

Spring 2013  
History 3366  
JO 4.102  
MW 1:00-2:15

Prof. Katherine Turk  
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OH: W 10-12 or by appt.

## United States Legal History

Questions about the role and nature of the law have been at the heart of the defining events of American history: the Revolutionary and Civil Wars, popular demands for suffrage and other civil rights, the expansion of the federal government, and more. As Americans have struggled to answer these questions, the law has shaped society, society has shaped the law, and this interplay has created the central foundations of and divisions within American life.

This course will trace the history of law in America from colonial times into the present. Through lectures, readings, discussions and films, we will consider how legal authorities influenced people and their property and how the boundaries between the public and private realms were developed and challenged. We will also explore how Americans of varied race, class and gender identities experienced the law differently. Finally, we will examine how the law has helped to produce categories of social difference while providing disempowered groups with an avenue for advocacy. Legal history involves written laws and challenges to them—as well as the social history of the law's impact and the political history of efforts to change it. Thus, course readings will include legal texts, secondary legal and historical writings, and popular commentary.

### Assignments:

- Consistent attendance and active participation in class discussions. Readings are due and will be discussed on the day they are listed below. *(20% of final grade)*
- Quizzes. At the beginning of most classes, there will be a short reading quiz that will be graded credit/no credit. *(10% of final grade)*
- Two 4-5 page papers discussing a court case you find on Lexis-Nexis (but not a case we have read in class). In describing the case, present its historical context, the issues at stake, and the court's opinion (both majority and minority opinions, if both exist). You should also address how the opinion reflects contemporary ideas about race, sex, religion, the economy, or the role of law in society. The first paper is due in class in hard copy on February 27<sup>th</sup>, and must be written about a case that predates 1900. The second paper is due in class in hard copy on April 24<sup>th</sup>, and must be written about a case from after 1900. We will discuss how to locate cases on Lexis, in class. *(10% each of final grade)*
- One in-class midterm exam administered on March 6<sup>th</sup>. *(20% of final grade)*
- One take-home final exam distributed in class on May 1<sup>st</sup> and due via email to Professor Turk by noon on May 7<sup>th</sup>. *(30% of final grade)*

### Prerequisites:

HIST 1301, HIST 1302, HIST 2301, HIST 2330, HIST 2331, or equivalent.

**Required Texts:**

The following texts are available for purchase at the university bookstore and at Off Campus Books (561 W. Campbell Road). Readings marked (\*) are posted on the course electronic reserves.

Kermit Hall, et. al. *American Legal History: Cases and Materials*. 4th Edition (2011). ISBN # 0195395425.

John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia*. Oxford University Press, 2002. ISBN # 0195144791.

Dylan C. Penningroth. *The Claims of Kinfolk: African American Property and Community in The Nineteenth Century South*. University of North Carolina Press, 2002. ISBN # 080785476X.

Sarah Weddington. *A Question of Choice*. Penguin, 1993. ISBN # 0140177981.

**Schedule:****January 14: Introductions****January 16: Law in the Colonies**

*Ann Orthwood's Bastard*, pps. 3-50.

**January 23: Law in the Colonies, continued**

*Ann Orthwood's Bastard*, pps. 51-102.

*American Legal History*, pps. 7-14, 30-32, 58-62.

Dale's Laws (1611)

Mayflower Compact (1620)

Fundamental Constitutions of Carolina (1669)

South Carolina Slave Code (1740)

**January 28: Revolution**

*American Legal History*, pps. 84, 88-94, 96-99, 684-692

Mayhew, "Unlimited Submission and Non-Resistance to the Higher Powers" (1750)

Declaratory Act (1766)

Paine, *Common Sense* (1776)

Declaration of Independence (1776)

The People the Best Governors (1776)

*Somerset v. Stewart* (1772)

U.S. Constitution (1787)

**January 30: Rights and Commerce**

*American Legal History*, pps. 120-126, 143-147, 159-163, 693-694

Federalist No. 10 (1787)

Federalist No. 78 (1788)

Amendments No. 1-10 (1789)

*Marbury v. Madison* (1803)

*McCulloch v. Maryland* (1819)

**February 4: Law, Labor and State Power**

*American Legal History*, pps. 148-151, 155-158, 180-187

Note: The Golden Age of American Law

*Gibbons v. Ogden* (1824)

Note: Labor in an Industrializing Society

*Commonwealth v. Hunt* (1842)

*Farwell v. Boston & Worcester Railroad Co.* (1842)

**February 6: Women, Marriage and Family**

*American Legal History*, pps. 46-48, 56, 316-319

Negro Women's Children to Serve According to the Condition of the Mother (1662)

Blackstone on Women in the Eyes of the Law (1765)

Note: Women and the Law in Colonial America

An Act Concerning Feme-Sole Traders (1718)

Seneca Falls Declaration of Sentiments (1848)

New York Married Women's Property Acts (1848)

\*In-class film segment: *A Jury of Her Peers*

**February 11: Slavery**

*The Claims of Kinfolk*, pps. 1-44

*American Legal History*, pps. 221-225, 232-233, 238-244

Cobb, An Inquiry into the Law of Negro Slavery (1858)

*State v. Mann* (1829)

Note: Slavery and the Constitution

*Dred Scott v. Sandford* (1857)

Note: The Reaction to *Dred Scott*

Lincoln, "House Divided" Speech (1858)

**February 13: Secession and War**

*The Claims of Kinfolk*, pps. 45-110

*American Legal History*, pps. 246-258

South Carolina Ordinance of Nullification (1832)

Jackson's Proclamation Regarding Nullification (1832)

Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina (1860)

Lincoln, First Inaugural Address (1861)

**February 18: Emancipation and Reconstruction**

*The Claims of Kinfolk*, pps. 111-130.

*American Legal History*, pps. 258-261, 266-270, 695-696

Note: The Civil War and Emancipation

Lincoln, Emancipation Proclamation (1863)

Lincoln, Second Inaugural Address (1864)

Mississippi Black Codes (1865)

An Act to Protect All Persons in the United States in their Civil Rights (1866)  
Note: The Civil Rights Act and the Fourteenth Amendment  
13<sup>th</sup>, 14<sup>th</sup>, & 15<sup>th</sup> Amendments to the Constitution

**February 25: The Unfinished Work of Reconstruction: Race and Sex**

*The Claims of Kinfolk*, pps. 131-186.  
*American Legal History*, pps. 282-286, 320-323, 298-300  
*Plessy v. Ferguson* (1896)  
*Bradwell v. Illinois* (1873)  
*Minor v. Happersett* (1875)  
*Yick Wo v. Hopkins* (1886)  
Note: The Chinese and Jim Crow

**February 27: Corporations and Regulation**

*American Legal History*, pps. 381-385  
Note: The Interstate Commerce Commission  
Interstate Commerce Act (1887)  
Note: Judicial Reaction to the ICC  
Note: Trust-Busting: The Statutory Basis  
Sherman Anti-Trust Act (1890)  
*United States v. E.C. Knight & Co.* (1895)  
Note: Anti-Trust Law in the Progressive Era

**\*\*First short paper is due in hard copy in class on February 27<sup>th</sup>\*\***

**March 4: Substantive Due Process**

*American Legal History*, pps. 388-398  
Note: Judicial Reaction to the Regulatory State  
Note: The Origins of Substantive Due Process  
*Wynehamer v. The People* (1856)  
*Slaughterhouse Cases* (1873)  
The Bradley Dissent in *Slaughterhouse* (1873)  
Note: Reaffirmation of the Police Power  
*Munn v. Illinois* (1877)  
*In re Jacobs* (1885)  
Note: Substantive Due Process in the State Courts  
Note: The Labor Injunction

**March 6: In-Class Midterm**

**\*\*No class March 11 or March 13\*\***

**March 18: Labor and Progressivism**

*American Legal History*, pps. 334-336, 386-387, 399-401, 403-410

*State v. Slagle* (1880)  
*People v. Sanger* (1918)  
Populist Party Platform Adopted at Saint Louis (1892)  
Note: The Labor Injunction  
Note: Liberty of Contract and Workplace Regulation  
*In re Debs* (1895)  
Note: Labor and the Law  
*Holden v. Hardy* (1898)  
*Lochner v. New York* (1905)  
*Muller v. Oregon* (1908)

### **March 20: Segregation and Jim Crow**

*American Legal History*, pps. 286, 456-462  
Note: Separate but Equal in the North  
Segregation on the Eve of a New Century (1898)  
Civil Rights and Racial Justice  
*Missouri ex rel. Gaines v. Canada* (1938)  
Note: Beyond *Gaines*  
Racial Justice and Criminal Law  
Chadbourne, "Lynching and the Administration of Justice" (1933)  
Note: Lynching and Federal Law  
\*In-class film segment: *Unforgivable Blackness*

### **March 25: War and Speech**

*American Legal History*, pps. 420-432  
World War I and Civil Liberties  
Note: The Suppression of Dissent During World War I  
Murphy, World War I and the Origins of Civil Liberties (1979)  
Note: Censorship During World War I  
*Schenk v. United States* (1919)  
Note: *Debs v. United States* (1919)  
*Abrams v. United States* (1919)  
Note: The *Abrams* Dissent  
Radicals and Civil Liberties  
Note: Civil Liberties and Fourteenth Amendment Incorporation  
*Whitney v. California* (1927)

### **March 27: The New Deal and the Rise of Legal Liberalism**

*American Legal History*, pps. 465-467, 473-475, 478-483, 487-492, 495-496.  
Holmes, "Law and the Court" (1913)  
Note: Legal Realism  
Frank, *Law and the Modern Mind* (1936)  
Note: The Supreme Court and the New Deal  
*Schechter v. United States* (1935)  
Roosevelt, "Fireside Chat on the 'Court-Packing' Bill" (1937)  
*West Coast Hotel v. Parrish* (1937)

*United States v. Carolene Products Co.*, footnote 4 (1938)

### **April 1: World War II, Loyalty and Belonging**

*American Legal History*, pps. 432-446

World War II and Legal Developments

Note: The Flag Salute Cases

*West Virginia State Board of Education v. Barnette* (1943)

Note: The Japanese Internment

Note: Executive Order No. 9066

*Hirabayashi v. United States* (1943)

*Korematsu v. United States* (1944)

Note: *Ex Parte Endo* (1944)

\*In-class film segment: U.S. Office of War Information, “The Japanese Relocation.”

### **April 3: Civil Liberties**

*American Legal History*, pps. 540-550, 554-559

Civil Liberties

Freedom of Speech and Press

*Dennis v. United States* (1951)

Note: Free Speech and Internal Security

*New York Times v. Sullivan* (1964)

Note: Offensive Speech

*Engel v. Vitale* (1962)

*Miranda v. Arizona* (1966)

Note: The Supreme Court and Criminal Justice

Note: Surge in Incarceration

### **April 8: Civil Liberties Spotlight: The Right to Counsel**

\*In-class film: *Gideon’s Trumpet* (1980)

### **April 10: Race and the Rights Revolution**

*American Legal History*, pps. 454-455, 499-503, 505-507

Race and the Franchise

Race and Education

*Brown v. Board of Education* (1954)

“Southern Declaration on Integration” (1956)

King, “Letter from Birmingham City Jail” (1963)

Civil Rights Act of 1964

*Smith v. Allwright* (1944) (\*)

*Sweatt v. Painter* (1950) (\*)

*Loving v. Virginia* (1967) (\*)

### **April 15: Privacy and Reproductive Rights**

Wedington, *A Question of Choice*, pps. 11-57

Gender

*American Legal History*, pps. 518-525

*Griswold v. Connecticut* (1965)

Note: The Debate in *Griswold*

*Roe v. Wade* (1973)

Note: The Future of *Roe*

*Eisenstadt v. Baird* (1972) (\*)

#### **April 17: Implementing Sex Equality**

Weddington, *A Question of Choice*, pps. 109-174

*Frontiero v. Richardson* (1973) (\*)

Pregnancy Discrimination Act (1978) (\*)

*Meritor Savings Bank v. Vinson* (1986) (\*)

#### **April 22: Race, Gender and Retrenchment**

Weddington, *A Question of Choice*, pps. 175-234

*American Legal History*, pps. 506-518

Affirmative Action

*Regents of the University of California v. Bakke* (1978)

*City of Richmond v. J.A. Croson Co.* (1989)

*Automobile Workers v. Johnson Controls* (1991) (\*)

#### **April 24: Contemporary Issues I: Science, Environment and Economy**

*American Legal History*, pps. 560-563, 566-570, 571-575, 578-586

Definition of Death

*In re Quinlan* (1976)

*TVA v. Hill* (1978)

*Intel v. Hamidi* (2003)

The Staggers Act (1980)

Latin, "Ideal v. Real Regulatory Efficiency" (1985)

Ackerman & Stewart, "Reforming Environmental Law" (1985)

Executive Order No. 12866 (1993)

**\*\*Second short paper is due in hard copy in class on by April 24<sup>th</sup>\*\***

#### **April 29: Contemporary Issues II: Gender and Sexuality**

Defense of Marriage Act (\*)

*Oncale v. Sundowner Offshore Services* (1998) (\*)

*Jespersion v. Harrah Operating Company* (2006) (\*)

*Perry v. Brown* (2012) (\*)

Kenji Yoshino, "Preface" and "An Uncovered Self," in *Covering: The New Assault on Our Civil Rights* (\*).

#### **May 1: Contemporary Issues III: Terror and State Power**

*American Legal History*, pps. 651-658, 662-667

*Bush v. Gore* (2000)

Note: The USA Patriot Act of 2001

The Uniting and Strengthening of America by Providing Appropriate Tools, 2001  
The USA Patriot Act: For and Against  
The USA Patriot Act: Preserving Life and Liberties (2004)  
ACLU, “The USA Patriot Act and Government Actions that Threaten Our Civil Liberties”  
Citizens United v. Federal Election Commission (\*)  
Affordable Care Act Case (\*)

***\*\*Final exam prompt will be distributed in class and is due via e-learning or email by noon on May 7<sup>th</sup>.\*\****

### **Course Objectives:**

Upon successful completion of this course, students will:

- Have a greater understanding of the development of the American legal system—and in particular, how questions of equality, privacy, liberty have informed its evolution.
- Be able to discuss how law and society have shaped each other at key moments and throughout American history.
- Be able to identify how race, sex, class, and sexuality have mediated Americans’ experiences of the law and legal institutions.
- Be able to use legal documents to make historical arguments.
- Have strengthened their oral and written communication skills.

### **Course & Instructor Policies:**

- Your presence, punctuality and participation will be crucial to your success in this class. Attendance will be taken each day. Your participation grade will decline by 1/3 letter grade for each class missed after your second absence, and students who arrive more than 10 minutes after class has started will be counted as absent. If an unavoidable obstacle prevents you from attending or arriving on time for a class, please consult with Prof. Turk in advance.
- Good participation also includes good citizenship: specifically, active listening and responding to peers’ thoughts in a respectful way.
- Readings are due the day they are listed on the syllabus. Bring the assigned readings to class on discussion days.
- All communication outside of class must be conducted using UTD email addresses only.
- With the exceptions of documented medical emergencies or unavoidable conflicts with school-sponsored activities, no make-up midterms will be given. A late final examination will be penalized 1/3 letter grade per day. Late short papers will not be accepted. No make-up reading quizzes will be given.
- Please ensure that cell phones and laptops are silenced and put away during class.
- Plagiarism and other scholastic dishonesty are unacceptable and will be punished according to UTD guidelines. For information on academic integrity, as well as other university policies and procedures, please consult <<http://go.utdallas.edu/syllabus-policies>>.

**The descriptions and timelines in this syllabus may change at Prof. Turk’s discretion.**