

AS.100.373: Crime, Punishment, Felony and Freedom

Law and Society in Pre-modern England, 1066 to 1688

[A brief history of English Constitutional Law]

Syllabus • Fall 2019

MW: 12:00-1:15pm
Gilman 219



Professor Lester
Gilman 322
Office Hours:
Tuesdays: 2-4pm
and by appointment
alester5@jhu.edu

Course Description

This course explores the development of English law and the English legal tradition from the Norman Conquest through the English Revolution (ca. 1066-1688) within its social context. Over the course of the semester we will attempt to answer many key questions, for example: What is a jury? What is possession? What was the context for the creation of the Magna Carta? What is the nature of sovereign power? How well did Shakespeare know the law? We will begin by tracing the impact of the Norman Conquest of England and examining the origins and developments of English legal and political institutions such as kingship, the common law, the evolution of legal procedure, and the court and jury system, ideas of franchise, felony, treason and parliament. We will also consider specific aspects of the law and its effects including the treatment of aliens, women, heirs, traitors and the legal framework for the emergence of the English Church in the fifteenth century. When applicable the implications of these institutions for developments in the contemporary American and British legal systems will be addressed.

Goals of the Course

The overarching goals of the course are threefold: (1) to offer students a synthesis of the place and meaning of law and legal change within the larger framework of the social history of medieval and early modern England. (2) The course also seeks to introduce students to the techniques and practices of reading and interpreting the law and legal texts in the past. This involves a considerable commitment to patient, careful, detailed reading of primary sources, many of which can be terse and initially impenetrable. In turn, to see how the law both evolved and functioned in the lives of individuals, students will gain the skills of reconstructive reading;

reading as historians do with an eye to the world that lies behind and beyond the text at hand. Finally, (3) through the written assignments and exams required for the course, students will gain an expertise in writing focused, clear, thesis or argument driven analytic papers. This type of writing will be pursued with an eye to legal writing and the importance of crafting a clear and convincing argument.

Course Requirements

(1) Regular attendance in lecture and active and engaged participation in discussions (this is participation above and beyond one's physical presence in the classroom) is required. **(20% of the final grade)**. Students are expected to do a thorough reading of all course materials, take notes as they read, and generate questions that will propel discussion. Lectures are intended to provide you with a broad historical framework that will aid you in contextualizing the weekly reading assignments. Because there is not a textbook for the legal aspects of this course lectures will be absolutely crucial to understanding many of the key components, terms, ideas and developments that lie at the heart of this class.

(2) Performance on two take-home exams. Both exams will follow the same format for which there will be a section devoted to terms from lectures and readings and an essay portion that asks students to synthesize a theme from the course. The list of possible terms and essay questions will be pre-circulated at least two weeks before the exam. Please plan to come to office hours for review. **(40% of the final grade)**.

(3) Two short (3-pages each) legal briefs. For this exercise you are asked to give a cogent and clear argument on an aspect of English law or legal practice using one of the primary texts available on Blackboard. Your legal brief will present the facts of a specific case or situation and offer an argument related to its intended effects. Your conclusions should be supported by an assessment of the previous historical circumstances, other legal documents or decisions that pertained to the creation of the new law. Detailed guidelines for these assignments will be pre-circulated in the weeks prior to its due date. Parenthetical citations will suffice for the briefs. In contrast to the exams and final paper, the briefs will be graded on a scale of A-B-C-F. **(20% of the final grade)**.

(4) Finally, students must complete a research paper of (8-10 pages) in length **(20% of final grade)**. The research paper is a thesis-driven essay on an aspect of English law of your choosing due **December 17th by 5pm**. The paper must focus on one or more primary source documents and offer an interpretation and contextualization of these sources. All students must arrange to discuss their proposed research topic with me **before 13 November**. A formal paper prospectus is due **20 November**. The prospectus should include a 300-word overview of your topic, a preliminary thesis, and a preliminary bibliography of no fewer than ten sources including, but not limited to (a) primary sources and (b) secondary books and (c) articles. Footnote citations are required for the final draft. For guidance I will circulate several handouts relating to citation styles, resources for research papers, and further details about this assignment. Please also take advantage of the many research resources available through the library and its websites.

Evaluation in the course is as follows:

Midterm & Final Exams	(40%)
Legal Briefs (2, 3-pages each)	(20%)
Research Paper	(20%)
Attendance and Participation	(20%)

NB: **Students must complete ALL assignments to receive a passing grade in the course**

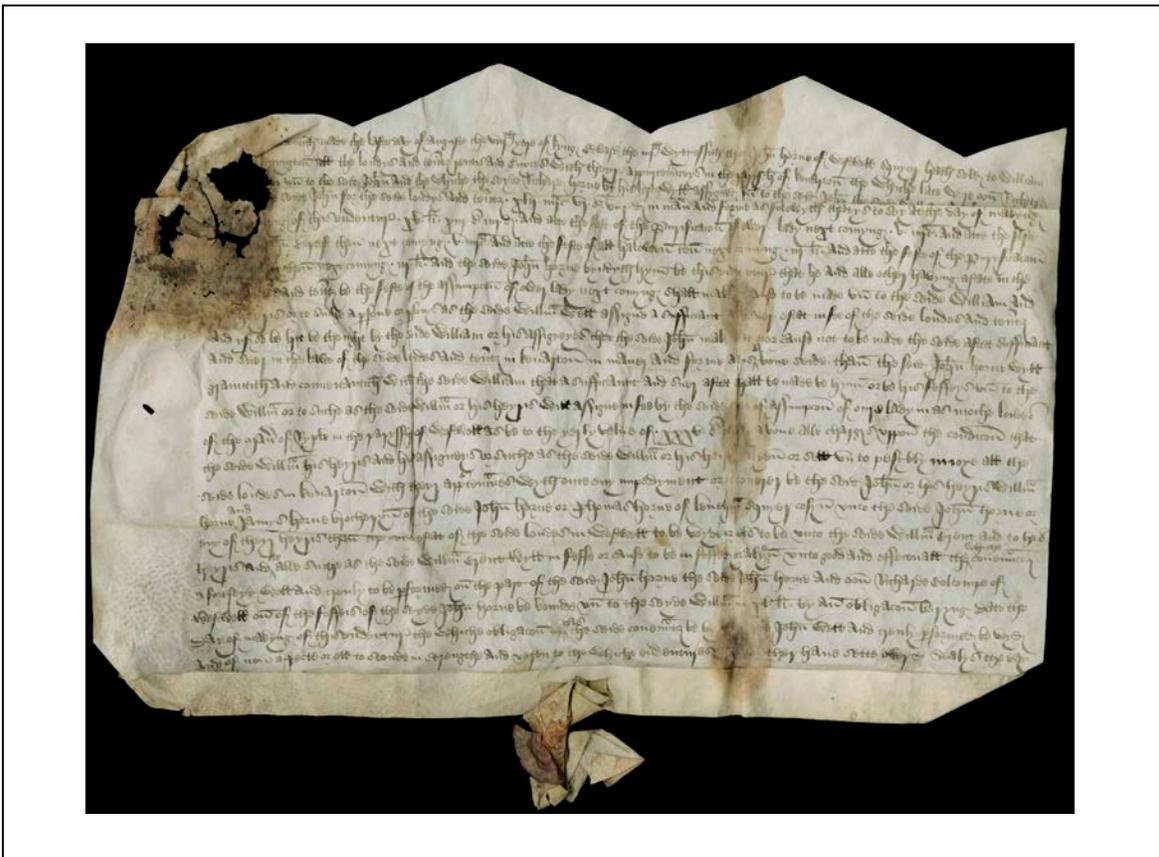


COURSE TEXTBOOKS AND READINGS

All of the books and articles and the primary readings necessary for the course are available through the Library and/or the Blackboard course site. The following books are also available for purchase at the Hopkins Bookstore:

- C. Hollister, et al., *The Making of England: To 1399*, 8th edition (New York: Houghton Mifflin, 2001). [ISBN: 0-618-00101-8]
- L. Smith, *The Realm of England, 1399-1688*, 8th edition (New York: Houghton Mifflin, 2001). [ISBN: 0-618-00102-6]
- Magna Carta*, ed. David A. Carpenter (New York: Penguin, 2015). [ISBN-10: 0241953375]
- William Shakespeare, *Richard III* revised edition (New York: Signet Classics, 1998) [ISBN: 9780451526953]
- The Trial of Charles I: A Documentary History*, ed. David Iagomarsino and Charles T. Wood (Hanover, NH: Dartmouth College Press, 1989). [ISBN13: 978-0874514995]

In addition, ALL of the required readings (other than those listed above) have been placed on the course **Blackboard** site. We will make use of these readings for nearly every class meeting. I strongly encourage you to **PRINT** them out and take notes on those printed texts – especially the primary source material scanned from the Stephenson and Marcham books listed below. If this becomes a problem, printing the texts may become a requirement.



Contract of indenture, University of Colorado-Boulder, Special Collections MS 350 (14th C)

SCHEDULE OF LECTURES, DISCUSSIONS AND COURSE READINGS

[B] = Blackboard Website



Week I: The Origins of the Common Law

M (meets Thurs.): Aug 29 – Lecture 1: Introductions -- Where to begin?

Read: Become familiar with the map of England (see back of front cover of Hollister, et. al.)
Hollister, et al, pp. (84-)115-124 (*optional*)
[Blackboard = B] Stephenson and Marcham, no. 5

Week II: Law, Conquest and Authority

M: Sept. 2 – NO CLASS – Labor Day

W: Sept. 4 -- Lecture 2: English Kingship and the Norman Conquest

Read:
Hollister et al, pp. 125-53
[B] Pollock and Maitland, I, pp. 79-87
[B] Stephenson and Marcham, nos. 16-18, 21-22.

THEME: Consider how the power of an outside culture is imposed? Was the Norman Conquest an act of colonization? If so, how and why? Consider the nature and meaning of hegemony in England between 1066-1087.

Week III: Institutions of the Realm: Domesday and Beyond

M: Sept. 9 – Lecture 3: Institutions of Government and the Jurisdictions of England

W: Sept. 11– Lecture 4: The Succession of Henry I & the Coronation Charter

Read:
Hollister et al, pp. 154-72
[B] Carol Symes, “Doing Things beside Domesday Book,” *Speculum* 93 (2018):1048-1101.
[B] Stephenson and Marcham, nos. 23-25

THEME: Consider the nature of English kingship – how was it constituted in the time of Edward the Confessor; what was it like under Henry I? What does it mean for the law to look back at older laws? What is the nature of legal precedent?

Week IV: Old Law/Unlaw

M: Sept. 16 – Lecture 5: Norman Kingship, the Rise of New Men and the “Good Old Law”

W: Sept. 18 – Lecture 6: Stephen and the “Unlaw”

Read:

Hollister et al, pp. 172-78

[B] Stephenson and Marcham, no. 29

* Work on the First Brief Assignment: sources available on Blackboard

THEME: How did the royal household function? Who staffed the household and what were their roles and obligations? What is the role of material wealth in this context? How did Stephen’s rule undermine or strengthen the need for and force of the law?

Week V: Henry II: Land, Writ and Criminal Clerks

M: Sept. 23 – Lecture 7: Restoring Justice under Henry II: The Law and Procedure – or the nature of the Writ

W: Sept. 25 – Lecture 8: Thomas Becket and the Limits of Royal Authority

**** FIRST BRIEF PAPER DUE September 25th ****

Read:

Hollister et al, pp. 179-201

[B] Pollock and Maitland, vol. I, pp. 136-73, 458-85

[B] Stephenson and Marcham, nos. 30-33

[B] Selected Miracles of Saint Thomas Becket

* *Optional:* Watch the 1964 film *Becket* and submit a one-page review.

THEMES: What was the nature of restorative justice under Henry II? Why does possession, or seisin, matter? And who is denied access to the law? On what grounds? What was innovative about the jury system?

BUT, also consider: What were the limits of English royal power? What jurisdictions existed in England during the mid-twelfth century, or put another way, what types of law co-existed in the realm? What did the writ do for the king? What did access to a writ do for the common man?

Week VI: Parvus rex et Magna Carta

M: Sept. 30 – Lecture 9: The Reign of King John and Constriction of Royal Power

W: Oct. 2 – Lecture 10: Magna Carta and its Meaning

Read:

Hollister et al, pp. 201-256

[B] Stephenson and Marcham, nos. 43-45

Magna Carta, with commentary by David Carpenter (New York: Penguin, 2015), 22-69 (a different version of #44 above), and 98-123.

THEME: Consider what was new in the Magna Carta. What precedents did it appeal to and draw from? How did it change the nature of royal authority? Whose liberties did it protect?

Week VII: Bracton and Henry III

M: Oct. 7 – Lecture 11: The Rise of the Petty Jury and the Power to Punish

W: Oct. 9 – Lecture 12: The King, His Barons and the Law – Bracton's Ideas

Read:

Hollister et al, pp. 257-85

[B] Stephenson and Marcham, nos. 45 (review) and 47

[B] Pollock and Maitland, I, 174-225

[B] Bracton, *De Legibus*, trans. S. Thorne, vol. II, 1-42, 48, 109-10

[B] Carpenter, pp. 309-48

Selections from Bracton may also be viewed online: <http://bracton.law.harvard.edu>

THEME: We have seen the considerable evolution of the relationship between the king and the law in England. How does Bracton come down on this dynamic? In turn, knights and land-holders also have an obligation to the law of the realm: Consider how you would describe these obligations. Does this change one's commitment to society?

Week VIII: Diminishing the Common Law – Legal Statutes and Taxation

M: Oct. 14 – Lecture 13: The Rise of Parliament

W: Oct. 16 – Lecture 14: Edward I and the Constitutional Crisis

**** TAKE-HOME MIDTERM EXAM Due in class October 16th ****

Read:

Hollister et al, pp. 286-300

[B] Stephenson and Marcham, no. 51(A)

[B] Carpenter, *The Reign of Henry III*, pp. 381-408

THEME: Consider the power and effect of Parliament. What was it created to do? What relationship does it initially have to royal authority and prerogatives? Are their parallels in our own modern law that point to the tensions behind this relationship?

Week IX: Calamities of the Fourteenth Century

M: Oct. 21 – Lecture 15: England under Three Edwards, 1272-1377

W: Oct. 23 – Lecture 16: Crafting Treason and Finding Felons

Read:

Hollister et al, pp. 301-360

[B] Stephenson and Marcham, nos. 55-56, 58-59, 61(C), 62(D), 62(F)

THEME: How did the legal definition of treason and treasonous behavior affect royal power? How did the climate of events and social conditions in the 14th century shape the creation and augmentation of law? What does fear do to political power and royal authority?

Week X: Rule through One Hundred Years of War

M: Oct. 28 – Lecture 17: Royal Prerogative in the Reign of Richard II and Following

W: Oct. 30 – Lecture 18: JPs, MPs, and all the Common Folk

Read:

Smith, pp. 3-47

[B] Stephenson and Marcham, nos. 63 (E), 66(A), 67 (C) (E) (F), 69 (G)

THEME: What effect did the peasant's rebellion of 1381 have on royal authority? How does the common law, unlike other forms of law (one thinks of Roman law in particular) limit the power of the king? What does this limitation mean for England as a "nation"? How are the common interests given power in the realm?

Week XI: A Renaissance of the Common Law: Performance and Play(s) at Court

M: Nov. 4 – NO CLASS – Prof. Lester out of town (*Be sure to read Shakespeare!)

W: Nov. 6 – Lecture 20: Inns of Court and the Rise of the Tudor Rose

**** SECOND BRIEF PAPER DUE November 6th ****

Read:

Smith, pp. 48-70

William Shakespeare, *Richard III*, revised edition (New York: Signet Classics, 1998)

* Optional: You may also choose to watch the BBC Series *The Hollow Crown*.

THEME: What was at stake with the rise of the Tudor Dynasty? How does Shakespeare's presentation of events illuminate the legal nature of kingship? How do law and literature intersect? Consider the importance or power of imagination in reconstructing meaning in the past.

Week XII: Dominium regale (et politicum) – Henry VIII

M: Nov. 11 – Lecture 21: Practice of Kingship – Technical Innovations

W: Nov. 13 – Lecture 22: "By Divine Right"– Acts of Supremacy & the Tudor Constitution

Read:

Smith, (pp. 71-88 *optional*), pp. 89-145

[B] Stephenson and Marcham, nos. 73 (A)(B)(C)(E)(F), 74 (B)(G)(J)(K)(L)(M)

THEME: How do Henry VII and Henry VIII reclaim political authority for the crown? Why are they successful? What is England's place in the context of Europe by the 16th century? What types of legal power do the Tudors use as a basis of comparison? What is the nature of the "Anglican Church" on the eve of Henry VIII's death?

Week XIII: Religion in the Service of its Rulers

M: Nov. 18 – Lecture 23: England Under Tudor Rule: The Reign of Elizabeth I

W: Nov. 20 – Lecture 24: Between Catholics and Puritans

**** RESEARCH PAPER PROSPECTUS DUE in class November 13th ****

Read:

Smith, pp. 149-210

[B] Stephenson and Marcham, nos. 77, 78 (A)(C), 81(A)(B)(D), 82 (P)

THEME: Consider the tensions surrounding class (that is, the distribution and political benefits of wealth) during the Tudor period. How do innovations in the law deepen these tensions? What role does Parliament play in this regard? Does it matter that the Queen is a woman? When does gender in this case play a role?

Week XIV: THANKSGIVING BREAK – November 25-29, 2019

Week XV: The Stuart Dynasty

M: Dec. 2 – Lecture 25: James I and the Politics of Taxation

W: Dec. 4 – Lecture 25: Government, Governance, and the Killing of a King

Read:

Smith, pp. 243-315

[B] Stephenson and Marcham, nos. 91 (A), 92 (D)(E)(F), 94 (A)(B)(C)

The Trial of Charles I: A Documentary History, ed. David Iagomarsino and Charles T. Wood (Hanover, NH: Dartmouth College Press, 1989).

THEME: What are the issues that divide the king from his realm? Why does taxation matter? Ultimately, what are the limits of royal power? When does the common law trump a tyrant? How do you kill a king in the 17th century?

Second TAKE-HOME EXAM – December 7th in my box Gilman 301

**** FINAL PAPERS due DECEMBER 17TH 2019 ****

They must be in my box (LESTER) in the History office, Gilman 301 by 5 pm.

OTHER IMPORTANT MATTERS

(Many of these statements will be familiar to you, but they are important!)

Academic Integrity

The strength of the university depends on academic and personal integrity. In this course, you must be honest and truthful. Ethical violations include cheating on exams, plagiarism, reuse of assignments, improper use of the Internet and electronic devices, unauthorized collaboration, alteration of graded assignments, forgery and falsification, lying, facilitating academic dishonesty, and unfair competition. I take all of this very seriously, especially acts of plagiarism.

Report any violations you witness to the instructor. You may consult the associate dean of student conduct by calling the Office of the Dean of Students at 410-516-8208 or via email at integrity@jhu.edu. For more information, see the Homewood Student Affairs site on academic ethics:

(<https://studentaffairs.jhu.edu/student-life/student-conduct/academic-ethics-undergraduates>)

or the e-catalog entry on the undergraduate academic ethics board:

(<http://e-catalog.jhu.edu/undergrad-students/student-life-policies/#UAEB>).

Please also include the following University ethics statement on the final paper of your exams:

"I attest that I have completed this exam without unauthorized assistance from any person, materials, or device." [Signed and dated].

Illness/Unexpected Absences

Students should do their best to be in communication with the professor regarding illness and unexpected absences. I understand that this happens sometimes; we are all human. If this becomes a problem (i.e., if you miss more than three classes, or more than two consecutive classes), it will reflect in your overall grade. Please, simply contact me via email if you will not be in class on a specific day or if you have missed a class. This holds for lectures and discussion meetings.

Weather Events/Cancelled Classes

Sometimes unexpected weather events or other issues will cause the university or myself to have to cancel class. In this event, I will update the class about changes to the syllabus, the class-meeting schedule, and assignment deadlines. If needed, I will create an updated syllabus for the remainder of the course.

Religious Holidays

Religious holidays are valid reasons to be excused from class. Students who must miss a class or an examination because of a religious holiday must inform the instructor as early in the semester as possible in order to be excused from class or to make up any work that is missed.

For more information can be found at the [Religious and Spiritual Life](#) website.

Disability Services

Any student with a disability who may need accommodations in this class must obtain an accommodation letter from Student Disability Services, 385 Garland, (410) 516-4720, studentdisabilityservices@jhu.edu

Please also come and discuss this with me at the start of the semester.

Anxiety, stress and mental health

If you are struggling with anxiety, stress, depression or other mental health related concerns, please consider visiting the JHU Counseling Center. If you are concerned about a friend, please encourage that person to seek out their services. The Counseling Center is located at 3003 North Charles Street in Suite S-200 and can be reached at 410-516-8278 and online at <http://studentaffairs.jhu.edu/counselingcenter/>

Classroom Climate and Etiquette

I am committed to creating a classroom environment that values the diversity of experiences and perspectives that all students bring. Everyone here has the right to be treated with dignity and respect. I believe fostering an inclusive climate is important because research and my experience show that students who interact with peers who are different from themselves learn new things and experience tangible education and life outcomes. Please join me in creating a welcoming and vibrant classroom climate. You should expect to be challenged intellectually and it's possible that at times that may feel uncomfortable. Being exposed to new ideas and ways of thinking can be unexpected and challenging. At no time, however, in this learning process should someone feel singled out or treated unequally on the basis of any seen or unseen part of their identity.

If you have concerns in this course about harassment, discrimination, or any unequal treatment, or if you seek accommodations or resources, I invite you to share directly with me. I will take your communication seriously and will seek mutually acceptable resolutions and accommodations. Reporting will not impact your course grade. Should you have any concerns, please contact the department chair or the director of undergraduate studies.

Family accommodation: You are welcome to bring a family member to class on occasional days when your responsibilities require it (for example, if emergency child care is unavailable, or for health needs of a relative). In fact, you may see my children in the class on days when their school is closed. Please be sensitive to the classroom environment, and if your family member becomes uncomfortably disruptive, you may leave the classroom and return as needed.

Technology Policy

Please be sure to consider your fellow colleagues in this course. The classroom is an environment of mutual respect and dialogue. We won't all agree all the time, but having constructive conversations is the goal. Please be sure to **turn off** and **put away** all cell phones, iPads, etc. before lecture and discussion begins.

I ask that you NOT use computers in the classroom to take notes or to surf the internet during lecture and discussion. IF you require the use of a computer please come and speak to me before the course begins. There are a few days that may offer exceptions to this rule, especially towards the end of class. I will make you aware should you need a computer in class.

Email is an essential component of this course and one of the primary means by which I will communicate with you during the semester regarding discussions, reading assignments, and other materials. Be aware too that email will not always garner an instant response. If you need a question answered be sure to consider what you are asking well in advance of when you need a reply.

GUIDELINES RELATED TO GRADING AND WRITTEN ASSIGNMENTS IN THE COURSE:

An **A** or **A-** paper, written assignment or exam demonstrates an exemplary command of the course material. Such assignments offer a close and critical reading of the texts and a consideration of issues raised in the course as a whole, offer a synthesis of the readings, discussions, and lectures and present a perceptive, compelling, independent argument. They are clearly written and well-organized. The argument or thesis shows intellectual originality and creativity (a willingness to take risks with ideas and interpretations), are attuned to historical context, supported by a well-chosen variety of specific examples from the texts, and (in the case of papers) rely upon a critical reading of primary material.

A **B+** or **B** paper, written assignment, or exam shares many aspects in common with A-level work, but falls short in either the organization and clarity of its writing (stylistically), the formation and presentation of its argument (organizationally), or in the quality and level of critical engagement (substantively).

A **B-** paper, written assignment or exam demonstrates a command of the course material and a general understanding of the historical context but offers a less than thorough presentation of the writer's independent thesis due to weakness in writing, argument, organization or presentation of evidence.

A **C+**, **C**, or **C-** paper, written assignment, or exam offers little more than a summary of ideas and information covered in the course or presented in the specific question. They are insensitive to the historical context, do not respond to the assignment adequately, suffer from factual errors, unclear writing, lack of organization, or inadequate use of evidence, or a combination of these problems.

Papers, written assignments and exams that belong to the **D** or **F** categories demonstrate inadequate command of the course material:

A **D** paper, written assignment, or exam demonstrates serious deficiencies or clear flaws in the student's command of the course material or readings at hand.

And **F** paper, written assignment, or exam demonstrates **NO** competence in the course or reading materials. It indicates a student's neglect or lack of effort in the course.

Grading Range:

A = 93+; A- = 90-92.9; B+ = 87-89.9; B = 83-86.9; B- = 80-82.9; C+ = 77-79.9; C = 73-76.9; C- = 70-72.9; D+ = 67-69.9; D = 63-66.9; D- = 60-62.9; F = <60.

*I strongly encourage you to come to my office hours (Tuesdays 2:00-4:00pm, or by appointment) if you have questions or concerns either **before** an assignment is due, or concerning your performance in the course. Graded assignments and exams will be returned in class. After two weeks you can come by my office during office hours to pick up your assignments if you have not picked them up in class. I do not e-mail grades during the semester or at the end of the course. We address a great deal of material in this course, and at times it will feel overwhelming. Please come and talk with me if that is the case.*