American Legal History Survey: Syllabus

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Recommended Citation
This course provides an overview of American Legal History, focusing on the manner in which law has been used to organize American society. Several themes will be traced through the semester, including law’s role in encouraging innovation and regulating social relations, in part through the elaboration of legal disciplines like property, tort, contract, criminal law, tax, business associations, administrative law, environmental law, securities regulation, commercial law, immigration, and health law. Emphasis will also be placed on the origins and evolution of constitutional law, from the founding to the present.

While most legal history courses focus on the Nineteenth Century, this course will give equal weight to the Twentieth, covering developments in American law up to the turn of the 21st Century. Further, the course will maintain a steady focus not only on New England and the American South, but also the West, including the Midwest. Chicago and St. Louis, in particular, will be referenced, both cities playing critical roles in major legal developments, including westward expansion, Indian relations, slavery, the Civil War, labor regulation, and Progressivism.

There are no required texts for the class; all readings will come from a source book entitled American Legal History: Sources (or ALHS). The readings will be distributed electronically and posted on TWEN. For those interested, hard copies will be made available for purchase for roughly $30.00. The readings are designed to be short, providing an evidentiary basis for class lecture. Students will be expected to have done the reading prior to class, and to answer questions if called on. For students who are not prepared, two passes will be provided, with no excuse necessary. For students who cannot make it to class, two absences will be provided with no excuse necessary. Beyond that, grade reductions may ensue. The grade will derive primarily from a final exam. The exam will consist of two to three essay questions, provided at least one week in advance of the actual exam date. The questions will be designed to test the ability of students to synthesize the diverse readings assigned for the course, looking for recurring themes in American Legal History.
American Legal History Syllabus: Part I

Introduction: Pre-Histories: Cabot/ Columbus/ Cahokia [ALHS 3-7]
   Glenn Hodges, “America’s Forgotten City”

The Colonial Era, I: Rebellious Notions, 1600-1660 [ALHS, 9-15]
   John Winthrop, “Reasons for Puritan Migration,” 1629
   The Trial of Roger Williams, 1635
   The Trial of Anne Hutchinson, 1638
   The Laws of Massachusetts, 1648
   Salem Witchcraft Trials, 1692

The Colonial Era, II: The Decline of Religious Rule, 1660-1776 [ALHS, 17-22]
   The Trial of Robert Keaynes, 1640
   The Triangle & Bilateral Trades [map]
   The Navigation Acts, 1660-1696
   The Georgia Colony, 1733
   Slavery & the Collapse of Oglethorpe’s Vision for Georgia, 1757
   Indentured Servitude, 1750
   Indian War & the Collapse of Quaker Rule in Pennsylvania, 1755
   Soldier’s Diary, 1755

The Founding, I: The Rise of Republican Rule, 1776-1789 [ALHS, 23-29]
   Proclamation of George III, 1763
   The Stamp Act, Lawyers, & the Revolution, 1765
   The Declaration of Independence, 1766
   The Virginia Act for Establishing Religious Freedom, 1786
   Thomas Jefferson to William Short, April 13, 1820
   Slavery and the Rise of Republican Virtue [excerpt from Edmund S. Morgan,
   Slavery & Freedom: The American Paradox, 59 J. of Am. Hist. 5 (1972)]

The Founding, II: Interest, Innovation, & the American Constitution [ALHS, 31-37]
   Shay’s Rebellion, 1786
   The Federalist Position, 1787
   The Anti-Federalist Position, 1787
   The Bill of Rights, 1789
   Federalist #10, 1787
   The Constitution, Slavery, & the Doctrine of Interest, 1787

Jefferson, Jackson, & National Expansion [ALHS, 39-42]
   Northwest Ordinance, 1787
   The Louisiana Purchase, 1803
   St. Louis Letters, 1804-1805
   The Acquisition of Florida, 1817
   The Missouri Compromise, 1820
Law, Innovation, & Commerce [ALHS, 43-49]
- 1791 Jefferson, Hamilton, & the 1st National Bank
- Marbury v. Madison (1803)
- McCulloch v. Maryland (1816)
- Corporations, Contracts, & Dartmouth College v. Woodward (1819)
- Gibbons v. Ogden (1824) & the Commerce Clause
- Andrew Jackson Vetoes the Bank
- Charles River Bridge v. Warren Bridge (1837)
- Commerce, Materialism, & the Spread of Evangelical Faith

The Laws of Slavery [ALHS, 51-56]
- Slave Code of the State of Georgia (1848)
- The Crimes of Jesse Ruffin (1835) [excerpt from Laura Edwards, The People & Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South (2009)]
- Theft, Arson, & the Law the Slaves Made [excerpt from Eugene D. Genovese, Roll Jordan Roll: The World the Slaves Made (1976)]
- The Trial of Steven Lewis (1831) [excerpt from Christopher Waldrep, Roots of Disorder: Race and Criminal Justice in the American South, 1817-1880 (1998)]

The Laws of Marriage [ALHS, 57-62]
- Wightman v. Coates (1833)
- Angelina Emily Grimke to Catherine Beecher (1837)
- Friedrich Engels to Karl Marx, October 1844 (on American communitarianism)
- Seneca Falls Declaration of Sentiments (1848)
Slavery, Property, & the Civil War [ALHS, 63-67]
  Kansas Nebraska Act (1854)
  Edward Bridgman, “A Little about the Affairs of Kansas” [letter, May 25, 1856]
  *Dred Scott v. Sandford* (1857)
  The Emancipation Proclamation (1863)

Railroads, Rebellions, & the Rise of Tort Law [ALHS 69-71]
  Bill for the Construction of a Transcontinental Railroad (1862) [excerpt from Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* (1997)]
  Railroads & the Rise of Negligence: *Fent et al. v. Toledo* 59 Ill. 349 (1871)
  An Act to Establish the Responsibility of Railroad Corporations (1887)

Reconstruction, Redemption, Segregation [ALHS, 73-79]
  The Mississippi Black Codes (1865)
  The 13th, 14th, & 15th Amendments
  Race War: United States v. Cruickshank (1874)
  Booker T. Washington, Atlanta Exposition Address (1895)
  *Plessy v. Ferguson* (1896)
  The Race War Continues: North Carolina & Mississippi (1898)
  Senator Benjamin Tillman, Senate Address, March 23, 1900
  The Laws of Segregation

The Specter of Socialism [ALHS, 81-86]
  Strike of 1877
  The Haymarket Trial (1886)
  Red Ribbon Mourners: The Anarchists of St. Louis Hold a Memorial Meeting, *St. Louis Globe Democrat*, Nov. 14, 1887
  Illinois Criminal Syndicalism Act (1887)
  *In re Debs* (1895)
The Progressive Era, I: The Defense of Business [ALHS, 87-94]
Christopher Tiedemann, Treatise on the Limitations of the Police Power (1886)
_In re Jacobs_ (1885)
_Santa Clara County v. Southern Pacific Railroad_ (1886)
Andrew Carnegie, _The Gospel of Wealth_ (1889)
_Holden v. Hardy_ (1897)
Theodore Roosevelt, _The Strenuous Life_ (1899)
George Santayana, “The Love of Business,” (1904)
_Lochner v. New York_ (1906)
_Muller v. Oregon_ (1908)

The Progressive Era, II: Antitrust, Environmental Law, & Federal Tax [ALHS, 95-101]
Sherman Act 1890
_Pollock v. Farmers Loan and Trust Co._ (1895)
_Northern Securities Co. v. United States_ (1904)
Upton Sinclair, _The Jungle_ (1906)
Pure Food and Drug Act (1906)
Theodore Roosevelt, Conference on Conservation of Natural Resources (1908)
Sixteenth Amendment (1913)

World War I: Speech, Suffrage, & Anti-German Sentiment [ALHS, 103-110]
Espionage Act (1917)
“Nobody Would Eat Kraut” (1917)
_Schenck v. United States_ (1919)
_Deb s v. United States_ (1919)
Mitchell Palmer, “The Case Against the Reds” (1920)
The War & Women’s Suffrage (1917)
Woodrow Wilson, Speech to Congress (1918)
The Nineteenth Amendment (1920)
_Meyer v. Nebraska_ (1923)
_Pierce v. Society of Sisters_ (1925)
_Gitlow v. New York_ (1925)
_Whitney v. California_ (1927)

Prohibition, Immigration, & Organized Crime [ALHS, 111-120]
18th Amendment (1919)
Richard Hofstadter, _The Age of Reform: From Bryan to FDR_ (1955)
Warren G. Harding, “The President’s Appeal to Halt Law-Breaking,” (1922)
Immigration Act (1924)
“Guarding Against Undesirables,” (1924)
_Klansman’s Manual_ (1925)
“Warning Against the ‘Roman Catholic Party,’” (1928)
The New Deal, I: Capitalism in Crisis [ALHS, 121-129]
1934 Securities Exchange Act
1935 National Labor Relations Act (The Wagner Act)
1937 Franklin D. Roosevelt, “Fireside Chat on the Court-Packing Bill,”
West Coast Hotel v. Parrish (1937)

The New Deal, II: The Rise of Legal Realism [ALHS, 131-134]
Karl Llewellyn, ‘Some Realism about Realism”
Uniform Commercial Code (1942)
Anders Walker, “The Anti-Case Method: Herbert Wechsler and the Political History of
the Criminal Law Course,” 7 Ohio State Journal of Criminal Law 31 (2009)

World War II: Internment, Integration, International Law [ALHS, 135-141]
Adolf Hitler, Mein Kampf
Japanese Internment & Ex. Order # 9066 (1942)
Korematsu v. United States (1944)
Taft-Hartley Act (1947)
The Truman Doctrine (1947)
Harry S. Truman, “To Secure These Rights” (1948)

The Cold War, Part I: Modern Designs [ALHS, 143-156]
Brown v. Board of Education (1954)
Anders Walker, “The Violent Bear It Away: Emmett Till and the Modernization of Law
“Why They Built the Pruitt-Igoe Project,” (1956)
Sweezy v. New Hampshire (1957)
Richard Nixon, The Kitchen Debates (1959)

Cold War, II: Strategies of Containment [ALHS, 157-166]
Southern Moderates Used Brown v. Board of Education to Stall Civil Rights (New York:
Oxford University Press, 2009)
Lyndon Johnson’s Statement on Watts (1965)
Miranda v. Arizona (1966)
Jack Greenberg, “Civil Rights, & Civil Dissonance,” 77 Yale L. J. (1968)
Terry v. Ohio (1968)
Kerner Commission Report (1968)
Cold War III: The Rise of Privacy [ALHS, 167-177]
The Kinsey Report (1948)
Betty Friedan, *The Feminine Mystique* (1957)
*Mapp v. Ohio* (1961)
*Griswold v. Connecticut* (1965)
*Stanley v. Georgia* (1969)

Christian Coalitions [ALHS, 179-188]
*Roe v. Wade* (1973)
Phyllis Schlafly, “A Choice not an Echo”

The Culture Wars [ALHS, 189-197]
Prince, “Darling Nikki,” 1984
Tipper Gore, *Raising PG Kids in an X-Rated Society*
The Impeachment of William Jefferson Clinton, 1998

The New Federalism [ALHS, 199-214]
NWA “**ck the Police,” 1988
The Rodney King Riots (1992)

The American Century [ALHS, 215-225]
President-Elect George W. Bush Addresses the Nation, Dec. 13, 2000
*Chickasaw Nation v. United States*, 534 U.S. 84 (2001)