

Legal Studies/History 261

American Legal History to the 1860s, Fall 2017: Syllabus

Social Sciences 6104, Tues.-Thur., 9:30 — 10:45 am

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Office Hours: 7131 Soc Sci, Tues.-Thur., 2:30 – 4:00 pm, and by appointment.

Description: This course surveys the development of American legal institutions and ideas down to the U.S. Civil War. After a review of the historical background in England, we will examine how law changed in colonial America, giving special attention to the growth of legal ideas leading up to and shaping the American Revolution, the drafting of the Constitution, and the early national period. Finally, we will explore how territorial expansion, democracy, and slavery shaped nineteenth-century American law. Throughout our goal will be to understand how law interacts with political, social, and cultural change, with a focus on the origins of our modern ideas about civil and constitutional rights.

Learning Goals: This class will help students to learn about the role of law in society by introducing them to the:

1. social, political, economic, and cultural determinants of law.
2. social, political, and economic impacts of law at the macro level.
3. dynamics of legal ideas and ideologies.
4. nature of legal reasoning and analysis in common law, civil law, and other legal systems.
5. functioning of legal institutions, and how those institutions differ from other societal institutions.
6. cross-cultural and international valences of law in distinctive social orders.

To accomplish these goals, students will read pertinent primary and secondary sources, and then use these sources to write essays in which they assess how the Anglo-American traditions of Common Law and representative government, as well as the eighteenth-century political philosophies of republicanism and liberalism, shaped the Declaration of Independence and the U.S. Constitution (goals 1, 3, and 6). By closely analyzing local social regulation, women's legal rights, and historical arguments about the American system of slavery in constitutional conventions and federal courts, among other topics, students will also learn about British and American legal institutions (goals 5 and 6), the impacts of law on ordinary people (goal 2), and how social ideologies and legal reasoning interact (goals 2, 3, and 4).

Grades: will be calculated on a standard UW scale: A=93-100%, AB=88-92%, B=83-87%, BC=78-82%, C=70-77%, D=60-69%, F=0-59%. Note: in order to pass this class, you must complete all of the essay assignments and take all of the exams. Grades will be determined as follows:

Attendance and participation:	8%
Short Essay (2-3 Pages)	7%
Quizzes	10%
Midterm exam:	20%
Essay:	25%
Final exam:	30%
Total:	100%

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than THREE unexcused absences is excessive, because missing this much class usually leads to misunderstanding of course materials and assignments; 3) missing more than SIX classes without valid excuses may be grounds for failing the class; and 4) valid excuses are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your

planned absences by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family. 5) In cases of absence for quizzes, paper due-dates, and exams, you should inform me of your absence in advance if at all possible. Missing class on such days without prior notice to me may result in a failing grade for that assessment.

Qualitative Assessment for Participation in Lectures: This class is typically a medium-sized lecture, with about 60 or more students. For classes of this size, I assess participation qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester. I typically use my assessment of attendance and participation to adjust students' final grades in borderline cases, especially when a student contributes to class at a level above their performance on written work.

Quality of Participation: When making contributions to class, quality of contribution counts more than quantity. Quality contributions reflect your familiarity with the readings and your effort to ask good critical questions about them, such as: What are the main questions the author tries to answer? What is the author's main argument? What specific arguments, assumptions, or evidence are used in support? What is left out? Good participation also means that you listen to others and try to engage seriously but respectfully with what others say.

Computers, Electronic Devices, & Distracted Behavior: Due to the potential for distraction, the use of computers or any other electronic devices in class is prohibited. I make exceptions only if you speak to me, explaining your need to use a computer to take notes. Those students who have my approval to use a computer in class must, in order to minimize the potential for distracting others, sit in either the back row or at the ends of rows and near the front or back of the classroom. Engaging in any unauthorized screen time or in any other distracted or distracting behavior, such as reading unassigned materials, audible eating or drinking, sleeping, conversation with classmates or on the phone, etc., may negatively impact your grade.

Quizzes: There will be quizzes approximately every two weeks, consisting mostly of multiple choice, fill-in-the-blank, and short answer questions.

Essays: There will be two essays, one very short one of 2-3 pages near the beginning of the semester, and one 6-8 page essay later on, both of which focus on the assigned readings. The topic and guidelines will be given later, about two weeks before the due date. Essays must be turned in both as paper copies in class, and as electronic copies to an anti-plagiarism website (www.turnitin.com). Late papers will be heavily penalized: they will be marked down one grade per class day late. For help with papers, besides asking me and reading the guides on [my website](#), you can get additional individual help at both the [History Lab](#) and the [Writing Center](#).

Midterm and Final Exams: These will be comprehensive, covering everything studied in the course up to the time of each exam, including both factual material and the broader ideas and themes of the course. The format will include some identification, short-answer essays, as well as one or two longer essays.

Academic Honesty: Your written work must reflect your own ideas, and where you draw on others' words or ideas you need to indicate this clearly with proper quotations and citations. Academic dishonesty will not be tolerated, and all appropriate penalties, including failing the course, will be strictly enforced. Academic misconduct includes, but is not limited to "claim[ing] credit for the work or efforts of another without authorization or citation." See [UW's plain-language guidance](#) on this topic. Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and download their handout '[Acknowledging, Paraphrasing, and Quoting Sources.](#)'

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Sept. 21. In order to maintain confidentiality, you may do so by coming to my office hours or by emailing me to arrange a meeting. You will need to provide documentation from the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: mcburney@studentlife.wisc.edu.

Reading Assignments and Note-Taking: Ideally you should read all of the week's assignments by Tuesday's class, but you may prioritize them according to the order in which they appear on the syllabus. More specifically, it is often helpful to start with the most general secondary source (Yirush, Maier, and Foner), and then proceed to the more focused secondary sources (the introductions in the Course Pack or in the books by Hall and Finkelman). Next, go on to the primary sources (the texts of laws and cases in the Course Pack, Hall, and Finkelman), which are the most important and the most challenging readings, and to which we will try to devote significant class time. The above steps will prepare you, finally, to get the most out of the interpretive essays in Hall (assigned beginning only after the midterm), which are key for understanding ongoing debates about the material. You should read each assignment carefully, answer the reading questions, and if possible prepare your own short summary as a basis for class discussion (approx. 2 pages for each week's assignments).

Course Pack (1) Required Books (4): You need to acquire the Course Pack and the four books listed below, and bring them to class on the days when they are assigned. They are listed here in the order in which they will be assigned. The Course Pack is available at the Copy Center in 6120 Social Sciences: <http://copy.ls.wisc.edu/>. You should get the books in the editions specified here. Please note that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems. The books are all available from, among other places, the UW Bookstore: www.uwbookstore.com. All the books and the course pack are also on reserve at College Library.

Keyser, Richard. *Course Pack for Legal Studies/History 261*. UW, 2017.

Yirush, Craig. *Settlers, Liberty, and Empire: The Roots of Early American Political Theory*. Cambridge University Press, 2011.

Foner, Eric. *The Story of American Freedom*. New York: W. W. Norton & Co., 1998.

Hall, Kermit, and Timothy Huebner, eds., *Major Problems in American Constitutional History: Documents and Essays*, 2nd ed. Boston, MA: Wadsworth, 2010.

Finkelman, Paul. *Dred Scott v. Sandford: A Brief History with Documents*, 2nd ed. New York: Bedford/St. Martin's, 2017.

SCHEDULE

Week 1, Thur., Sept. 7. Introduction; Law & Human Equality. [11 pages total reading]

Course Pack, ch. 1, "Sources of Western Law." If you have not picked up the Course Pack yet, you may consult this week's readings on my website, [Sources of Western Law](#), intro and parts 1-5 (links at the bottom of the intro page, for the "Bible," "Cicero's Philosophy," etc.).

Week 2, Tues.-Thur., Sept. 12-14. From Magna Carta to the Stuarts; Early Colonies. [50 pages]

Course Pack, ch. 1.5, "Medieval Custom;" ch. 2.1-6, "British History."

Yirush, *Settlers, Liberty, and Empire*, ch. 2-3, pp. 51-69, 73-80, 110-112.

Course Pack, begin ch. 3, "Early Colonial," Part I (charters); and "Timeline" (to 1700).

Week 3, Tues.-Thur., Sept. 19-21. The Glorious Revolution; Colonial Law & Society. [54 p.]

Course Pack, ch. 2.7-8, "British History."

Foner, *American Freedom*, begin ch. 1, pp. 3-12.

Yirush, *Settlers, Liberty, and Empire*, ch. 7, pp. 183-200.
Course Pack, ch. 3; “Early Colonial,” Part II (laws); review “Timeline” (to ca. 1700).

Week 4, Tues.-Thur., Sept. 26-28. Anglo-American Political Culture and Colonial Expansion. [42 p.]

Tues., Sept. 26: Short Essay Due.

Yirush, *Settlers, Liberty, and Empire*, ch. 7, pp. 204-14; ch. 8, pp. 215-33.
Course Pack, ch. 4, “Colonial Policies & Debates,” parts I – II; ch. 5, Locke, “Second Treatise.”

Week 5, Tues.-Thur., Oct. 3-5. The American Revolution. [55 p.]

Foner, *American Freedom*, ch. 1, pp. 12-16.
Yirush, *Settlers, Liberty, and Empire*, ch. 8, pp. 233-43, 248-59.
Course Pack: Pauline Maier, *American Scripture*, pp. 105-23.
Course Pack, finish ch. 4, part III, “Towards Rebellion;” review “Timeline” (to 1776).
Declaration of Independence: a) Hall & Huebner, *ACH*, pp. 34-37.

Week 6, Tues.-Thur., Oct. 10-12. The Declaration of Independence & Review. [38 p.]

Yirush, *Settlers, Liberty, and Empire*, finish ch. 8 & conclusion, pp. 259-70.
Course Pack: Pauline Maier, *American Scripture*, pp. 123-43.
Declaration of Independence: b) Course Pack (Gary Wills, pp. 374-79).

Midterm Exam: Thur., Oct. 12.

Week 7, Tues.-Thur., Oct. 17-19. The Enlightenment and the Idea of Equality. [48 p.]

Course Pack, ch. 6, “Lower Classes,” part I (servitude); ch. 7, “Women,” part I.
Course Pack: Lynn Hunt, *Human Rights*, intro, pp. 15-31; ch. 2-3, pp. 108-26.
Course Pack: Jensen, “Indentured Servitude,” pp. 481-86.

Week 8, Tues.-Thur., Oct. 24-26. Ideas & Interests in the Constitution. [48 p.]

Foner, *American Freedom*, finish ch. 1, pp. 12-28.
Hall & Huebner, *ACH*, ch. 1, pp. 1-17 (Nedelsky & Semonche essays); pp. 557-67 (Constitution).
Course Pack, ch. 6, “Lower Classes,” part III (poor laws); ch. 7, “Women,” part II (coverture).

Week 9, Tues.-Thur., Oct. 31- Nov. 2. Declaring Rights and Debating the Constitution. [53 p.]

Hall & Huebner, *ACH*, ch. 2, pp. 30-56 (docs. 3-8 are most important); & review pp. 557-67.
Course Pack, ch. 7, “Women,” parts II-III (coverture & revolution).
Course Pack: Keyssar, *Right to Vote*, pp. 1-7, 20-21; tables A.1, A.3, & A.5.

Week 10, Tues.-Thur., Nov. 7-9. Slavery, Citizenship, and the Constitution. [55 p.]

Foner, *American Freedom*, ch. 2, pp. 29-45.
Course Pack: Dahl, *How Democratic is the American Constitution?*, pp. 7-23, 179-83.
Hall & Huebner, *ACH*, ch. 2, pp. 57-58, 69-74 (beginning of Finkelman essay & Lewis essay).
Course Pack: ch. 6, “Lower Classes,” part II (slave law); begin ch. 8, “Founding Era.”

Week 11, Thur., Nov. 14-16. Rights, Democracy, and Citizenship in the New Nation [37 p.]

Hall & Huebner, *ACH*, ch. 3, pp. 76-78, 81-83 (intro & doc. 2); 87-91 (docs. 4-5); 94-109.
Course Pack, ch. 7, “Women,” parts III-IV; finish ch. 8, “Founding Era;” and “Timeline” (to 1800).

Essay Due: Thur., Nov. 16.

Week 12, Tues., Nov. 21. Economic Growth, Law, and the Supreme Court. [30 p.]

Foner, *American Freedom*, ch. 3, pp. 47-68.

Hall & Huebner, *ACH*, ch. 4, pp. 110-116 (through doc. 1); & pp. 122-26 (doc. 4).

Thanksgiving Break, Nov. 23-26.

Week 13, Tues.-Thur., Nov. 28 – 30. Expansion and Race in the Jacksonian Era [66 p.]

Foner, *American Freedom*, ch. 4, pp. 69-79.

Hall & Huebner, *ACH*, ch. 4, pp. 136-37 (doc. 7); ch. 5, pp. 157-59, 162-64 (intro & doc. 2).

Finkelman, *Dred Scott*, Part I, pp. 1-48.

Week 14, Tues.-Thur., Dec. 5-7. The *Dred Scott* Decision and the Confederacy's Secession. [65 p.]

Foner, *American Freedom*, ch. 4, pp. 79-94.

Course Pack, ch. 9, "Antebellum Period."

Finkelman, *Dred Scott*, Part II, pp. 55-76 (Taney); and 106-124 (Curtis).

Hall & Huebner, *ACH*, ch. 6, pp. 192-196 (through doc. 1).

Week 15, Tues., Dec. 12. Civil War: Towards a Constitutional Revolution. [38 p.]

Foner, *American Freedom*, ch. 5, pp. 95-113.

Finkelman, *Dred Scott*, Part II, pp. 166-78 (Douglass); & 197-99 (Lincoln).

Hall & Huebner, *ACH*, ch. 6, pp. 204-207 (doc. 4); pp. 211-212 (doc. 6).

Final Exam: Thursday, Dec. 21, 12:25 – 2:25 pm.