

History of American Law

HIST 4400 / 7400 / TR 3:30-4:45
Spring Semester 2017
Strickland Hall 219
Professor Mark M. Carroll
E-mail: CarrollMM@missouri.edu
214 Read Hall
Office Hours: R 2:00-3:00 and by appointment

Required Materials

Kermit L. Hall and Peter Karsten, The Magic Mirror: Law in American History, 2nd ed. 2009.
John W. Whitehead, A Government of Wolves: The Emerging American Police State. 2013.

Subject Matter

This course illuminates the interactions of American law, government, economy, society, and culture from the colonial era through the early twenty-first century. Broadly speaking, it looks at the persistently-tense relationships between hallowed individual liberties and the prerogatives of police power; the rights and duties of citizens and communities; liberal market capitalism and economic regulation; majority preferences and the needs of vulnerable minorities; and the relationship of all these polarities to rising popular politics and judicial paternalism. The last third of the course focuses on the contentious question of whether ever-more-extensive regulations and criminal statutes have transformed the United States from a society governed by “we the people” to a police state governed by unelected functionaries and an overly-strong arm of the law – and whether, in such an environment, the law and its institutions have become a tool to oppress Americans and deprive them of basic freedoms.

Course Approach

First and foremost, the instructor wants you to relax and enjoy our enquiries. There will certainly be no demand for mastery of the materials to be examined. Rather, the idea is for you to make a conscientious and patient effort to get familiar with certain basic aspects of the history of American law. The course is organized around group appraisals of readings in assigned monographs and selected primary sources, that is, old documents from the period under study. The challenge for you will be to identify the linkages between themes presented in the assigned readings, related discussions, and occasional lectures. The instructor will presuppose that all students enrolled have had some formal instruction in the history of colonial British North America and the United States to the end of the twentieth century, through the completion of college-level survey courses or a comparable course of study.

Requirements and Procedures

I. Readings and Discussions. To succeed in this course, you must acquire access to the two (2) books referenced above. You are responsible for reading and familiarizing yourself with each book chapter and the related documents posted on the Blackboard website for the course in advance of discussion thereof according to the course calendar included below. As indicated above, the instructor will occasionally lecture on topics related to assigned materials, but he expects you to participate regularly in classroom discussions. Unwillingness to make contributions or uninformed commentary will constitute evidence of non-preparation.

II. Research Paper. One formal research paper will be required of all undergraduates enrolled in the course. The paper must be set out in 12-point type with one-inch margins all around, include from 4,000 to 5,000 words of main text (ca. 12 to 15 pages), and employ footnotes or endnotes, a formal bibliography, and appropriate formatting and style. For all undergraduates, the research paper is due in class at the beginning of class on May 2nd. The instructor will post a Research Paper Rubric on the Blackboard website for the course setting out detailed guidelines for the paper, suggestions on how to do the assignment, and course policy for late submission of the assignment.

III. Examinations. There will be a mid-term examination and a final examination this semester. These two events are set forth on the calendar. Both examinations will entail the writing of an essay and three or four briefer written responses (“short-answer questions”), although the instructor reserves the right to change this format if necessary. The mid-term examination will, of course, be comprehensive, while the final examination will deal only with material covered after the mid-term examination. Both examinations must be taken for credit and during the designated times. On the examination essays and short-answer items, you will be responsible for integrating material from text readings and documents, classroom discussions of them, and information you receive from occasional lectures. The instructor will distribute a study guide to assist your preparation for each of the examinations.

For graduate students only: Students enrolled for graduate credit must meet all of the requirements laid down for undergraduates – with one important exception: Graduate students must prepare two (2) research papers, rather than one. Each paper must meet the formal criteria outlined above for undergraduate enrollees. As well, graduate students must receive approval for the proposed project in each case no later than seven (7) days in advance of its due date. The first research paper must be turned in no later than 5:00 p.m. on March 7th, and the second research paper must be turned in no later than 5:00 p.m. on May 4th.

Blackboard

As indicated, the instructor will maintain an MU Blackboard website for the course. This site will be used primarily to make available basic course materials, such as the syllabus and primary sources to be studied in tandem with assigned text readings; make announcements for unusual situations, such as inclement weather; provide examination study guides; and post the Research Paper Rubric.

Grading

For undergraduates, classroom discussion will count 10% of the final grade; each examination will constitute 30% of the final grade, as will the research paper. For undergraduates, the instructor will rely on a ten-point scale for final grade determination. The plus/minus system of grading will be employed for that purpose.

The Grading Scale will be as follows:

97-100 = A+

94-96 = A

90-93 = A-

87-89 = B+

84-86 = B

80-83 = B-

77-79 = C+

74-76 = C

70-73 = C-

67-69 = D+

64-66 = D

60-63 = D-

0-59 = F

For graduate students only: For students enrolled in the course for graduate credit, classroom discussion will count for 10% of the final grade; each examination will count for 15% of the final grade. The two research papers will count 30% each.

ADA Guidelines and Registration

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary, please register with the Disability Center, S5 Memorial Union, 573-882-4696 (<http://disabilitycenter.missouri.edu>), and then notify me of your eligibility for reasonable accommodations.

Intellectual Freedom

The University of Missouri, particularly its faculty, welcomes intellectual diversity and is committed to the free expression of ideas, the protection of student rights, and the enforcement of student obligations. Students who have questions relevant to these issues are invited to address concerns to the instructor or the chair of the Department of History or the dean of the College of Arts and Science or the director of the Office of Student Rights and Responsibilities. All students will have the opportunity to submit an anonymous evaluation of the instruction provided in this course at the end of the semester.

Attendance

You are allowed two (2) unexcused absences. For each such absence in excess of that, your final average will be reduced by five (5) points. An excused absence is one that is the consequence of an emergency, that is, sudden and unforeseen circumstances making it extraordinarily difficult or impossible to attend class – such as, for example, an automobile accident on the way to class; an illness or injury requiring bed rest or hospitalization on the order of a physician; mandatory attendance in a court of law; or the death, severe injury, or grave illness of a spouse or comparable partner, or close relative – a child, parent, or sibling. Required participation in a University of Missouri-sponsored intercollegiate athletics event or an MU-sponsored intercollegiate academic event also constitute an excuse. Employment of any kind and domestic obligations, unfortunately, cannot serve to excuse absence. Activities required or suggested for other courses or for any program of study (including internships and externships) will not constitute an excuse for absence. Late arrivals and early departures will also figure into the absence tabulation and provide a basis for a final grade penalty. To obtain an excuse for an absence of any duration, you must provide the instructor clear documentation for it. Communication with the instructor regarding absences for which no excuse is sought is discouraged.

Classroom Decorum

It is mandatory that you help maintain an environment conducive to college-level instruction. You certainly have the right to incur the penalties for excessive absence and to withdraw from this course. But as long as you remain in it, you assume a personal obligation to your fellow students, the instructor, and the university to make all possible efforts to avoid disruption of class with untimely arrivals and departures or with any other behavior a reasonable person would view as uncivil, disruptive, or inappropriate for a college classroom. The use of laptop or other portable computers during instruction is strictly prohibited, except for students who have been specifically authorized otherwise by the Disability Center. The use of telecommunications devices is proscribed in all cases. This ban extends to having electronic devices in view, otherwise monitoring devices, or exiting the classroom to use such devices during instruction. Violations of this policy will not be tolerated. A first violation will result in a final-grade penalty of five (5) points; a second violation will result in a final-grade penalty of ten (10) points or expulsion from the course with the final grade of “F”.

Academic Dishonesty

It is fundamental to the activities and principles of a university that students and professors alike present work that is the product of their own intellectual labor. All members of the scholarly community must be confident that the work of each person has been responsibly and honorably acquired, developed, and presented according to accepted standards. Any effort to gain advantage not given to all students is dishonest whether or not the effort is successful. Academic dishonesty is an opprobrious offense. The consequences for such a breach may include academic sanctions from the instructor, including the assignment of a failing grade for the course, and/or disciplinary sanctions by the Office of the Provost, ranging from probation to expulsion from the university. Consult with the instructor when in doubt about test-taking

procedures, documentation for formal papers (citations), appropriate paraphrasing and quoting, the meaning of plagiarism, and limits on student collaboration.

Course Calendar

MM = The Magic Mirror

AGOW = A Government of Wolves

Date	Assigned Book Chapters / Occasional Lecture Topics	Assigned Primary Document(s)	Critical Events
Jan 17			Orientation
Jan 19	MM, Introduction and Ch. 1, Social and Institutional Foundations of Early American Law [c. 6th Century-1775]	Magna Carta, July 15, 1215 Dale's Laws (1611) The Maryland Toleration Act (1649)	
Jan 24	MM, Ch. 2, Law, Society, and Economy in Colonial America [c. 1600-1775]	South Carolina Servant Regulations (1761) William Blackstone on Women in the Eyes of the Law (1765)	
Jan 26	MM, Ch. 3, The Law in Revolution and Revolution in Law [1763-1787] Key theme: Early developments in the Constitutional protections of individual privacy, 1760-1791	Writs of Assistance Case, a.k.a., Paxton's Case (1761) The Quartering Act (1765) The Declaration of Independence (1776) Virginia Declaration of Rights (1776) The Articles of Confederation (1781) The Constitution of the United States (1789) The United States Bill of Rights (1791)	
Jan 31	MM, Ch. 4, Law, Politics, and the Rise of the American Legal System [c. 1776-1815]	The Sedition Act (1798) The Virginia and Kentucky Resolutions (1798-1799)	
Feb 2	MM, Ch. 5, The Active State and the Mixed Economy: 1789-1861	Territory of Louisiana Insolvent Debtor Act (1807) Territory of Missouri Act for the Punishment of Certain Crimes (1813)	
Feb 7	MM, Ch. 6, Common Law, Jurists, and American Values: Continuity and Change, 1780-1880	Dartmouth College v. Woodward (1819) Charles River Bridge Company v.	

		Warren Bridge Company (1837)	
Feb 9	MM, Ch. 7, Race and the Nineteenth-Century Law of Personal Status	State v. Mann (1829)	
Feb 14 & 16	MM, Ch. 8, The Nineteenth-Century Law of Domestic Relations	The Seneca Falls Declaration of Sentiments (1848) Minor v. Happersett (1875) The Comstock Act (1873)	
Feb 21			No class meeting
Feb 23	MM, Ch. 9, The Dangerous Classes and the Nineteenth-Century Criminal Justice System	Cesare Beccaria, "On Crimes and Punishments" (1764) Charles Loring Brace, "The Causes of Crime" (1880)	
Feb 28	MM, Ch. 10, Law, Industrialization, and the Beginnings of the Regulatory State: 1860-1920	Illinois Criminal Syndicalism Act (1887) New York Worker's Compensation Act (1910)	
Mar 2	MM, Ch. 12, The Judicial Response to Industrialization: 1860-1920	Lockner v. New York (1905)	
Mar 7	MM, Ch. 13, Cultural Pluralism, Total War, and the Formation of Modern Legal Culture: 1917-1945	Schenck v. United States (1919) Abrams, et al. v. United States (1919)	Posting of mid-term exam study guide 1st research paper due from graduate students
Mar 9	MM, Ch. 14, The Great Depression and the Emergence of Liberal Legal Culture [c. 1920-1945]		
Mar 14			Mid-term exam
Mar 16	MM, Ch. 14, The Great Depression and the Emergence of Liberal Legal Culture [c. 1920-1945]	Schechter v. United States (1935) West Coast Hotel v. Parrish (1937)	
Mar 21	MM, Ch. 15, Law and Society in the Cold War Years, 1946-1990 MM, Ch. 16, The Imperial Judiciary and Contemporary Social and Cultural Change [c. 1945-2008]	The McCarran Act (1950) Benanti v. United States (1957) City of Richmond v. J. A. Croson Company (1989) United States v. Lopez (1995)	

	MM, Epilogue	United States v. Windsor (2013)	
Mar 23			
Mar 28			Spring recess
Mar 30			Spring recess
Apr 4	Lecture: The Fourth Amendment, Privacy, and Surveillance, 1877-1968 [Formerly “Privacy’s Golden Hour – The Warren Court”]	Adams v. New York (1904) Weeks v. United States (1914) Silverthorne Lumber Co. v. United States (1920) Communications Act of 1934 (Sec. 605) Nardone v. United States (1937) Weiss v. United States (1939) Nardone v. United States (1939)	
Apr 6	Lecture: The Fourth Amendment, Privacy, and Surveillance, 1877-1968	Mapp v. Ohio (1961) Katz v. United States (1967) Berger v. United States (1967) The Wiretap Statute (1968)	
Apr 11	Lecture: Nixon, Foreign Intelligence, and Privacy, 1969-1986	United States v. U.S. District Court (1972) The Privacy Act of 1974 The Right to Financial Privacy Act of 1978 [Title XI of FIRIRCA] The Foreign Intelligence Surveillance Act [FISA] (1978) Electronic Communications Privacy Act (1986)	
Apr 13	AGOW, Introduction, pp. xi-xiv; Part I. Is This America?	Reichle, et al. v. Howards (2011) Florence v. Burlington (2012)	
Apr 18	AGOW, PART II. The Future Is Here		
Apr 20	AGOW, PART II. The Future Is Here		
Apr 25	AGOW, PART III. Welcome to the Police State	Excerpt from Aldous Huxley, <u>Brave New World</u> (1932). Excerpt from George Orwell, <u>Nineteen Eighty-Four</u> (1949) United States v. Jones (2012)	
Apr 27	MM, Ch. 16, “Civil Liberties,” pp. 346-362.	Sections 215 and 216, USA PATRIOT Act (2001)	

	Lecture: 9/11, the FISA Court, and Edward Snowden	FISA Amendments Act of 2008 PATRIOT Sunsets Extension Act of 2011 USA Freedom Act of 2015	
May 2			Research paper due from undergraduate students
May 4	AGOW, PART IV. The Electronic Concentration Camp (Chs. 12-16) AGOW, PART V. America The Battlefield (Chs. 17-21)	United States v. Jones (2012) – in re Ch. 14, p. 106 Brooks v. City of Seattle and Mattos v. Agarano (2011) – in re Ch. 19, pp. 145-150	Posting of final exam study guide 2nd research paper due from graduate students
Wed. May 10, 10:00- Noon			Final exam