LEGAL HISTORY

The teaching of legal history at the Law Center dates from 1875 when Martin F. Morris, a founder and dean, offered lectures on the subject. Morris, a self-described "philosophic historian," studied the past to discern "a purpose and a continuity in human history," namely, the steady progress of civilization and civil liberty from antiquity to his day. Although Georgetown's present legal historians are not likely to join in a search for an unfolding purpose in the past, all share his conviction that a first-rate law school owes its students more than instruction in the canons of legal reasoning and aspects of legal practice. It should also provide students with perspectives on the legal acumen they acquire, so that they can use their new power wisely and with self-mastery. As different as Georgetown's offerings are, they all consider legal history an engaging way to acquire this self-awareness.

Of course, judges, lawyers and law students have sometimes asked legal history to do more. In particular, some study the legal past to discover information that courts can use in deciding cases. Some of Georgetown's courses and seminars do permit students to search out the origins of a doctrine, to revisit landmark precedents, or to explore the legislative intent behind particular statutes. But this view of the utility of legal history is not the dominant approach of the school's offerings. More common is a concern for revealing how law has changed over time. Students should not expect to find authoritative lessons in the past, only analogies whose aptness are for us in the present to decide. They should also expect their teachers to stress differences between the past and present as often as they note similarities.

Two courses offer background and overviews of substantial portions of the Anglo-American legal past. In his English Legal History Seminar: Foundations of American Law, Professor James Oldham uses original trial manuscript sources to introduce students to the 18th-century English common law system, much of which was transplanted to the colonies. American Legal History, taught by Professor Daniel Ernst, takes up the years since Reconstruction with special concern for the development of the U.S. state.

The rest of the offerings allow students to conduct their own research in areas of their professors' special expertise, including the history of the jury, the history of ideas, the social history of gender and the family, and the constitutional history of speech in the United States.

Many of these seminars require that students work in the unusually rich sources available at or within walking distance of the Law Center. These include the Edward Bennett Williams Library's microform edition of English Legal Manuscripts, the Folger Library, the National Archives, the Library of Congress, and the libraries of the federal departments.

Search Legal History Courses (http://curriculum.law.georgetown.edu/course-search/?cluster=cluster_19)

LAW 1265 v00 Advanced Constitutional Law Seminar: The Framing and Ratification of the Constitution (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201265%20v00)
J.D. Seminar | 3 credit hours
Few events have had as much impact on the history of American law as the framing and ratification of the U.S. Constitution. This seminar is designed to offer upper-level students with serious interests in American history, political theory, and constitutional law an opportunity to learn more about these events by becoming intimately acquainted with some of the best and most sophisticated historical scholarship on the origins of the Constitution and by writing an original research paper on a relevant topic of their own choosing. Themes and topics covered in the course will likely include most or all of the following: the Declaration of Independence, the Revolutionary War, the Continental Congress, the Articles of Confederation, the History of American Public Finance, the Bank of North America, the Origins of American Federalism, the Problems of Union and Sovereignty, Implied Powers, Natural Rights, Slavery, Indian Affairs, Western Lands and Interstate Jurisdictional Disputes, the Annapolis Convention, the Virginia Plan, Madison's Notes, Farrand's Records, the Committee of Detail, the Committee of Style, the State Ratification Conventions, the Anti-Federalists, the Federalist Papers, the "Other" Federalists, and the Bill of Rights. Some attention will also be given to originalism as a method of constitutional adjudication, but the primary focus of the seminar will be on constitutional history rather than constitutional originalism. Guest lecturers with special knowledge of the foregoing topics will be invited to share their recent scholarship and critical perspectives on the history and historiography of American constitutional law.

Prerequisite: Constitutional Law I: The Federal System (or Democracy and Coercion).

LAW 015 v02 American Legal History (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20015%20v02)
J.D. Course | 3 credit hours
This course is a political history of American legal institutions in the twentieth century. After a brief survey of nineteenth-century state of courts and parties, it explains how American law and lawyers were transformed by the emergence of an administrative state. The bulk of the course is devoted to the emergence and consolidation of two political regimes—the Progressive (1898-1932) and the New Deal (1933-1964). Topics include the rise of the corporate bar, judicial reform, theories of administration and the rule of law, race and gender in the legal profession, "New Deal" and "Washington" lawyers, state and federal administrative agencies, and McCarthyism and the bar. The course is intended to provide students with a perspective on the statutory and regulatory courses of the upper-class curriculum and a historical understanding of the profession they are preparing to join. Readings are a collection of photocopied documents and historical articles. Classes mix lectures with discussion of assigned readings.
LAW 1518 v00 Doing Justice: Trial Judges Explain How Tough Decisions Are Made (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201518%20v00)
J.D. Seminar (cross-listed) | 2 credit hours
As any judge who has served on a busy trial court can attest, there are many assignments where the cases come at you so hard and fast that there is barely time to step into the box and take your stance before the next one comes zooming in. And that is true of the “easy” cases. In addition, there are cases where the judge has to wrestle with a problem so complex, or so emotionally draining, as to test the fortitude and impartiality of even the most competent and experienced jurists. These might be called “go to the mountain top” cases.

In busy trial courts, “mountain top” cases can appear in the garb of criminal, civil, probate, or family cases. Often the judge is unable to find any guiding legal precedent and is forced to navigate uncharted waters in search of the “just” result. Sometimes controlling legal precedent exists, but following it will lead to an unjust result. And then there are cases where the judge has very wide discretion to apply a vague legal standard, like “the best interest of the child” in contested child custody proceedings, or finding the “right sentence” in a criminal case, where the statutory range might run from no prison time at all to life in prison.

Some cases are hard not only because of the subject matter, but also because they capture the attention of the entire community and become highly politicized. This can be especially challenging for elected judges, who know that whatever decision they make may become the fodder for an opposition campaign when they next stand for election, and may ultimately cost them their judgeship. These political realities do not lessen the judge’s duty to decide each case in accordance with the facts and the rule of law, by reference to neutral principles. But these requirements can make the exercise of that duty more agonizing, knowing that the decision is likely to be unpopular with at least one large segment of the population.

This seminar will provide students with a rink side seat in the arena of judicial decision-making.

Learning Objectives:

By analyzing and critiquing thirteen poignant stories written by trial judges who struggled with difficult cases, seminar participants should come away with valuable insights about the litigation process. Hopefully too, students will become enthused and empowered to become effective trial advocates and perhaps judges. Besides reading 13 stories written by judges about real life difficult cases, each student will select a judge and interview that jurist about his or her decision making process in a tough case or class of cases. The semester will culminate with students drafting a paper describing not only the issues requiring judicial decision, but also how the interviewed judge sets about deciding those issues.

Prerequisite: Civil Procedure (or Legal Process and Society) or Criminal Justice (or Democracy and Coercion) or Criminal Procedure.

LAW 1067 v01 English Legal History Seminar: Foundations of American Law (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201067%20v01)
J.D. Seminar | 3 credit hours
This seminar emphasizes the development of the common law during the 18th Century—the age of Blackstone and his Commentaries. This was an era of rapid growth in the law, and English procedures and precedents were the foundation upon which much of the law of the early American republic was built. A central focus is on the role of Lord Mansfield as Chief Justice of the Court of King's Bench in creating a modern approach to doctrine and practice. Mansfield was a strong influence on leading American jurists and scholars of the 19th and 20th centuries, such as Joseph Story and Karl Llewellyn. Also studied is the role of the jury in 18th-century English courts—a role that continues to govern the scope of the right to jury trial in the United States under the Seventh Amendment. Special juries will be discussed, including the jury de mediate linguæ (“of the half tongue”) and the jury of matrons. Attention is given to the problem of crime in the 18th century, to the conduct of the criminal trial, and to the early history of the law of evidence. Students examine and discuss original documentary evidence discovered by recent research. A substantial paper is expected.

LAW 1523 v00 Judicial Biographies Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201523%20v00)
J.D. Seminar | 2-3 credit hours
In this seminar, students will analyze Supreme Court justices’ doctrinal tendencies and judicial philosophies in light of each justice’s personal history and early career. The course will focus on twentieth-century justices who no longer serve on the Court. Throughout the course of the semester, each student will write an original paper that aims to identify key elements of a justice’s life and core values and discusses the extent to which the justice’s history contributes to his or her judicial opinions (or fails to). After an introductory/overview class, each week two students will lead discussions on their selected justices based on the materials the students assemble—primarily the students’ papers and 2-3 key opinions by each selected justice. The professors will work with students to review their papers and materials prior to their presentations. Students also will have the opportunity to discuss various issues related to judges’ lives and their decision-making. We plan to invite a member of the judiciary to one of the classes to discuss his or her insights on these issues with the students. Evaluation will be based primarily on the student’s paper and presentation, plus contribution to the class discussions.

Prerequisite: Constitutional Law I: The Federal System (or Democracy and Coercion).

Note: This course will be enrolled via waitlist.

FIRST CLASS ATTENDANCE IS MANDATORY. All enrolled and waitlisted students must be in attendance at the first class session in order to be eligible for a seat in the class.
LAW 394 v02 Jury Trials in America: Understanding and Practicing Before a Pure Form Democracy (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20394%20v02)
J.D. Seminar (cross-listed) | 2 credit hours
The seminar will examine:
• The history of the U.S. jury trial system
• Jury selection dynamics
• Factors affecting juror performance during the trial
• Jury management challenges such as increasing juror comprehension in complex litigation and juror privacy
• Current policy debates concerning the jury.

Learning Objectives:
By participating in class discussions and role-plays and critically observing a real jury trial, students should better understand the nuances of trial by jury and feel more comfortable about appearing before a jury. By studying the assigned readings and writing an observation report on the jury trial they attended, students will come to understand the do’s and don’ts of communicating with juries and the dynamic efforts occurring across the country to bring about improved jury trial management.

Prerequisite: Civil Procedure (or Legal Process and Society) and Criminal Justice (or Democracy and Coercion) or Criminal Procedure.

LAW 1388 v00 Law and Social Change Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201388%20v00)
J.D. Seminar (cross-listed) | 2 credit hours
This course will explore the contemporary strategies used by movements seeking law and social change. An early wave of critique in the analysis of law and social change centered on the distinction between rule change and culture change, and stressed the shortcomings of litigation and reliance on courts in bringing about deep or lasting change. Today, most legal rights organizations have significantly modified the litigation-centric model to adopt a strategy more consistent with multi-dimensional advocacy, an approach to social change that self-consciously uses multiple strategies for change, including litigation, legislation, administrative and policy advocacy.

This class will analyze the role of law in achieving social movement goals. Topics will include both practice-grounded and more abstract questions. In the former category, the class will study the advantages and disadvantages of different institutional venues, approaches to communications, how framing decisions are made and with what consequences, working with allies, and the process of anticipating and responding to limitations of working within the law.

The class will meet as a once-a-week seminar. Students working in teams will take responsibility for proposing discussion questions in advance of class and introducing the material assigned for a given week.

In addition to interviewing one guest speaker, each student will write a paper of approximately 5,000 words in length analyzing how a particular legal campaign has used and/or is using some of the strategies discussed in class and with what results. Papers should

• Situate the legal campaign in the broader legal/political landscape in which it is engaged;
• Describe the strategic and tactical choices being undertaken and the results; and
• Analyze how its experiences illustrate or refute (or both) arguments in the theoretical or social science literature.

Students may select a campaign for either progressive or conservative change, or will be assigned to a particular movement.

Final grades will be based on class participation, including discussion leader sessions, and the paper. (The paper for this course will not satisfy the UCWR.)

Students should leave the course with a much more nuanced understanding of what is involved in working as a lawyer toward “making the world a better place.” They will learn how some challenges recur across issues; how social movements affect law as well as the other way around; and how to bring theoretically informed critical thinking to practice.

LAW 1664 v00 Legal History of the Early Republic Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201664%20v00)
J.D. Seminar | 2 credit hours
Description forthcoming.
LAW 626 v00 New Deal Legal History Seminar

J.D. Seminar | 3 credit hours
The deep recession that commenced in 2007 encouraged many in the United States to look to the past for insight on how the American legal order should respond to severe economic dislocation. Many turned to the first two presidential administrations of Franklin D. Roosevelt. For many years, the New Deal had been Old Hat, reviled by conservatives for its statist excesses and deplored by reformers for its bureaucratic rigidities. Suddenly, the Roosevelt administration's seemed to speak directly to the present. Then, in November 2016, the election of Donald Trump suddenly provided a new, less flattering perspective on Roosevelt, from which his impatience with legal and constitutional proprieties and his ability to galvanize public opinion through a relatively new medium (radio in FDR's case; Twitter in Trump's) suggested disturbing parallels.

This seminar takes up many legal developments from the years 1933-1941: the creation of new federal programs of social insurance, regulation, and public investment; the blazing, by a generation of young law graduates, of a new path into the profession through what had previously been considered a wasteland of government employment; the birth of modern administrative law; a reorientation of judicial activism from the defense of free markets and private property to the safeguarding of civil rights and civil liberties; and a great duel between President Roosevelt and Chief Justice Charles Evans Hughes, known to history as the "Court-packing" plan of 1937. Over the course of the semester, students will read nine historical monographs as well as articles and book chapters. They will write a Review Essay that evaluates one of the books assigned in the course. Most importantly, they will write a research paper that fulfills the Upperclass Legal Writing Requirement. Class meetings will be devoted to lectures, discussions of the assigned readings, progress reports on students' research and writing, and a concluding, roundtable discussion of the first drafts.

LAW 382 v00 Roman Law

J.D. Course | 4 credit hours
With such watershed events in the civil rights movement as Brown v. Board of Education (1954) and the civil rights acts of the 1960s, the eradication of racial subordination in America seemed an achievable goal. Yet, in America today, racial minorities continue to experience social and economic disadvantages, and race relations remain strained in many respects. Whether law has aided or impeded the cause of civil rights in the past and the extent to which law can help to resolve racial issues in the present and future are questions of considerable controversy. This course will examine the response of law to racial issues in a variety of legal contexts. Topics will likely include the meaning of race and racial discrimination, intimate relationships, child placement, employment, education and integration, policing and criminal punishment, free expression, and political participation. Classes will center on candid discussion and participatory exercises about the issues raised by the assigned material. The course will cover most of the seminal "race" cases decided by the U.S. Supreme Court.


Note: Laptops may not be used during class sessions.
LAW 1338 v00 Think Like a Lawyer: Elements for American Legal Analysis Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201338%20v00)
J.D. Seminar | 3 credit hours

A distinctive set of political, philosophical, and economic ideas underwrites American law. These provide elements for thinking like a lawyer, especially when one must come up with creative legal arguments, understand new areas of doctrine, or shift areas of practice altogether. This seminar aims to equip students with an introduction to a selection of elemental ideas that underpin American law, including liberty and tyranny; sovereignty; trade and commerce; and enfranchisement. We will explore these ideas within a broadly historical framework, concentrating especially on their development in England and then the United States in the 17th, 18th, and 19th centuries. No prior study of history, philosophy, or political theory is necessary.

Students will write papers that select a current (21st century) significant legal question and to analyze it using one element covered in the course. The legal question may come from any area of American law, including but not limited to corporate law, constitutional law, securities law, tort law, family law, immigration law, bankruptcy, consumer protection, labor and employment law… Students will submit rough drafts for comments from the professor. They will also have an opportunity to receive peer feedback on their work-in-progress. Final papers will be evaluated with consideration for originality, creativity, quality of writing, and to ability to absorb and constructively use feedback. Seminar grades will be based on the paper grade, the quality of class participation, and the quality of constructive feedback given to fellow students. The technical requirements for the paper (e.g. minimum length, citation format, submission for WR credit) are given in the Student Handbook (http://www.law.georgetown.edu/campusservices/registrar/handbook/upload/Juris_Doctor_Program.pdf) (page 5).

The weekly plan for the course is below. The readings listed will be the focal point of discussion; many will be available at the course website. A list of books (e-format fine) worth obtaining:

- John Locke, Two Treatises on Government
- Blackstone's Commentaries, Book 1
- Thomas Paine, Common Sense
- Jacobus tenBroek, The Antislavery Origins of the Fourteenth Amendment (this book is out of print, so must be borrowed from a library or purchased used)
- John Stuart Mill, The Subjection of Women

Full-time and Visiting Faculty

Stephen B. Cohen
Daniel R. Ernst
James C. Oldham
Ladislas M. Orsy