

Legal Studies/History 261

American Legal History to the 1860s, Fall 2018: Syllabus for Online Course (Draft, Aug. 29)

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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.

Credit Hours: This is a 3-Credit-Hour Course. The credit standard for this course is met by an expectation of a total of 135 hours of student engagement with the course learning activities (at least 45 hours per credit), which include reading, writing, discussions, quizzes, and other student work as described in the syllabus. Over the semester, which consists of fourteen weeks, this means students should expect to spend about 10 hours per week on this class.

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 at least 75% of the quizzes and discussions. Grades will be determined as follows:

<u>Item</u>	<u>% of grade</u>	<u>course points</u>
Discussion:	16	80
Quizzes	16	80
Short Essay (1)	8	40
<u>Midterm and final essays (3)</u>	<u>60 (20 each)</u>	<u>300 (100 each)</u>
Total:	100	500

Past-Due Guidelines: 1) valid excuses for any late or missed assignments are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your scheduling conflicts by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family. 2) In cases of missed deadlines for quizzes, discussions, and paper due-dates, you should inform me of your absence in advance if at all possible. Missing these deadlines without prior notice to me may result in a failing grade for that assessment.

Participation in and Assessment of Online Discussions: The class will be divided into small discussion section of approximately 5-8 students each. There will be online discussions every week, and all students are expected to make regular, thoughtful contributions to their group's discussion. I assess participation qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester.

Quality of Participation: When making contributions to the discussion, 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.

Quizzes: There will be quizzes every week, consisting of multiple choice or true/false questions.

Essays: There will be four essays, one short one of 2-3 pages near the beginning of the semester, and three other, longer ones, of 4-6 pages each. All the essays focus on the assigned readings, videos, and other course materials. 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](#).

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. 19. 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.

Reading Assignments: The reading load for this class is moderate in terms of pages numbers: in print the total weekly reading averages about 50-60 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 or module, 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 more general secondary sources (texts written recently), such as Yirush and Foner. Then proceed to the more focused secondary sources, including the introductions in Canvas or in the book by Finkelman. Finally, go on to the primary sources: (texts written during the period you are studying), including laws, cases, constitutional debates, etc.; most of these are on Canvas or in Finkelman. The primary sources are the most important and the most challenging readings, and these will often be the focus of the discussions.

Required Books (3): You need to acquire the books listed below, making sure that you have easy access to them during the week in which they are assigned. They are listed here in the order in which they will be assigned. You should get the books in the editions specified here (though for the Finkelman book, either the 1st or 2nd edition is fine). But 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.

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.

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

SCHEDULE

***Note:** The class is organized by week. On the Canvas course website these weekly units are called Modules. Most weeks or modules will begin on Tuesday, at 8 am, and run through the following Monday, at midnight (11:59 pm), both U.S. Central Time. However, some modules will be slightly different, including Module 1 (which starts on Wed., Sept. 5, the first day of Fall classes) and the last two modules.

Week/Module 1, Wed., Sept. 5 – Mon., Sept. 10. Introduction: Human Equality and the Medieval Origins of Anglo-American Law.

Module 1 readings: ch. 1, “Sources of Western Law;” and ch. 2, “British History,” parts 1-5; and ch. 3, Hoffer, *The English Legal Tradition* (ch. 1, pp. 1-10).

Week/Module 2, Tues., Sept. 11 – Mon., Sept. 17. Britain to the Glorious Revolution; Early Colonies.

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

Module 2 readings: ch. 1, Early Colonial Charters and Law (Hoffer, ch. 1-2, pp. 10-30; 51-53); ch. 2, Early Colonial Charters, Selections; ch. 3, Glorious Revolution; and “Timeline” (to 1700).

Week/Module 3, Tues., Sept. 18 – Mon., Sept. 24. Colonial Law & Society.

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

Yirush, *Settlers, Liberty, and Empire*, ch. 7, pp. 183-200.

Module 3 readings: ch. 1, “Early Colonial Laws;” review “Timeline” (to ca. 1700).

Mon., Sept. 24: Short Essay Due.

Week/Module 4, Tues., Sept. 25 – Mon., Oct. 1. Anglo-American Political Culture and Colonial Expansion.

Yirush, *Settlers, Liberty, and Empire*, ch. 7, pp. 204-14; ch. 8, pp. 215-33.

Module 4 readings: ch. 1, Hoffer, pp. 40-43; ch. 2, “Colonial Debates;” ch. 3, Locke, “Second Treatise.”

Week/Module 5, Tues., Oct. 2 – Mon., Oct. 8. The American Revolution.

Foner, *American Freedom*, ch. 1, pp. 12-16.

Yirush, *Settlers, Liberty, and Empire*, ch. 8, pp. 233-43, 248-59.

Module 5 readings: ch. 1, Pauline Maier, *American Scripture*, pp. 105-23; ch. 2, “Towards Rebellion;” review “Timeline” (to 1776); and ch. 3, “The Declaration of Independence.”

Week/Module 6, Tues., Oct. 9 – Mon., Oct. 15. The Declaration of Independence & Revolution.

Yirush, *Settlers, Liberty, and Empire*, finish ch. 8 & conclusion, pp. 259-70.

Module 6 readings, ch. 1, Pauline Maier, *American Scripture*, pp. 123-43; the Declaration of Independence: from Jefferson to Congress.

First Midterm Essay Due: Mon., Oct. 15.

Week/Module 7, Tues., Oct. 16 – Mon., Oct. 22. The Enlightenment and the Idea of Equality.

Module 7 readings: ch. 1, Hoffer, pp. 121-26; ch. 2, servitude; ch. 3, “Women under Coverture;” ch. 4, Lynn Hunt, *Human Rights*, intro, pp. 15-31, 108-26.

Week/Module 8, Tues., Oct. 23 – Mon., Oct. 29. Ideas & Interests in the Constitution.

Foner, *American Freedom*, finish ch. 1, pp. 12-28.

Module 8 readings: ch. 1, “The Poor;” ch. 2, “Indentured Servants (Jensen 481-6);” and ch. 3, “Women,” part II (coverture).

Week/Module 9, Tues., Oct. 30 – Mon., Nov. 5. Declaring Rights and Debating the Constitution.

Module 9 readings: ch. 1, Articles of Confederation; ch. 2, the Constitutional Debates in Philadelphia; ch. 3, the Constitution; ch. 4, Changes in Women's law after the Revolution; and ch. 5, Keyssar, *Right to Vote*, pp. 1-7, 20-21; tables A.1, A.3, & A.5.

Week/Module 10, Tues., Nov. 6 – Mon., Nov. 12. Slavery, Citizenship, and the Constitution.

Foner, *American Freedom*, ch. 2, pp. 29-45.

Module 10 readings: ch. 1, Dahl, *How Democratic is the American Constitution?*, pp. 7-23, 179-83; ch. 2, essay by Jan Lewis; and ch. 3, Slave law.

Week/Module 11, Tues., Nov. 13 – Mon., Nov. 19. Rights, Democracy, and Citizenship

Module 11 readings: ch. 1, Founding Era texts (George Mason, doc. 2, 81-83); Sedition Act, 1798; Virginia & Kentucky Resolutions, 1798-99 (docs. 4-5); ch. 2, essay by L. Levy; ch. 3, "Women" (parts III-IV); and "Timeline" (to 1800).

Essay Due: Thur., Nov. 19.

Thanksgiving Break, Nov. 22-25.

Week/Module 12, Tues., Nov. 20 – Mon., Dec. 3. Expansion and Race in the Jacksonian Era

Foner, *American Freedom*, ch. 3, pp. 47-68; and ch. 4, pp. 69-79.

Module 12 readings: ch. 1, A. Hamilton, Federalist 78; ch. 2, Marbury v. Madison (doc. 4); ch. 3, McCulloch v. Maryland (doc. 6); Jackson's Veto of the Bank Bill (doc. 7); and ch. 4, Calhoun's Theory of Nullification (doc. 1); Jackson on Indian Removal (doc. 2); Worcester v. Georgia (doc. 4).

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

Week/Module 13, Tues., Dec. 4 – Wed., Dec. 12. The *Dred Scott* Case and the Civil War.

Foner, *American Freedom*, ch. 4, pp. 79-94; and ch. 5, pp. 95-113.

Module 13 readings: ch. 1, "Antebellum Period;" ch. 2, Frederick Douglass (doc. 1); ch. 3, the Confederacy (doc. 3); ch. 4, Lincoln's First Inaugural (doc. 4); and ch. 5, Emancipation Proclamation (doc. 6)).

Finkelman, *Dred Scott*, Part II, pp. 55-76 (Taney); 106-124 (Curtis); 166-78 (Douglass); and pp. 197-99 (Lincoln).

Final Essay Due: Dec. 16.