

Fall 2023 — Spring 2024

Writing Group: The Original Constitution

STEPHEN E. SACHS
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HLS 3500

M 6–8

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Welcome! This course is designed to support a year-long writing project. You are invited to write on any topic relating to the original content of the Constitution or of its amendments, or to pursue any other project usefully overlapping with such topics in sources and methods.

Meetings will be held on six **Monday evenings** throughout the year, **6–8 p.m.**, per the schedule below. We'll discuss the techniques and difficulties of legal history, available sources and research methods, and tips and tricks for effective research and writing. We'll also workshop our papers—I'll be working on one along with you!—to benefit from feedback and collaboration.

Over the course of the year, each of us will circulate a précis, outline, and first draft of our papers. We'll also each deliver a job-talk style presentation of our research, both as a way of refining our ideas and as potential training for the academic job market. Final papers will be due on the last day of the spring exam period.

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READINGS

There is one required text: John B. Nann & Morris L. Cohen, *The Yale Law School Guide to Research in American Legal History* (2018). Other readings are available on the course website under “Files,” as well as in a printed coursepack.

A few wholly optional readings, which others have found useful in designing and structuring their research projects, include:

- Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples, and Execution* (3d ed. 2019)
- Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (5th ed. 2016)
- Wendy Belcher, *Writing Your Journal Article in Twelve Weeks: A Guide to Academic Publishing Success* (2d ed. 2019)
- Matthew Butterick, *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* (2d ed. 2018), <https://typographyforlawyers.com/>

OFFICE HOURS

Please feel free to attend my office hours! A sign-up sheet is available on the course website. If those times don't work for you, just contact me, and we can try to make other arrangements.

Also: HLS will pay for lunches for faculty members and groups of four students or more. While you should feel *no* obligation to see any more of me than is required by the prescribed number of credit-hours, I'm always happy to meet for lunch. Just email me to propose a time.

GRADING

Grading for the course itself will be on a Pass/Fail basis. Papers for which HLS writing credit is sought will be graded along the lines usually prescribed for student writing, with standard page requirements and so on.

SCHEDULE

1 Sept. 11: Introduction and general themes

1.1 J. A. Crook, *Legal History and General History*, 41 Bull. Inst. Classical Stud. 31 (1996) 7

1.2 David Ibbetson, *What Is Legal History a History of?*, in *Law and History* 33 (Current Legal Issues vol. 6, Andrew Lewis & Michael Lobban eds., 2003) 13

1.3 Shannon McSheffrey, *Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England*, Hist. Workshop J., Spring 2008, at 65 21

1.4 Gordon S. Wood, *Ideology and the Origins of Liberal America*, 44 Wm. & Mary Q. 628 (1987) 35

1.5 Markus Dirk Dubber, *Historical Analysis of Law*, 16 Law & Hist. Rev. 159 (1998) 49

1.6 William Baude & Stephen E. Sachs, *Originalism and the Law of the Past*, 37 Law & Hist. Rev. 809 (2019) 53

For this session, in addition to being ready to discuss the readings, you should be prepared to offer:

- a working title for your project; and
- a 30-second “elevator pitch” describing your idea to someone familiar with the law but not with your field (say, your average law-review articles editor).

In preparing your “elevator pitch,” consider the following list of questions, along lines suggested by Prof. Jonathan Mummolo of Princeton:

- What is my research question?
- Why should we care about it?
- Why don’t we already know the answer? (What has gone overlooked? What did prior work get wrong, empirically or theoretically?)
- What did I do to answer the question that was new?
- What did I find?
- What are its implications?

At this point, you won't have done or found much of anything yet. So you should think about what you *hope* to do, or what you expect you *will* find. And it's perfectly fine for all these things to change later on! But organizing your thinking along these lines can be useful in drafting an elevator pitch, an abstract, an introduction, and the paper itself.

We'll also discuss some technical means of organizing sources and some helpful software options.

2 Oct. 23: Sources and methods

- 2.1 John B. Nann & Morris L. Cohen, *The Yale Law School Guide to Research in American Legal History* (2018)
- 2.2 William Baude & Jud Campbell, *Early American Constitutional History: A Source Guide* (rev. ed. Mar. 11, 2023), <https://ssrn.com/id=2718777>.....65

The *night before* this session, you should post to the website (under "Discussions") a two-page précis of your proposed topic. The précis should summarize your topic and plan of research. It should include answers to the list questions above, but it should take the form of continuous paragraphs rather than a bullet-pointed list. Also, your précis should include a short bibliography listing some of the sources you plan to use. (Don't expect to have very many of them yet!)

At this session we'll be joined by representatives of the HLS Library research staff. They'll discuss some of the historical resources to which we have access at HLS and some helpful ways to make use of them.

3 Nov. 6: Organization and outlining

The *night before* this session, you should post to the website a detailed outline of your paper. This outline should have sufficient detail to give the reader a clear sense of what you plan to argue and how you plan to go about it. You should absolutely feel free to depart from this outline while drafting! But having it on paper may help the process along.

At this session we'll each deliver a 'status report' on our projects, identifying areas of difficulty and trading advice. We'll also discuss approaches to organizing papers and effective modes of argument.

4 Jan. 22: Drafting and presenting

On the *Friday evening before* this session—to give others time to read—you should post to the website a ten-page excerpt of your paper. Any ten pages will do! The goal is to encourage you to get something on paper, which is often the hardest step. As *Simpsons* writer John Swartzwelder put it:

... I do have a trick that makes things easier for me. Since writing is very hard and rewriting is comparatively easy and rather fun, I always write my scripts all the way through as fast as I can, the first day, if possible, putting in crap jokes and pattern dialogue—"Homer, I don't want you to do that." "Then I won't do it." Then the next day, when I get up, the script's been written. It's lousy, but it's a script. The hard part is done. It's like a crappy little elf has snuck into my office and badly done all my work for me, and then left with a tip of his crappy hat. All I have to do from that point on is fix it. So I've taken a very hard job, writing, and turned it into an easy one, rewriting, overnight. I advise all writers to do their scripts and other writing this way. And be sure to send me a small royalty every time you do it.

At this session we'll also discuss the format of job talks and prepare for your upcoming presentations. We'll also decide at which of the two following sessions each of us will deliver an in-class presentation.

5 Mar. 18: Presentations

6 Mar. 25: Presentations

On the *Friday evening before* your scheduled presentation—to give others time to read—you should post to the website a full first draft. Although you'll be revising this version before it's graded, it should nonetheless be a polished and shareable essay.

The in-class presentation should be modeled on an academic job talk. It should assume that the audience is legally sophisticated, but not that they are subject-matter experts. Powerpoint, etc., is perfectly permissible but strictly optional.

After a fifteen- to twenty-minute presentation—which really should not exceed twenty minutes—we’ll open the floor to questions from the audience, which the rest of you should be prepared to ask.

I’ll be sending you individualized comments on your first drafts, hopefully within two weeks of their being posted on the website. I’m also happy to discuss the comments and your first drafts one-on-one.

May 3: Final drafts due by 4:30 p.m. on the last day of the upper-level exam period.