


2012

American Legal History Survey: Syllabus

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American Legal History
Saint Louis University Law School
Anders Walker
Spring 2012

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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.

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]

1790 Federal Patent Act & the Genius Inventor

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

The Rise of Bankruptcy Law [excerpt from Morton J. Horowitz, *The Transformation of American Law, 1780-1860* (1977)]

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)]

Repression, Resistance, Religion [excerpt from Eugene D. Genovese, *Roll Jordan Roll: The World the Slaves Made* (1976)]

The Laws of Marriage [ALHS, 57-62]

Wightman v. Coates (1833)

Trusts, Estates, & Marriage Settlements [excerpt from Marylynn Salmon, "Women and Property in South Carolina: The Evidence of Marriage Settlements, 1730-1830," 39 *William & Mary Quarterly* (1982)]

Angelina Emily Grimke to Catherine Beecher (1837)

Fisher v. Allen (1837) [excerpt from Zorina Khan, "Married Women's Property Laws and Female Commercial Activity: Evidence from United States Patent Records, 1790-1895," 56 *Journal of Economic History* (1996)]

Gender Equality: The Shakers of Pleasant Hill, Kentucky [excerpt from Lyman Tower Sargent, "The Social and Political Ideas of the American Communitarians: a Comparison of religious and Secular Communities founded Before 1850," 3 *Utopian Studies* (1991)]

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)

War, Innovation, & the Rise of Women Inventors [excerpt from Zorina Khan, "Married Women's Property Laws and Female Commercial Activity: Evidence from United States Patent Records, 1790-1895," 56 *Journal of Economic History* (1996)]

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)Law, Outlaws, & Railroads: The Case of Missouri [excerpt from David Thelen, *Paths of Resistance: Tradition & Dignity in Industrializing Missouri* (1986)]

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 AmendmentsRace 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 Evangelical Response to Socialism, Communism, & Anarchism [excerpt from Rev. James Crawford, "The Dangers of the Republic from Atheism, Communism, and Socialism," *Reformed Quarterly Review*, April 1879, 302.

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)
Eugene V. Debs, "The Monstrous System of Capitalism," (1912)
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)
Debs 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]

“Stock Prices Slump,” *New York Times*, Oct. 29, 1929

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)

Maurice Spector, “The Collapse of the New Deal,” (1938)

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)

Mary Dudziak, “Desegregation as a Cold War Imperative,” 41 *Stan. L. Rev.* 61 (1988)

Anders Walker, “The Violent Bear It Away: Emmett Till and the Modernization of Law Enforcement in Mississippi,” 46 *San Diego Law Review* 459 (2009)

“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]

1965 “Turn-around Tuesday,” from Anders Walker, *The Ghost of Jim Crow: How 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)

Memoirs of a Woman of Pleasure v. Massachusetts (1966)

Stanley v. Georgia (1969)

Christian Coalitions [ALHS, 179-188]

Engel v. Vitale, 370 U.S. 421 (1962)

Roe v. Wade (1973)

Phyllis Schlafly, "A Choice not an Echo"

"E.R.A.'s Assist to Abortion," The Phyllis Schlafly Report (Dec. 1974)

Bowers v. Hardwick (1986)

The Culture Wars [ALHS, 189-197]

Prince, "Darling Nikki," 1984

Tipper Gore, Raising PG Kids in an X-Rated Society

Luke Records, Inc. v. Navarro, 960 F.2d 134

Romer v. Evans (1996)

The Impeachment of William Jefferson Clinton, 1998

The New Federalism [ALHS, 199-214]

NWA "***ck the Police," 1988

"Do the Right-Wing Thing: Eazy-E Republican?" *Entertainment Weekly* March 29, 1991

The Rodney King Riots (1992)

The Trial of O.J. Simpson (1995)

United States v. Lopez (1995)

Anders Walker, "From Ballots to Bullets: *District of Columbia v. Heller* and the New Civil Rights," 69 *Louisiana Law Review* 509 (2009)

The American Century [ALHS, 215-225]

Bush v. Gore (2000)

President-Elect George W. Bush Addresses the Nation, Dec. 13, 2000

Chickasaw Nation v. United States, 534 U.S. 84 (2001)

Rick Warren, "Transformed by Trouble," from *The Purpose Driven Life: What on Earth am I Here For?* (2002)