

History 331: U.S. Legal and Constitutional History Spring 2006

Honor R. Sachs
Office 5231 Humanities Building
Office Hours: Wed. 1-3

Email: hrsachs@wisc.edu
Office Phone: 263-1838
Mail: 5022 Humanities

Course Description:

This course deals with the interaction between the legal system and social change in what is now the United States. Legal history involves not only the history of statutory law and of lawsuits and trials that test those laws, but also the social history of the impact of the law and the political history of efforts to change laws. Our course will look at the ways that the organizations and administration of the law has changed throughout American history and the ways that the law relates to issues of rights, citizenship, state formation, social relations and nationhood. At the same time, we will study how cultural and political forces, including race, gender, class, sexuality and religion have influenced legal regimes. Throughout this course, we will devote considerable attention to understanding historical methodologies and competing interpretations of legal history.

Readings:

Class readings consist of both primary and secondary material. Most documents will be in the Kermit Hall collection. Others can be found on e-Reserve. You should purchase the following two books from *A Room of One's Own* bookstore at 307 W. Johnson St.:

John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York, 2003)

Kermit L. Hall, et al., *American Legal History: Cases and Materials*, 3rd ed.

Assignments and Grading:

This course emphasizes writing. You will have four written assignments. The first three will ask you to consider the many possible interpretations of a different period in legal history: the colonial era and the transition to an independent republic, the early republic before the Civil War, and the turn of the century. Your final paper in this class will be a synthetic analysis of the course – I'd like you to write the final lecture of this class and discuss the various themes and threads of change that shape the changing nature of the law throughout. Each assignment will be worth 25% of your total grade.

Week 1 – Intro

Jan 18 W Introductions

F 20 Methodological Approaches to Studying Law and Society

Readings:

Anne Marie Plane, "Customary Laws of Marriage: Legal Pluralism, Colonialism, and the Narragansett Indian Identity in Eighteenth-Century Rhode Island," in Tomlins and Mann, *The Many Legalities of Early America* (Chapel Hill: 2001) 181-213.

Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York, 2003) Chapters 1-5

Week 2 – Law and Social Order in the Colonies

M 23 The Social Contract

W 25 The Legal Origins of Slavery

F 27 Discussion

Readings:

John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York, 2003) Chapters 6-10

Week 3 – Defining People in Colonial America

M 30 Coverture and the Gendered Meanings of Property

W FEB 1 NO CLASS

F 3 NO CLASS

Readings:

"A Horrible Case of Bestiality" (1642) KH 42-43

William Blackstone on Women in the Eyes of the Law (1765) KH 44-46

White Indentured Servitude; In re Wm. Wootton and John Bradye (1640); South Carolina Servant Regulations (1761) KH 48-50

The New York "Negro Plot" (1741) KH 59-61

Hening 170, 260, 270, 481 KH 54-55

Week 4 – The Growing Revolutionary Crisis

M 6 Colonial Struggles ****PAPER 1 DUE****

W 8 Empires and Indians

F 10 Discussion

Readings:

The Declaratory Act (1766) KH 85-86

Thomas Paine, *Common Sense* (1776) KH 87-88

Declaration of Independence KH 88-91

James Otis, "The Rights of the British Colonies" KH 82-83

Virginia Declaration of Rights (1776) KH 92-93

Week 5 – Conceptualizing the New Republic

M 13 The Constitution of 1787

W 15 Visions of the Republic: Jefferson vs. Hamilton

F 17 Discussion

Readings:

Constitution of the United States KH 676-684
The Sedition Act (1798) KH 130-131
The Virginia and Kentucky Resolutions (1798-1799) KH 131-134
Northwest Ordinance (1787) KH 123-124
Federalist Nos. 10 and 78 KH 117-123
Marbury v. Madison KH 140-144
Jefferson versus Hamilton on the Bank of the United States (1791) KH 137-139

Week 6 – The Active State in the Era of National Growth

M 20 Economic Expansion: The Release of Energy
W 22 Territorial Expansion: Shaping a National Domain
F 24 Discussion

Readings:

Charles River Bridge v. Warren Bridge (1837) KH 173-176
Dartmouth College v. Woodward (1819) KH 169-172 (*plus preceding note on “The Advent of Corporations”)
Van Ness v. Pacard (1829) KH 185-186
Parham v. The Justices of Decatur County (1851) KH 186-187

Week 7 – Economic and Political Participation in the Early Republic

M 27 Consequences of Economic Growth: Collective v. the Individual
W MARCH 1 Rethinking Citizenship in Early America
F 3 Discussion

Readings:

Commonwealth v. Hunt (1842) KH 178-181
Farwell v. The Boston and Worcester Railroad Col. (1842) KH 181-184
Cherokee Nation v. Georgia (1831) KH 287-290
Seneca Falls Declaration of Sentiments (1848) KH 312-314
New York Married Women’s Property Acts (1848) KH 314-315

Week 8 – Slavery, States’ Rights and Civil War

M 6 Slavery in the Territories ****PAPER 2 DUE****
W 8 Secession, States’ Rights, and the Rise of the Republican Party
F 10 Discussion

Readings:

Thomas R.R. Cobb “An Inquiry into the Law of Negro Slavery (1858) KH 218-219
Prigg v. Pennsylvania (1842) KH 230-234
Dred Scott v. Sanford (1857) KH 235-240
Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina (1860) KH 250-252
Abraham Lincoln, First Inaugural Address (1861) KH 252-255
Abraham Lincoln, Second Inaugural Address (1865) KH 257-258

Week 9

March 11-19 Spring break

Week 10 – Reconstruction

M 20 Constitutional Amendments

W 22 The Rise of Jim Crow and the Road to *Plessy*

F 24 Discussion

Readings:

13th, 14th and 15th Amendments KH 687-688

Mississippi Black Codes (1865) KH 263-265

An Act to Protect All Persons in the United States in Their Civil Rights, and Furnish Means of their Vindications (1866) KH 265-267

Plessy v. Ferguson (1896) KH 278-282

Week 11 – Outlining a New Liberal Polity

M 27 Slaughterhouse Cases

W 29 Race and Gender in the Industrial Age

F 31 Discussion

Readings:

The Slaughterhouse Cases (*also read notes following cases) (1873) KH 267-271

Bradley Dissent in Slaughterhouse Cases (1873) KH 387-389

Civil Rights Cases (1883)

Yick Wo v Hopkins (1886) KH 294-296

People v. Plath (1885) KH 344-347

Week 12 – Industrialization and Labor Relations

M APRIL 3 The Industrial Economy and Worker Welfare

W 5 Substantive Due Process

F 7 Discussion

Readings:

Lochner v. New York (1905) KH 401-404

Godcharles v. Wigeman (1886)

Muller v. Oregon (1908) KH 404-405

Munn v. Illinois (1877) KH 389-392

Ives v. South Buffalo Railway Co. (1911) KH 372-374

Populist Platform Adopted at St. Louis (1892) KH 382-383

Week 13 - Progressivism

M 10 The Rise of the Regulatory State

W 12 Social Engineering

F 14 Discussion ****PAPER 3 DUE****

Readings:

Oliver Wendell Holmes, Jr. "The Path of Law" (1897) KH 361-363
Sherman Anti-Trust Act (1890) KH 379-380
People v. Sanger (1918) KH 331-332

Week 14 – New Deal Liberalism

M 17 The New Deal, 1932-1937
W 19 Four Freedoms and the Second Bill of Rights
F 21 Discussion

Readings:

U.S. v. Caroline Products Co. (1938) KH 491-492
West Coast Hotel v. Parrish (1937) KH 486-489
Executive Order 8802
Franklin D. Roosevelt, State of the Union Address (1944)
Franklin D. Roosevelt, "Four Freedoms" Speech (1941)

Week 15 – Civil Rights in the Law

M 24 Perspectives on Civil Rights
W 26 The "Rights Revolution"
F 28 Discussion

Readings:

Korematsu v. U.S. (1944) KH 437-443
Brown v. Board of Education (1954) KH 495-498
"Letter from Birmingham City Jail" KH 501-502
Lyndon B. Johnson, "To Secure These Rights"

Week 16 – Visions of the Post-New Deal State

M MAY 1 Meanings of Equality
W 3 Competing Visions in the 21st Century
F 5 Conclusions

Readings:

Roe v. Wade (1973) KH 517-521
Planned Parenthood v. Casey (with dissents) (1992)
Title VII (1964)
Title IX (1972)
In the Matter of Evan (1992)
Goodridge v. Department of Public Health (2003)
Lawrence and Gardner v. Texas (2003)

*****FINAL PAPER DUE MAY 7*****