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

Spring 2015

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**Office Hours:** Th 3:00-6:00 or by appointment

**Time and Place of Class Meetings:** UNIVERSITY HALL, Room 01, Tu-Th 11:00 a.m.-12:20 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, disability, developments in criminal and civil law, and the failure of Reconstruction.

**Student Learning Outcomes:** During this course, students will learn how to:

• identify key events, peoples, individuals, terms, periods, and chronology of the legal history of the United States

• develop critical thinking skills by discussing the living nature of legal history, using primary sources to critique competing interpretations of the same historical events, explaining the nature of controversies in legal history

• synthesize diverse historical information and evidence related to broad themes of U.S. legal history and present this information in coherent, well-articulated, and well-substantiated analytical discussions and other written assignments

• develop the ability to connect choices, actions, and consequences to decision making by examining the motivations and actions of key figures in U.S. legal history

**Required Textbooks and Other Course Materials:**
Courtwatchers, CUSHMAN
<http://www.amazon.com/Courtwatchers-Eyewitness-Accounts-Supreme-History/dp/1442212454>

* **ISBN-10:** 1442212454
* **ISBN-13:** 978-1442212459

Cases and Materials, HALL
[http://www.amazon.com/American-Legal-History-Cases-Materials/dp/0195395425/ref=sr\_1\_6?s=books&ie=UTF8&qid=1414568703&sr=1-6&keywords=hall+finkelman](http://www.amazon.com/American-Legal-History-Cases-Materials/dp/0195395425/ref%3Dsr_1_6?s=books&ie=UTF8&qid=1414568703&sr=1-6&keywords=hall+finkelman)

* **ISBN-10:** 0195395425
* **ISBN-13:** 978-0195395426

*Note*: You may, for reasons of cost or convenience, choose to the use earlier editions of this book. 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 three components:

 **Midterm examination**: 33.3%

 **Final examination**: 33.3%

 **Case briefs (3)**: 33.3%

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. **Smartphones are a lot of fun, I know. I mean, who doesn’t love Flappy Bird or Farmville or Mafia Wars or Angry Birds or what have you? But would you pay $50/class to play these wonderful games, given that most are free to play or nearly so? Because that’s what it costs to sit in each class (based on in-state tuition rates, anyway). I’m going to try to give you your money’s worth, but it’s extremely difficult to do this if you’re fiddling around with those things. If you don’t want to pay attention, don’t come. I’m very understanding regarding illnesses, demanding work schedules, and so forth, but I can’t tolerate inattention and I don’t like wasting my own time. My lecture performances vary in quality, but they’re usually decent. Thus our new rule: UNLESS YOU TELL ME BEFOREHAND, CELL PHONES MAY NOT BE VISIBLE DURING CLASS TIME. PERIOD.**

**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 20, 2015

Lecture: Course policies / Introduction

Reading: None

January 22, 2015

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 27, 2015

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 29, 2015

Lecture: Reform and Revolution in Early America

Reading: Finkelman, pp. 30-42

February 3, 2015

Lecture: Law and Colonial Society

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

February 5, 2015

Lecture: Slave Codes and the Law of Slavery

Readings: Finkelman, pp. 53-63

February 10, 2015

Lecture: The Zenger Trial

Reading: Finkelman, pp. 77-81

February 12, 2015

Lecture: The Legal Origins of the American Revolution

Reading: Finkelman, pp. 83-94

February 17, 2015

Lecture: Founding Fathers

Reading: Finkelman, pp. 110-137

February 19, 2015

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 24, 2015

Lecture: The Age of John Marshall

Readings: Finkelman, pp. 138-164

Cushman, pp. 1-45

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

February 26, 2015

**MIDTERM EXAMINATION (study guide distributed 02/20/2015)**

March 3, 2015

Lecture: Law and Economic Growth in Antebellum America

Reading: Finkelman, pp. 171-199

Case brief #3 (optional due date): *Dartmouth College v. Woodward* available at <http://supreme.justia.com/cases/federal/us/17/518/case.html>

March 5, 2015

Lecture: Slavery and State Law

Reading: Finkelman, pp. 221-247

Case brief #4 (optional due date): *Prigg v. Pennsylvania* available at <http://supreme.justia.com/cases/federal/us/41/539/case.html>

**SPRING BREAK – NO CLASS MARCH 10 OR MARCH 12**

March 17, 2015

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 19, 2015

Lecture: Judicial Personality and the Supreme Court

Reading: Cushman, pp. 105-140, 163-178, 229-249

March 24, 2015

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 26, 2015

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>

March 31, 2015

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

Reading: none

April 2, 2015

Lecture: Abraham Lincoln’s Constitution

Reading: Finkelman, pp. 252-261

Case brief #5 (optional due date): *Dred Scott v. Sandford* available at <http://supreme.justia.com/cases/federal/us/60/393/case.html>

April 7, 2015

Lecture: Crime and Punishment in the 19th Century

Reading: Finkelman, pp. 336-353

April 9, 2015

Lecture: The Role of the Lawyer in American Society

Reading: Finkelman, pp. 355-367

April 14, 2015

Lecture: Law and Race, 1800-1900

Reading: Finkelman, pp. 287-316

Case brief #6 (optional due date): *Yick Wo v. Hopkins* available at <http://supreme.justia.com/cases/federal/us/118/356/case.html>

April 16, 2015

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 21, 2015

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 23, 2015

Video TBA

April 28, 2015

Lecture: Review session for second examination, concluding remarks

Reading: Review sheet (distributed 04/26/2015)

April 30, 2015

**SECOND EXAMINATION**

May 5, 2015

**NO CLASS – HAVE A GREAT SUMMER!**