HISTORY LAW (HSGL)

HSGL 0202. GREAT BOOKS IN AMERICAN LAW. (2 Credits)
Students in this seminar will read the following six books, plus reviews and commentary on each of the books:\n\n- Oliver Wendell Holmes, The Common Law
- Benjamin N. Cardozo, The Nature of the Judicial Process
- Adolph Berle and Gardiner Means, The Modern Corporation and Private Property
- Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics

Students will be expected to write twelve 2-3 page response papers on the books and materials circulated for the twelve classes discussing the books and commentary. The first class will be introductory. There will be no final exam.

Attributes: INLJ, LLM, PIF.

HSGL 0203. UNITED STATES CONSTITUTIONAL HISTORY: THE WARREN COURT. (2 Credits)
The Warren Court helped transform in American law, politics, and society. And American politics and society shaped the Warren Court and its ultimate legacy. This seminar will start with some background on Earl Warren, focusing on his biography, his role in the Japanese Internment, and Korematsu. In week 2, we will focus on Brown and desegregation.


Week 4: The Criminal Rights Revolution: Gideon, Miranda, and Mapp.

Week 5: The First Amendment and Privacy.

Week 6: Religion, Presentations and the Warren Court's Revolution: Gideon, Miranda, and Mapp.

The grade is based on the response papers and class participation. There is no final paper or final exam. Although I am assigning all six books described below in full, I will provide guidance regarding parts of each on which students may focus. Here are the books we will read: Weeks 1 and 2 (1/18 and 25): John McGinnis and Michael Rappaport, Originalism and the Good Constitution (McGinnis, from Northwestern University, will come to class). This book argues in favor of originalist methods of interpreting the Constitution, largely from a consequentialist framework, i.e., that we are better off as a nation following originalist methods. The book also advances a distinctive originalist argument focusing on the supermajoritarian nature of our Constitution.

Weeks 3 and 4 (2/1 and 8): John D. Inazu, Confident Pluralism: Surviving and Thriving through Deep Difference (Inazu, a former Fordham Law School professor, now at Boston University) is one of our leading anti-originalists and pro-Dworkinian constitutional scholars. He claims moral readings of the Constitution are both best and unavoidable.

Week 5 and 6 (2/15 and 22): Frederick Schauer, The Force of Law (Schauer (University of Virginia) is one of our leading legal theorists and First Amendment scholars. This book challenges a leading legal theory account (H.L.A. Hart's notion of people following the law just because it's the law, i.e., internalizing a sense of legal obligation) and argues instead that coercion – the force of law – is central to understanding the core of law and its efficacy.


This book is a nice counterpoint to Schauer's book. Conventional accounts of legal compliance focus on deterrence (Schauer's approach) and legitimacy. McAdams (University of Chicago) adds that law has an expressive mechanism that generates compliance, as well, through a coordinating function and an information function. In part through game theory, McAdams advances both descriptive and normative claims supporting his thesis.


Whereas the first four books provide general constitutional and then legal theory approaches, the final two books focus on more specific areas. Inazu (Washington University in St. Louis) advances a deeply pluralistic theory of our constitutional order, analyzing freedom of speech, religion, assembly, and association arguments.


Kitrosser (University of Minnesota) challenges standard defenses of presidential power, especially "supremacy" and "the unitary executive." She argues that presidential power need not be as centralized as unitary theories maintain, and that secrecy of information and programs within the executive branch are antithetical to proper understandings of accountability. She also discusses First Amendment issues surrounding prosecution of leakers and publishers of classified information.

Note: I am trying to keep costs reasonable for students, and have figured out a way to reimburse you if total book costs per student go over $200.

Attribute: INLJ.
HSGL 0290. HISTORY OF COMMERCE AND LAW. (2 Credits)
The course examines how nine pre-industrial societies developed (or failed to develop) legal and informal rules and institutions to support trade and commerce: Hunter/gatherers, Mesopotamia, ancient Egypt, Classical Athens, Rome, Early Islamic World, Medieval Europe, Medieval Southern (Hindu) India and Qing China. The course is a combination of legal history, comparative law and economic history, with particular focus on business organization and commercial dispute resolution. Discussion is structured around five business objectives: <br> 1. pool capital and share risks --- eg, business organization forms like the Roman societas (contractual joint venture or partnership), the Assyrian naruqum (joint stock fund), the Islamic inan and mudaraba (partnerships), the medieval Italian compagnia and the Qing tang (lineage trust), compared with the attributes of the modern corporation (eg, legal personality, duration, entity and owner shielding (limited liability), separation of ownership and management, etc. <br> 2. enforce agreements and resolve commercial disputes --- eg, merchant demand for speedy and impartial resolution of disputes via special courts, fora or procedures; <br> 3. secure persons and property, particularly in long-distance trade --- eg, fictional kin relationships, treaty guarantees and medieval Indian private merchant armies <br> 4. address principal/agency concerns --- eg, merchant and ethnic networks in addition to agency law <br> 5. disseminate market information and reduce asymmetries --- eg, regulation of retail market to ensure fair dealing and protect consumers like the Islamic hisba manuals <p> The course also is intended to add historical perspective to contemporary issues concerning, among other, economic development, private versus public ordering, legal pluralism and “Law Merchants.” <br> This a condensed seminar (14 classes in seven weeks) which meets Jan. 20 - March 10, 2015. The seminar is open to J.D. and LL.M candidates. There are no prerequisites. There will be a paper rather than an examination. <br> Attributes: JD, LAWI, LLM.

HSGL 0308. AMERICAN LEGAL HISTORY. (3 Credits)
This course examines the tension between individual liberty and governmental authority expressed in law from the seventeenth century to contemporary debates among modern political and legal conservatives, liberals and moderates. The specific issues and details of the conflict between liberty and authority have changed over time, but they have involved questions regarding the specific rights in which freedom consists, the manner in which personal liberties should be enjoyed and exercised, who should enjoy them, and how law and public policies can best facilitate, protect, and regulate the exercise of personal freedom. This course explores how events and ideas have influenced the evolution of law relating to these subjects over the course of American history. <br> Attributes: JD, LLM, PIF.

HSGL 0310. ENGLISH LEGAL HISTORY. (2 or 3 Credits)
This seminar will examine the development of English civil, criminal and constitutional law from the medieval period to the present. The focus of the course will be on the evolution of legal doctrines and institutions since the eighteenth century. These developments will be considered in the context of broader social, economic, political and intellectual changes. Selected topics will include criminal law and procedure, the rise of the legal profession, the law of trade unions and corporate enterprise, the triumph and decline of freedom of contract, and judicial responses to popular protest movements. Readings will include scholarly articles and monographs as well as case law. <br> Attributes: JD, LLM.

HSGL 0322. NATURAL LAW: INTENT, RIGHTS & JUSTICE. (2 Credits)
This course will examine the theoretical foundations and practical implications of natural law theory. Because “natural law” is often taken to mean many different things, one of the course’s first aims will be to establish a common vocabulary for identifying and distinguishing the various “versions” of natural law theory. We will see that a common denominator in all natural law theory is the proposition that positive law (i.e., law as it is simply “posited” or enacted by lawmakers) does not exhaust the content of the law, and can be evaluated in light of a “higher law” or “natural law.” Our ensuing discussion of the difference between positive law and natural law will open onto a series of questions that will guide us through the rest of the course: “Is there really a natural law?” “If there is a natural law, what is the basis upon which this law exists and becomes knowable to us?” “If natural law exists, then what is its moral content and what does this moral content have to say about individual goods and rights, and their relation to the common good?” Furthermore, how is the moral content of natural law to be enforced or made effective through our system of positive law?” “Finally, how are we to make sense of the natural law tradition in light of our contemporary understandings of judicial review, governmental neutrality, and reasonable pluralism?” The course will not only introduce the classical natural law tradition (based mainly on the thought of Aristotle and Aquinas), but will place this classical tradition in dialogue with contemporary thinkers. The ultimate aim of the course will be to achieve an understanding of the natural law tradition and its relevance for a variety of contemporary legal issues. No prior acquaintance with philosophy or jurisprudence is assumed; the relevant concepts will be developed in class. Students will have a choice between an open book in-class exam and a take-home exam. <br> Attributes: INLJ, PIF.

HSGL 0799. NATIVE AMERICAN LAW. (2 Credits)
This course is aimed at a comprehensive understanding of Native American law and the history that has formed this law. Native American Law is in a sense the most all-encompassing of any field of law, as it necessarily entails the study of the Constitution, federalism and the federal system, international law, the full span of American (and colonial) legal and political history, constitutional and civil law and jurisdiction, administrative law, civil rights, the Commerce Clause, the Treaty Power, the First Amendment, resource rights, trust law, economic development and the laws of other nations. The course will explore the divisions and contentions among Indian, federal, state and international authorities by moving in a chronological fashion from the early colonial era to the most recent meetings of the United Nations Permanent Forum on Indigenous Issues. The format of the class is an interactive seminar based on assigned readings, and paper on a topic of the student’s choosing done under the professor’s guidance after submission of a first draft. <br> Attributes: INLJ, JD, LAWI, LLM.