

PLS 4965/POLS 3340
Foundations of Law
Saint Louis University
SPRING 2020

"The life of the law has not been logic: it has been experience,"

Oliver Wendell Holmes, Jr. (1883)

Email: anders.walker@slu.edu; Office: 856 Scott Hall; Office Hours: Tuesday 4:15, Thursday 4:15 (after class)

This course provides an introduction to the foundations of American law. It takes the Legal Realist position that law evolves over time, and that a full understanding of American legal development is not possible without some understanding of American historical context. Several themes will be traced through the semester, including the emergence of various fields of law as a response to social, political, and/or economic pressures. Attention will also be paid to law's role in exerting pressure, particularly *vis a vis* encouraging innovation and regulating social relations, in part through the elaboration of legal disciplines like property, tort, contract, criminal law, tax, business associations, administrative law, environmental law, securities regulation, commercial law, immigration, and civil rights. Emphasis will also be placed on the origins and evolution of constitutional law, from the founding to the present.

Class Preparation: Attendance and participation in class discussions count for 25% of the final grade. You will be allowed two unexcused absences and one pass (for not reading). Any absences or passes beyond that may result in a grade reduction. In the interest of fairness to all students, there will be no extensions or make-ups without a signed and dated doctor's note. Please be aware that late assignments will lose 3 points (or one third of a grade) every day past the due date.

Your decision to participate in this course indicates your agreement to abide by all stated deadlines and requirements.

Term Essay: This essay is an extended study (8-10 pages) of a topic concerning some aspect of American law. Paper topics are due in class or via email no later than **Tuesday, October 23**. Final papers are due in class on **Thursday, Nov. 15**.

Exams: There will be two essay exams: a midterm and a final.

ACADEMIC INTEGRITY AND HONESTY

Students are expected to be honest in their academic work. The University reserves the right to penalize any student whose academic conduct at any time is, in its judgment, detrimental to the University. Such conduct shall include cases of plagiarism, collusion, cheating, giving or

receiving or offering or soliciting information in examinations, or the use of previously prepared material in examinations or quizzes. Violations should be reported to your course instructor, who will investigate and adjudicate them according to the policy on academic honesty of the College of Arts and Sciences. If the charges are found to be true, the student may be liable for academic or disciplinary probation, suspension, or expulsion by the University. Students should review the College of Arts and Sciences policy on Academic Honesty (<http://www.slu.edu/x16363.xml>).

STUDENTS WITH SPECIAL NEEDS-DISABILITY SERVICES

In recognition that people learn in a variety of ways and that learning is influenced by multiple factors (e.g., prior experience, study skills, learning disability), resources to support student success are available on campus. Students who think they might benefit from these resources can find out more about:

- Course-level support (e.g., faculty member, departmental resources, etc.) by asking your course instructor.
- University-level support (e.g., tutoring/writing services, Disability Services) by visiting the Student Success Center (BSC 331) or by going to www.slu.edu/success. Students who believe that, due to a disability, they could benefit from academic accommodations are encouraged to contact Disability Services at 314-977-8885 or visit the Student Success Center. Confidentiality will be observed in all inquiries.

Course instructors support student accommodation requests when an approved letter from Disability Services has been received and when students discuss these accommodations with the instructor after receipt of the approved letter.

COURSE CONTENT DISCLAIMER

In this course, students may be required to read text or view materials that they may consider offensive. The ideas expressed in any given text do not necessarily reflect the views of the instructor, the History Department, the Law School, the Writing Program, or Saint Louis University. Course materials are selected for their historical and/or cultural relevance, or as an example of stylistic and/or rhetorical strategies and techniques. They are meant to be examined in the context of intellectual inquiry of the sort encountered at the university level.

WRITING CENTER

I encourage you to take advantage of the writing services in the Student Success Center; getting feedback benefits writers at all skill levels. Trained writing consultants can help with any writing, multimedia project, or oral presentation. During the one-on-one consultations, you can work on everything from brainstorming and developing ideas to crafting strong sentences and documenting sources. These services do fill up, so please make an appointment! For more information, or to make, change, or cancel an appointment, call 977-3484 or visit <http://www.slu.edu/writingservices.xml>.

Additional Academic Honesty requirement: Please keep copies of notes and sources used for your term paper until the date of the final exam. If you cannot show the notes and sources upon request you will automatically receive a grade of zero for the term essay. Any assignment, whether written or verbal, that does not meet the University's standards of academic honesty will receive a grade of zero and will be liable to other University penalties, including a failing

course grade. Please be aware that I consider all communication, even private conversations, to be an important part of your course work, and subject to academic honesty requirements.

Readings and exams: The midterm and final exams will cover readings, lectures, and class discussions. All exams will be in essay form.

Grading:	Class participation /	
	Attendance	250 points
	Midterm exam	250 points
	Term Paper	250 points
	Final exam	250 points

		1000 Total

Percentage / Letter Grade Equivalents

95-100	A	77-81	C
93-94	A-	75-76	C-
91-92	B+	70-74	D
86-90	B	0-69	F
84-85	B-		
82-83	C+		

[Note: Percentages assigned to course work will determine letter grades, and letter grades have the CAS stated equivalencies to the grade-point numbers listed below.]

College of Arts and Sciences grading scale:

3.9 – 4.0	A	2.2 – 2.5	C+
3.6 – 3.8	A –	1.9 – 2.1	C
3.2 – 3.5	B+	1.6 – 1.8	C –
2.9 – 3.1	B	0.9 – 1.5	D
2.6 – 2.8	B –	0.0 – 0.8	F

Syllabus Key

Each section on the syllabus corresponds to one class period.

Introduction: Pre-Histories: Cabot/ Columbus/ Cahokia

No Reading

The Colonial Era: Rebellious Notions, 1600-1660

John Winthrop, "Reasons for Puritan Migration," 1629

The Trial of Roger Williams, 1635

The Trial of Anne Hutchinson, 1638

A Model of Christian Charity, 1630

The Laws of Massachusetts, 1648

Salem Witchcraft Trials, 1692

The Colonial Era: The Decline of Religious Rule, 1660-1776

The Trial of Robert Keaynes, 1640

The Triangle & Bilateral Trades [map]

The Navigation Acts, 1660-1696

The Georgia Colony, 1733

Slavery & the Collapse of Oglethorpe's Vision for Georgia, 1757

Indian War & the Collapse of Quaker Rule in Pennsylvania, 1755

The Founding: The Rise of Republican Rule, 1776-1789

Proclamation of George III, 1763

The Stamp Act, Lawyers, & the Revolution, 1765

The Declaration of Independence, 1766

The Virginia Act for Establishing Religious Freedom, 1786

Thomas Jefferson to William Short, April 13, 1820

Slavery and the Rise of Republican Virtue [excerpt from Edmund S. Morgan, *Slavery & Freedom: The American Paradox*, 59 J. OF AM. HIST. 5 (1972)]

The Founding: Interest, Innovation, & the American Constitution

Shay's Rebellion, 1786

The Federalist Position, 1787

The Anti-Federalist Position, 1787

The Bill of Rights, 1789

Federalist #10, 1787

The Constitution, Slavery, & the Doctrine of Interest, 1787

The Early Republic: National Expansion

Northwest Ordinance, 1787

The Louisiana Purchase, 1803

St. Louis Letters, 1804-1805

The Missouri Compromise, 1820

The Early Republic: Law, Innovation, & Commerce

1790 Federal Patent Act & the Genius Inventor

1791 Jefferson, Hamilton, & the 1st National Bank

Marbury v. Madison (1803)

McCulloch v. Maryland (1816)

Corporations, Contracts, & *Dartmouth College v. Woodward* (1819)

Gibbons v. Ogden (1824) & the Commerce Clause

The Rise of Bankruptcy Law [excerpt from Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (1977)]

Andrew Jackson Vetoes the Bank

Charles River Bridge v. Warren Bridge (1837)

The Laws of Slavery

Leviticus 25: 44-46

Ephesians 6:5

Aristotle, *Politics*, Part V (350 BC)

Thomas Jefferson, *Notes on the State of Virginia* (1782)

“Joseph Emory Davis: A Mississippi Planter Patriarch”

Solomon Northrup, *Twelve Years a Slave* (1853)

Slave Code of the State of Georgia (1848)

The Crimes of Jesse Ruffin (1835) [excerpt from Laura Edwards, *The People & Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (2009)]

Theft, Arson, & the Law the Slaves Made [excerpt from Eugene D. Genovese, *Roll Jordan Roll: The World the Slaves Made* (1976)]

The Laws of Marriage

Wightman v. Coates (1833)

Trusts, Estates, & Marriage Settlements [excerpt from Marylynn Salmon, “Women and Property in South Carolina: The Evidence of Marriage Settlements, 1730-1830,” 39 *William & Mary Quarterly* (1982)

Angelina Emily Grimke to Catherine Beecher (1837)

Gender Equality: The Shakers of Pleasant Hill, Kentucky [excerpt from Lyman Tower Sargent, “The Social and Political Ideas of the American Communitarians: a Comparison of religious and Secular Communities founded Before 1850,” 3

Utopian Studies (1991)

Friedrich Engels to Karl Marx, October 1844 (on American communitarianism)

Seneca Falls Declaration of Sentiments (1848)

The Civil War

Kansas Nebraska Act (1854)
Edward Bridgman, "A Little about the Affairs of Kansas" [letter, May 25, 1856]
Oregon Exclusion Act (1857)
Dred Scott v. Sandford (1857)
Lincoln-Douglas Debate, Charleston, Illinois (1858)
The Emancipation Proclamation (1863)
South Carolina Declaration of Secession (1860)
Abraham Lincoln's Proclamation of War (1861)
Crittenden-Johnson Resolution (1861)
Gettysburg Address (1863)
The Official Surrender Document of Lee's Troops (1865)

The Indian Wars

The Ohio Valley Confederacy (1809)
The Battle of Tippecanoe (1811)
The Conquest of Florida (1817)
Johnson v. M'Intosh (1823)
The Indian Removal Act (1830)
Cherokee Nation v. Georgia (1831)
Worcester v. Georgia (1832)
Navajo Wars, 1861-64
Apache Wars, 1861-1886
Sioux Wars, 1862-1864
Cheyenne Wars, 1864-1879
Comanche Wars, 1867-1875
The Indian Appropriations Act (1871)
Lone Wolf v. Hitchcock (1903)

Railroads, Rebellions, & the Rise of Tort Law

Bill for the Construction of a Transcontinental Railroad (1862) [excerpt from Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* (1997)]
Railroads & the Rise of Negligence: *Fent et al. v. Toledo* 59 Ill. 349 (1871)
Law, Outlaws, & Railroads: The Case of Missouri [excerpt from David Thelen, *Paths of Resistance: Tradition & Dignity in Industrializing Missouri* (1986)]
An Act to Establish the Responsibility of Railroad Corporations (1887)

Reconstruction

The Thirteenth Amendment (1865)
The Mississippi Black Code (1865)
The Impeachment of Andrew Johnson (1867)
The Fourteenth Amendment (1868)
The Fifteenth Amendment (1870)
The Slaughterhouse Cases (1873)
United States v. Cruickshank (1874)
Minor v. Happersett (1875)

Segregation

Senator Hiram Revels (1871), Governor Pinckney Benton Stewart (1872)
Senator Blanche Bruce (1874)
Pace v. Alabama (1881)
Charles A. Gardiner “The Future of the Negro” (1884)
The Laws of Segregation
Henry Grady, “The New South” (1886)
1890 Mississippi Constitution
Tom Watson, “The Negro Question in the South”
Booker T. Washington, Atlanta Exposition Address (1895)
Plessy v. Ferguson (1896)
Lift Every Voice and Sing (1900)
Powell v. Alabama (1932)
Brown v. Mississippi (1936)

The Specter of Socialism

Strike of 1877
The Haymarket Trial (1886)
Red Ribbon Mourners: The Anarchists of St. Louis Hold a Memorial Meeting, *St. Louis Globe Democrat*, Nov. 14, 1887
Illinois Criminal Syndicalism Act (1887)
In re Debs (1895)
The Evangelical Response to Socialism, Communism, & Anarchism [excerpt from Rev. James Crawford, “The Dangers of the Republic from Atheism, Communism, and Socialism,” *Reformed Quarterly Review*, April 1879, 302.]

The Gilded Age

Christopher Tiedemann, *Treatise on the Limitations of the Police Power* (1886)
In re Jacobs (1885)
Santa Clara County v. Southern Pacific Railroad (1886)
Andrew Carnegie, *The Gospel of Wealth* (1889)
Holden v. Hardy (1897)
John Jay Chapman, "This Pressure of Self-Interest" (1898)
Theodore Roosevelt, *The Strenuous Life* (1899)
George Santayana, "The Love of Business," (1904)
Lochner v. New York (1906)
Muller v. Oregon (1908)

The Progressive Era

Sherman Act (1890)
Pollock v. Farmers Loan and Trust Co. (1895)
Northern Securities Co. v. United States (1904)
Upton Sinclair, *The Jungle* (1906)
Pure Food and Drug Act (1906)
Theodore Roosevelt, Conference on Conservation of Natural Resources (1908)
Eugene V. Debs, "The Monstrous System of Capitalism," (1912)
Sixteenth Amendment (1913)

World War I: Speech, Suffrage, & Anti-German Sentiment

Espionage Act (1917)
"Nobody Would Eat Kraut" (1917)
Schenck v. United States (1919), *Debs v. United States* (1919)
Mitchell Palmer, "The Case Against the Reds" (1920)
The War & Women's Suffrage (1917)
Woodrow Wilson, Speech to Congress (1918)
The Nineteenth Amendment (1920)
Meyer v. Nebraska (1923), *Pierce v. Society of Sisters* (1925)
Gitlow v. New York (1925), *Whitney v. California* (1927)

Prohibition, Immigration, & Eugenics

18th Amendment (1919)
Richard Hofstadter, *The Age of Reform: From Bryan to FDR* (1955)
Warren G. Harding, "The President's Appeal to Halt Law-Breaking," (1922)
Immigration Act (1924)
"Guarding the Gates Against Undesirables," (1924)
Klansman's Manual (1925)
Tennessee v. Scopes (1925), *Buck v. Bell* (1927)
Margarete Sanger, "The Eugenic of Birth Control Propaganda"
"Warning Against the 'Roman Catholic Party,'" (1928)

The New Deal

“Stock Prices Slump,” New York Times, Oct. 29, 1929
1934 Securities Exchange Act
1934 Indian Reorganization Act
1935 National Labor Relations Act (The Wagner Act)
1937 Franklin D. Roosevelt, “Fireside Chat on the Court-Packing Bill,”
West Coast Hotel v. Parrish (1937)
Maurice Spector, “The Collapse of the New Deal,” (1938)

World War II: Internment, Integration, International Law

Adolf Hitler, *Mein Kampf*
The Nuremberg Laws (1935)
Executive Order #8802 (1941)
Japanese Internment & Ex. Order # 9066 (1942)
Korematsu v. United States (1944)
Taft-Hartley Act (1947)
The Truman Doctrine (1947)
Harry S. Truman, “To Secure These Rights” (1948)

The Cold War, Civil Rights

Ex rel. Gaines v. Canada (1938)
Sipuel v. Board of Regents of Oklahoma (1948)
Shelley v. Kraemer (1948)
Sweatt v. Painter (1950)
Brown v. Board of Education (1954)
Mary Dudziak, “Desegregation as a Cold War Imperative”
The Southern Manifesto (1956)
Letter from Birmingham Jail (1963)
The Civil Rights Act of 1964

The Urban Crisis

National Housing Act (1934)
Servicemen’s Readjustment Act (The G.I. Bill) (1944)
The Second Great Migration
The St. Louis Fairground Park Pool Riot (1949)
“Why They Built the Pruitt-Igoe Project” (1956)
National Interstate and Defense Highways Act (1956)
Kerner Commission Report (1968)
Keyes v. Denver (1973)
San Antonio v. Rodriguez (1973)
Milliken v. Bradley (1974)
Regents v. Bakke (1978)

Cold War III: The Rise of Privacy

The Kinsey Report (1948)

Betty Friedan, *The Feminine Mystique* (1957)

Mapp v. Ohio (1961)

Griswold v. Connecticut (1965)

Stanley v. Georgia (1969)

Christian Coalitions

Engle v. Vitale, 370 U.S. 421 (1962)

Roe v. Wade (1973)

“E.R.A.’s Assist to Abortion,” The Phyllis Schlafly Report (Dec. 1974)

Bowers v. Hardwick (1986)

The Culture Wars

Prince, “Darling Nikki,” 1984

Tipper Gore, *Raising PG Kids in an X-Rated Society* (1987)

National Endowment for the Arts v. Finley (1998)

Romer v. Evans (1996)

The Impeachment of William Jefferson Clinton, 1998

The New Economy

Apple Computer v. Microsoft Corporation (1992)

Emergency Economic Stabilization Act (2008)

Facebook v. Winklevoss (2011)