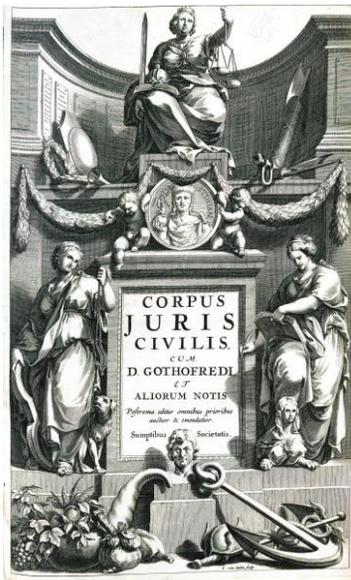


# FOUNDATIONS OF LAW

HIST 1201-001, Spring 2024  
MW 12:00-1:29pm



**This course explores the history and conceptual underpinnings of modern law in the European West.** What exactly is law? What is its relationship with politics and religion? Where do our notions of constitutionalism come from? How have we come to think in terms of rights? Using a historical and comparative approach, we will examine legal thought and culture in the European West from the Greek concept of *nomos* to the main categories of law developed in Roman antiquity, concepts of constitutionalism and rights crafted in medieval Europe, the development of the two main legal traditions of Europe (Common Law and Civil Law), and the emergence of procedural justice, modern international law, human rights discourse, and modern theories of law and state. The course will blend intellectual, political and social history. We will study concepts and intellectual alongside illustrative cases that exemplified the law or pushed it forward, and foundational documents such as Magna Carta. Crucially, at each stage we will examine the different relationships with and uses of the past in legal thought, evaluating the tension between traditionalism and reform that remains a critical question today. **Together, these subjects form core foundations of how we think and do law today.**

Professor Ada Kuskowski ([akusk@upenn.edu](mailto:akusk@upenn.edu))

Class Location: TBA

Office Hours: Tuesday 8:45-10:45 or request an appointment via email

Office: College Hall 306E

## Section Attributes:

\*\*\* Though not listed on Path, this class **\*does count for the Minor in Legal Studies and History\*** (LSHS) and counts for either “Philosophical Foundations of Law.” Let Dr. Fabella (fabella@sas.upenn.edu) know if the course needs to be entered on your LSHS worksheet in Path@Penn.

### As listed in Path, also counts for:

- GMST Europe (AGME), GMST Minor- Medieval Studies History (AGMH)
- HIST Concentration in European History (AHCE), HIST Concentration in Intellectual History (AHCI), HIST Concentration in Intellectual History Related (AHIR), HIST Europe and Australia (AHEA), HIST Pre- (AH18)
- NU Sector History&Traditions (NUHT)

## Assigned Readings

This is an introductory course and you are not expected to have background knowledge—lectures will provide the information you need to understand the readings.

You do not need to purchase any materials for this class. All readings will be posted in Canvas, in the Modules tab where they will be organized according to the class schedule. Every set of readings will come with some contextual material and set of questions to help you think through the material. You can expect the readings to be approximately 60 pages per week (depending on size of page), though some weeks will have a little more and some a little less.

Most of the readings for this course are primary sources. Primary sources are the evidence of history: contemporary accounts, original records or objects created by participants or observers at/around the time historical events (ex. Law codes, constitutions, speeches, trial records, images, imaginative writing, and so on). In other words, most readings for this course were composed in periods we are studying, by people living at that time.

### Required Readings:

- Tamar Herzog’s *A Short History of European Law: The Last Two and a Half Millenia* (Harvard, 2018).
- Primary Source Readings on posted in Canvas under the Modules tab.

## Evaluation

Attendance (5%)  
Participation (5%)  
4 in-class quizzes (20%)  
2 Themes & Questions (10%)  
Midterm (25%)  
Final Exam (35%)

\*\*\* ***Students must complete and pass each form of assignment to pass the course.*** Ex. You must attend in order to pass the course, even though its value is 5%.

**Attendance:** Students are expected to arrive on time and attend every lecture. Attendance will be taken on a random basis. Student questions and participation are always encouraged.

The course will not be recorded so if you need to miss a class, get notes from a colleague. If you need to miss more than two classes, do contact the professor to discuss how to catch up. Filling out absence reports is recommended.

**Participation:** Come to class ready to engage with the lecture and reading materials. Participation includes active attentiveness, offering to read from slides, questions, comments, bringing in tidbits and links from outside the classroom. This is a large class and you are not expected to speak every time. If you have real problem with speaking up in public, do come and speak to the professor and we will find a different way for you to participate.

**4 in-class quizzes:** Four short quizzes based on lectures and assigned readings.

**2 Themes & Questions:** You will write 200-250 words describing major themes and provide three discussion questions for the readings assigned for two classes. These will be due on Canvas the day prior to the class in question at 6pm. Student will be asked for preferences and then assigned dates (you may not get exactly what you want, but we will do our best). These will be used during in-class discussion.

**Midterm and Final Exam:** The midterm will be in class and the final exam during the final exam period. Both will be in bluebook format. Final exam is cumulative.

### **Note on Technology**

It is fine if you like to take notes on your laptop or tablet. Please do your texting, emailing, googling, online shopping, posting on various apps, ect., outside of class time. This not only lessens your own engagement with the course but is also distracting to others. We are building an experience together, let's build a dynamic and engaged one.

## CLASS SCHEDULE

### **PART I**

Mon. Jan 22: Intro: Topics, Sources, Big Questions

Wed Jan. 24 – Ancient Greece: Law, Lawgivers and Law as Philosophy

Canvas: selection from Demosthenes' *Against Conon*, Athenian Constitution, Aristotle's Nichomachean Ethics Bk. 5

Mon. Jan. 29 – Ancient Rome: Law from Kings to Empire

Canvas: XII Tables, selection from Cicero's *Laws* & Quintillian's *Institutes of Oratory*

Wed. Jan. 31— Law & Early Christianity

Canvas: Paul's Letter to the Romans selection, Martyrdom of Justin, Constantine & Edict of Milan

[Course Selection Period ends on Jan. 31]

Mon. Feb. 5— Law in Later Empire: Emperors, Christians, and Jurists

Canvas: Selection from Justinian's *Digest*

Quiz

Wed. Feb. 7— The Body of All Law: *Corpus Iuris Civilis*

Canvas: Selection from Justinian's *Institutes*, *Code* and *Digest*

Mon. Feb. 12— From Early Medieval Laws to "Feudal"

Canvas: Laws of Aethelberht, excerpt from Bede and Irish Penitential

## **PART 2**

Wed. Feb. 14— Church vs. State: Which has Power over the Other?

Canvas: documents from Brian Tierney's *The Crisis of Church and State*

Mon. Feb. 19— Roman Law, the Birth of the University and the Origins of Professional Law

Canvas: Frederick Barbarossa's Constitution Habita & Accursius' Gloss, Rainerius of Perugia contract

Wed. Feb. 21— Popes and Reformers: Making Church Law

Canvas: Gratian's *Decretum* first page, Fourth Lateran Council selection, cases from church court  
Quiz

Mon. Feb. 26— Documentation, Authenticity and Materiality of Law, Part 1: Library visit with Dr. Nicholas Herman, Lawrence J. Schoenberg Curator at the Schoenberg Institute for Manuscript Studies and Medieval Studies Librarian at Penn Libraries

[Feb. 27 - Drop period ends]

Wed. Feb. 28— From the French Conquest of England to the Birth of the Common law

Canvas: Charter of Liberties of Henry I, selection from Glanvill (*On the Laws and Customs of England*)

Mon. Mar. 4 & 6— Spring Break, no class

Wed. Mar. 11— Freedoms, Liberties & Magna Carta

Canvas: Selection from Roger of Wendover's history, Magna Carta 1215

Midterm

Wed. Mar. 13— Crime & Punishment

Canvas: Assize of Clarendon, selection of entries from coroner's rolls

Mon. Mar. 18— Inquisitorial Procedure & Proof by Torture  
Canvas: Bernard Gui inquisitorial technique selection, trial of Florea d'Ays

Wed. Mar. 20— Courts, Law & Custom in England and France  
Canvas: Selection from Bracton (*On the Laws and Customs of England*) & Beaumanoir's *Customs of Beauvaisis*

### **PART 3**

Mon. Mar. 25—Study Day

Wed. Mar. 27—Midterm

Wed. Apr. 1— Theorizing of the State: Rule of Law, Tyranny & Ancient Constitutionalism  
Canvas: Selection from Fortescue (*On the Laws and Customs of England*), Coke's *Institutes*, Jean Bodin

[April 2 - Last day to withdraw from courses]

Wed. Apr. 3 – Empires & Law: Colonization & Settlement  
Canvas: Selection from Francisco de Vitoria, lawsuit of Beatriz for her freedom

Mon. Apr. 8— From Law of Nations to International Law  
Canvas: Grotius selection  
Quiz

Wed. Apr. 10— Documentation, Authenticity and Materiality of Law, Part 2: Library visit with Dr. Mitch Frass, Curator at Kislak Center for Special Collections, Rare Books & Manuscripts at Penn Libraries

Mon. Apr. 15— Persons & Property: Freedom and Slavery in Europe and Colonies  
Canvas: Selection from Black Code (France), *Somerset v Stewart*

Wed. Apr. 17— Seeing Justice Done: Crime, Spectacular Punishment and Reform  
Canvas: Trial of Damiens, Gallows Speech Broadside, Beccaria's *On Punishment* selection

Mon. Apr. 22—18<sup>th</sup> c “Enlightenment”: Blackstone, Montesquieu, Rousseau  
Canvas: Selection from Montesquieu's *Spirit of the Laws*, Rousseau's Social Contract, Declaration of Rights of Man and Citizen  
Quiz

Wed. Apr. 24—Conservatism, Reform and Nationalism: Formation of Common Law and Civil Law  
Canvas: Selection from Blackstone's *Commentary on the Laws of England*, Portalis' Preliminary Address on the First Draft of the Civil Code

Mon. Apr. 29 –Theories of Law & the Modern State: Utilitarianism, Historical School, Anthropology, Marxism, Criminal Law and Punishment, Legal Positivism  
Canvas: Selections from John Austin’s *The Province of Legislation Determined*, Savigny’s *Of the Vocation of our Age for Legislation and Jurisprudence*, & Léon Faucher’s Rules for young prisoners in Paris

Wed. May 1 [Last Day of Classes] – Conclusion: Thinking About Foundations  
Canvas: Fill out final course reflection survey.

Final Exam – TBD during Exam Period

## **POLICIES & RESOURCES**

### **Welcome and communication**

Please come see me if you would like to discuss the course—this includes any questions or issues you might have as well as interests and delights. I will be happy to chat after class when I am free, or come see me in office hours or make an appointment to meet with me. I will answer brief questions via email, but questions needing longer discussion will be addressed in person. If your question is about an assignment, make sure to email me *at least* 48 hours before it is due to get an answer while it is still useful. If I have not answered an email for more than three days, I may have missed it, so you can at that point simply resend it (no additional note necessary).

### **Disability Accommodations**

Students needing academic accommodations for a disability must first be registered with and approved by Student Disabilities Services. This must be submitted to the professor in the first weeks of class so that appropriate arrangements can be made.

[http://www.vpul.upenn.edu/lrc/sds/cs\\_documentation\\_guidelines.php](http://www.vpul.upenn.edu/lrc/sds/cs_documentation_guidelines.php)

### **Academic Integrity**

“Since the University is an academic community, its fundamental purpose is the pursuit of knowledge. Essential to the success of this educational mission is a commitment to the principles of academic integrity. Every member of the University community is responsible for upholding the highest standards of honesty at all times. Students, as members of the community, are also responsible for adhering to the principles and spirit of the following Code of Academic Integrity.” Activities that infringe on academic integrity include: cheating, plagiarism, fabrication, multiple submissions, misrepresentation of academic record, facilitating academic dishonesty and unfair advantage. To see what these mean and find out more, go to:

<https://catalog.upenn.edu/pennbook/code-of-academic-integrity/>

**Having trouble with the academic side of things?** The Office of Learning Resources at the Weingarten Learning Resources Center provides professional consultation services in university relevant skills such as academic reading, writing, study strategies, and time management to the Penn community. Check out their website or go to a walk-in session:

<http://www.vpul.upenn.edu/lrc/>

**Feeling overwhelmed or having other non-academic issue?** Counseling and Psychological Services (CAPS) is the counseling center for the University of Pennsylvania. They offer free and confidential services to all students. <http://www.vpul.upenn.edu/caps/>