

Communication(s): dhamil2@gmu.edu

Office Hours: Mondays and Wednesdays from 2-4 pm or by appointment.

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

1. Kermit L. Hall, Paul Finkelman and James W. Ely, American Legal History: Cases and Materials (New York: Oxford University Press, 5th ed. 2017)
2. I will also post supplemental readings on TWEN. Please be sure to check the course page on TWEN at least once a week.

Helpful Texts: This seminar assumes some general knowledge of the basic events and interpretations of American history but does not assume that everyone taking it was an undergraduate history major. Some helpful texts for those who want to brush up on their U.S. history and legal history are listed below.

1. The class survey of the field remains Lawrence M. Friedman, *History of American Law*. Among other things, it has a wonderful index. Friedman's book works best as a guide to an older generation of literature.
2. For other excellent survey accounts of legal history, consult Kermit Hall, *The Magic Mirror: Law in American History*, and Melvin I. Urofsky and Paul Finkelman, *The March of Liberty: A Constitutional History of the United States*.
3. If you want help with American history, consult Eric Foner, *The Story of American Freedom*.
4. I'm also happy to suggest additional readings for those who have a special interest in particular topics.

Class Format: The class meets on the Arlington Campus from 4:00 p.m. – 5:25 p.m. on Tuesdays and 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.

COURSE DESCRIPTION

This seminar will explore the development of American law and legal thought from the founding of the United States through the Warren Court. Topics include the Revolution and the creation of the Constitution, the law of slavery, the Civil War and Reconstruction, race and the law, immigration and industrialization, the challenge of Progressivism, the Red Scare, gender, legal realism, the New Deal, World War II and the Civil Rights movement. We will consider the way changes in American social and political life helped drive legal change, and also how changes in legal doctrine and legal thought helped shape American history. Substantial time will be devoted to discussing alternative historical methodologies and competing interpretations of legal history. Throughout, we will be concerned with the ways law, legal institutions and legal thought both reflect social and political change, and also create change in American history. The seminar will rely on primary sources and secondary materials that help highlight different historical interpretations and schools of thought. Students will write a seminar paper and the course will rely on extensive class discussion.

COURSE OBJECTIVES

Learning objectives for the course include:

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

GRADING & PARTICIPATION

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.” American Legal History Seminar is a 600-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 7, 2025. 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 28, 2025. 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 SCHEDULE & ASSIGNED READINGS

CLASS 1 (Jan. 16) Popular Sovereignty, Natural Law and the Legitimacy of American Independence

Readings: Hall, *American Legal History*

Ch. 1 pp. 14-15, 40-41, 41-42

Ch. 2, pp.82-84, 86-87, 88-89, 89-90, 90-91, 91-92, 92-95, 96-97, 97-99, 104-

107

John Winthrop, “A Model of Christian Charity” (1629)

The Sources of Law in America

Note: “Reception of the Common Law”

Note: “Law in a Republican Revolution”

James Otis, “The Rights of the British Colonies” (1764)

William Blackstone, “The Imperial Constitution” (1765)

The Declaratory Act (1766)

The Declaration and Resolves of the Continental Congress (1774)

Tom Paine, “Common Sense” (1776)

The Declaration of Independence (1776)

The Virginia Declaration of Rights (1776)

Anonymous, “The People the Best Governors” (1776)

CLASS 2 (Jan. 21): Popular Sovereignty, Natural Law and the Legitimacy of American Independence Part 2

Supplemental readings

CLASS 3 (Jan. 23): Creating a National Constitution: The ‘Repudiation of 1776’

Readings: Hall, *American Legal History*

Ch. 2 pp.111-112, 112-113, 113-120, 120-121, 711-726

Note, “Republican National Constitutionalism”

The Articles of Confederation (1781)

The Philadelphia Convention (1787)

Elbridge Gerry, “Report on the Constitution: (1787)

Appendix: The Constitution of the United States

CLASS 4 (Jan. 28): Creating a National Constitution Part 2

Supplemental readings

CLASS 5 (Jan. 30): Property, Contract and Justice Marshall: Law and the Market Revolution

Readings: Hall, *American Legal History*

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Ch. 3, pp. 151-155, 158-162, 162-167, 175-179, 179-185

Note: “The Active State and the Mixed Economy”

Gibbons v. Ogden, 11 U.S. 1 (1824)

McCulloch v. Maryland, 17 U.S. 316 (1819)

Dartmouth College v. Woodward, 17 U.S. 518 (1819)

Charles River Bridge Company v. Warren Bridge, 36 U.S. 429 (1837)

CLASS 6 (Feb. 4): Gender, Marriage and Family Law in Antebellum America

Readings: Hall, *American Legal History*

Ch. 5 pp. 322, 322-324, 324-326, 328-332, 326-327, 340-342, 342-343

Note: “Gender and Domestic Relations”

The Seneca Falls Declaration of Sentiments (1848)

The New York Married Women’s Property Acts (1848)

Minor v. Happersett, 88 U.S. 162 (1875)

Bradwell v. Illinois (1873)

Birth Control and Abortion, State v. Slagle and Note (1880)

People v. Sanger (1918)

CLASS 7 (Feb. 6): Gender, Marriage and Family Law Part 2

Supplemental readings

CLASS 8 (Feb. 11): The Law of Slavery

Readings: Hall, *American Legal History*

Ch. 4 pp. 227-230, 236-238, 238-242, 242-248, 222-225, 248-249

State v. Mann, 2 Devereux 263 (N.C. 1829), pp. 227-230

Note: “Slavery and the Constitution,” pp. 236-242

Prigg v. Pennsylvania 41 U.S. 539 (1842), pp. 238-242

Dred Scott v. Sandford 60 U.S. 393 (1857), pp. 242-248

Slavery, the Civil War, Reconstruction, and Segregation, pp. 222-225

Abraham Lincoln’s “House Divided” Speech (June 16, 1858), pp. 248-249

CLASS 9 (Feb. 13): The Law of Slavery Part 2

Supplemental readings

CLASS 10 (Feb. 18): The Civil War and the Second American Revolution

Readings: Hall, *American Legal History*

Ch. 4 pp. 250, 250-252, 252-257, 258-260, 260-263, 264, 265-266

Note: “Nullification, Secession and Constitutional Theory”

South Carolina Ordinance of Nullification (1832)

President Jackson's Proclamation Regarding Nullification

“Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina” (1860)

Abraham Lincoln: First Inaugural Address (1861)

Abraham Lincoln: The Emancipation Proclamation (1863)

Abraham Lincoln: Second Inaugural Address (1865)

[The Gettysburg Address](#) (not in the case book but available via this link)

CLASS 11 (Feb. 20): The Success and Failure of Reconstruction

Readings: Hall, *American Legal History*

Ch. 4 pp. 266-267, 269-270, 271-272, 273, 274-275, 275-279, 279, 279-281, 281-282, 284-286, 286, 286-287

Reconstruction and Its Aftermath: Political Change, Black Freedom, and the Nadir of Black Rights

Note: “The Courts and the Politics of Reconstruction”

The Mississippi Black Codes (1865)

“An Act to Protect All Persons in the United States” (1866)

“Notes” ending with “The End of Civil Rights”

The Slaughterhouse Cases (1873)

Note: *The Slaughterhouse Legacy*

Note: *Civil Rights Cases*, 109 U.S. 3 (1883)

Note: Responses to the Civil Rights Cases

Roberts v. The City of Boston (1850)

Note: The Response to *Roberts*

Note: Free Blacks and the Law

Please also read Amendments 13, 14, and 15.

CLASS 12 (Feb. 25): The Success and Failure of Reconstruction Part 2

Supplemental readings

CLASS 13 (Feb. 27): Race, Labor and Citizenship in Industrial America

Readings: Hall, *American Legal History*

Ch. 5 pp. 292-296, 296-299, 299, 303-306, 306, 319-322, 336-338

Ch. 4 pp. 287-291, 291

Nineteenth-Century Law and Society (1800-1900), including sections on Race and Native Americans

Cherokee Nation v. Georgia (1831)

Note: The Federal Government and Native Americans

Yick Wo v. Hopkins 118 U.S. 356 (1886)

Note: “The Chinese and Jim Crow”

California ex rel. M. M. Kimberly v. Pablo de la Guerra (1870)

Reynolds v. United States (1879)

Plessy v. Ferguson, 163 U.S. 537 (1896)

Note: “Separate But Equal in the North”

CLASS 14 (Mar. 4): The *Lochner* Court and the Challenge of Progressivism

Readings: Hall, *American Legal History*

Ch. 6 pp. 388-389, 389-391, 391-392, 402-405, 414-417, 417-419, 384-386

Note: “Federal Regulation and the Public Interest”

The Interstate Commerce Act (1887)

The Sherman Anti-trust Act (1890)

Munn v. Illinois (1877)

Lochner v. New York 198 U.S. 45 (1905)

Muller v. Oregon 208 U.S. 412 (1908)

Ives v. South Buffalo Railway Co. 201 N.Y. 271 (1911)

CLASS 15 (Mar. 6): Red Scare: Civil Liberties, Criminal Justice and the Great War

Readings: Hall, *American Legal History*

Ch. 7 pp. 423-425, 425-429, 429-431, 431-432, 433-434, 434-437, 437-439, 439-441

Note: “Individual Rights in a Changing Culture”

Brandeis & Warren, “The Right to Privacy”

Note: “World War I and Civil Liberties”

Murphy, “World War I and the Origins of Civil Liberties”

Schenk v. U.S. (1919)

Abrams v. U.S. (1919)

Note: “Radicals and Civil Liberties”

Whitney v. California (1927)

CLASS 16 (Mar. 18): Langdell and the Case Method

Supplemental readings

CLASS 17 (Mar. 20): Legal Realism

Readings: Hall, *American Legal History*

Ch. 6 pp.367-368, 369, 373-375

Ch. 8 pp. 477-479, 482-484, 484

Christopher C. Langdell, “A Selection of Cases on the Law of Contracts” (1871)

Note: Critics of Langdellian Assumptions

Oliver Wendell Holmes, “The Path of the Law” (1897)

Louis Brandeis, “Brief for the Defendant in Error,” *Muller v. Oregon* (1907)

Jerome Frank, “Law and the Modern Mind” (1936)

Note: “Legal Realism”

CLASS 18 (Mar. 25): The New Deal, Legal Liberalism and the Administrative State

Readings: Hall, *American Legal History*

Ch. 8 pp. 485-486, 486-487, 487-489, 489-492, 499-502, 502-503, 503-505, 505-506

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Note: “The New Deal and the Rise of Legal Liberalism”

“The State and Federal Legislative Responses”

“The Supreme Court and the New Deal”

Schechter v. U.S. 295 U.S. 495 (1935)

West Coast Hotel v. Parrish 300 U.S. 379 (1937)

Note: “The Decline of Substantive Due Process”

Palko v. Connecticut (1937)

U.S. v. Carolene Products 304 U.S. 144 (1938): Footnote Four

CLASS 19 (Mar. 27): The New Deal, Legal Liberalism and the Administrative State Part 2

Supplemental readings

CLASS 20 (Mar. 31): World War II and the New Global Order

Supplemental readings

CLASS 21 (Apr. 3): The Warren Court and Democracy: Debating Rights in the Post- War America

Readings: Hall, *American Legal History*

Ch. pp. 507-509, 509-512, 512-514, 514-515, 515-516, 530, 530-532, 532-536

Note: “Rights, Liberty and Science in Modern America”

Brown v. Board of Education of Topeka, Kansas (347 U.S. 483) (1954)

The “Southern Declaration on Integration” (1956)

Note: “Race and the Constitution”

King, “Letter from Birmingham City Jail” (1963)

Note: Gender

Griswold v. Connecticut 381 U.S. 479 (1965)

Roe v. Wade 410 U.S. 113 (1973)

CLASS 22 (Apr. 8): The Warren Court Part 2

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CLASS 23 (Apr. 10): The Renquist Court and the New Federalism

Supplemental readings

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CLASS 24 (Apr. 15): The Roberts Court and Contemporary Legal Debate

Supplemental readings

CLASS 25 (Apr. 17): Discussion of Student Papers

CLASS 26 (Apr. 22): Final Paper Review