

Law and the U.S. Constitution in Global History



Law 101, 4 Credits, Spring 2021
Fulfills GE Requirement for Citizenship in a Global Era

Class Meetings	Instructor	Office Hours
M/W 11-11:50	Professor Sam Erman serman@law.usc.edu	
	Afamefuna Ibekwe afamefuna.ibekwe.2021@lawmail.usc.edu	
	Michelle Ong michelle.ong.2022@lawmail.usc.edu	
	Marian Slocum marian.slocum.2021@lawmail.usc.edu	

*Professor Erman's Assistant, John Lee, johnlee@law.usc.edu, 213-740-6792

COURSE DESCRIPTION

This is a course about law and constitutionalism within and beyond the United States. By examining key constitutional moments involving race, rights, and revolutions, students will explore how legal meaning changes over time. The reading is primarily that of lawyers: judicial opinions and constitutions. Students will also engage visual media like movies and television programs as part of exploring the cultural reception of legal change and the role of popular culture in altering law.

One of the insights that the course seeks to convey is the extent to which legal ideas have crossed and re-crossed borders. Here, the approach is both comparative and dynamic. It is comparative in asking how the U.S. Constitution differs from and resembles the organic charters of other nations (and groups of nations). Such questions clarify what choices the United States and other nations have made and illuminate alternatives that they could have – and still could – pursue. The approach is dynamic in recognizing that members of nations do not act in isolation as they construct constitutional systems. In interpreting the U.S. Constitution, U.S. jurists have turned to and altered many ideas with foreign pedigrees. In turn, as members of other polities elaborated their own constitutional schemes, they have borrowed and reworked aspects of the U.S. approach.

COURSE OBJECTIVES

This course aims to teach students legal and historical approaches to analyzing important social problems. Students will learn to read judicial opinions and legislative enactments and to use those sources as evidence for legal and historical arguments.

LEARNING OBJECTIVES/LEARNING OUTCOMES

1. Develop the ability to think critically, analyze, synthesize ideas and concepts, and use information to solve problems.
2. Understand the nature of empirical evidence in historical and legal research, and assess the usefulness of different types of evidence in explaining the specific social phenomena; become cognizant of the ethical issues presented when conducting research into evolving human subjects like history, law, and culture.
3. Be able to understand the use of interdisciplinary study for increasing human knowledge.

REQUIRED MATERIALS

All texts and media will be available on the blackboard site under content except as indicated below. Items listed below as available on Amazon streaming or Google Play are often available only at a cost, which is the student's responsibility. Students will be provided with bluebooks for exams. To reach material streamed through Blackboard, navigate to the course page on Blackboard, click Content on the left-hand side, click Streaming Media, and then scroll down to the relevant item.

EXPECTATIONS

Final Exam (25% of final grade)

The final (25%) examination will cover assigned readings and media and material presented during lecture and section. It will be essay based and cover material from throughout the course. You cannot pass the course unless you take the final exam.

Papers (50% of final grade)

Students will write one 5-7 page paper (20%) and one 7-10 page paper (30%). For each paper, students will be provided with several topics to choose from. The hallmarks of an excellent paper are: (1) original and critical argument; (2) organized presentation of evidence and ideas; (3) evidence drawn from the course materials that supports the argument and clear explanations of why that is; (4) well-chosen, readable, error-free prose. In particular, a paper should have a clear thesis that is laid out in the first paragraph. Each subsequent paragraph should advance that argument. Each paragraph should also have a topic sentence that foreshadows what the paragraph as a whole will say while also signaling how the paragraph advances the argument. Section leaders are available to help students at every stage of the writing process. The USC Dornsife Writing Center is also an excellent resource for student writers (<http://dornsife.usc.edu/writing-center/>). Papers will be graded down 1/3 of a grade for each day late. Thus, papers that would have received an A- if turned in on time will receive a B+ if turned in one day (up to 24 hours) late. You cannot pass the course unless you turn in both papers.

Assignments (10% of final grade)

There are five assignments given throughout the semester. Each is worth 2% of the final grade. For each assignment, a 200-300 word response must be submitted by Turnitin to the section leader. This is done by going to the Blackboard site, selecting "Course Tools" (not "Tools"), then from the dropdown menu selecting _____. These assignments are graded on a SAT/UNSAT/ZERO basis. Students will receive feedback if and only if a posted paragraph is UNSAT. Students will not receive notice of their grade or feedback if they post SAT work.

Section (15% of final grade)

Students are expected to complete the assigned reading, media, and other assignments prior to section and to attend section consistently and on time. Each student may be late to section once without penalty and may also miss one section without penalty. All other tardiness and absence will result in reductions in students' section participation scores. Those reductions will be smaller if students provide their section leaders with advance notice. Participation in section will be measured by students' preparation, the thoughtfulness of students' comments, and how well students listen to and respond to each other. Students who add the course once the term has started are not responsible for attending section prior to enrolling in the course.

Lecture (Mandatory)

Students will have access to lecture notes and PowerPoint slides before lecture. Students are expected to study these and to complete other assigned reading and media prior to lecture (except where noted otherwise below). Lecture is designed to help students consolidate and master this material. I will ask students to participate individual and in groups. Students are expected to attend lecture consistently and on time. Students with more than five unexcused lecture absences cannot pass the course. Students who with more than five unexcused tardies to class may receive a penalty of one third of a grade on their final grade (e.g., an A- would become a B+). These rules mean that the onus is on the student to reach out to her or his section leader to explain absences and tardies. Under the circumstances of the pandemic, it is the policy of the course to be flexible in responding to student difficulties with attendance -- after the student reaches out and explains her or is circumstances.

Extra Credit

Students may receive extra credit by attending substantive events put on by the Center for Law, History and Culture or by the Law, History and Culture major. To receive credit, students must simply attend the event. The section leaders will pull the attendance sheets and give credit that way. The schedule of events for the Center for Law, History and Culture is available at https://gould.usc.edu/centers/clhc/events/feature/featured_workshops.cfm. For each event/optional media assignment, students will receive a 0.5% boost in their final grade, up to a maximum of 2.5% (i.e., 5 extra credit events).

STATEMENT FOR STUDENTS WITH DISABILITIES

USC adheres to a non-discrimination policy; see http://www.usc.edu/dept/publications/cat2010/about_catalogue/nondiscrimination_policy.html

Any student requesting academic accommodations based on a disability is required to register with Disability Services and Programs (DSP) each semester. A letter of verification for approved accommodations can be obtained from DSP. Please be sure the letter is delivered to me (or to your TA) as early in the semester as possible. DSP is located in GFS 120 and is open 8.30 a.m.- 5.00 p.m., Monday through Friday. The phone number for DSP is (213) 740-0776.

STATEMENT ON ACADEMIC INTEGRITY

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards”: <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct at <http://policy.usc.edu/scientific-misconduct>.

STATEMENT ON SUPPORT SYSTEMS

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

<https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

<https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class.

<https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC – <https://diversity.usc.edu/>

Tab for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students

STATEMENT ON LEARNING EXPERIENCE EVALUATIONS

“Learning Experience Evaluations will be conducted in discussion sections during the final week of classes. This will be your opportunity to provide feedback about your learning experience in the class. This feedback helps the instructor determine whether students are having the intended learning experiences for the class. It is important to remember that the learning process is collaborative and requires significant effort from the instructor, individual students, and the class as a whole. Students should provide a thoughtful assessment of their experience, as well as of their own effort, with comments focused on specific aspects of instruction or the course. Comments on personal characteristics of the instructor are not appropriate and will not be considered. For this feedback to be as comprehensive as possible, all students should complete the evaluation.”

TECHNOLOGY POLICIES

Blackboard

This course presumes that students have regular access to and facility with the internet, including the course website on Blackboard. The URL for the site is: <https://blackboard.usc.edu/>. To access it, you must activate your USC e-mail account, which you can do by visiting the ITS activation page at <http://www.usc.edu/firstlogin>. For assistance, contact Blackboard’s 24 hour tech support online or at 213-740-5555. For every assignment turned in, students are responsible for refreshing the page and confirming that the assignment has posted. An assignment that never posted will receive no credit.

Cell Phones, Laptops, Tablets, Etc.

In-class use of laptops, tablets, cell phones, and similar devices is prohibited except as part of an official disability accommodation.

I. THE IDEA OF A CONSTITUTION

- Week 1 1/18 MLK Day
- C1: 1/20: Written & Unwritten Constitutions. Democracy, Popular Sovereignty, & Representation
- Reading: Matherson v. Marchello, 473 N.Y.S.2d 998 (by Supreme Court of N.Y., Appellate Division, 1984) (excerpts); Yonaty v. Mincolla, 945 N.Y.S.2d 774 (by Supreme Court of N.Y., Appellate Division, 2012) (excerpts)
- What is at issue in these cases? How and under what reasoning do the courts resolve the issue(s)?
 - Are the decisions fair? Why or why not? How could the decisions be improved?
- Week 2 C2: 1/25 Separation of Powers, Limited Government, and the Bill of Rights
- C3:1/27: The British Constitution in the Colonies
- Reading: Declaration of Independence (by Thomas Jefferson on behalf of the Continental Congress, Philadelphia, 1776); lecture notes for classes 1-3
- What is the purpose of the Declaration of Independence? How does it justify that purpose?
 - Is the Declaration of Independence law?
- Media: *John Adams Miniseries*, Part I: Join or Die (by HBO, United States, 2008), available free on HBO Max with USC login
- What is gained by having high-budget entertainment that covers major historical events? Did the episode alter how you think about anything we have covered in class?
 - What if any obligation do the creators of such content have to get the history right? What would it mean to do so?
- Week 3 C4: 2/1: The British Constitution in the States
- C5: 2/3: Ratification and the Bill of Rights
- Reading: U.S. Constitution as ratified (by delegates to the constitutional convention and ratified by the United States, United States, 1787–1788) (identify all provisions concerning citizenship or slavery); Derrick A. Bell, The Chronicle of the Constitutional Contradiction, in *And We Are Not Saved* (New York: Basic Books, 1987), 28-42; lecture notes

- What does the Constitution say about slavery? Why does it address slavery in this way?
- What does the Constitution say about citizenship? Why does it address citizenship in this way?

Media: *The Liberator* (by Producciones Insurgentes & San Mateo Films, Venezuela, 2013), available on Amazon streaming and Google Play

- Which histories end up being made into movies and which do not? What factors matter? Do they need a good hero? A rich audience who is interested in the history? Does language matter? Race? Controversy?

II. REVOLUTION, SLAVERY, & EMPIRE

Week 4 C6: 2/8: French & Haitian Revolutions

C7: 2/10: The Spanish Empire in the Age of Revolutions

Reading: Declaration of the Rights of Man and Citizen (by the French National Constituent Assembly, France, 1789); Bill of Rights (by James Madison and Congress, United States, 1789–1791); lecture notes (and get a head start on next week's reading, which is substantial)

- How does the Declaration of the Rights of Man and Citizen compare and contrast with the Bill of Rights?

Media: Explore Danny Glover's attempt to make a biopic about Toussaint L'Ouverture online. Some potential starting places:

- Stuart Jeffries, "Danny Glover: The Good Cop," *The Guardian*, online edition, 18 May 2012, <http://www.theguardian.com/film/2012/may/18/danny-glover-good-cop>
- Tambay A. Obenson, "Danny Glover's Toussaint L'Ouverture Film that Never Was, but Could Still Be & Other Films on the Haitian Revolution," *Shadow and Act Blog*, 31 Jul. 2015, <https://www.indiewire.com/2015/07/danny-glovers-toussaint-louverture-film-that-never-was-but-could-still-be-other-films-on-the-haitian-revolutionary-235064/>
- Rebecca Frasquet, "Danny Glover Makes Black Film," *News24, Archives*, 28 Jul. 2008, <http://www.news24.com/Entertainment/CelebNews/Danny-Glover-makes-black-film-20080725>
- Rory Carroll, "Venezuela Giving Danny Glover \$18m to Direct Film on Epic Slave Revolt," *The Guardian*, online edition, 20 May 2007, <http://www.theguardian.com/world/2007/may/21/film.venezuela>

- Consider the same questions as above for the *Liberator*

First Paper topics (5-7 pp) emailed out and posted to Blackboard

Week 5 2/15 Presidents Day

C8: 2/17: The Fugitive Slave Clause in Practice: the Fugitive Slave Law of 1793, *Prigg v. Pennsylvania* (1842), and the Compromise of 1850

Reading: Solomon Northrup, *Twelve Years a Slave* (New York, Millery, Orton & Mulligan, 1855); lecture notes [updated notes for class 9 with questions and answers added will be available shortly after class 9]

- How is slavery depicted by Northrup?
- *Twelve Years a Slave* was published as propaganda for the abolitionist movement. How does this affect your understanding of the text?
- How is the law depicted by Northrup? Does the law protect slavery? Does the law protect free people?

Media: *Twelve Years a Slave* (by Fox Searchlight Pictures, United States, 2013), available on Amazon streaming and Google Play

- Heads up: This is a film that contains graphic violence and abuse of both a sexual and racial nature.
- In what ways are the movie and book similar? How do they differ? What is at stake in those similarities and differences?
- What were the purposes of the creators of the movie? Did they achieve those purposes?
- What choices did the filmmakers make that you might have made differently? Why?

Week 6

C9: 2/22: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery I

C10: 2/24: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery II

Reading: *Scott v. Sandford*, 60 U.S. 393 (by U.S. Supreme Court, United States, 1857) (excerpts); lecture notes [updated notes for class 10 with questions and answers added will be available shortly after class 10]

- What are the two main issues in the case? How does the Court come out on each issue? Why?
- How does the Court frame the issue of citizenship and how does this influence the Court's analysis?
- How does the Court define citizenship? What sources does the Court use in determining this definition? Does the Court's analysis make sense?

Media: *Amistad* (by DreamWorks Pictures, United States, 1997), available on Amazon and Google Play

- How does the film portray its African characters?
- How does the film portray the legal issue at stake in the film? How does it portray the counsel for the Africans? How does it portray abolitionists?
- What is the narrative arc of the film? What message is it trying to convey? How does that choice fit with the audience it needs to reach to be profitable?

Assignment 1 due by Turnitin to section leaders by midnight Wednesday night

Week 7

C11: 3/1: Illegal Enslavement, Jus Soli Citizenship, Dred Scott, and Federal Power over Slavery II

3/3: Reconstruction

Reading: lecture notes

Executive Summary: ____.

III. RACE & RIGHTS AFTER SLAVERY

Week 8

C12: 3/8: Redemption?

C13: 3/10: Reconstruction before the Court

Reading: lecture notes, 25 pages of your choosing from the *Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States*, vols. 1-13 (by U.S. Congress, Washington, D.C., 1872), available at <http://onlinebooks.library.upenn.edu/webbin/metabook?id=insurrection1872>; lecture notes

- **Heads up:** The *Report* includes graphic descriptions of racial and sexual violence.
- In what ways are the KKK empowered by the law?
- What tools and methods are used by the KKK to exercise influence? What does this signify about the nature of social and legal change?

Assignment 2 due by Turnitin to section leaders by midnight Wednesday night

Media: *Birth of a Nation* (by D.W. Griffith, United States, 1915), available at <https://www.youtube.com/watch?v=ebtjH3EOHo> (if link broken, full movie should be available by searching youtube.com)

- **Heads up:** This film contains highly offensive depictions of Black Americans. That racism was put to specific political and cultural purposes, which we will be analyzing.
- This movie sought to

HALFWAY MARK: By this point in the course, students will be able to gain a preliminary sense of how they are performing in the class. Each will have already received a grade on the midterm.

Week 9

C14: 3/15: White Supremacists Seek Political Lockup

C15: 3/17: Jurists Contemplate the Spanish American War & the *Insular Cases* of 1901

Reading: *Plesy v. Ferguson*, 163 U.S. 537 (by U.S. Supreme Court, United States, 1896); lecture notes [updated notes for class 14 with questions and answers added will be available shortly after class 14]

- In what ways is the Court's decision based on the Constitution?
- What is the difference between social rights and political/civil rights? Why does this matter to the Court?

- In what ways does Justice Harlan’s dissent embrace the notion of a “color-blind” constitution that bars officials from noting race? In what ways does Harlan’s dissent suggest that officials must sometimes be aware of the realities of race in carrying out their jobs?

First paper (5-7 pp) due by Turnitin to section leader by midnight Wednesday night

Second Paper topics (7-10 pp) emailed out and posted to Blackboard

Media: *Gone with the Wind* (by David Selznick, United States, 1939), available on Amazon and Google Play

- Heads up: This is another film that includes highly offensive depictions of Black Americans. Again, it is racism that is put to specific political and cultural purposes, which we will be analyzing.
- What stereotypes are being deployed in the film? What purpose do they serve?
- How should one think about the Black men and women who played stereotyped characters in this and other films of the era? What choices were open to them? What effects did their choices have on their own lives, on the world that they inhabited, and on subsequent generations?
- When was the film made? What does it say about the United States at that time? What do you make of the film coming out the same year that WWII started?

Week 10

C16: 3/22: White-Supremacist Political Lockup Arrives

C17: 3/24: *Gonzales v. Williams* (1904)

Reading: Brief of Petitioner, No. 225, *Gonzales v. United States*, 192 U.S. 1 (by Frederic Coudert, United States, Nov. 30, 1903); Selected writings by Isabel Gonzalez (New York, early 20th century); lecture notes

- Does the petitioner seek to be a citizen, or merely a national?
- What is the difference between a citizen and a national? Why does it matter?
- How do American Indians, African Americans, and the French Imperial experience figure into the argument?
- How are Puerto Ricans portrayed in the brief? To whom are they compared or analogized?
- How does Isabel Gonzalez the letter writer compare to Isabel Gonzales the litigant?
- What did the litigation mean to Gonzalez? What were her goals? How did she understand the result?

Week 11

C18: 3/29: Empire and Reconstruction

C19: 3/31: World War I and the Anti-Colonial Feint

Reading: Luis Muñoz Rivera to Woodrow Wilson, Nov. 18, 1913 (United States), Maryland Branch of the National Archives and Records Administration, Record Group 350, Series 5A, File 26429-33; House of Representatives Committee on Insular Affairs, *A Civil Government for Porto Rico* (Washington, D.C.: Government

Printing Office, 1916), 15-16; Senate Committee on Pacific Islands and Porto Rico, *Government for Porto Rico* (Washington, D.C.: Government Printing Office, 1916), 62; 53 *Congressional Record* 7471-7473 (1916) (speech of Luis Muñoz Rivera, Washington, D.C.); 54 *Congressional Record* 2250, 4170 (by Congress, Washington, D.C., 1917); Woodrow Wilson, Fourteen Points Speech (United States, Jan. 8, 1918); lecture notes

- Luis Muñoz Rivera is the leader of the dominant political party on the island. Woodrow Wilson was a Democrat who became president in 1913, which was the first time Democrats had taken control of Congress and the White House since the annexation of Puerto Rico.
- What were Muñoz Rivera's goals? Did they change over time? Did his views of Wilson and the Democrats change over time? How?
- What ideals animated Wilson's Fourteen Points Speech? What would have been the result of applying those ideals to Puerto Rico.

Assignment 3 due by Turnitin to section leaders by midnight Wednesday night

IV. WAR & HUMAN RIGHTS

Week 12 C20: 4/5: The Japanese and German Post-War Constitutions

4/7 WELLNESS DAY

Reading: Preamble and Chapter I-III and IX-X of the Constitution of Japan (by U.S. military officials and the Japanese people, Japan, 1947); Preamble and Arts. 1-19 of the Basic Law for the Federal Republic of Germany (by the German people, Germany, 1949); The Universal Declaration of Human Rights (by the United Nations, Paris, 1948); lecture notes

- Knowing what you do about the U.S. Constitution, what is familiar in each of the three documents? What is unfamiliar in each of them?
- Where does U.S. influence seem greatest? Least?

Executive Summary: ____.

Week 13 C21: 4/12: The Universal Declaration of Human Rights

C22: 4/14: The Lead up to *Brown v. Board of Education* (1954)

Reading: *Brown v. Board of Education*, 347 U.S. 483 (by U.S. Supreme Court, United States, 1954); lecture notes

- What were the issues in the various cases before the Court?
- How did the lower courts seem to be treating *Plessy v. Ferguson*? How did the Supreme Court treat *Plessy*?
- What evidence was there that segregation hurts African American children? Would the case against segregation have been weaker without that evidence?
- The case put off deciding on a remedy until later. What remedy do you think would be appropriate? Why?

Assignment 4 due by Turnitin to section leaders by midnight Wednesday night

Week 14 C23: 4/19: Desegregation

V. Affirmative Action

C24: 4/21: U.S. Affirmative Action I

Reading: *Fisher v. University of Texas at Austin*, ___ U.S. ___ (by U.S. Supreme Court, United States, 2013); lecture notes for class 24.

- This is a case where the Supreme Court applies strict scrutiny to an affirmative action program. What is the reason that the Court applies strict scrutiny instead of normal scrutiny? What is the test for strict scrutiny? What part of the test is at issue here?
- What is the role of diversity in the case? What is the role of the long history of U.S. discrimination in the United States?
- What is the specific doctrinal issue that this case settles? How does the decision alter the doctrinal landscape?
- Does the moral or legal valence of racial discrimination change with the race of the victim, the motive of the person engaging in the differential treatment, or the impact of the differential treatment on society?

Second Paper due by Turnitin to section leaders by midnight Wednesday night

Week 15 C25: 4/26: U.S. Affirmative Action II

C26: 4/28: Final Exam Review

Reading: *Roper v. Simmons*, 543 U.S. 551 (by U.S. Supreme Court, United States, 2005) (read all of the majority opinion (focusing on Part IV); Part II.D of O'Connor's dissent, and all of Scalia's dissent (focusing on Part III)); lecture notes for classes 25 and 26 [these will be posted to Blackboard shortly after class 26, and should be read prior to the final exam review]

- How do each of the opinions envision the role of international law in Supreme Court opinion writing and decision making? To what extent are the divisions more illusory than real? Who has the better of the argument?

Students will complete Learning Experience Evaluations at the start of section and at the start of Wednesday's lecture

Assignment 5 due by Turnitin to section leaders by midnight Wednesday night

Week 16 **Final Exam. Wednesday, May 5.** It is the university and the course policy that all students must take the final exam at the assigned date and time.

KEY COURSE CONCEPTS

As we work our way through the course, keep these key overarching concepts in mind to assist you in meeting our learning objectives.

Autonomy of Law: The ways in which law drives historical change. Autonomy of law has two aspects. The first is continuity of law. Other historical forces (such as economics, politics, culture, society, and ideas) do not completely determine the shape that law took. What law was has shaped what it became. In other words, law has tended to have a certain stickiness and resilience. The second aspect is law's influence on other domains (such as economy, society, and the like). Law has channeled, constrained, shaped, and facilitated historical change in domains far beyond those traditionally thought of as legal.

Put another way, this concept encompasses these two dynamics:

- (1) Law is not entirely and immediately responsive to non-legal forces like economics or politics. Law retains its shape to some degree for some time in the face of non-legal pressures.
- (2) Law has an impact on non-legal forces. What the law influences how other forces proceed. Law can be seen channeling, slowing, bounding, or assisting other drivers of change over time.

Ideas and Borders: Ideas have mattered to historical change. They have not themselves changed the world. Rather, they were resources that individuals took up, altered, and deployed. In so doing, they altered the ideas that existed as well as the world around them. This dynamic has particular application to law, where individuals have repeatedly used ideas to bring legal claims capable of altering the shape of law itself. This mechanism of individuals using ideas to alter history has a transnational aspect. People pick up and rework legal ideas from other countries in consequential ways. As people and paper circulated, ideas articulated in one place became available in other places. People took up those arriving ideas as bases for claims, thereby infusing law in one place with (legal) ideas from others. Three implications follow. The first has to do with robust notions of agency: this dynamic (sometimes) rested on the consequentiality of claims by modestly situated people. Conversely, the second has to do with domination. Those who are more powerful may have repeatedly imposed their ideas on those who are less powerful. We see this with some frequency where, race, war, and empire are concerned. The third implication is that legal systems did not develop in isolation: they often embodied each other's ideas.

Agency: Agency describes individuals' ability to act autonomously, and analysis of this key concept forces us to focus on the experiences and impacts of individuals in history. Thinner notions of agency focus on how individuals experienced historical moments, especially those moments of great social or political upheaval. In our course, this includes the ways that individuals understood and actively navigated the legal regimes that they faced. Law did not fully determine people's actions and consciousness. Individuals constructed their own understandings of law. They drew on, evaded, and reshaped law as they lived their lives. In its strongest form, the concept of agency suggests that even the choices that modestly situated people make can become important motors of historical change.

Politics, Society, Culture, Economy, and Violence: Historical forces other than law and ideas. Dynamics in these domains affect and are affected by each other, law, and ideas.

Citizenship: Citizenship was a popular ideal and a formal legal category. As an ideal, citizenship often embodied expansive rights. As an official category, its content could be much less consequential. Citizenship often had a hydraulic dynamic; when more people got it, the rights it brought fell, and vice versa. As a result, who was a citizen and what one got by being a citizen both changed over time. Because citizenship provided a language that was widely accessible while also having official recognition, many modestly situated individuals found it a useful basis on which to bring claims. Conversely, citizenship has also served the powerful, providing a basis on which to exclude. The meaning of citizenship has often been ambiguous and contested. In practice, citizenship has not held equal promise for all. Its meaning has differed based on such identity traits as race, gender, and class.

Race: A central category in law, society, culture, ideas, violence, economy, and politics that has been a major basis for discrimination.

Contingency: The extent to which small changes at a prior time would result in large changes at a later time (i.e. later events are “contingent” on earlier ones). The concept rests on an imaginative, speculative act; it requires speculating how an event that did not happen would have altered what followed. Contingency is one way to capture the reality that historical actors did not know how what their future would hold (even though we now do). It is also a precondition to a thick notion of agency. For the choices of modestly situated individuals to change the course of history, (smallish) shifts at one time must be capable of producing more substantial shifts at a later time.

Equality: A central constitutional (and legal, social, cultural, and political) category, value, and subject of debate. Equality has had many meanings. Some forms of discrimination (inequality) have always been accepted (e.g., murderers are treated differently than law-abiding folk). Where equality has been sought, it has involved certain similarities in treatment (e.g., equality in outcome) along certain lines (e.g., race).

Representation: The portrayal of the past for present purposes. History is one form of representation. It describes and analyzes prior events for a modern-day audience with modern-day goals. Counter-histories, memoirs and historical movies and television shows and novels also depict the past for contemporary audiences. The aims of such representation can be profit, entertainment, propaganda, or argument, among others. Sometimes, one representation builds off another, as when a historical novel is adapted into a movie. Representations are both (secondary-source) evidence of the events they describe and (primary-source) evidence of the eras that produced them.