway 'trust fund,' whose revenues would come from new taxes on the purchase of fuel, automobiles, trucks, and tires.").

630 *Id.* at 785 ("For a time, rising tax revenues from the growing economy nearly compensated for the new expenditures. In 1964, Johnson managed to win passage of the $11.5 billion tax cut that Kennedy had first proposed in 1962. The cut increased the federal deficit, but substantial economic growth over the next several years made up for much of the revenue initially lost."); *see, e.g.*, *id.* at 755 ("The 'new economics,' as its supporters came to call it, finally won acceptance in 1963, when John Kennedy proposed a tax cut to stimulate economic growth. Although it took Kennedy's death and the political skills of Lyndon Johnson to win passage of the measure in 1964, the result seemed to confirm all the Keynesians had predicted: an increase in private demand, which stimulated economic growth and reduced unemployment.").

631 *See, e.g.*, *id.* at 830 (noting that one cause of rising inflation in the 1970s was the Johnson administration, during the 1960s, funding the Vietnam war and social programs, "without raising taxes").

632 *See, e.g.*, *id.* at 845 ("Equally important to the success of the New Right was the new and potent conservative issue: the tax revolt. It had its public beginnings in 1978, when Howard Jarvis, a conservative activist is California, launched the first successful major citizens' tax revolt in California with Proposition 13, a referendum, question on the state ballot rolling back property tax rates. Similar anti-tax movements soon began in other states and eventually spread to national politics.").

cut taxes.[633] By the end of the George H.W. Bush presidency, however, the need for a tax increase had become apparent.[634] President Clinton also worked for much-needed tax increases.[635] In the early twenty-first century, President George Bush[636] and the Tea Party Republicans continued the Republican practice of decreasing taxes.[637] Part of President Obama's solution to the financial crisis in 2008 was to promote some tax cuts.[638]

11. Women

WOMEN	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	14	29	14	57

a. Highlights

Since World War II, women have worked to acquire rights equal to men and to secure rights to their personal reproductive decisions.[639] Legislation such as the Equal

633 *Id.* at 848 ("The 1981 tax cuts, the largest in American history to that point, contributed to the deficit."); *see, e.g.*, *id.* at 846 ("Supply-side economics operated on the assumption that the woes of the American economy were in large part a result of excessive taxation, which left inadequate capital available to investors to stimulate growth. The solution, therefore, was to reduce taxes, with particularly generous benefits to corporations and wealthy individuals, in order to encourage new investments.").

634 *See, e.g.*, *id.* at 852 ("In 1990, the president bowed to congressional pressure and agreed to a significant tax increase as part of a multiyear 'budget package' designed to reduce the deficit—thus violating his own 1988 campaign pledge.").

635 *See, e.g.*, *id.* at 857 (explaining that in 1992, President Clinton's budget, "included a substantial tax increase on the wealthiest Americans, a large reduction in many areas of government spending, and a major expansion of tax credits to low-income working people").

636 *See, e.g.*, *id.* at 876 (discussing President George W. Bush's years, Brinkley writes: "The president's tax cuts of 2001 disproportionately benefitted wealthy Americans, reflecting the view of the White House economists that the best way to ensure growth was to put money into the hands of people most likely to invest. The cuts also contributed to the nearly $10 trillion increase in the national debt during the Bush presidency.").

637 *See, e.g.*, *id.* at 878 ("Although the Tea Party could not stop passage of the Affordable Care Act, they used their opposition to it to spearhead their overall conservative agenda: deficit reduction, tax reduction, and smaller government.").

638 *See, e.g.*, *id.* ("The Obama stimulus package, announced in 2009, included tax cuts, expanded unemployment benefits, and increased spending on education, infrastructure, police, health care, and job creation. The total funding for all of these programs reached $787 billion. Though controversial and passed by only a slight margin in Congress, in 2014 most economists agree that the stimulus measures saved the economy from catastrophe.").

639 *See, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 857 ("Important steps in [the revival of feminism in the 1960s and 1970s] included the Presidential Commission on the status of Women in 1961, the addition of gender as one of the categories protected by the Civil Rights Act of

Pay Act of 1963,[640] the establishment of the Equal Employment Opportunity Commission, affirmative action,[641] and Title IX brought some progress.[642] The National Organization for Women (NOW), established in 1966, took a leading role in advocacy for women's rights.[643] NOW, for example, called attention to the low percentage of women in the legal profession, noting that, in 1966, "[w]omen comprise[d] less than 1% of federal judges; less than 4% of all lawyers . . . ."[644] It was in the 1960's that American women intensified their pressure on state legislatures, asking that women be given greater voice regarding abortion decisions.[645] Although

---

1964 (see chapter 28), and the creation of the national Organization for Women (NOW) in 1966. Mainstream feminism targeted unequal opportunity in the job market . . . . Feminists focused attention on rape as a crime of violence and called attention to the burdens of the legal system placed on rape victims. In the 1980s and 1990s, they also challenged sexual harassment in the workplace, gradually redefining the boundaries between acceptable and unacceptable behavior.").

640 BRINKLEY, *supra* note 10, at 819 ("John Kennedy . . . established the President's Commission on the Status of Women; it brought national attention to sexual discrimination and helped to create important networks of feminist activists who would lobby for legislative redress. Also in 1963, the Kennedy administration helped win passage of the Equal Pay Act, which barred the pervasive practice of paying women less than men for equal work. A year later, Congress incorporated into the Civil Rights Act of 1964 an amendment—Title VII—that extended to women many of the same legal protections against discrimination that were being extended to African Americans."); *see, e.g.*, FONER, *supra* note 8, at 799 ("The law slowly began to address feminist concerns. In 1963, Congress passed the Equal Pay Act, barring sex discrimination among holders of the same jobs. The Civil Rights Act of 1964, as noted earlier, prohibited inequalities based on sex as well as race. Deluged with complaints of discrimination by working women, the Equal Employment Opportunity Commission established by the law became a major force in breaking down barriers to female employment.").

641 *See, e.g.*, BRINKLEY, *supra* note 10, at 820 ("In 1971, the government extended its affirmative action guidelines to include women–linking sexism with racism as an officially acknowledged social problem.").

642 *See*, *e.g.*, GOLDFIELD ET AL., *supra* note 26, at 910 ("Title IX of the Educational Amendments (1972) to the Civil Rights Act prohibited discrimination by sex in any educational program receiving federal aid. The legislation expanded athletic opportunities for women and slowly equalized the balance of women and men in faculty positions.").

643 *See, e.g.*, FONER, *supra* note 8, at 799 ("In 1966 the National Organization for Women (NOW) was formed, with [Betty] Freidan as president. Modeled on the civil rights organizations, it demanded equal opportunity in jobs, education, and political participation and attacked the 'false image of women' spread by the mass media."); *see also, e.g.*, BRINKLEY, *supra* note 10, at 819 ("NOW [the National Organization for Women] denounced the exclusion of women from professions, from politics, and from countless other areas of American life. It decried legal and economic discrimination, including the practice of paying women less than men for equal work (a practice the Equal Pay Act had not effectively eliminated.").

644 FONER, *supra* note 8, at 793.

645 *See, e.g.*, *id.* at 800 ("Radical feminists' first public campaign demanded the repeal of state laws that underscored women's lack of self-determination by banning abortions or leaving it up to physicians to decide whether a pregnancy could be terminated. In 1969, a group of

Congress passed the Equal Rights Amendment in 1972, an insufficient number of states ratified it in a timely fashion.[646] Since 1981 when Sandra Day O'Connor became the first woman justice of the United States Supreme Court, four other women have also served on the Court—Ruth Bader Ginsberg, Sonia Sotomayor, Elena Kagan, and the first African American woman, Ketanji Brown Jackson.[647] Meanwhile state legislatures and both state and federal courts have grappled with abortion rights and other issues relating to women's reproductive health (*e.g.*, *Griswold v. Connecticut* (1963),[648] *Roe v. Wade* (1973),[649] *Bowers v. Harwick* (1986),[650] *Lawrence v. Texas* (2003),[651] *Webster v. Reproductive Health Services* (1989),[652] *Planned Parenthood v. Casey* (1992)[653]).

---

feminists disrupted legislative hearings on New York's law banning abortions, where the experts scheduled to testify consisted of fourteen men and a Roman Catholic nun.").

646 BRINKLEY, *supra* note 10, at 821; *see*, *e.g.*, GOLDFIELD ET AL., *supra* note 26, at 910 ("In [1972] . . . , Congress sent the Equal Rights Amendment (ERA) to the states for ratification. The amendment read, 'Equal rights under the law shall not be denied or abridged by the United States or by any state on account of sex.' More than twenty states ratified in the first few months. As conservatives who wanted to preserve traditional family patterns rallied strong opposition, however, the ERA faced increasingly tough battles in state legislatures and stalled, three states short, until the time limit for ratification expired in 1982.").

647 *See, e.g.*, BRINKLEY, *supra* note 10, at 821 ("Ronald Reagan appointed the first female Supreme Court justice, Sandra Day O'Connor, in 1981; In 1993, Bill Clinton appointed the second, Ruth Bader Ginsburg; and Barack Obama appointed two women justices, Sonia Sotomayor and Elena Kagan in 2009 and 2010, respectively." President Joe Biden nominated Justice Brown Jackson February 25, 2022. The senate confirmed her on April 7, 2022, and she was sworn in June 30, 2022.).

648 *See generally* Griswold v. Connecticut, 381 U.S. 479 (1965).

649 BRINKLEY, *supra* note 10, at 866–67; *see*, *e.g.*, GOLDFIELD ET AL., *supra* note 26, at 910 ("In January 1973, the U.S. Supreme Court expanded the debate about women's rights with the case Roe v. Wade. Voting 7 to 2, the Court struck down state laws forbidding abortion in the first three months of pregnancy and set guidelines for abortion during the remaining months. Drawing on the earlier decision of *Griswold v. Connecticut*, which dealt with birth control, the Court held that the Fourteenth Amendment includes a right of privacy that blocks states from interfering with a woman's right to terminate a pregnancy."); *see generally* Roe v. Wade, 410 U.S. 113 (1973) (overruled by Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022)).

650 *See generally* Bowers v. Harwick, 478 U.S. 186 (1986).

651 *See generally* Lawrence v. Texas, 539 U.S. 558 (2003).

652 *See generally* Webster v. Reprod. Health Servs., 492 U.S. 490 (1989).

653 GOLDFIELD ET AL., *supra* note 26, at 910; *see, e.g.*, FONER, *supra* note 8, at 870 ("Although dominated by conservatives, the Supreme Court, in *Casey v. Planned Parenthood of Pennsylvania* (1992), reaffirmed a woman's right to terminate a pregnancy. The decision allowed states to enact mandatory waiting periods and anti-abortion counseling, but it overturned a requirement that the husband be given notification before the procedure was undertaken. 'At the heart of liberty,' said the Court, 'is the right to . . . make the most intimate

12. Immigration

IMMIGRATION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	10	17	15	42

a. Highlights

Immediately after World War II, the United States reconsidered the legal status of certain categories of Mexican workers who had received relaxed treatment during the war.[654] In addition, "[t]he Cold War reshaped immigration policy, with refugees from communism being allowed to enter the United States regardless of national-origin quotas."[655] Congress passed the Immigration Act (Hart-Celler Act) of 1965, which adjusted previous quotas and was aimed at diminishing discrimination against certain groups.[656] In 1994, California's Proposition 187 decreased access to public services for undocumented aliens and threatened their security in other ways.[657] Although both the House and Senate approved separate immigration bills in 2006, they were unable to pass legislation upon which both could agree.[658] In 2010, Tea Party Republicans active in a number of state legislatures passed laws that punished undocumented

---

and personal choices' without outside interference."); *see generally* Planned Parenthood v. Casey, 505 U.S. 833 (1992).

654 *See, e.g.*, BRINKLEY, *supra* note 10, at 816 ("After the war [i.e., WWII], when the legal agreements that had allowed Mexican contract workers to enter the country expired, large numbers of immigrants continued to move to the United States illegally. In 1953, the government launched what it called Operation Wetback to deport the illegals, but the effort failed to stem the flow of new arrivals. By 1960, there were substantial Mexican American neighborhoods (barrios) in American cities from El Paso to Detroit.").

655 FONER, *supra* note 8, at 730.

656 FONER, *supra* note 8, at 784; BRINKLEY, *supra* note 10, at 785; *see, e.g.*, GOLDFIELD ET AL., *supra* note 26, at 907 ("Immigration and Nationality Act of 1965: Federal legislation that replaced the national quota system for immigration with overall limits of 170,000 immigrants per year from the Eastern Hemisphere and 120,000 per year from the Western Hemisphere."); s*ee also* BRINKLEY, *supra* note 10, at 865 (noting in caption for pie chart: "The Immigration Reform Act of 1965 lifted the national quotas imposed on immigration policy in 1924 and opened immigration to large areas of the world that had previously been restricted.").

657 GOLDFIELD ET AL., *supra* note 26, at 936–37; *see, e.g.*, FONER, *supra* note 8, at 869 ("Increased cultural diversity and changes in educational policy inspired harsh debates over whether immigrant children should be required to learn English and whether further immigration should be discouraged. These issues entered politics most dramatically in California, whose voters in 1994 approved Proposition 187, which denied undocumented immigrants and their children access to welfare, education, and most health services. A federal judge soon barred implementation of the measure on the grounds that control over immigration policy rests with the federal government. By 2000, twenty-three states had passed laws establishing English as their official language.").

658 *See, e.g.*, FONER, *supra* note 8, at 890.

immigrants and even punished people who provided transportation for them, even rides to places of worship and health care facilities.[659] And legal controversy over immigration policy has continued to attract the attention of law makers.[660]

13. Environmental

ENVIRONMENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	11	12	13	36

14. Labor

LABOR	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	9	9	14	32

659 *See, e.g.*, *id.* at 911 ("Tea Party-inspired conservative gains at the state level in 2010 unleashed a rash of new legislation . . . . New conservative legislatures also took aim at undocumented immigrants. Alabama, which has no land border with a foreign country and a small population of immigrants, enacted the harshest measure, making it a crime for undocumented immigrants to apply for a job and for anyone to transport them, even to a church or a hospital. During the contest for the Republican presidential nomination in early 2012, candidates vied with each other to demonstrate their determination to drive undocumented immigrants from the country. Oddly, all this took place at a time when illegal immigration from Mexico, the largest source of undocumented workers, had ceased almost completely because of stricter controls at the border and the drying up of available jobs because of the recession.").

660 BRINKLEY, *supra* note 10, at 879 ("Many Republicans . . . believed that their party should reach out to this growing sector of the population [i.e., the Latino population] by pushing through an immigration reform bill. On June 27, 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 as a comprehensive package of provisions, including a path to US citizenship for illegal immigrants already in the country. As of the spring 2014, the House had not passed the bill owing to powerful conservative Republican opposition."); *see, e.g.*, FONER, *supra* note 8, at 889–90 ("The Bush and Obama administrations greatly accelerated efforts to police the [U.S.-Mexican] border. By 2013, the number of U.S. Border Patrol officers stood at 20,000, making it the nation's second-largest police force after the New York City's Police Department, and 400,000 undocumented immigrants were being deported annually, far more than in the past. Latino communities experienced the southwestern borderlands as increasingly militarized, since the 'border' stretched far inland and persons accused of having entered the country illegally—almost all of them from Mexico, Guatemala, Honduras, and El Salvador—could be apprehended many miles north of Mexico.").

15. Property

PROPERTY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	12	10	8	30

16. Voting and Elections

VOTING & ELECTIONS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	11	10	9	30

17. Marriage and Family

MARRIAGE & FAMILY	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	6	19	1	26

18. Religion

RELIGION	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	10	8	3	21

19. Contracts

CONTRACTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	6	7	7	20

20. Other Minorities

OTHER MINORITIES	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	10	7	1	18

21. Incidental

INCIDENTAL	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	4	4	7	15

22. Native Americans

NATIVE AMERICANS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	2	3	8	13

23. Torts

TORTS	GOLDFIELD	FONER	BRINKLEY	TEXTBOOK TOTALS
WWII – Present	2	3	0	5

VI. CONCLUSION

Among the goals of historical analysis—the study of history—is an effort to raise awareness of problems and the concomitant effort to seek solutions to those problems. This Article suggests that certain topics in our nation's history have caused significant problems.[661] Legal history suggests that, as societies evolve, people resort to the legal system to resolve differences. The alternative is violence.[662] Given the structure of government in the United States, the legal system is comprised of the three branches of government—executive, legislative, and judicial.[663] In one sense, the history of law

---

661 *See, e.g.*, BLOCH, *supra* note 1, at 192–93 ("[A] graduated classification of causes, which is really only an intellectual convenience, cannot safely be elevated to an absolute. Reality offers us a nearly infinite number of lines of force which all converge together upon the same phenomenon.").

662 BRINKLEY, *supra* note 10, at 357 (discussing violence caused by Anti-abolitionists in response to unfavorable rulings in court rooms); *id.* at 359 (differing political ideals and lack of legislation led to violence in Kansas in mid-nineteenth century); *see, e.g.*, *id.* at 335 (discussing courts' refusal to rule favorably for the Abolitionist Movement and the Movement's response in the form of revolts).

663 *See Branches of the U.S. Government*, USA.GOV (Aug. 5, 2022), https://www.usa.gov/branches-of-government.

in the United States has been characterized by a complex and oftentimes chaotic interplay among interest groups, executives, legislators, and courts.[664]

As suggested in the Introduction, one common chain of events is as follows. A group of persons who perceive a specific problem advocates a particular point of view by communicating their perception of injustice to politicians (*i.e.*, either executives such as mayors, governors, presidents, or legislators).[665] In response to such advocacy, executives may issue executive orders or propose legislation.[666] Legislators may enact legislation.[667] Then in response to the new executive order or legislation, other individuals or groups are likely to perceive injustice caused by the new law (*i.e.*, the executive order or legislation) to them.[668] Perceiving injustice, those individuals or groups then use the judicial system to litigate the issue.[669] It is then up to the judiciary to determine whether the executive order or legislation should stand.[670] And once the courts have ruled, it is not uncommon for the aggrieved group to voice their displeasure by communicating again with executives and/or legislators in an effort to find a work-around, another way to achieve their goals that will somehow walk the fine line between the first executive order or legislation and the court's ruling.[671] And so this chain of events may continue seemingly ad infinitum in a somewhat cyclical pattern until a resolution is reached that either appeases enough people that neither the executives, legislators, nor judges are willing to revisit it or until the disparate groups become so exhausted that they discontinue the fight. One simple example should suffice.

---

664 *See, e.g.*, FONER, *supra* note 8, at 911 (pertaining to interest groups involvement in the immigration issue in proposing legislation as well as the courts' role in this process).

665 *See* CARR, WHAT IS HISTORY?, *supra* note 1.

666 *See What is an Executive Order*, A.B.A. (Jan. 25, 2021), https://www.americanbar.org/groups/public_education/resources/teacher_portal/educational_resources/executive_orders/; *The Legislative Branch*, THE WHITE HOUSE, https://www.whitehouse.gov/about-the-white-house/our-government/the-legislative-branch/ (last visited Oct. 13, 2022).

667 *See Branches of the U.S. Government*, USA.GOV (Aug. 5, 2022), https://www.usa.gov/branches-of-government.

668 *See, e.g.*, FONER, *supra* note 8, at 889–90 ("Parks is widely remembered today as a "seamstress with tired feet," a symbol of ordinary blacks' determination to resist the daily injustices and indignities of the Jim Crow South.").

669 *See* USA.GOV, *supra* note 667.

670 *See* Marbury v. Madison, 5 U.S. 137, 173–74 (1803).

671 *See, e.g.*, BRINKLEY, *supra* note 10, at 821 ("Abortion had once been legal in much of the United States, but by the beginning of the twentieth century it was banned by statute in most of the country and remained so into the 1960s (although many abortions continued to be performed quietly, and often dangerously, out of sight of the law). But the women's movement created strong new pressures on behalf of legalizing abortion.").

Since the Civil War and Reconstruction, many African Americans have perceived that they possess voting rights unequal to whites.[672] African Americans and those sympathetic to their cause clamored for equal voting rights for African Americans.[673] Eventually African Americans and those sympathetic to their cause convinced legislators to pass legislation designed to address voting rights inequality.[674] Once passed, others who perceived injustice caused by the new legislation (*i.e.*, legislation that was designed to address the voting rights inequality for African Americans) tested the new laws in court.[675] After resolution by the courts that upheld the new voting rights laws, those aggrieved returned to their legislators and sought ways to work-around the judicial decisions.[676] For example, legislators passed grandfather clauses and poll taxes that superficially complied with the new laws but that, in practice, discriminated against African American voters.[677] As a result of the passage of grandfather clauses and poll taxes, African Americans and those sympathetic to their cause again returned to the courts to litigate the legitimacy of those new laws.[678] After judges held that such laws could not withstand scrutiny, the aggrieved again voiced

---

672 BRINKLEY, *supra* note 10, at 423; *see*, *e.g.*, FONER, *supra* note 8, at 460, 765, 783.

673 *See*, *e.g.*, FONER, *supra* note 8, at 783–84 (noting once again, violence against nonviolent demonstrators flashed across television screens throughout the world. "Calling Selma a milestone in 'man's unending search for freedom,' Johnson asked Congress to enact a law securing the right to vote. He closed his speech by quoting the demonstrators' song, 'We Shall Overcome.' Never before had the movement received so powerful an endorsement from the federal government. Congress quickly passed the Voting Rights Act of 1965, which allowed federal officials to register voters. In addition, the Twenty-fourth Amendment to the Constitution outlawed the poll tax, which had long prevented poor blacks (and some whites) from voting in the South.").

674 *Id.*

675 *See generally* United States v. Reese, 92 U.S. 214, 221–22 (1875).

676 *See, e.g.*, BRINKLEY, *supra* note 10, at 423 ("In devising laws to disenfranchise black males, the southern states had to find ways to evade the Fifteenth Amendment, which prohibited states from denying anyone the right to vote because of race. Two devices emerged before 1900 to accomplish this goal. One was the poll tax or some form of property qualification; few African Americans were prosperous enough to meet such requirements. Another was the "literacy" or "understanding" test, which required voters to demonstrate an ability to read and interpret the Constitution. Even those African Americans who could read had trouble passing the difficult test white officials gave them. Such restrictions were often applied unequally. Literacy tests for whites, for example, were sometimes much easier than those for blacks. Even so, the laws affected poor white voters as well as African Americans. By the late 1890s, the black vote had decreased by 62 percent, the white vote by 26 percent.").

677 *See, e.g.*, BRINKLEY, *supra* note 10, at 423.

678 *See, e.g.*, *id.* at 424 ("The Court eventually voided the grandfather laws, but it validated the literacy test (in the 1898 case of *Williams v. Mississippi*) and displayed a general willingness to let the southern states define their own suffrage standards as long as evasions of the Fifteenth Amendment were not too glaring.").

their concerns to legislators.[679] The legislators went back to the drawing board and devised gerrymandered voting districts.[680] And so, the cycle continues.[681]

This Article shows that groups of people in the United States have sought to use the legal system to address a variety of problems. This Article also shows that certain categories of problems have accounted for a significant percentage of our legal resources. Although the legal system has succeeded in addressing many of these problems, many of these conflicts persist. [682] Perhaps merely recognizing this phenomenon will prove beneficial. Perhaps acknowledging that these topics are topics that historically have stirred emotions and engendered conflict can help raise our collective consciousness about the importance of addressing them in a serious and reasoned manner. "What history teaches, [G. W. F.] Hegel remarked, is that men have never learned anything from it; or at least their knowledge has not availed against the ancient enemy. *** Yet as we live we must continue to bet on education, on thought, as our only possible chance."[683]

---

679 *Id.*

680 *How Gerrymandering Began in the US*, HISTORY.COM https://www.history.com/news/gerrymandering-origins-voting (last visited Oct. 16, 2022) ("In 1874, South Carolina introduced the first non-contiguous voting district, but had to change back to contiguous districts for the 1876 election because the U.S. House of Representatives told the state it wouldn't seat any more members elected under such a system. In 1882, South Carolina created a "boa constrictor" district that concentrated Black Americans—who made up the majority of the state's population—into one winding district, so that every other district had a white majority.").

681 MULLER, *supra* note 87, at 72–73 ("Civilization has accordingly created the problem of adjusting rights and duties, harmonizing the interests of the individual and of the group. The most conspicuous and most difficult aspect of this problem is the political. Here we encounter the ancient, universal story of privilege and oppression, the long struggle for social justice and personal liberty, and the new complications introduced by the ideal of individualism . . . . In a democratic society with a tradition of rugged individualism, and a perhaps excessive fear of all forms and constraints, one might stress that there is no such thing as an absolute individual with absolute rights. The individual is inseparable from his society, which has created his rights, furnished the materials for his prized individuality, furnished even the principles for his rebellion against it.").

682 BLOCH, *supra* note 1, at 149 ("[I]n many societies at least, the application, and even in great measure the elaboration, of rules of law have been the particular work of a group of relatively specialized men . . . . [T]he history of law sheds some glimmers of light upon phenomena which are extremely diversified, yet subject to a common human activity, and these glimmerings, if necessarily limited in their scope, are very revealing.").

683 MULLER, *supra* note 87, at 375.