

American Legal History to the 1860s, Legal St/Hist 261

University of Wisconsin-Madison, Fall 2023: Syllabus

Instructional Modality

Face-to-face, Tues. and Thur., 2:30 – 3:45 pm, 6102 Social Sciences Building.

Instructor

Prof. Richard Keyser, rkeyser (at) wisc.edu. Office Hours: Tues. & Thur., 11:00 am – 12:00 pm, 7131 Social Sciences, and by appointment.

Course Description

This course surveys the development of early American legal institutions and ideas 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.

Credit Hours: This is a 3-Credit-Hour course, for which the credit standard is met by: a) the two class meetings of 75 minutes each per week; and b) the expectation that students will work on course learning activities (reading, writing, film clips, studying, etc.) for about 3 hours out of the classroom for every class period, or about 6 hours per week outside of class.

Regular and Substantive Student-Instructor Interaction: In this course students interact with the instructor primarily in each scheduled class meeting and through the comments provided by the instructor on each student's assigned papers. The instructor's weekly office hours provide an additional opportunity for students to ask questions.

Course Designation & Level: Breadth - Either Humanities or Social Science. Level – Intermediate. Requisite: Sophomore Standing. L&S Credit - Counts as Liberal Arts and Science credit in L&S.

Student Learning Goals

This class will help students to learn about the role of law in society by (at least) helping students to:

1. Analyze and articulate their own arguments about how social, political, and cultural phenomena shape law and legal systems.
2. Analyze and articulate their own arguments about the social, political, and cultural impacts of law at the societal and individual levels.
3. Demonstrate knowledge about how legal ideas and ideologies have changed over time and have shaped law and legal systems.
4. Demonstrate their abilities to find, interpret, and utilize resources relevant to law and society.
5. Demonstrate their abilities to analyze information, to write clearly and persuasively, and to construct original arguments.

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, 4, and 5). 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 1 and 3), the impacts of law on ordinary people (goal 2), and how social ideologies and legal reasoning interact (goals 2, 3, and 4).

Grades

Grades are calculated on the standard UW scale: A=93-100%, AB=88-92%, B=83-87%, BC=78- 82%, C=70-77%, D=60-69%, F=0-59%. Grades will be determined as follows:

	<u>% of grade</u>	<u>course points</u>
Participation	10	50
Quizzes	15	75
Short Essay	10	50
Midterm Exam	20	100
Midterm Essay	20	100
Final Exam	25	125
Total:	100	500

Note: in order to pass this class, you must complete all of the essay assignments and exams, and at least 75% of the quizzes and discussions.

Attendance and Participation

Attendance and Past-Due 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.
- 4) valid excuses for any absence or any late or missed assignment 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 or missed deadlines for quizzes, paper due-dates, and exams, you should inform me of your absence or other problem in advance if at all possible. Missing class or a deadline without prior notice to me may result in a failing grade for that assessment.
- 6) When you miss class: remember that there is no practical way to “make up” for missing class: lecture and discussion cannot be entirely repeated for individual students. Nor is it fair or practical to ask if “anything important was covered,” or “what were the key points covered,” or if you can do any extra assignments. Instead, it is your responsibility to: 1) let me know by email about your absence, preferably before class; 2) get lecture notes from a classmate; and 3) keep up with the assigned readings. 4) After you have taken these steps, you are also welcome, as always, to meet with me to ask any specific questions you may have about the material.

Online Discussions. Part of your participation will consist of your posts to online discussions on the course website, for which the class will be divided into several discussion sections. Students in each group will be required to post responses on a rotating basis, approximately every three weeks (the precise schedule is to be determined). When it is your group’s turn, each student will need to make a total of **two posts**, including both your answers to the questions and your responses to others. Each posting should aim for a length of **between about 150 and 300 words**.

Assessment of Discussion Contributions and Participation. There will be a rubric posted on Canvas and your discussion posts will be scored accordingly. These numeric scores will focus on such criteria as the length of posts, being on time, being on topic, citing pertinent evidence, and a rough assessment of the quality of your posts. These scores will provide, however, only one factor in determining your participation grade. Final grades for participation will be determined at the end of the semester, taking into account both the numeric scores on your online posts and a qualitative assessment of your attendance and the overall quality and consistency of your discussion contributions, both online and in class. Then I will assign an overall grade level, i.e., A-level contributor, AB-level, etc. For more detail, see the “Rubric for Final Assessment of Participation,” under the Course Orientation Module on Canvas.

Quality of Participation: When making discussion contributions, both in class and online, quality of contribution counts more than quantity. A quality contribution is one in which you: a) cite the assigned readings and other sources; b) make thoughtful and ideally original points; and c) explain your ideas clearly and concisely. 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 strongly discouraged. I make exceptions only if you speak to me, explaining your need to use a computer to take notes. Those students who need to use a computer class should if possible, 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.

Written Work

Quizzes: There will be online quizzes due approximately every week, which will consist of multiple choice or true/false questions. You will be provided with a study guide at least several days before each quiz.

Essays: There will be two essays, one short one of about three pages near the beginning of the semester, and one longer midterm essay of about six pages. Both essays focus on the assigned readings and other course materials. Essays must be turned in as electronic copies on Canvas (not via email!). Late papers will be heavily penalized: they will be marked down one grade per class day late. For help with papers, besides asking me, see the tips on my webpage on [Teaching Policies & Guides](#). You can also get one-on-one help at both the [Writing Center](#) and the [History Lab](#).

Midterm and Final Exams: These will be comprehensive, covering everything studied in the course, 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. For more detail on exam questions, see the document on “The Three Types of Exam Question,” on my webpage on [Teaching Policies & Guides](#).

Academic Honesty and Accommodations

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 guidance on this topic, on the page “[Academic Misconduct](#).” Specifically on the proper ways to give credit to sources, consult the [Writing Center](#) and see their page on “[Quoting and Paraphrasing](#).”

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Thur., Sept. 21st. It is the student’s responsibility to contact the McBurney Center and arrange to have the proper notification sent to me. See: <https://mcburney.wisc.edu/>. If you are on or near campus, you can also visit their office, the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741; or email them at: mcburney@studentlife.wisc.edu.

Course Materials

Please note that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems.

The book below is available from, among other places, the UW Bookstore: www.uwbookstore.com. All these items are also on reserve at College Library.

Required Course Pack: Keyser, Richard. *Course Pack for Legal Studies/History 261, Fall, 2023*: Parts I, II, and III to be released one at a time as they become assigned during the semester. They will be available at the Letters and Sciences Copy Center, 6102 Social Sciences (see: <https://copy.ls.wisc.edu/>).

Required Textbook: Finkelman, Paul. *Dred Scott v. Sandford: A Brief History with Documents*, 2nd ed. New York: Bedford/ St. Martin's, 2017. The 1st edition is also OK.

For those who might like or need additional background on the history of the periods we will be studying, I recommend (completely optionally) the excellent one-volume survey by Eric Foner, *The Story of American Freedom* (Norton, 1998); and, for more detail, three books by Alan Taylor: *American Colonies* (Penguin, 2002); *American Revolutions* (Norton, 2016); and *American Republics* (Norton, 2021).

Reading Assignments: The reading load for this class is moderate in terms of pages numbers: in print the total weekly reading averages about 50-70 pages. However, these readings are often challenging; many legal texts, for example, are quite dense. To succeed you need to devote sufficient time to read carefully and, ideally, take notes. You should try to get through most or all of the readings towards the beginning of the week, and you can also prioritize them according to the order in which they appear on the syllabus.

More specifically, it is often helpful to start with the general secondary sources, which are texts written recently. These include the lectures (and your notes from them) and the introductory essays and similar material in the Course Pack. Then proceed to the primary sources, which are texts written during the period you are studying. These include laws, cases, constitutional debates, etc. The primary sources are the most important and the most challenging readings, and these will often be the focus of class discussions.

SCHEDULE

***Note:** this schedule provides the weekly topics, the reading assignments in the required course pack or textbook, and dates for exams or essays. These are all set and will not be changed. But the full details for many course activities, including online materials and activities (film clips, discussions, quizzes, etc.), **will be updated and provided on a weekly basis** on the course website on Canvas, under the Activity Guide for each weekly Module.

Week 1, Thur., Sept. 7- Tues., Sept. 12. Human Equality and the Medieval Origins of Anglo-American Law.

- Course Pack Module 1: Ch. 1, Sources of Western Law; ch. 2, English History: Common Law Origins to the Tudors (*ch. 2 is the key one for this week); and ch. 3, English Law in the Colonies.

Week 2, Thur., Sept. 14 – Tues., Sept. 19. Britain to the Glorious Revolution; Early Colonies.

- Course Pack Module 2: ch. 1, Anglo-British History: Stuarts to Glorious Revolution; ch. 2, Charters and Colonial Law; ch. 3, Texts of Early Colonial Charters (*ch. 3 is the key one for this week).

Week 3, Thur., Sept. 21 – Tues., Sept. 26. Colonial Law & Society.

- Course Pack Module 3: ch. 1, Early Colonial Law & Courts; ch. 2, Freedom in Colonial America; ch. 3, Texts of Early Colonial Laws (*both ch. 2 & 3 are key for this week); and ch. 4, Timeline to ca. 1700.

Short Essay Due: Wed., Sept. 27.

Week 4, Thur., Sept. 28 – Tues., Oct. 3. Colonial Law & Government: Practice, Policy, and Debate.

- Course Pack Module 4: ch. 1, Law & the Salem Witch Trials; ch. 2, Navigation & Export Laws; ch. 3, Debates about Colonial Government (*ch. 3 is the key one for this week); and ch. 4, Government in Britain.

Week 5, Thur., Oct. 5 – Tues., Oct. 10. The American Revolution.

- Course Pack Module 5: ch. 1, From the French and Indian War to the Revolution; ch. 2, Thomas Jefferson and the Declaration of Independence (*both ch. 1 and 2 are key for this week); ch. 3, The Declaration of Independence; ch. 4, Timeline to 1776.

Week 6, Thur., Oct. 12. Revolution and the Declaration of Independence.

- Course Pack Module 6: ch. 1, Jefferson's Draft, Preamble and Conclusion; ch. 2, Congress's Declaration.

Midterm Exam: Tues., Oct. 17.

Week 7, Thur., Oct. 19 – Tues., Oct. 24. The Enlightenment and the Idea of Equality.

- Course Pack Module 7: ch. 1, Enlightenment and Human Rights; ch. 2, The Lower Classes; ch. 3, Indentured Servants; ch. 4, Women under Coverture.

Week 8, Thur., Oct. 26 – Tues., Oct. 31. Ideas & Interests in the Constitution.

- Course Pack Module 8: ch. 1, Before the Constitution; ch. 2, The Philadelphia Debates; and ch. 3, The Constitution; ch. 4, Interpreting the Debates.

Week 9, Thur., Nov. 2 – Tues., Nov. 7. Slavery, the Constitution, and the American Creed.

- Course Pack Module 9: ch. 1, The Law of Slavery; ch. 2, Debating Slavery; ch. 3, Slavery and the Constitution; ch. 4, Civic Culture and the American Creed.

Week 10, Thur., Nov. 9 – Tues., Nov. 14. Citizenship and Political Participation

- Course Pack Module 10: ch. 1, Voting Rights; ch. 2, Population and Slavery; ch. 3, Democracy and the Constitution; ch. 4, Women in the Constitution; ch. 5, Rights and Citizenship; ch. 6, Timeline.

Week 11, Thur., Nov. 16 – Tues., Nov. 21. The Constitution, Rights, and Political Parties

- Course Pack Module 11: ch. 1, The Federalist-Antifederalist Debates; ch. 2, Amendments: The Bill of Rights; ch. 3, Politics and Sedition; ch. 4, Freedom and Sedition.

Midterm Essay Due: Tues., Nov. 21.

Thanksgiving Break, Nov. 23 – 26.

Week 12, Tue., Nov. 28 – Thur., Nov. 30. Expansion, the Judiciary, & Nullification

- Course Pack Module 12: ch. 1, The Federal Judiciary; ch. 2, Judicial Review and the Economy; ch. 3, Federal Authority and the Economy; ch. 4, The Nullification Crisis.
- Finkelman, *Dred Scott*, Part I, pp. 1-19.

Week 13, Tues., Dec. 5 – Thur., Dec. 7. Indian Removal, Women's Rights, & Slavery to 1860

- Course Pack Module 13: ch. 1, Indian Removal; ch. 2, Biological Racism; ch. 3, Women's Rights; ch. 4, Antebellum Slavery.
- Finkelman, *Dred Scott*, Part I, pp. 20-48.

Week 14, Tues., Dec. 12. The *Dred Scott* Case and the Civil War.

- Course Pack Module 14: ch. 1, Secession and Civil War; ch. 2, A New Birth of Freedom.
- Finkelman, *Dred Scott*, Part II, pp. 55-76 (Taney); 106-124 (Curtis); 166-78 (Douglass); and pp. 197-99 (Lincoln).

Final Exam: Wed., Dec. 20, 7:45 – 9:45 am.