

Legal Studies/History 261: Syllabus

American Legal History to the 1860s, Fall 2014

(revised June 30, 2014)

Social Sciences 4308, Tues.-Thur., 9:30 — 10:45 am

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Office Hours: 7131 Soc Sci, Tues.-Thur., 11:00 am - 12:00 pm, and by appointment.

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.

Grades: will be 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:

Attendance and participation:	20%
Midterm exam:	20%
Essay:	30%
Final exam:	30%

Attendance: You are allowed TWO ‘free’ absences, which will not impact your grade. You do not earn points just for attending class, as this is expected, but after the two allowed absences, each additional absence may negatively impact your grade. More than SIX absences constitute grounds for failing the course. Valid excuses are limited to absences for university-recognized religious observances (concerning which you should inform me within the first two weeks of class), participation by team members in university-sponsored athletic or similar excursions, and for well-documented major illnesses or emergencies in the immediate family.

Participation: will demonstrate your engagement with and understanding of the course materials—and it will make class discussion more enjoyable. Everyone should try to speak, and I will also try to call on students who do not seize the opportunity to speak up frequently. But quality of contribution counts more than quantity. Quality contributions are clear and precise, while showing that you have understood the readings and that you are asking critical questions about them (for this kind of question, see the writing guide by Patrick Rael linked from the History Department’s “Writing History” page, available at: <http://www.bowdoin.edu/writing-guides/>, sections 3c and 3d, on “How to Ask Good Questions,” and “What makes a Question Good?”). Good class participation also means that you listen to others and try to engage seriously but respectfully in the lively conversation that we hope to generate.

Computers and Electronic Devices: Due to the potential for distraction, these devices may NOT be used in class and must be turned completely off. Exceptions will be made only for those students who have a medical need to type their notes.

Reading Notes: You should always read each weekly assignment carefully, take notes, and prepare a short summary of, response to, and critical questions provoked by the readings as a basis for class discussion (1-2 pages, handwritten or typed). Normally I will not collect these, but if you are having trouble, going over your notes together is the best first step in making improvements. Such notes are also

very helpful to prepare for class discussions, exams, and papers.

Quizzes and Homework Assignments: To help reinforce what you are learning from the readings, there may be occasional quizzes or short homework assignments (usually of one page or less). I will assess these exercises subjectively and approximately (usually with a check/check-plus/check-minus) as an indication of the quality of your participation. However, they will not receive numerical grades and thus will not be used in any mathematical way to determine your grade.

Essay: This will be one 6-8 page essay focusing 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.

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. As the UW website explains, "plagiarism means presenting the words or ideas of others without giving credit. You should know the principles of plagiarism and the correct rules for citing sources..." For this quotation and more information, see: <http://students.wisc.edu/saja/misconduct/UWS14.html#overview>. As this website notes, if you are unsure about the proper ways to give credit to sources, ask your instructor or consult the Writing Center, at 6171 Helen C. White Hall (phone: 608/263-1992, e-mail: writing@wisc.edu). For a copy of their handout 'Acknowledging, Paraphrasing, and Quoting Sources,' please download: http://writing.wisc.edu/Handbook/Acknowledging_Sources.pdf.

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Sept. 11. 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.

Required Books: You need to acquire the Course Pack and the five 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/>. The books, which you should get in the editions specified here, 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 LS/Hist 261*. UW, 2014.

Yirush, Craig. *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775*. New York: Cambridge University Press, 2011.

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

Hunt, Lynn. *Inventing Human Rights: A History*. New York: W. W. Norton & Co., 2007.

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*. New York: Bedford/ St. Martin's, 1997.

Reading Assignments: you should read each week's assignments in the order they are listed on the syllabus and finish all of them by Tuesday's class. This will enable you to make connections among the readings and to use class time to review, clarify, and ask questions about the week's material. For most weeks the primary source readings (e.g. in the Course Pack, in Hall & Huebner, and in Finkelman) are listed last, and we will often reserve time in Thursday's class to discuss them.

SCHEDULE

- Week 1, Sept. 2-4. Introduction. The English Background I: Magna Carta & Limited Monarchy.
Course Pack, intro, p. 1; & ch. 1: Early English Law (10 pages). If you have not picked up the Course Pack yet, you may consult the full text of the Magna Carta at:
<http://avalon.law.yale.edu/medieval/magframe.asp>
- Week 2, Sept. 9-11. The English Background II: Stuart Crisis & Early Colonies.
Yirush, *Settlers, Liberty, and Empire*, Introduction, pp. 1-21; ch. 1, pp. 29-50.
Course Pack, intro, pp. 2-4; & ch. 2: Early Colonial Charters & Laws (11 pp.).
- Week 3, Sept. 16-18. The Glorious Revolution in England and America.
Yirush, *Settlers, Liberty, and Empire*, ch. 2, pp. 51-80; ch. 3, pp. 83-95, 110-112.
Course Pack, intro, p. 5; ch. 3, Glorious Revolution (4 pp.); & ch. 4, Royal Centralization (5 pp.).
- Week 4, Sept. 23-25. Anglo-American Political Culture and Colonial Expansion.
Foner, *American Freedom*, begin ch. 1, pp. 3-12.
Yirush, *Settlers, Liberty, and Empire*, ch. 4, pp. 113-41; and ch. 7, pp. 183-95; 204-212.
Course Pack, ch. 5, Locke, 2nd Treatise (9 pp.); begin ch. 6, Prelude to Revolution, part I, pp. 1-3.
- Week 5, Sept. 30 - Oct. 2. The Imperial Crisis and the Coming of the American Revolution.
Yirush, *Settlers, Liberty, and Empire*, ch. 8 & Conclusion, pp. 215-270.
Course Pack, finish ch. 6, Prelude to Revolution, pp. 4-8.
- Week 6, Oct. 7-9. The Enlightenment and the Idea of Equality.
Midterm Exam: Oct. 7.
Hunt, *Human Rights*, introduction and ch. 1, pp. 15-50; 57-69.
Course Pack, ch. 8: Women in Early America, part I, pp. 1-4.
- Week 7, Oct. 14-16. The Revolutionary Era: Ideas & Interests in the Constitution.
Hunt, *Human Rights*, ch. 2, pp. 70-83; 108-112.
Foner, *American Freedom*, finish ch. 1, pp. 12-28.
Hall & Huebner, *ACH*, ch. 1, pp. 1-18 (Nedelsky; Semonche; & beginning of Kramer essay).
Course Pack, ch. 7: Lower Classes (7 pp.).
- Week 8, Oct. 21-23. Declaring Rights and Debating the Constitution.
Hunt, *Human Rights*, ch. 3, pp. 113-35.
Hall & Huebner, *ACH*, ch. 2, pp. 30-56 (docs. 4-8 are most important); & App. 1, pp. 557-67.
Course Pack, ch. 8, Women, part II-III, pp. 4-8.
- Week 9, Oct. 28-30. Slavery, Citizenship, and the Constitution.
Hunt, *Human Rights*, ch. 4, pp. 146-75.
Hall & Huebner, *ACH*, ch. 2, pp. 57-74; & App. 1, pp. 557-67.
Course Pack, ch. 7: Lower Classes (7 pp.).

Week 10, Nov. 4-6. Rights, Democracy, and Citizenship in the New Nation

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

Hall & Huebner, *ACH*, ch. 3, pp. 76-83 (through doc. 2); 87-91 (docs. 4-5); & 94-109.

Course Pack, ch. 8, Women, parts III-IV, pp. 7-10.

Week 11, Nov. 11-13. Economic Growth, Law, and the Supreme Court.

Foner, *American Freedom*, ch. 3, pp. 47-58.

Hall & Huebner, *ACH*, ch. 4, pp. 110-116 (through doc. 1); 118-126 (docs. 3-4); & 130-44 (docs. 6-7 & Kramer essay).

Essay Due: Nov. 11.

Week 12, Nov. 18-20. Expansion and Race in the Jacksonian Era.

Hunt, *Human Rights*, ch. 5, pp. 176-96.

Foner, *American Freedom*, ch. 3, pp. 58-68.

Hall & Huebner, *ACH*, ch. 5, pp. 157-177 (docs. 1-6).

Week 13, Nov. 25. Slavery and the Constitution.

Finkelman, *Dred Scott*, Part I, pp. 1-52.

Thanksgiving Break, Nov. 27-30.

Week 14, Dec. 2-4. The *Dred Scott* Decision and the Confederacy's Secession.

Foner, *American Freedom*, ch. 4, pp. 69-94.

Finkelman, *Dred Scott*, Part II, ch. 1, "Opinions," pp. 55-77 (Taney); & 108-126 (Curtis).

Hall & Huebner, *ACH*, ch. 1, pp. 17-25 (Kramer essay); ch. 6, pp. 192-196 (through doc. 1).

Week 15, Dec. 9-11. Civil War and Reconstruction: A Constitutional Revolution.

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

Finkelman, *Dred Scott*, Part II, ch. 3, "Debate," pp. 169-82 (Douglass); & 201-04 (Lincoln).

Hall & Huebner, *ACH*, ch. 6, pp. 201-207 (docs. 3-4); pp. 211-212 (doc. 6); & pp. 222-227 (McPherson essay).

Final Exam: Tuesday, Dec. 16, 2:45 – 4:45 pm.