**HIST 3317:** AMERICAN LEGAL AND CONSTITUTIONAL HISTORY TO 1860

Spring 2013

**Instructor:** Oliver Lee Bateman, MA, JD, Ph.D.

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**Office Hours:** 1:30 p.m.-4:30 p.m., W

**Time and Place of Class Meetings:** [BUSINESS BUILDING (COBA)](http://www.uta.edu/maps/map?id=COBA), ROOM 254

9:00 a.m.-9:50 a.m., MWF

**Description of Course Content:** In this course, we will examine the Transatlantic origins of American law; the evolution of colonial and state laws regulating slavery and indentured servitude; the operation of colonial governments and the early national government under the Articles of Confederation; the arguments that accompanied the drafting of the federal Constitution and postwar state constitutions; the arrogation of power by the federal judiciary undertaken by Chief Justice John Marshall; and the impact of “state’s rights” jurisprudence in the years leading up to the Civil War. Developments in civil and criminal law will be discussed as well, with reference made—where applicable—to the pioneering historical work of Oliver Wendell Holmes, Jr., John Chipman Gray, F. W. Maitland, J. Willard Hurst, and Morton Horwitz.

Over these twelve weeks, you will not only learn about the pastbut also *learn how to learn about the past*. In order to ensure that the latter goal is achieved, we will avoid simplistic monocausal interpretations and instead reason our way to well-supported answers about many of the curious and controversial aspects of American legal history.

**Student Learning Outcomes:** Each week, we will sort fact from fiction while examining the themes around which this course has been organized:

1. The continuing tension between scholars such as Morton Horwitz who have argued that law has furnished with elites with a means for social control and others, like J. Willard Hurst, who believe that the rule of law has fostered economic growth and limited the authority of government while functioning as a device through which antagonistic interests can resolve their conflicts in a peaceable manner.

2. The seemingly endless debates that have polarized American judicial culture since the nation’s inception: “state’s rights” versus a “federal system,” “activist” versus “restrained” judging, and the demand for popular oversight of judges as set against the desire to insulate the judiciary from the caprices of the electorate.

3. The Transatlantic origins of early American jurisprudence, a fact apparently forgotten by those who have criticized the use of international precedents in recent cases such as *Lawrence v. Texas*.

4. The complicated relationship between slavery and freedom in early America, with particular attention paid to how the growth of freedom that occurred following the American Revolution depended—at least in part—on the continued enslavement of more than 20 percent of the population.

**Required Textbooks and Other Course Materials:** Friedman, Lawrence*. A History of American Law*. Simon & Schuster/Touchstone Books (3rd Edition, 2005).

Kermit Hall, Paul Finkelman, and James W. Ely, Jr.. *American Legal History: Cases and Materials*. Oxford University Press (4th edition, 2010). Note: Available to rent for $32 on amazon.com.

*Note*: You may, for reasons of cost or convenience, choose to the use earlier editions of these books. Please be advised that you are doing so at your own risk, as the reading assignments and examination questions will be taken from the most recent editions (in the case of *American Legal History*, I am referring to the version authored by Finkelman, Ely, **and** the late Kermit Hall).

**Grading:** Your grade will consist of four components:

 **Participation and attendance**: 10%

 **Midterm examination**: 30%

 **Final examination**: 30%

 **Case briefs (3)**: 30%

**Attendance:** For each course meeting, you will sign an attendance sheet. Ideally, you would attend every class, but I recognize that this is not always possible. As such, you may miss **three classes** without having to provide an excuse. Each subsequent absence will reduce your attendance grade by 1%, to a minimum of 0%. Disruptive behavior such as leaving early, reading newspapers, answering cellular phones, text messaging, and insulting classmates will not be tolerated. In general, I expect you to behave in a mature, professional manner.

Because this is an upper-division course with a heavier reading load, it will only be as successful as the preparation and thoughtfulness of its participants. You are expected to read all of the required readings carefully before each class and come prepared to discuss those readings.

**Descriptions of major assignments and examinations:** The **midterm examination**  and **final examination** consist of short-answer and essay questions.

The **case brief** (of which 3 will be turned in during the course of the semester) is a 4-6 page, double-spaced document in which you will address the following points in a systematic manner for that week’s “assigned case”:

1) The relevant *facts* of the case.

2) The specific *holding* of the case, as announced by the writer of the majority opinion.

3) An analysis of the court’s *reasoning* in reaching its decision, making reference to important *precedents* that may have impelled this result.

4) A short discussion of the *dissent*, in situations where I advise you beforehand that such a discussion is warranted.

5) A detailed treatment of the case’s *historical significance*. This section should comprise at least 50% of your brief and consist of a careful summary of the social, political, and cultural impact of the case, as supported by citations from one of the required text for this classic or a scholarly article found using a searchable archive such as HeinOnline.

Since some—though by no means *all*—of you have enrolled in this course as a sort of “introduction” to the course of study offered at a law school, I will attempt to simulate the experience of *thinking like a lawyer* as nearly as I can while nonetheless still accounting for the competing (and certainly no less pressing) demands of *teaching you how to come to terms with the very “pastness” of the past*.

***UTA NOTE TO STUDENTS****: You are expected to keep track of your performance throughout the semester and seek guidance from available sources (including the instructor) if your performance drops below satisfactory levels. A general rule of thumb is this: for every credit hour earned, you should spend 3 hours per week working outside of class. Beyond the time required to attend each class meeting, you should expect to spend at least an additional 9 hours per week of your own time in course-related activities, including reading required materials, completing assignments, preparing for exams, etc.*

**Make-up Exams**: In the event of a documented medical emergency, I will schedule a make-up examination for you that will take place during office hours.

**Grade Grievances**: Any appeal of a grade in this course must follow the procedures and deadlines for grade-related grievances as published in the current undergraduate catalog. For the full text of this policy, see <http://wweb.uta.edu/catalog/content/general/academic_regulations.aspx#10>.

**UTA Drop Policy:** Students may drop or swap (adding and dropping a class concurrently) classes through self-service in MyMav from the beginning of the registration period through the late registration period. After the late registration period, students must see their academic advisor to drop a class or withdraw. Undeclared students must see an advisor in the University Advising Center. Drops can continue through a point two-thirds of the way through the term or session. It is the student's responsibility to officially withdraw if they do not plan to attend after registering. **Students will not be automatically dropped for non-attendance**. Repayment of certain types of financial aid administered through the University may be required as the result of dropping classes or withdrawing. For more information, contact the Office of Financial Aid and Scholarships (<http://wweb.uta.edu/ses/fao>).

**Americans with Disabilities Act:** The University of Texas at Arlington is on record as being committed to both the spirit and letter of all federal equal opportunity legislation, including the *Americans with Disabilities Act (ADA)*. All instructors at UT Arlington are required by law to provide "reasonable accommodations" to students with disabilities, so as not to discriminate on the basis of that disability. Any student requiring an accommodation for this course must provide the instructor with official documentation in the form of a letter certified by the staff in the Office for Students with Disabilities, University Hall 102. Only those students who have officially documented a need for an accommodation will have their request honored. Information regarding diagnostic criteria and policies for obtaining disability-based academic accommodations can be found at [www.uta.edu/disability](http://www.uta.edu/disability) or by calling the Office for Students with Disabilities at (817) 272-3364.

**Academic Integrity:** All students enrolled in this course are expected to adhere to the UT Arlington Honor Code:

*I pledge, on my honor, to uphold UT Arlington’s tradition of academic integrity, a tradition that values hard work and honest effort in the pursuit of academic excellence.*

*I promise that I will submit only work that I personally create or contribute to group collaborations, and I will appropriately reference any work from other sources. I will follow the highest standards of integrity and uphold the spirit of the Honor Code.*

Violators will be disciplined in accordance with University policy, which may result in the student’s suspension or expulsion from the University.

**Student Support Services**:UT Arlington provides a variety of resources and programs designed to help students develop academic skills, deal with personal situations, and better understand concepts and information related to their courses. Resources include tutoring, major-based learning centers, developmental education, advising and mentoring, personal counseling, and federally funded programs. For individualized referrals, students may visit the reception desk at University College (Ransom Hall), call the Maverick Resource Hotline at 817-272-6107, send a message to resources@uta.edu, or view the information at [www.uta.edu/resources](http://www.uta.edu/resources).

**Electronic Communication:** UT Arlington has adopted MavMail as its official means to communicate with students about important deadlines and events, as well as to transact university-related business regarding financial aid, tuition, grades, graduation, etc. All students are assigned a MavMail account and are responsible for checking the inbox regularly. There is no additional charge to students for using this account, which remains active even after graduation. Information about activating and using MavMail is available at <http://www.uta.edu/oit/cs/email/mavmail.php>.

**Student Feedback Survey:** At the end of each term, students enrolled in classes categorized as lecture, seminar, or laboratory shall be directed to complete a Student Feedback Survey (SFS). Instructions on how to access the SFS for this course will be sent directly to each student through MavMail approximately 10 days before the end of the term. Each student’s feedback enters the SFS database anonymously and is aggregated with that of other students enrolled in the course. UT Arlington’s effort to solicit, gather, tabulate, and publish student feedback is required by state law; students are strongly urged to participate. For more information, visit <http://www.uta.edu/sfs>.

**Final Review Week:** A period of five class days prior to the first day of final examinations in the long sessions shall be designated as Final Review Week. The purpose of this week is to allow students sufficient time to prepare for final examinations. During this week, there shall be no scheduled activities such as required field trips or performances; and no instructor shall assign any themes, research problems or exercises of similar scope that have a completion date during or following this week *unless specified in the class syllabus*.

**Course Schedule:**

*Week of 01/14/2013*

**Lectures**: “Course FAQ,” “An Introduction to the Philosophy of History”

**Reading Assignments**: E.H. Carr, “What is History?”, Accessible at <https://facultystaff.richmond.edu/~wstevens/history331texts/carr.html>

Herbert Butterfield, “Moral Judgments in History,” Accessible at <http://www.eliohs.unifi.it/testi/900/butterfield/chap_6.html>

Friedrich Nietzsche, “On the Use and Abuse of History for Life,” Accessible at <http://records.viu.ca/~johnstoi/nietzsche/history.htm>

Walter Benjamin, “On the Concept of History,” Accessible at <http://www.sfu.ca/~andrewf/CONCEPT2.html>

[Skim these readings; they will be covered in greater detail over the course of the first two lectures.]

*Week of 01/21/2013 (No Class on 1/21—MLK Day)*

**Lectures**: “Law in Colonial America”

**Reading Assignment**: Friedman, pp. 1-63; Casebook, pp. 4-54

*Weeks 01/28/2013 and 02/04/2013*

**Lectures**: “The American Revolution: An Agony in Several Fits”

**Reading Assignment**: Friedman, pp. 63-104, 140-167; Casebook, pp. 56-109

**Case Assignment (Brief #1, Possible Due Date):** *Marbury v. Madison*

*Week of 02/11/2013*

**Lectures**: “Law and the Economy, 1776-1850”

**Reading Assignment**: Friedman, pp. 120-140; Casebook, pp. 114-159

**Case Assignment (Brief #2, Possible Due Date):** *McCulloch v. Maryland*, *Gibbons v. Ogden*, or *Dartmouth College v. Woodward* – **AND –** *Charles River Bridge Company v. Warren Bridge Company*

*Week of 02/18/2013*

**Lectures**: “Property and Contract Law in the 19th Century”

**Reading Assignment**: Friedman, pp. 167-207, 309-329; Casebook, pp. 159-170

**Case Assignment (Brief #3, Possible Due Date):** *Barron v. Baltimore (But include a discussion of United States v. Cruikshank)*

*Week of 02/25/2013*

**Lectures**: “Legal Education and the Legal Profession”

**Midterm examination, In-Class, 02/25/2013**

**Reading Assignment**: Friedman, pp. 226-251, 463-501, 538-554; Casebook, pp. 332-339

*Week of 03/04/2013*

**Lectures**: “Slavery and Race”

**Reading Assignment**: Casebook, pp. 187-216

**Case Assignment (Brief #4, Possible Due Date):** *Prigg v. Pennsylvania*

*Week of 3/11/2013*

**Spring Break**

*Week of 03/18/2013*

**Lectures**: “Crime and Punishment”

**Reading Assignment**: Friedman, pp. 207-226, 434-463; Casebook, pp. 284-303

*Week of 03/25/2013*

**Lectures**: “Legal Reform”

**Reading Assignment**: Friedman, pp. 253-309; Casebook, pp. 304-331

*Week of 04/01/2013*

**Lectures**: “Lincoln and the Constitutional Crisis”

**Reading Assignment**: Casebook, pp. 216-263

**Case Assignment (Brief #5 , Possible Due Date)**: *Roberts v. The City of Boston*

or *Civil Rights Cases*

*Week of 04/08/2013*

**Lectures**: “Family Law and the Status of Women”

**Reading Assignment:** Friedman, pp. 367-390; Casebook, pp. 264-283

**Case Assignment (Brief #6 , Possible Due Date)**: *Wightman v. Coates* or *Reynolds v. United States*

*Week of 04/15/2013*

**Lectures**: “Administrative Law and the Law of corporations”

**Reading Assignment**: Friedman, pp. 329-350, 390-404; Casebook, pp. 356-378

**Case Assignment (Brief #7, Possible Due Date):** *Munn v. Illinois*

*Week of 04/22/2013*

**Lectures**: “Torts, Commerce, and Taxation”

**Reading Assignment**: Friedman, pp. 350-367, 404-434; Casebook, pp. 170-186

**Case Assignment (Brief #8, Possible Due Date):** *Brown v. Kendall*

*Week of 04/29/2013*

**Lectures:** “Legal History in the 20th Century,” “Exam Review”

**Reading Assignment:** Casebook, pp. 339-350; Morton J. Horwitz, “The Conservative Tradition in the Writing of American Legal History,” American Journal of Legal History 17 (1973), 281 (Will distribute via e-mail)

**Final examination, in-class. 05/08/ 2013, 8:00 a.m.-10:30 a.m. Relevant Information Can Be Found HERE:** [**http://wweb.uta.edu/ses/recordsandregistration/content/general\_information/registration.aspx**](http://wweb.uta.edu/ses/recordsandregistration/content/general_information/registration.aspx)

**NOTE : *As the instructor for this course, I reserve the right to adjust the schedule in any way that serves the educational needs of the enrolled students. --OLB***