



Founding Era Jurisprudence

Hilary (Winter) 2024

Dates: January 8, 2024 – March 16, 2024
Module(s): Theology & Law/Christian History
Instructor(s): Ethan Foster • e.foster@davenportinstitute.org
Meeting Time: Saturdays, 1:00 PM – 3:00 PM (ET) ([Zoom Link](#))
Difficulty: Introductory

Course Description

This course will introduce students to the philosophical and historical foundations of the American constitutional system. By emphasizing early American jurisprudence, this course will treat students to a survey of historic texts including Blackstone's *Commentaries on the Laws of England*, James Wilson's *Lectures on Law*, and the first decisions of the U.S. Supreme Court. In the process, students will gain a deeper understanding of how early American lawyers used to think. Specifically, early American jurisprudence was characterized by an attentiveness to arguments sounding in natural law philosophy, history, and formal logic. Early American judging was similarly open-handed and almost experimental in its approach. Students who complete this course will therefore be equipped to read modern Supreme Court cases with a trained eye to what judges have found relevant over the past two hundred years and, most importantly, why. Students will be challenged to consider how the sources of legal reasoning and judicial methods at play reveal fundamental convictions about the nature of law and its source.

Objectives

1. Learn to read legal opinions and understand legal reasoning.
2. Comprehend the divergence between modern schools of legal thought (particularly legal realism and originalism) and early American jurisprudence (with its emphasis on history, natural law, and moral reasoning), and the consequences that follow from these approaches to legal thought.
3. Understand the philosophical assumptions underlying different legal methodologies and learn to spot them when reading cases.
4. Develop a deep grasp of the philosophical and historical roots of American legal thought.
5. Cultivate an appreciation for jurisprudence as a field and learn to articulate its relevance to citizens more broadly.

Course Texts

- [“The Path of the Law,”](#) by Oliver Wendell Holmes (pdf online).
- [“The Case of the Speluncean Explorers,”](#) by Lon Fuller (pdf online).
- [Treatise On the Laws](#), by Marcus Tullius Cicero (selections) (pdf online).
- [De Officiis](#), by Marcus Tullius Cicero (selections) (pdf online).
- [The Laws of Ecclesiastical Polity](#), by Richard Hooker (selections) (≈ \$20).
- [The Rights of War and Peace](#), by Hugo Grotius (selections) (pdf online).
- [The Law of Nations](#), by Emer de Vattel (selections) (pdf online).
- [Commentaries on the Laws of England](#), by Sir William Blackstone (selections) (pdf online).
- [Lectures on Law \(in Collected Works of James Wilson\)](#), by James Wilson (selections) (pdf online).
- [Early Supreme Court Cases](#) (selections) (available online).
- [A Matter of Interpretation: Federal Courts and the Law](#), by Antonin Scalia (≈ \$25).

Course Format & Delivery

Class sessions will primarily involve seminar-style text-based conversation. Students are expected to come to class having already read required texts for that week and ready for discussion.

Readings will be 50–100 pages per week. Classes will meet on [Zoom](#) for two hours weekly and **recorded** for absent students (not for dissemination outside of class). Additional student participation and instructor interaction will take place on our [Discord](#) channel, which students will be given access to before the course. [Google Classroom](#) will be used for assignment submissions, grades, and announcements.

Auditing

Auditors are not required to attend class live or submit assignments, but may participate in Zoom meetings, Discord, Google Classroom, and access recordings. If the time does not work for you, you can switch to auditing or to another course. See the drop/switch policy on the [Course Catalog](#) or [M.Litt. FAQ](#). Students are entitled to a full refund if the chosen time does not work for them. Please email Julia Thiele at registrar@davenportinstitute.org with any changes, requests, or questions.

Requirements



Attendance & Participation ^{10%}

[All Students]

Attentive and sustained participation in class is required. One unexcused absence is permitted. Students are expected to read required texts beforehand and come with texts, notes, and questions in hand. [TDI – H2023 – Early American Jurisprudence – Attendance](#).



Reading Responses ^{40%}

[All Students]

Due: The next session after the readings are covered in lecture.

- **Instructions:** Write two-page (600–800 word) responses for each of the works listed below. Focus on depth instead of breadth. Focus on one or two important points. Present an argument. Make a brief (one or two paragraph) conclusion applying the reading to a contemporary issue.
- **Due:** One week after the class in which the discussion of a text is finished.
- **Submission:** Submit on [Google Classroom](#) as .DOCX, .PDF, or Google Doc link.
- **Papers:** You may choose to write four total reading response papers on weeks of your choosing.

ONE of the following, depending on degree status:



Oral Exam ^{50%}

[M.Litt. Students Only]

Each student will schedule a 30 minute oral exam over Zoom for the last week of the course covering essential points of the course. To score 100%, students must competently answer questions related to five out of six topics. The format will be conversational, and will try to discover what you remember rather than asking “gotcha” or “what’s in my pocket” trick questions. More details will be given in class.

- **Schedule Sign Ups:** [Early American Jurisprudence – Oral Exam Signups](#).



Research Paper ^{50%}

[Non M.Litt. Students]

Due: See Course Calendar (end of term).

- **Length:** 3,000–5,000 words.
- **Sources:** At least two primary sources; secondary sources encouraged.
- **Instructions:** Write a research paper on one of the topics covered in class. Your paper must be an argumentative research paper drawing from primary and secondary sources in support of your thesis. See Grading Rubric for details on expectations.
- **Grading:** Read this in detail [Grading Rubric - Research Paper \(Davenport\)](#) Late: -5%/day.
- **Submit:** Submit on [Google Classroom](#) as .DOCX, .PDF, or Google Doc link.

Grading Scale:

A	A-	B+	B	B-	C+	C	C-	D+	D	D-	F
93	90	87	83	80	77	73	70	67	63	60	

Course Calendar

(See online syllabus for most up-to-date; subject to change)



Week of...



Readings

Sat.

January

13

1. Introduction to Jurisprudence (~49 pp.)
 - Legal Realism
 - 1.1. [Confirmation Hearing of Chief Justice Roberts](#) (Excerpts of Opening Statement)
 - 1.2. [“The Path of the Law,”](#) by Oliver Wendell Holmes (22 pp.).
 - Legal Writing and Legal Methods
 - 1.3. [“The Case of the Speluncean Explorers,”](#) by Lon Fuller (27 pp.).
 - Survey of Classroom Assumptions
 - 1.4. [Early American Jurisprudence Survey](#)

Sat.

January

20

2. Ancient Contributions to Jurisprudence (64 pp.)
 - Cicero’s *Treatise on the Laws*
 - 2.1. [Treatise on the Laws \(Book I\)](#), by Marcus Tullius Cicero (24 pp.).
 - Cicero’s *De Officiis* (On Moral Obligation)
 - 2.2. [De Officiis \(Book I\)](#), by Marcus Tullius Cicero (40 pp.).

Sat.

January

27

3. Reformation Era Contributions to Jurisprudence (101 pp.)
 - Richard Hooker’s *Defense of Traditional Thought*
 - 3.1. *The Laws of Ecclesiastical Polity* (Book I, Chapters 1–12), by Richard Hooker

Sat.

Feb.

3

4. Early Modern International Law (Part I)
 - Grotius: *The First Treatise on the Law of Nations*
 - 4.1. [The Rights of War and Peace](#), by Hugo Grotius (selections to be determined).

Sat.

Feb.

10

5. Early Modern International Law (Part II)
 - Vattel: *A Treatise on the Law of Nations*
 - 5.1. [The Law of Nations](#), by Emer de Vattel (selections to be determined).

Sat.

Feb.

17

6. English Common Law (64 pp.)
 - Blackstone: *The Father of Common Law Jurisprudence*
 - 6.1. [Commentaries on the Laws of England](#), by Sir William Blackstone (Introduction; Book I, Chapters 1–3).

Sat.

Feb.

24

7. American Jurisprudence Develops (Part I) (69 pp.)
 - James Wilson: *Laying a Philosophical Foundation*
 - 7.1. [Lectures on Law \(in *Collected Works of James Wilson*\)](#), by James Wilson (Lectures I–III).

Sat.

March

2

8. American Jurisprudence Develops (Part II) (89 pp.)
 - James Wilson: *Building on that Foundation*
 - 8.1. [Lectures on Law \(in *Collected Works of James Wilson*\)](#), by James Wilson (Lectures IV–VII).

Sat.

March

9

9. America’s First Supreme Court
 - The Chaotic Early Years: Jay (1789–1795), Rutledge (1795–1795), and Ellsworth (1796–1801)
 - 9.1. [West v. Barnes, 2 U.S. 401 \(1791\).](#)
 - 9.2. [Vanstophorst v. Maryland, 2 U.S. 401 \(1791\).](#)
 - 9.3. [Oswald v. New York, 2 U.S. 401–02 \(1792\).](#)

- 9.4. [Georgia v. Brailsford \(Brailsford I\), 2 U.S. 402 \(1792\).](#)
- 9.5. [Hayburn's Case, 2 U.S. 409, 412 \(1792\).](#)
- 9.6. [Georgia v. Brailsford \(Brailsford II\), 2 U.S. 415 \(1793\).](#)
- 9.7. [Chisholm v. Georgia, 2 U.S. 419 \(1793\).](#)
- 9.8. [Talbot v. Jansen, 3 U.S. 133 \(1795\).](#)
- 9.9. [Ware v. Hylton, 3 U.S. 199 \(1796\).](#)
- 9.10. [Calder v. Bull, 3 U.S. 386 \(1798\).](#)
- Judicial Review and the Marshall Court (1801–1835)
- 9.11. [Marbury v. Madison, 5 U.S. 137 \(1803\)](#)

<div>Sat.</div> <div>March</div> <div>16</div>	<p>10. Originalism Today (45 pp.)</p> <p><u>Antonin Scalia: Toward A More Limited Methodology</u></p> <p>10.1. <u>A Matter of Interpretation: Federal Courts and the Law</u>, by Antonin Scalia</p> <p>Optional Reading (~43 pp.):</p> <p>10.2. <u>District of Columbia v. Heller, 554 U.S. 570 (2008)</u></p>
<div>SAT.</div> <div>MARCH</div> <div>16</div>	<p>END OF TERM</p>
<div>March</div> <div>18-23</div>	<ul style="list-style-type: none"> • Oral Exam <u>Early American Jurisprudence – Oral Exam Signups</u>
<div>SAT.</div> <div>March</div> <div>23</div>	<ul style="list-style-type: none"> • Research Paper: Due by Saturday, March 23, 2024 • Reading Responses: Due the Saturday after the class in which the discussion of a text is finished.