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: 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; John Hart Ely, Democracy and Distrust: A Theory of Judicial Review; and Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law. 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.

HSGL 0203. United States Constitutional History: The Warren Court. (2 Credits)
The main work in our workshop is reading forthcoming scholarship (work in progress) or recent books in constitutional history and then meeting with the authors to ask them questions and constructively critique their work for their benefit. Authors benefit tremendously from these workshops in getting feedback, and students learn from how historians engage legal questions and how history can be relevant to contemporary legal arguments. These workshops also add to Fordham’s intellectual and scholarly life. We will have a few weeks in the beginning of the semester on foundational work on originalism and its critics, as well as background on the Founding era.

Attributes: INLJ, LLM, PIF.

HSGL 0204. Recent Books in Con Legl Theory. (2 Credits)
The purpose of this course is to give students an opportunity to read, discuss, and write about important recent books in constitutional and legal theory, and to meet and engage with the authors of those books. We will cover each book in two class sessions. For each book, in week one, students will write 5 page response papers, and the students and I will meet to discuss the book. In week two for each book, the author will come to class and discuss the book with the students and me. 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. (Note that the response paper for this first book is due 1/16, so students will be reading the book over winter break. Response papers are due the Monday morning before the first Wednesday session for each book.) Weeks 3 and 4 (2/1 and 8): James E. Fleming, Fidelity to Our Imperfect Constitution: For Moral Readings and Against Originalisms. The title well describes the book. Fleming (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. Weeks 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. Weeks 7 and 8 (3/1 and 8): Richard H. McAdams, The Expressive Powers of Law: Theories and Limits. 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. Weeks 9 and 10 (3/22 and 29): John D. Inazu, Confident Pluralism: Surviving and Thriving through Deep Difference. 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. Weeks 11 and 12 (4/5 and 12): Heidi Kitrosser, Reclaiming Accountability: Transparency, Executive Power, and the U.S. Constitution. 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. Week 13 (4/26): Wrap-up discussion and I hope some kind of party #. 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 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.
Attributes: JD, LLM, PIF.

HSGL 0322. Natural Law: Intent, Rights, and 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.
Attributes: CEED, CEMP, HECH, INLJ, PIF.