

HIST 545: Graduate American Legal History to 1865

Instructor Information

Dr. Kate Brown

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Office hours: By appointment if you would like to meet me in my office, in person. I will check my email everyday if you'd like to get in touch with me, or schedule an online office hour.

Email is the best way to contact me.

Course Description

A graduate-level survey of the development of American law and its relationship to political, economic, and social trends in American society to 1865.

Course Learning Objectives

We will aim to achieve three objectives throughout our course:

- 1) **Analyzing and critically evaluating legal ideas and historiographical arguments** at a graduate level.
- 2) **Learning fundamental principles, generalization, and theories** of American law.
- 3) **Gaining factual knowledge** (terminology, case outcomes, development of jurisprudential concepts, judicial interpretations of the Constitution) through assigned readings and limited lectures.

Course Materials

In addition to course materials made available on Blackboard, the following texts are required (they can be purchased at the WKU bookstore) and will be discussed throughout the semester:

- John Ruston Pagan, *Anne Orthwood's Bastard*
- Mary Sarah Bilder, *The Transatlantic Constitution*
- Kate Elizabeth Brown, *Alexander Hamilton and the Development of American Law*
- Gordon Wood, *Power and Liberty*
- William Novak, *The People's Welfare*
- John Fabian Witt, *Lincoln's Code*

Graded Assignments

- Discussion Participation, 15 points (15%)
- Leading Discussion, 15 points (15%)
- Quiz #1, 10 points (10%)
- Quiz #2, 10 points (10%)
- Historiographical Paper, 25 points (25%)
- Oral Exam, 25 points (25%)

Your final course grade will be calculated based on adding together the points you earn on each assignment. This sum total of points will be your percentage out of 100%.

Grading Requirements and Expectations

General Expectations

Late work will not be tolerated. Late assignments or non-preparation for our discussions automatically receives a grade of **ZERO** for the assignment and a severe penalty to your participation grade, unless you have made other arrangements with Dr. Brown **prior** to the due date of the assignment or in-class discussion.

Oral Exam

Your final examination in this course will be answering a set of comprehensive questions about the course material in a 20 minute oral exam with Dr. Brown. She will provide follow-up questions to your response to an initial prompt. You will be graded on your mastery of course material as demonstrated through your answers to these questions. The oral exam exercise is meant to prepare you for your masters-level comprehensive examination.

Historiographical Paper

Paper requirements: 12-15pages (double-spaced); typewritten; Times New Roman font; 12 pt font; follows the Chicago Manual of Style for style and citation guidance; uses footnotes (not endnotes or parenthetical citations). This paper is **argument based** and engages with appropriate historiography/primary sources. **Dr. Brown reserves the right to deduct points if these requirements are not met.**

The paper topic **MUST** engage with legal topics/themes concerning American law from 1607-1865. The paper **MUST** incorporate all of the monographs read over the semester (assigned for this course). Historiographical essays use historical scholarship

as sources. They are not summaries of historians' work; historiographical essays have their own arguments and analysis based on the scholarship of the period under study.

Quizzes

Quizzes are meant to test your basic comprehension of select material covered in this course. They are not meant to be comprehensive, but they are meant to alert you to whether or not you are sufficiently learning the (oftentimes difficult) legal material. If you do not receive perfect scores on the quizzes, you should study past material and possibly consult Dr. Brown about how to better master the material presented in this course.

Discussion Board Conversations and Leading Discussion:

Since we will not meet together in a classroom, discussion boards will be used to generate communication among us and they will be used additionally to assess your engagement with the material.

The expectation is that you will engage in constructive participation and discussion throughout the semester, and that you will always interact with Dr. Brown, as well as other students in the course, with complete respect. You are also expected to complete readings before they are due and to work towards improvement over the course of the class.

Expectations for the discussion board conversations:

You are graduate students, and as such, I expect that you will actively participate in all discussions, actively posing questions, responding to each other (and to Dr. Brown), and considering the legal/historical context of all course material. I expect you to make a minimum of **5+ substantial posts per week, with more posts if you are leading discussion. Dr. Brown will ask questions on the discussion board too, and will expect answers.** You are responsible not only for having substantive and constructive conversations among yourselves, discussing the monographs and articles we read, but the material presented in lectures and podcasts too. You are also responsible for ensuring that you respond to me or to other students who ask you questions.

You will not receive a numerical or letter grade per week on these conversations, but I will give you feedback whenever you ask for it about your discussion performance. Your discussion participation will be graded cumulatively at the end of the semester.

A note on leading discussions:

The forum is open to you to pose whatever questions you'd like (I suggest making a short list of questions to pose to the class, and then pressing other students after they answer the questions). As graduate students, I expect that you challenge other students and you respectfully suggest criticisms when appropriate (and students receiving the leader's criticism should respond to that criticism, a back-and-forth practiced by professional historians).

You may base your discussion prompts/questions off of the monographs, articles, podcasts, or lectures you encounter in the class. Discussions should be roughly current with the course material due that week, but it can engage with previous course material. For example, if you would like to lead discussion combining questions about last week's podcast and this week's monograph, then that would be great! Do not base your discussion solely on a monograph thoroughly discussed by someone else, or one from weeks ago (that is, not current with the material being covered in or around that week). As always, however, feel free to make reference to previous monographs, lectures, podcasts discussed in the past if those references help to compare/contrast/better understand the current material.

Grade Scale

A (roughly 90-100 points) – Exceptional work; pays excellent attention to, and clearly achieves, the goals of the assignment (especially pertaining to the student's analytical efforts and written work)

B (roughly 80-89 points) – Good work; shows a significant achievement of the goals of the assignment

C (roughly 70-79 points) – Adequate work; demonstrates a basic effort to achieve the goals of the assignment

D (roughly 60-69 points) – Less-than-adequate work, demonstrates inadequate attention to the goals of the assignment

F (roughly 50-59 points) -- Unacceptable work; demonstrates an outright failure to meet the goals of the assignment

Notices Relating to Online Formats:

Make sure you know how to use Blackboard: If you have not used Blackboard before, I highly advise that you contact WKU IT Help Desk to complete a Blackboard Student User Training Module.

Blackboard Help/WKU IT Help Desk: 270-745-7000

You can also sign up by signing into Blackboard, clicking the IT TRAINING tab (black with white writing, at the top. Look for IT Blackboard Student User Training.

WKU Online Student Resource Center: [WKU Student Resource Center](http://www.wku.edu/online/src/)
(<http://www.wku.edu/online/src/>)

Other items needed for an online class (in addition to the course materials described above):

- Access to a computer (your own) with a reliable Internet connection
- Microsoft Word in docx, file format
- The ability to watch videos from YouTube and listen to podcasts (links provided).

Course Policies

Technology & Due Dates (Late Work)

All required work will be completed online. You will submit your work through the use of Blackboard and the Internet.

Use the syllabus and Blackboard announcements/postings to find out when assignments are due (and the details of each assignment). Any work submitted past the stated deadline will not be accepted and will receive a grade of zero. (All time deadlines occur at 11:59pm CDT.)

Announcements

I will use email and Blackboard announcements as a way of communicating to the entire class during the course. For individual communications, I will use email or comments posted to your discussion posts. Please look out for email and Blackboard communications from me.

Work Submission

All work will be submitted via our course site on Blackboard, with the exception of the research paper and drafts which Dr. Brown will want emailed to her. Work must be submitted in the appropriate docx format (or they will not be graded).

Failure of Technology

It happens. Plan for it in advance. Late work will NOT be accepted, even if it is late because your laptop/internet connection/electricity, etc. malfunctioned. The only exception to this is if the Blackboard platform is inaccessible to WKU users.

If you find that Blackboard is having issues, contact the IT Help Desk at 270-745-7000.

Civility and Respectful Behavior

You are expected to express your opinions freely, but respectfully and civilly. If you disagree with me or your fellow classmate, you are expected to do so respectfully. Foul language, slurs, name-calling and other discourse deemed by me to be uncivil will not be tolerated and may result in an automatic failure for that assignment, or an automatic failure from the course.

On Plagiarism and Academic Honesty and Integrity

Plagiarism will not be tolerated, and all assignments must be your original work, produced for this course. Plagiarism is a form of academic dishonesty where a student either intentionally or unintentionally uses the words/wording and/or ideas of another without proper citation (that is, without proper acknowledgement—see Dr. Brown for the proper way to cite information). This improper use of another's words/wording/ideas/information gives a false or misleading impression that the material is original to the student. Plagiarism will result in an automatic **zero** on the plagiarized assignment, and possibly an automatic F in the course. Plagiarism also violates WKU's Student Code of Conduct:

“The Student Code of Conduct educates students about appropriate behavior and fosters a community in which academic success can occur. The following Student Codes of Conduct are the regulations that apply to ALL WKU students, including the satellite campuses: ...

- 1. Dishonesty.** Dishonesty, such as cheating, plagiarism, misrepresenting of oneself or an organization, knowingly furnishing false information to the University, or omitting relevant or necessary information to gain a benefit, to injure, or to defraud is prohibited.”

Because plagiarism is a serious offense, please see Dr. Brown with any and all questions you have when in doubt—and, if in doubt, cite! (See the History Department's Style Sheet available at the [History Department's Style Sheet, at https://www.wku.edu/history/writing/writing-citations.php](https://www.wku.edu/history/writing/writing-citations.php)).

Note that common oversights **that count as plagiarism include**: using someone else's words/phrases/sentences precisely—or almost precisely (e.g. copying their quote and changing around a few words) or paraphrasing their thought—counts as plagiarism unless you use quotes (to indicate direct copying of their words) and/or you include a footnote with a citation to the source of the idea/thoughts/words. If the words, thoughts, phrases, ideas, sentences, etc. are not your own then you **MUST** cite the source of those words, thoughts, phrases, ideas, sentences, etc. or you will be plagiarizing.

As a student at WKU, you are expected to adhere to the university's "Student Life Policies on Student Rights and Responsibilities" in the Student Handbook. This document is available online at [Student Rights and Responsibilities at https://www.wku.edu/studentconduct/student-rights-responsibilities.php](https://www.wku.edu/studentconduct/student-rights-responsibilities.php).

A Statement on Title IX Policy

Western Kentucky University (WKU) is committed to supporting faculty, staff and students by upholding WKU's Title IX Sexual Misconduct/Assault Policy (#0.2070) at the [Title IX Policy](#) and Discrimination and Harassment Policy (#0.2040) at the [Discrimination and Harassment Policy](#). Under these policies, discrimination, harassment and/or sexual misconduct based on sex/gender are prohibited. If you experience an incident of sex/gender-based discrimination, harassment and/or sexual misconduct, you are encouraged to report it to the Title IX Coordinator, Andrea Anderson, 270-745-5398 or Title IX Investigators, Michael Crowe, 270-745-5429 or Joshua Hayes, 270-745-5121. Please note that while you may report an incident of sex/gender based discrimination, harassment and/or sexual misconduct to a faculty member, WKU faculty are "Responsible Employees" of the University and **MUST** report what you share to WKU's Title IX Coordinator or Title IX Investigator. If you would like to speak with someone who may be able to afford you confidentiality, you may contact WKU's [Counseling and Testing Center](#) (<https://www.wku.edu/heretohelp/>) at 270-745-3159.

A Statement on Student Disability Services and the ADA

In compliance with University policy, students with disabilities who require academic and/or auxiliary accommodations for this course must contact the Student Accessibility Resource Center located in Downing Student Union, 1074. SARC can be reached by phone number at 270-745-5004 [270-745-3030 TTY] or via email at sarc.connect@wku.edu. Please do not request accommodations

directly from the professor or instructor without a faculty notification letter (FNL) from The Student Accessibility Resource Center.

See [Syllabus Info](https://www.wku.edu/syllabusinfo/) (<https://www.wku.edu/syllabusinfo/>) for other helpful links and information.

A Note on the Syllabus...

Dr. Brown reserves the right to add to, subtract from, and otherwise modify this syllabus at any time.

Course Schedule

NOTE: *Assigned readings are DUE on the day they appear on the syllabus.*

Week 1 Begins Monday August 19

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Learn about the English constitutionalism that impacted the development of American constitutionalism.	Read: “Constitutional History before 1776” (Blackboard) Participate in: Introduce Yourself forum and Discussion Forum #1 Participate in Discussion Forum #1	“Constitutional History Before 1776” DUE Thursday August 22 Complete “Introduce Yourself” forum DUE Thursday August 22 Week 1 Discussion Forum (Dr. Brown will lead) DUE Sunday August 25

Week 2: Begins Monday August 26

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Begin exploring American law in the colonial period through a close study of a Virginian indentured servant.	Read: John Ruston Pagan’s <i>Anne Orthwood’s Bastard</i> Listen to: Dr. Brown’s lecture #1 (Anglo American Legal Order)	<i>Anne Orthwood’s Bastard</i> DUE Thursday August 29 Listen to lecture #1 DUE Sunday September 1

Week 3: Begins Monday September 2

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Recreate the process of judicial review in the colonial era.	Complete: Mary Sarah Bilder's <i>Transatlantic Constitution</i> Participate in: Discussion forum #2 (Student led)	Mary Sarah Bilder's <i>Transatlantic Constitution</i> DUE Thursday September 5 Discussion Forum #2 conversation DUE Sunday September 8

Week 4: Begins Monday September 9

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Continue learning about American law in the Critical Period.	Participate in: Discussion forum #3 (student led) Listen to: Dr. Brown's lecture #2 (Constitutionalism through Critical Period)	Discussion Forum #3 conversation DUE Sunday September 15 Listen to lecture #2 DUE Sunday September 15

Week 5: Monday September 16

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Tak a breather.	No reading.	No due dates for this week.

Week 6: Monday September 23

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Focus on how the delegates to the Philadelphia Convention drafted the U.S. Constitution.	Read: Lance Banning's "The Constitutional Convention" (article) Read: U.S. Constitution Listen to: Dr. Brown's lecture #3: Va Plan, Article III, Judiciary Act of 1789	Banning article and Constitution DUE Thursday September 26 Listen to lecture DUE Sunday September 29

Week 7 Monday September 30

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Explore and consider recent scholarship on the drafting and interpretation of the U.S. Constitution.	<p>Listen to: Ben Franklin's World: Michael Klarman's The Framers' Coup (US Constitution) (https://www.benfranklinworld.com/episode-143-michael-klarman-making-united-states-constitution/)</p> <p>Ben Franklin's World: Mary Sarah Bilder's Madison's Hand (Convention Notes) (https://www.benfranklinworld.com/episode-107-mary-sarah-bilder-madisons-hand-revising-constitutional-convention/)</p> <p>Participate in: Discussion forum #4 (student led)</p>	<p>Two podcasts DUE Thursday October 4</p> <p>Discussion Forum #4 conversation DUE Sunday October 6</p>

Week 8: Monday October 7

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Explore the varieties of public law (federalism, executive and judicial power, freedom of the press) and private law (mortgage law, marine insurance contracts) in the early republic through Alexander Hamilton's law practice.	<p>Read: Kate Brown's <i>Alexander Hamilton and the Development of American Law</i></p> <p>Listen to: Ben Franklin's World: Kate Elizabeth Brown and AH and Development of American Law (https://www.benfranklinworld.com/episode-180-kate-elizabeth-brown-alexander-hamilton-and-the-making-of-american-law/)</p> <p>Study for: Quiz #1 (material from week 1-week 7)</p>	<p><i>AH and the Development of American Law</i> DUE Thursday October 11</p> <p>Podcast DUE Thursday October 11</p> <p>Quiz DUE Sunday October 13</p>

Week 9: Monday October 14

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
John Marshall's great cases and a synthesis of the legal/constitutional history of the early republic.	<p>Read: Gordon Wood's <i>Power and Liberty</i></p> <p>Listen to: Dr. Brown's lecture #4: Marshall Court Cases</p>	<p><i>Power and Liberty</i> DUE Thursday October 17</p> <p>Listen to lecture #4 DUE Sunday October 20</p>

Week 10: Monday October 21

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Discuss <i>Power and Liberty</i>	Participate in: Discussion forum #5 (student led)	Discussion Forum #5 conversation DUE Sunday October 27

Week 11: Monday October 28

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Explore the regulatory state of the 19 th century and the central legal principle, salus populi.	Read: William Novak's <i>The People's Welfare</i> Listen to: Dr. Brown's lecture #5: Dissolution of Comity, Dual Federalism	<i>The People's Welfare</i> DUE Sunday November 3 Listen to lecture #5 DUE Sunday November 3

Week 12: Monday November 4

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
<p>Master the complexities of the U.S. Supreme Court's most notorious case, <i>Dred Scott v. Sandford</i> (U.S., 1857).</p> <p>Explore the concept of dual federalism and the idea of perpetual union versus compact theory in the Age of Jackson.</p>	<p>Watch: C-Span's Landmark Cases: <i>Dred Scott v. Sandford</i> C-Span Landmark Cases Dred Scott v. Sandford (https://www.c-span.org/video/?327711-1/supreme-court-landmark-case-dred-scott-v-sandford)</p> <p>Read: Kenneth Stampp's "The Concept of a Perpetual Union"</p> <p>Participate in: Discussion forum #6 (student led)</p>	<p>C-Span's Landmark Cases: <i>Dred Scott v. Sandford</i> DUE Thursday November 7</p> <p>"The Concept of a Perpetual Union" DUE Thursday November 7</p> <p>Discussion Forum #6 conversation DUE Sunday November 10</p>

Week 13: Monday November 11

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
<p>Connect constitutionalism of civil war to the Lieber code.</p>	<p>Read: John Fabian Witt's <i>Lincoln's Code</i></p> <p>Participate in: Discussion forum #7 (student led)</p>	<p><i>Lincoln's Code</i> DUE Thursday November 14</p> <p>Discussion Forum #7 conversation DUE Sunday November 17</p>

Week 14: Begins Monday November 18

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Complete and submit paper and begin final review of the semester's materials.	Submit Final Draft of Research Paper. Study for Quiz #2 Be sure you know your oral exam time/date	Final Historiographical Paper DUE Monday December 2 by 12 noon (submit via email to Dr. Brown) Quiz #2 DUE Tuesday November 26 (covering material from week 8 – week 13) Oral exams begin this or next week

Week 15: Oral Exam Week—Begins Monday November 26, through exam week (Thanksgiving Holiday: Wed 27-Sunday Dec 1)

Weekly/Topical Learning Objective	Activities and Assessments	Activities & Assessment Due Dates
Comprehensively review the semester and prepare for your masters-level oral exam on the historiography of early American law.	Study for and complete your 20 minute oral exam.	Due date to be scheduled with Dr. Brown on: Nov 25, Nov 26, Dec 2, Dec 3, Dec 4, Dec 5, Dec 6