**HIST 3317:** AMERICAN LEGAL AND CONSTITUTIONAL HISTORY TO 1900

Spring 2014

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**Office Hours:** Tu 2:00 p.m.-4:30 p.m., Th by appointment

**Time and Place of Class Meetings:** UNIVERSITY HALL, Room 01, Tu-Th 12:30 p.m.-1:50 p.m.

**Description of Course Content:** HIST 3317 traces the adaptation of laws to changing social and economic needs with emphasis on the interrelations of law, public opinion, the legal profession, judiciary, and the political process. Topics include the transatlantic origins of American law, slavery and indentured servitude, poor laws and dependency, family law and gender, developments in criminal and civil law, and the failure of Reconstruction.

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

1. 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.

2. 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*.

3. 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.

4. The impact of the law on individuals identified as disadvantaged, disabled, and “deviant”, as explored in readings from Michel Foucault, George Chauncey, and others.

**Required Textbooks and Other Course Materials:** 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 on amazon.com at <http://www.amazon.com/American-Legal-History-Cases-Materials/dp/0195395425>.

*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 edition.

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

 **Participation and attendance**: 10%

 **Midterm examination**: 30%

 **Final examination**: 30%

 **Case briefs (2)**: 30%

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. 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.

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

The **case brief** (of which 2 will be turned in during the course of the semester) is a 5-8 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:**

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

January 14, 2014

Lecture: Course policies / Introduction

Reading: None

January 16, 2014

Lecture: Discipline and Punish

Reading: Michel Foucault, excerpts from *Discipline and Punish* available at <http://itpedia.nyu.edu/mediawiki/images/3/3e/Foucault-Discipline_and_Punish.pdf>

January 21, 2014

Lecture: Sources of Early American Law

Reading: Finkelman, pp. 6-29

James I Stuart, “A Counterblaste to Tobacco” available at <http://www.laits.utexas.edu/poltheory/james/blaste/blaste.html>

January 23, 2014

Lecture: Reform and Revolution

Reading: Finkelman, pp. 30-42

January 28, 2014

Lecture: Law and Colonial Society

Reading: Finkelman, pp. 43-53, 63-75

January 30, 2014

Lecture: Slave Codes and the Law of Slavery

Readings: Finkelman, pp. 53-63

February 4, 2014

Lecture: The Zenger Trial

Reading: Finkelman, pp. 77-81

February 6, 2014

Lecture: The Legal Origins of the American Revolution

Reading: Finkelman, pp. 83-94

February 11, 2014

Lecture: Founding Fathers

Reading: Finkelman, pp. 110-137

February 13, 2014

Lecture: Race and the Constitution

Readings: Finkelman, pp. 98-103

Case brief #1 (optional due date): *Commonwealth v. Jennison* available at <http://www.lexisnexis.com/academic/1univ/hist/aa/aas_case.asp>

February 18, 2014

Lecture: The Age of John Marshall

Readings: Finkelman, pp. 138-164

Case brief #2 (optional due date): *Marbury v. Madison* available at <http://supreme.justia.com/cases/federal/us/5/137/case.html>

February 20, 2014

Lecture: The Age of Andrew Jackson

Reading: Finkelman, pp. 164-169

Case brief #3 (optional due date): *Worcester v. Georgia* available at <http://supreme.justia.com/cases/federal/us/31/515/case.html>

February 25, 2014

Lecture: Law and Economic Growth in Antebellum America

Reading: Finkelman, pp. 171-199

Case brief #4 (optional due date): *Dartmouth College v. Woodward* available at <http://supreme.justia.com/cases/federal/us/17/518/case.html>

February 27, 2014

Lecture: Slavery and State Law

Reading: Finkelman, pp. 221-247

Case brief #5 (optional due date): *Prigg v. Pennsylvania* available at <http://supreme.justia.com/cases/federal/us/41/539/case.html>

March 4, 2014

Lecture: The Birth of the Asylum

Reading: Michel Foucault, “The Birth of the Asylum” in *Madness and Civilization* available at <https://ia801607.us.archive.org/6/items/MichelFoucaultMadnessAndCivilization/Michel%20Foucault%20-%20Madness%20and%20Civilization.pdf>

March 6, 2014

**EXAMINATION #1 (study guide distributed 03/02/2014)**

*Week of March 10, 2014 – NO CLASS, SPRING BREAK*

March 18, 2014

**NO CLASS**

March 20, 2014

Lecture: The History of Sexuality

Reading: Michael Foucault, *The History of Sexuality, Volume 1*, pp. 1-51, 133-161 available at <http://suplaney.files.wordpress.com/2010/09/foucault-the-history-of-sexuality-volume-1.pdf>

March 25, 2014

Lecture: Homosexuality and Deviance in the 19th Century

Reading: George Chauncey, *Gay New York*, introduction available at <http://macaulay.cuny.edu/eportfolios/scott12sem2courseblog/files/2012/05/George-Chauncey-Gay-New-York-intro.pdf>

April 1, 2014

Lecture: John “Old Smoke” Morrissey, the World’s Champion: Understanding Crime and Deviance Through Biography

Reading: none

April 3, 2014

Lecture: Abraham Lincoln’s Constitution

Reading: Finkelman, pp. 252-261

Case brief #6 (optional due date): *Dred Scott v. Sandford* available at <http://supreme.justia.com/cases/federal/us/60/393/case.html>

April 8, 2014

Lecture: Crime and Punishment in the 19th Century

Reading: Finkelman, pp. 336-353

April 10, 2014

Lecture: The Role of the Lawyer in American Society

Reading: Finkelman, pp. 355-367

April 15, 2014

Lecture: Law and Race, 1800-1900

Reading: Finkelman, pp. 287-316

Case brief #7 (optional due date): *Yick Wo v. Hopkins* available at <http://supreme.justia.com/cases/federal/us/118/356/case.html>

April 22, 2014

Lecture: Honor, Status, and Violence

Reading: Elliot Gorn, “Gouge and Bite, Pull Hair and Scratch” available at [http://suchma-sporthistory.wikispaces.com/file/view/Gorn+Week+2](http://suchma-sporthistory.wikispaces.com/file/view/Gorn%2BWeek%2B2)

April 24, 2014

Lecture: “The Life of the Law Has Been Experience”

Reading: O. W. Holmes, “Natural Law” available at <http://teachingamericanhistory.org/library/document/natural-law/>

April 29, 2014

Lecture: Review session for final examination

Reading: Review sheet distributed 04/29/2014

May 1, 2014

**NO CLASS**

May 8, 2014

**Final Examination, 11:00 a.m.-1:30 p.m.**