

Great Cases: American Legal History

CTY Course Syllabus

Readings:

Hall, Kermit, ed. *Major Problems in American Constitutional History, Volume 1*.
Lexington: DC Heath. 1992. (MPAC)

Hall, K, Wiecek, W. and Finkelman, P. *American Legal History: Cases and Materials*.
New York: Oxford University Press. 1996. (ALH)

Other selected essays and documents.

Day 1

Introductions and the Function of law

Morning:

- students will introduce themselves and each other (background, why they are interested in legal history, etc)
- Students will engage in a class discussion over the purpose of the law, its relationship to “morality” and justice, and laws relation to society. How do we understand the law? Where in American society is the law primarily depicted? How does this inform our understanding? (students will watch a clip from Judge Mathis) Role of the law in American political culture.
- In groups, students will come up with their own ideal country constitutions in light of the previous discussion. We will then convene as a group to talk about them.

Afternoon:

- Lecture on the origins of law and common vs. civil law
- Readings: a brief background on John Locke and the Glorious Revolution, and excerpt from Locke’s *Second Treatise*, English and US Bill of Rights
- Assignment: questions on Locke, Comparing the English and U.S. Bill of Rights

Evening: Finish afternoon assignments

Day 2

Morning:

American Trial Procedure

- readings from textbook “Street Law”

Afternoon/Evening:

Origins of American Law

- Finish Assignment on Locke
- Lecture on Early Modern England, Locke and property.
- Discussion of Locke, previous assignment

Colonial New England: Salem Witch Trials

- Lecture on religion/daily life in colonial New England and the various interpretations or explanations for witchcraft accusations
- Readings from Great American Trials (for overview)
- Mock Trial Activity: Put Sara Good on trial (students will play the following roles: teams of prosecutors and defense attorneys, witnesses, defendant, jury)
- Assignment: Students will write a short persuasive essay on whether convicting Good would represent a “just” action using one of the social explanations for the accusations as evidence.

Day 3

Morning:

- continue mock trial exercise

Colonial Virginia: Bacon’s Rebellion. Brief lecture; Readings: excerpts from Edmund Morgan, “Slavery and Freedom: The American Paradox” from the *Journal of American History*; “The declaration and Remonstrance of Sir William Berkeley his most sacred Majesties Governor and Captain General of Virginia”; brief summary of the rebellion

Readings from *the Logic of American Politics* on the modern U.S. judiciary

Afternoon/Evening:

- continue Bacon’s Rebellion
- Readings: ALH pp. 23-27
- Mock US Supreme Court nomination exercise

Republicanism and the Coming of the American Revolution

- lecture
- reading assignment: Bernard Bailyn, “The Birth of Republican Constitutionalism” pp. 91-96 from MPAC and Pauline Maier, “Insurrection As a step to Constitutionalism” pp. 114-121 from MPAC
- Writing assignment: part 1: what was more important in causing the revolution and constitutionalism, ideas or direct action or social changes and mob action. Part 2: How important are ideas in shaping history?
- Activity: students will divide into two groups and debate part 2 using part 1 as part of their evidence.

Day 4

Morning:

- Republicanism activities continued

The 1780s and the Constitutional Convention

- Lecture
- Break up into two groups, one with the instructor, the other with the TA to read and discuss Federalist #10
- Group activity: students will break into groups, each reading and interpreting one part of the constitution. Each group will find some way of presenting their section to the whole class (poem, rap, dramatization, etc.)

- Readings from Madison's notes on the debates of the federal constitutional convention on the debate over the appointment of the judiciary.
- Writing assignment: should judges be elected or appointed?
- Debate: topic from the writing assignment

Afternoon/Evening:

-1780s and the Constitutional Convention continued; begin readings for tomorrow

Day 5:

Morning

Judicial Review and the Marshall Court, politics of the early republic: Marbury vs.

Madison

- lecture
- readings: "Marbury v. Madison" in Great American Trials; Francis Stites "John Marshall and Constitutional Adaptation" pp. 314-322 in MPAC; Christopher Wolfe, "John Marshall and the Faithful Interpretation of the Constitution" pp. 323-334; Excerpt from John Marshall's opinion
- Writing assignment (if time): Based on the two articles, your knowledge of the constitution and John Marshall's opinion, do you think that John Marshall abused his power? Were his actions good for the health of the country? Do you think that the supreme court should have the power of judicial review?

Afternoon/Evening (Sunday)

Jacksonian America and the Marshall Court: Worcester vs. Georgia

-lecture

- Readings: Opinion from Worcester v. Georgia
- Students will fill out a legal brief, describing the case, its context and their opinions
- Debate: Should judges be elected or appointed?
- begin readings for next day

Day 6:

Morning:

Antebellum America: Dred Scott

- lecture
- readings: excerpt from Frederick Douglass, *Narrative of a Slave*; Fugitive Slave Act, 1850 pp.460-2 MPAC; "Abraham Lincoln and Stephen A. Douglas Debate the Dred Scott Decision, 1858 470-83.
- Assignment: Question sheet on the readings

Afternoon:

The Civil War: John Brown Trial and Emancipation

- lecture
- Readings: John Brown Trial from Great American Trials; essays by James M. McPherson and Ira Berlin on emancipation
- Mock Trial: John Brown

- Assignment: essays: Was John Brown insane?; After reading McPherson and Berlin, who do find to be more persuasive? Did Lincoln free the slaves or did the slaves free themselves?

Evening:

- continue afternoon readings, begin on readings for the next day

Day 7:

Morning:

13th, 14th and 15th Amendments

- Lecture
- Readings: Joan Hoff Wilson, “The Supreme Court’s Denial of the Rights of Women” pp. 602-606 MPAC; section on “selective incorporation” from Jacobson
- Assignment (if time): What was the meaning of citizenship in 1860s American?
- Class discussion over essays (evening session)

Afternoon/Evening:

From Reconstruction to Jim Crow: Plessey vs. Ferguson

- Lecture
- Readings: “Mississippi Black Codes (1865)” from ALH; An Act to Protect All Persons in the United States in Their Civil Rights, and Furnish Means of Their Vindication; Opinion from Plessey v. Ferguson; The Slaughterhouse Cases;
- Assignment: Students will fill out legal briefs on Plessey and the Slaughterhouse Cases
- Begin readings for tomorrow, if time

Day 8:

Late 19th Century America

- Lizzie Borden mock trial exercise. See lesson plan in appendix.

Day 9:

Morning:

The Gilded Age and the consolidation of corporate America: Pullman and the Debs Injunction

- Lecture
- Readings: “Industrialism and the Regulatory State” ALH; “The Sherman Anti-Trust Act” ALH; “In re Debs”; “Paternalism and the Female Worker” ALH; “Muller vs. Oregon ALH”
- Assignment: Students will fill out legal briefs
- Discussion: How has the rise of the corporation affected the law? How has the law aided the rise of the corporation? How do corporations affect modern America?
- Movie: excerpt from Chaplin, “Modern Times”

Afternoon:

- introduce paper topic; library research time

Evening:

Progressive Era, Race, Gender and the Regulatory State

- Lecture
- Readings: Amy Dru Stanley, "Beggars Can't be Choosers"

Day 10:

Morning:

-Library Research time

World War I, red scare, antiradicalism and civil liberties: Schenck v. US

- Lecture
- Readings: ALH pp. 400-419
- Debate: Should freedom of speech have limits?

Afternoon:

The 1920s, class and culture wars: The Scopes Monkey Trial

- lecture
- readings: "Scopes Trial" from GAT; "Inherit the Wind"
- Movie: "Inherit the Wind"
- Discussion: What is the significance of "culture" in American society? It what ways are power and culture connected?

Evening:

- Finish Inherit the Wind
- Library Time

Day 11:

Morning/Afternoon:

Great Depression, the New Deal and FDR court packing

- lecture
- Readings: ALH 455-457, 482-86
- Assignment (if time): students will write an essay either defending or indicting FDR for his courtpacking plan

World War II, civil liberties, internment: Korematsu v US

- lecture
- Readings: ALH 421-36
- Assignment: questions

Evening: Finish readings, begin readings for the next day

Day 12:

Morning:

Second Red Scare, civil liberties: Dennis et al v. US

- lecture
- Readings: ALH 530-39
- Assignment: You are Dennis, write an address to the media expressing your feelings. Why should you have the right to organize and the right to free speech?

- time to work on research paper rough draft

Afternoon:

Civil Rights: Brown v. Board

- Lecture
- Reading ALH 510-516; Excerpt from Ture, "Black Power"; Excerpt from MLK "Where do we go from here?"
- Movie: Excerpt from "Eyes on the Prize"
- Assignment: questions comparing and contrasting MLK and Ture

Evening:

-Finish the day's assignments, work on papers (as students finish drafts the TA or myself will look them over and give suggestions)

Day 13:

Morning:

The 60s, the New Left and Second Wave Feminism: Roe V. Wade

- Lecture
- Readings: "Leaving the Left" from Rosen *The World Split Open*
- Assignment or discussion (depending on time): questions: do you agree with Roe v. Wade on constitutional grounds? In what ways did the rise of the left aid the rise of second wave feminism, in what ways did it hinder its growth?
- students will finish writing their research papers

Afternoon:

- Library Time

Paper: Each student will have chosen a case that was not covered in class. The paper contains four parts: 1.) summary 2.) legal, constitutional and political framework 3.) historical context

- In groups of two, students will present their papers on cases pertaining to student rights

Evening: Students will continue to present papers

Day 14:

Morning/ Afternoon:

Problems in modern law- race: Affirmative action. Bakke v. UC, Gratz v. Umich, Gutter v. Bollinger. Rodney King police officers trial

- Lecture
- Readings: ALH pp. 526-29, 560-62; Opinion from Bakke
- Debate: Affirmative Action

Evening:

Problems in modern law- politics- Bush v. Gore

- Short readings TBA, readings assigned for tomorrow
- discussion over the role of the courts in politics

Day 15

Wrap up:

- Lecture
- Readings: Raoul Berger, "Original Intent as a Curb on Judicial Power"; Leonard Levy, "The Failure of Original Intent"
- Discussion
- Game: Legal History Jeopardy

Appendix:

Lizzie Borden Lesson Plan

Goal: The students will think critically about the effect of media reporting on the outcomes of trials, public perceptions of trials, and the role of gender and social class in law and society. Students will become familiar with legal procedures. They will recognize the role of primary research in the study of history. They will develop public speaking skills.

Summary: Students will reenact (not literally) the events leading up to the Lizzie Borden trial and the trial itself. Before each segment, students will be given sheets of paper that will define their roles. They will memorize the basic information on the sheets. They will combine this factual information with their own creativity in developing their roles.

Background: In 1892, Lizzie Borden was an unmarried, well-known member of elite Fall River, Massachusetts, society- a society marked by belief in Victorian notions of appropriate behavior for women and featuring visible class differentiations. Lizzie, however, challenged Victorian gender roles. Although she engaged in political activities, such as participating in the Women’s Christian Temperance Union (many members supported women’s suffrage), she also presented herself “as a lady.” Investigators, attorneys and newspapers began to investigate these identities after her father, Andrew, and his wife were found axe-murdered. Prosecutors charged Lizzie with the crime. What followed was considered “The Trial of the Century.” Large-scale, sensationalized media reporting developed many theories about her motives, as did the prosecution. Some thought Lizzie was expressing frustration over her father’s marriage to a woman of a lower social class. Others said Lizzie killed her father after he accused her of being pregnant and demanded that she identify her sexual partner. A jury ultimately acquitted Lizzie, but their motives might also have related to gender perceptions. She had purchased arsenic a few days before, presumably to use as poison. Had Lizzie actually used it, many think that she would have been convicted, as it constituted a “feminine” method of murder. Many simply couldn’t believe that a “lady” could use such masculine methods (axe-murder) in committing a crime. In some ways, her femininity was put on trial.

Exercise:

Students will be assigned to the following roles: Lizzie Borden, Andrew Borden, Andrew’s wife, the maid, teams of investigators/attorneys, defense attorney, newspaper reporters and a newspaper boss. The rest will be sequestered to work on a different assignment, as they will later be jurors.

In the morning (before break), each sheet will indicate business as usual in Fall River. The investigators/attorneys will not be interrogating any suspects, but they will have 15 minutes to chat as if they were conversing in a normal public space. This period should get each character acquainted with one another and, more importantly, with the makeup

of the 1892 Fall River society and Lizzie Borden's place in it. In conversations, students can make up details about their lives but they cannot contradict anything on their sheet or create information that would likely overshadow information given to them. They will be instructed to only create details that best portray their character as outlined on the sheet.

After break, students will examine a new set of sheets summarizing their roles for the day. Lizzie's will not say whether or not she committed the crime, only that she will deny it. The maid will be instructed to report that she found the bodies of Andrew and his wife to the investigators/attorneys. At this point, the newspaper reporters will be given no instruction other than to report on the events to their boss, whose focus is printing articles that sell newspapers. (Students will have already examined the Zenger trial, which dealt with issues of libel and slander). Throughout the rest of the exercise, they will write newspaper articles. The jury will read these articles along with a few real articles on other topics from the period. The investigation will continue- attorneys/investigators will spend a couple of hours (or less) interviewing the witnesses, compiling evidence and otherwise preparing for trial.

Afternoon, evening: the trial begins. Attorneys will follow regular trial procedure (opening statement, calling witnesses, etc.). Jurors will then decide on the case (the T.A. or myself will act as the judge), their only previous exposure to the case being the newspaper articles.

After the trial, students will examine a collection of real newspapers that reported on the Lizzie Borden trial. They will break up into small groups and be asked to discuss questions, such as: How did reporting of the event reflect the gender perceptions of the period? How did it reflect or skew perceptions of elite culture? Was this sensationalized news? How might such reporting have affected the outcome of the trial (in reality and in the mock trial) and its legacy in popular memory? By using real articles students will gain exposure to a major aspect of what historians do: primary research. They will be asked to make their own conclusions and develop their own analyses by using the available sources. If time is left, I will break the class into two sides to prepare for a debate on freedom of the press in the trial setting (Should there be limits placed on media access to criminal law cases?).

This assignment will lead into a lecture on Victorian gender roles/perceptions and the rise of an industrial elite.