

The History of American Legal Education
Scalia Law School | George Mason University
Spring 2024
LAW 340 | CRN 23449 | SEC 001
2 credit hours
Arlington Campus
Thursday 4:00 p.m. – 6:00 p.m.

Instructor: Distinguished Visiting Professor Daniel W. Hamilton

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Office Hours: Tuesdays and Thursdays from 2-4 pm or by appointment. My office is in Hazel Hall, Room 311.

Course Overview: How should lawyers be trained to become lawyers? Should new lawyers be trained primarily by practicing lawyers? As undergraduates? Or should there be law schools as part of a separate three-year training after college? Should students learn primarily how to practice law or how to “think like a lawyer?” From the 17th to the 21st century, American lawyers have been trained in an astonishing variety of ways. This course will study how lawyers became lawyers over the centuries and up until the present. The training of lawyers is particularly important given the central role of law and lawyers in American social, political, and economic life. Particular attention will be paid to the creation of the American law school in the 19th century, to the codification movement of the 19th century, to comparative ways of training lawyers around the world, and to modern controversies over law school admissions, how students pay for law school, and entrance requirements to join the profession. The course will rely on primary historical sources and secondary materials. Students will write a paper and the course will rely on extensive class discussion.

Learning objectives for the course include:

- Students will deepen their knowledge of the development of American law and legal education.
- Students will understand the interactions between social and political history and changes in American law schools.
- Students will gain an appreciation for comparative methodologies of legal education.
- Students will be able to communicate their knowledge about this subject orally and in writing.

Required Text: The following is a required textbook for the course:

Stevens, Robert, Law School: Legal Education in America from the 1850s to the 1980s (Chapel Hill: The University of North Carolina Press, 1st ed. 1983)

There will also be a law review or journal article assigned on a weekly basis. These will be available on the TWEN course page.

Class Format: The class meets on the Arlington Campus from 4:00 p.m. to 6:00 p.m. on Thursdays. Please read all of the assigned material and be prepared for active class discussion. I will rely on volunteers and may call on students who aren't volunteering regularly.

Communication Policy: In addition to office hours, I'm glad to meet with you to discuss potential topics for your final paper, to talk about potential sources, and to read and respond to your drafts or partial drafts. I'm also glad to respond to student emails within 24 hours. You should also feel free to email me on nights and weekends.

Attendance: Students are expected to attend class. Per the law school's attendance policy, a student is not eligible to receive credit for a class if they miss more than 20 percent of the class sessions. For a class like this, that meets once a week, this means a student may not miss more than three classes.

Grading: The grade in this course will be based 80% on the final paper and 20% on class participation. It is important that student do the reading for each assignment and be prepared to discuss on a weekly basis.

The law school's Academic Regulation 3-3.2(b) states that "[s]tudents who are not enrolled in a specialty track must take one graded 400- or 600-level seminar course requiring a major paper, and must also complete either an additional such seminar or a course designated as a writing course." The History of American Legal Education is a 300-level seminar course requiring a major paper. The final paper must be between 20-30 double-spaced, typewritten pages, footnotes included. The topic must be approved in advance by me before the end of day on March 1, 2024. Please schedule an appointment with me to talk about your paper topics before then. The final paper is due by end of day on April 22, 2024. Please note that, per law school policy, the professor cannot grant deadline extensions for final papers; requests must be submitted to the Director of Student Academic Affairs.

Student with Disabilities: Students with disabilities may request academic accommodations as provided by federal law. Please contact George Mason University's Office of Disability Services (ODS) to request services (ods@gmu.edu, 703-993-2474).

Campus Closure or Emergency Class Cancellation/Adjustment Policy: If the campus closes, or if a class meeting needs to be canceled or adjusted due to weather or other concern, students will be contacted by email for updates on how to continue learning and for information about any changes to events or assignments.

COURSE OUTLINE

1. Jan. 18 — Legal Education in the West: From Justinian to the University of Bologna, to British Inns of Court, to the Napoleonic Code, to the Early American Experience
2. Jan. 25 — The Litchfield Law School, Blackstone's Commentaries, Chancellor Kent, and Abraham Lincoln
3. Feb. 1 — What Should Be Taught in Law School I: Legal Science, Christopher Columbus Langdell, Oliver Wendell Holmes, and the Creation of the Academic Law School
4. Feb. 8 — What Should Be Taught in Law School II: Formalism, Realism, Legal Process School, Critical Legal Studies, and Law & Economics
5. Feb. 15 — What Should Be Taught in Law School III: The Common Law, Skills Training, Practice-Ready (SHOULD THIS BE "PRACTICE READINESS" ...?)
6. Feb. 22 — Law School Transformed: Gender, Race, and Student Demographics
7. Feb. 29 — The Student Experience

SPRING RECESS MARCH 4 – 10

8. March 14 — The American Bar Association, the American Law Institute, and the Regulation of Legal Education
9. March 21 — A History of Law School Admissions I: Debates Over Affirmative Action and Legal Education
10. March 28 — A History of Law School Admissions II: The Future of the LSAT, the Bar Exam, and Financial Aid in American Legal Education
11. April 4 — Legal Education and Technology
12. April 11 — Law School Accreditation and Law School Rankings
13. April 18 — Comparative Legal Education Around the World and Alternative Methods of Examination and Licensing

CLASS 1 (Jan. 18): Legal Education in the West: From Justinian to the University of Bologna, to British Inns of Court, to the Napoleonic Code, to the Early American Experience

Reading Assignment:

- [Robert Stevens, *Two Cheers for 1870: The American Law School, Perspectives in American History* 406 \(1971\).](#)

Note: This is a link to a document on the TWEN course page. After clicking the link, you'll need to log in to TWEN to access the article.

CLASS 2 (Jan. 25): The Litchfield Law School, Blackstone's Commentaries, Chancellor Kent, and Abraham Lincoln

Reading Assignments:

- [John H. Langbein, *Chancellor Kent and the History of Legal Literature*, 93 Colum. L. Rev. 547, \(1993\).](#)
- [Daniel R. Coquillette, *American Legal Education: Where Did We Come From? Where Are We Going?* The Bar Examiner, June 2013, at 44.](#)

CLASS 3 (Feb. 1): What Should Be Taught in Law School I: Legal Science, Christopher Columbus Langdell, Oliver Wendell Holmes, and the Creation of the Academic Law School

Reading Assignments:

- [Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. Pitt. L. Rev. 1 \(1983\).](#)
Note: This is a link to a document on the TWEN course page. After clicking the link, you'll need to log in to TWEN to access the article.
- [William P. LaPiana, *Victorian from Beacon Hill: Oliver Wendell Holmes's Early Legal Scholarship*, 90 Colum. L. Rev. 809 \(April 1990\)](#)

CLASS 5 (Feb. 8): What Should Be Taught in Law School II: Formalism, Realism, Legal Process School, Critical Legal Studies, and Law & Economics

Reading Assignments:

- [John H. Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. Legal Educ. 311 \(1985\).](#)
- [Robert W. Gordon, *The Schlegelians v. the Langdellians on Legal Education*, 69 Buff. L. Rev. 87 \(2021\).](#)

CLASS 6 (Feb. 15): What Should Be Taught in Law School III: The Common Law, Skills Training, Becoming Practice-Ready

Reading Assignments:

- [John O. Sonsteng, Donna Ward, Colleen Bruce, and Michael Petersen, *A Legal Education Renaissance: A Practical Approach for the Twenty-first Century*, 34 Wm. Mitchell L. Rev. 302 \(2007\).](#)

CLASS 7 (Feb. 22): Law School Transformed: Gender, Race, and Student Demographics

Reading Assignments:

- [Elizabeth D. Katz, Kyle Rozema, and Sarath Sanga, *Women in U.S. Law Schools, 1948-2021*, 15 *Journal of Legal Analysis* 48 \(2023\).](#)
- [William P. LaPiana, *Merit and Diversity: The Origins of the Law School Admissions Test*, 48 *St. Louis U. L.J.* 955 \(2003-2004\).](#)
- [Ruth Bader Ginsburg, *Women's Work: The Place of Women in Law Schools*, 32 *J. Legal Ed.* 272 \(1982\).](#)

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CLASS 8 (Feb. 29): The Student Experience

Reading Assignments:

- [Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *The Politics of Law: A Progressive Critique* 38 \(David Kairys ed., 1982\)](#)
- [Louis D. Billionis, *Law School Leadership and Leadership Development for Developing Lawyers*, 58 *Santa Clara L. Rev.* 601 \(2019\).](#)

CLASS 9 (March 14): The American Bar Association, the American Law Institute, and the Regulation of Legal Education

Reading Assignments:

- [Roy Stuckey and Others, *Best Practices for Legal Education*, 1st ed. \(2007\).](#)
- [Jonathan Rose, *MacCrate Report: A Restatement of Legal Education - The Need for Reflection and Horse Sense*, 44 *J. Legal Educ.* 548 \(1994\).](#)
- MacRate Report – Executive summary (to be provided)

CLASS 10 (March 21): A History of Law School Admissions I: Debates Over Affirmative Action and Legal Education

Reading Assignments:

- [Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 *Stanford L. Rev.* 367 \(2004\).](#)
- [Angela Onwuachi-Willig & Kevin Johnson, *Cry Me A River: The Limits of 'A Systemic Analysis of Affirmative Action in American Law Schools'*, 7 *Berkeley Journal of African American Law and Policy* 1 \(2005\).](#)

CLASS 11 (March 28): A History of Law School Admissions II: The Future of the LSAT, the Bar Exam, and Financial Aid in American Legal Education

Reading Assignments:

- [Hon. Randall T. Shepard, *The Problem of Law School Discounting—How Do We Sustain Equal Opportunity in the Profession?* 50 *Ind. L. Rev.* 1 \(2016\).](#)

CLASS 12 (April 4): Legal Education and Technology

Reading Assignments:

- [Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 *Conn. L. Rev.* 3 \(2020\).](#)

CLASS 13 (April 11): Law School Accreditation and Law School Rankings

Reading Assignments:

- [David A. Thomas, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 Hous. L. Rev. 419 \(2003\).](#)
- [Mitchell Berger, *Why the "U.S. News and World Report" Law School Rankings Are Both Useful and Important*, 51 J. Legal Educ. 487 \(2001\).](#)

Note: This is a link to a document on the TWEN course page. After clicking the link, you'll need to log in to TWEN to access the article.

CLASS 14 (April 18): Comparative Legal Education Around the World and Alternative Methods of Examination and Licensing

Reading Assignments:

- [Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 Loy. L.A. Int'l & Comp. L. Rev. 601 \(1991\).](#)
- [John Flood, *Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation*, University of Westminster School of Law Report for the Legal Services Board.](#)