

American Legal History

(Law 621—321)

Spring 2015
Professor Lindsay

Course Overview

This course will explore select themes in American legal history from the Founding Era through the mid-twentieth century. Through a combination of short lectures and class discussions of historical documents, we will consider the drafting and ratification of the U.S. Constitution, the origins of judicial review, the development of state and federal regulatory authority, civil rights and civil liberties, and the regulation of labor and immigration. Throughout the course we will place special attention on the historical interrelationship between legal and constitutional doctrine, on the one hand, and politics, economics, ideology, and culture, on the other.

The syllabus and other course materials will be posted on TWEN. Please consult the posted syllabus regularly, as I expect to update reading and other assignments throughout the semester.

Class Meetings

Tuesday & Thursday, 9:00-10:15 a.m., in AL 403

Office Hours and Contact Information

Tuesdays, 2:00-4:00, and by appointment
AL 513
mlindsay1@ubalt.edu
(410) 837-4688

Required Materials

- Melvin I. Urofsky and Paul Finkelman, eds., Documents of American Legal and Constitutional History, Volume I: From the Founding to 1896 (3rd ed. 2007)
- Melvin I. Urofsky and Paul Finkelman, eds., Documents of American Legal and Constitutional History, Volume II: From 1896 to the Present (3rd ed. 2007)

Attendance

Please review the UB attendance policy:

<http://law.ubalt.edu/academics/policiesandprocedures/2014-2105%20Catalog.pdf>

Consistent with that policy, students with more than five unexcused absences during the semester may be required to withdraw from the course.

An attendance sheet will be circulated at the beginning of every class. Students who sign in will be considered “present and prepared” (and thus eligible to be called on); students who do not sign in will be counted absent.

Grades

Grades will be based on class participation* (15%), a midterm examination (25%) administered during the eighth week of the semester, and a three-hour, in-class final examination (60%). The course is subject to the standard first-year grading curve.

* Your class participation grade will be based on your contributions to class discussions and your preparation of **three short response papers**. Response papers should address one or more of the documents assigned for that day by, for example, engaging in a close reading of a document’s argumentation or rhetoric, analyzing a document in light of its political, economic or social context, or raising informed analytical questions or problems. Response papers should be between 300 and 400 words, and will receive a $\sqrt{+}$, $\sqrt{}$, or $\sqrt{-}$. Response papers will be due beginning the second week of class. An assignment sheet with due dates will be posted on TWEN.

Syllabus

* All numbered documents refer to Urofsky and Finkelman, Documents in American Legal and Constitutional History.

WEEK 1

Tues., 1/13

Introduction: What is legal history, and why study it?

English and Colonial Antecedents

- #1: Magna Carta (1215)
- #5: Mayflower Compact (1620)
- #11: The English Bill of Rights (1689)
- #12: John Locke, “Second Treatise on Government” (1690)

Thurs., 1/15

The Road to Independence

- #15: James Otis, “Against the Writs of Assistance” (1761)
- #18: Resolutions of the Stamp Act Congress (1765)
- #21: Somerset v. Stewart (1772)
- #22: Thomas Paine, “Common Sense” (1776)

WEEK 2

Tues., 1/20

The Problem of Confederation

- #24: Declaration of Independence (1776)
- #27: The Articles of Confederation (1781)
- #32: The Northwest Ordinance (1787)

Thurs., 1/22

A More Perfect Union—The U.S. Constitution

- #33: The Constitutional Convention: Proposals for Government (1787)
- #34: Constitution of the United States (1787)

WEEK 3

Tues., 1/27

The Great Experiment—Debating the Constitution

- #36: James Madison & Alexander Hamilton, “The Federalist” (1787-1788)
- #37: Brutus, No. 1 (1787)
- #39: Thomas Jefferson, “Opinion on the Constitutionality of a National Bank” (1791)
- #40: Alexander Hamilton, “Opinion as to the Constitutionality of a National Bank” (1791)

Thurs., 1/29

Law and Judicial Review in the New Nation

- #48: Georgia Judiciary Act (1799)
- #49: Instructions from Virginia Assembly to the Virginia Senators on Common Law (1800)
- #51: Marbury v. Madison (1803)
- #53: “Memorandum on the Louisiana Purchase” (1803)

WEEK 4

Tues., 2/3

Federalism and Economic Development in the Maturing Republic

- #69: Johnson and Graham's Lessee v. M'Intosh (1823)
- #65: McCulloch v. Maryland (1819)
- #70: Gibbons v. Ogden (1824)
- #86: Charles River Bridge Case (1837)

Thurs., 2/5

Personal Status and Legal Inequality in the Antebellum Era, Part I: Labor and the Meaning of Independence

- Excerpt from Gordon S. Wood, The Creation of the American Republic, 1776-1787 [posted on TWEN]
- #67: James Kent, "Against Universal Suffrage" (1821)

WEEK 5

Tues., 2/10

Personal Status and Legal Inequality in the Antebellum Era, Part II: Sex and the Law of Marriage

- William Blackstone, Commentaries on the Laws of England, Ch. 15: "Of Husband and Wife" (1765) [TWEN]
- Tapping Reeve, The Law of Baron and Femme, Ch. 5: "The Husband's Right to Property or Choses accrued to his Wife during Coverture" (1846) [TWEN]
- #96: Declaration of Seneca Falls Convention (1848)

Thurs., 2/12

Personal Status and Legal Inequality in the Antebellum Era, Part II: Sex and the Law of Marriage

- #74: Lansing v. Smith (1828)
- #92: Farwell v. Boston & Worcester Railroad (1842)
- #101: Commonwealth v. Alger (1851)
- #104: Henz v. Long Island Railroad Co. (1852)

WEEK 6

Tues., 2/17

Personal Status and Legal Inequality in the Antebellum Era, Part III: The Law of Slavery

- #76: State v. Mann (1829)
- #84: Commonwealth v. Aves (1836)
- #91: Prigg v. Pennsylvania (1842)
- #110: Slave Code of Virginia (1860)

Thurs., 2/19

The Coming of the Civil War

- #100: Fugitive Slave Act (1850)
- #105: Frederick Douglass, “What to the Slave is the Fourth of July?” (1852)
- #106: Massachusetts Personal Liberty Act (1855)
- #107: Dred Scott v. Sandford (1857)

WEEK 7

Tues., 2/24

The Union in Crisis

- #112: South Carolina Ordinance of Secession (1860)
- #115: Abraham Lincoln, First Inaugural Address (1861)
- #116: Ex Parte Merryman (1861)
- #118: Emancipation Proclamation (1863)

Thurs., 2/26

MIDTERM EXAM

WEEK 8

Tues., 3/3

Reunion and Reconstruction

- #125: Abraham Lincoln, Second Inaugural Address (1865)
- #126: Black Codes of Alabama and Mississippi (1865)
- #127: Civil Rights Act (1866)
- #128: Veto of Civil Rights Act (1866)

Thurs., 3/5

Civil Rights and the Rise of Jim Crow

- #135: Slaughterhouse Cases (1873)
- #141: Civil Rights Cases (1883)
- #152: Plessy v. Ferguson (1896)

WEEK 9

Tues., 3/10

Sex and Status in the Era of Equal Rights

- #136: Bradwell v. Illinois (1873)
- #137: Minor v. Happersett (1875)
- Congressional Debate: Women's Suffrage and the 14th Amendment (1866) [TWEN]
- Documents from the trial of Susan B. Anthony (1871) [TWEN]

Thurs., 3/12

Law and Regulation in the Era of Mass Immigration

- The Chinese Exclusion Case [TWEN]
- #146: Fong Yue Ting v. United States (1893)
- Fong Yue Ting v. United States (Field and Brewer, dissenting) [TWEN]
- Henry Cabot Lodge, "The Restriction of Immigration" [TWEN]

SPRING BREAK: No class on Tues., 3/17 or Thurs., 3/19

WEEK 10

Tues., 3/24

Economic Regulation in the Industrial Era: The Commerce Power

- #139: Munn v. Illinois (1877)
- #144: Wabash, St. Louis & Pacific Ry. Co. v. Illinois (1886)
- #147: United States v. E.C. Knight Co. (1895)
- #148: In re Debs (1895)

Thurs., 3/26

Labor Regulation and Constitutional Economic Liberty During the Progressive Era

- #155: Holden v. Hardy (1898)
- In re Jacobs (1886) [Posted on TWEN]
- #159: Lochner v. New York (1905)
- #160: Muller v. Oregon (1908)

WEEK 11

Tues., 3/31

Civil Liberties During World War I and the Birth of the Modern First Amendment

- #170: Schenck v. United States (1919)
- #172: Abrams v. United States (1919)
- #182: Whitney v. California (1927)

Thurs., 4/2

Equality and Difference in the Progressive Era

- Address of Elizabeth Cady Stanton before the Comm. on the Judiciary (1892) [TWEN]
- Congressional Debate: The Immigration Act of 1924 [TWEN]
- #181: Buck v. Bell (1927)

WEEK 12

Tues., 4/7

The New Deal and the Realist Critique of Classical Legal Thought

- #177: Adkins v. Children's Hospital (1923)
- #192: Carter v. Carter Coal Co. (1936)
- #196: West Coast Hotel Co. v. Parrish (1937)
- # 197: NLRB v. Jones & Laughlin Steel Corp. (1937)

Thurs., 4/9

Civil Liberties During (Cold) War Time

- #193: United States v. Curtiss-Wright Export Corporation (1936)
- #204: Korematsu v. United States (1944)
- #209: Dennis v. United States (1951)
- #230: Brandenburg v. Ohio (1969)

WEEK 13

Tues., 4/14

The Modern Civil Rights Era

- #211: Brown v. Board of Education (1954)
- #212: Brown v. Board of Education II (1955)
- #213: Southern Manifesto on Integration (1956)

Thurs., 4/16

Defining "Equality" In the post-Brown Era

- #223: Title II, Civil Rights Act (1964)
- #224: Heart of Atlanta Motel v. United States (1964)
- #228: Loving v. Virginia (1967)
- #238: Roe v. Wade (1973)

WEEK 14

Tues., 4/21

A Conservative Counterrevolution?

- #264: U.S. v. Lopez (1995)
- #246: Regents of the University of California v. Bakke (1978)
- #259: Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)

Thurs., 4/23

Make Up / Exam Review