History A231
U.S. LEGAL HISTORY II
Spring 2009

Professor Michael A. Ross
Office: Bobet Hall 420
X 3538/ maross1@loyno.edu
Office Hours:  MW 8-9:00
              FRI 9-11
              And by appointment

The purpose of this course is to introduce you to main ideas in American legal history from the Civil War through the 1980s. Unlike a constitutional law course, this class will focus on both how law shaped and was shaped by the larger historical context. Often Americans take their legal system for granted and do not question how or why it became the complex, sophisticated system it is today. In this class we will discuss the ways in which American law evolved over time and the factors that caused that evolution. Key questions we will ask include: Who has benefited from American law? Have any groups—rich or poor, black or white, male or female—benefited disproportionately from our legal system? Has American law been unfairly skewed in favor of businesses and property holders or has it been crucial to the nation’s economic success? Has American law shaped or been shaped by historical events? Which civil liberties have been important to U.S. citizens and why? And were those civil liberties protected during the period between the Civil War and today?

Course Requirements:
The requirements for this course will include: two 6-8 page response papers (15% each); a midterm exam (30%); and a final exam (30%). Participation in class discussion will also be important (10% of final grade).

Attendance:
Attendance is required and will be taken at the beginning of each class. You are allowed three absences during the semester. Four or more absences will adversely affect your class discussion grade. Late arrivals will be counted as one-half of one absence.
**Students with disabilities:** Students with disabilities who wish to receive accommodations in this class should contact Disability Services at 865-2990 as soon as possible so that accommodations can be implemented in a timely fashion.

**PLAGIARISM:**
"Plagiarism—the use of another person's ideas or wording without giving proper credit-results from the failure to document fully and accurately. Ideas and expressions of them are considered to belong to the individual who first puts them forward. Therefore, when you incorporate ideas or phrasing from any other author in your paper, whether you quote them directly or indirectly, you need to be honest and complete about indicating the source to avoid plagiarism. Whether intentional or unintentional, plagiarism can bring serious consequences, both academic, in the form of failure or expulsion, and legal, in the form of lawsuits. Plagiarism is a violation of the ethics of the academic community."


**Required Readings:**
Kermit Hall, William Wiecek, and Paul Finkleman, eds., *American Legal History: Cases and Materials*
Michael Ross, Justice of Shattered Dreams
Paul Kens, *Lochner v. New York: Economic Regulation on Trial*
Jonathan Harr, *A Civil Action*

All five books are available in the campus bookstore.

**LECTURE TOPICS AND ASSIGNMENTS**

**WEEK OF JANUARY 12:**
THE CIVIL WAR AS LEGAL CRISIS
Read and be prepared to discuss:
*American Legal History*, 249-255, 256-258
Justice of Shattered Dreams, 65-67, 81-88

**WEEK OF JANUARY 19:**
THE UNION UNRESTORED: RECONSTRUCTION
Read and be prepared to discuss:
AMERICAN LEGAL HISTORY, 258-266.
Justice of Shattered Dreams, 105-165.

No Class, Monday January 19 (Martin Luther King Jr.’s Birthday)

**WEEK OF JANUARY 26:**
THE LAW AND THE RETREAT FROM RECONSTRUCTION
Read: AMERICAN LEGAL HISTORY, 267-273, 277-282
Lochner v. New York, 1-88

**WEEK OF FEBRUARY 2:**
A NEW ORDER EMERGES: THE RISE OF CORPORATIONS AND THE REGULATORY STATE
Read:
AMERICAN LEGAL HISTORY, 363-401
Lochner v. New York, 89-187
WEEK OF FEBRUARY 9:
WOMEN AND THE LAW OF DOMESTIC RELATIONS IN
AT THE TURN OF THE CENTURY
Read: AMERICAN LEGAL HISTORY, 315-331

Paper Due: Paper on Lochner v. New York due in class on Monday, February 9. Late papers will lose ½ grade for each day they are late.

WEEK OF FEBRUARY 16:
WORLD WAR I & THE RED SCARE: TOTAL WAR, CIVIL LIBERTIES, AND CIVIL RIGHTS
Read: AMERICAN LEGAL HISTORY, 417-429

WEEK OF FEBRUARY 23
WORLD WAR I & THE RED SCARE: TOTAL WAR, CIVIL LIBERTIES, AND CIVIL RIGHTS
(continued)

No Class, Monday February 23, Mardi Gras Holiday

WEEK OF MARCH 2
THE 1920S: CULTURAL CONFLICTS TAKE CENTER STAGE

MIDTERM EXAMINATION MONDAY, MARCH 2
IN CLASS (PLEASE BRING BLUE BOOKS)

WEEKS OF MARCH 9 & MARCH 16
THE RISE OF LEGAL LIBERALISM, ECONOMIC REFORM, AND THE NEW DEAL
Read: AMERICAN LEGAL HISTORY, 472-492
What Brown Versus Board of Education Should Have Said

WEEK OF MARCH 23
WORLD WAR II & CIVIL RIGHTS
BROWN V. BOARD OF EDUCATION
Read: AMERICAN LEGAL HISTORY 429-443, 447-454, 510-513
What Brown Versus Board of Education Should Have Said

Be prepared to discuss What Brown Versus Board of Education Should Have Said on Friday, March 27

WEEK OF MARCH 30
THE CIVIL RIGHTS MOVEMENT
THE 1960S & THE LAW
Read: AMERICAN LEGAL HISTORY, 495-502

WEEK OF APRIL 6
No Class, Easter Holidays

WEEK OF APRIL 13
No Class, Monday April 13 (Easter Holidays)
GENDER & PRIVACY
AFFIRMATIVE ACTION
Read: AMERICAN LEGAL HISTORY, 502-535
A Civil Action

WEEK OF APRIL 20
THE TENSIONS OF CONTEMPORARY LAW AND SOCIETY
Read: AMERICAN LEGAL HISTORY, 535-566
A CIVIL ACTION

WEEK OF APRIL 27
THE MODERN PRESIDENCY & SEPARATION OF POWERS
LEGAL ISSUES FROM THE WAR ON TERRORISM
Read: AMERICAN LEGAL HISTORY, 566-570, 635-644, 644-655, 655-675.
A CIVIL ACTION

PAPER ON A CIVIL ACTION DUE IN CLASS ON WEDNESDAY, APRIL 29. PAPERS WILL RECEIVED GRADE OFF FOR EACH DAY THEY ARE LATE. PAPERS HANDED IN OUTSIDE OF CLASS ARE CONSIDERED LATE.

FINAL EXAMINATION WEDNESDAY MAY 6, 11:30-1:30 (PLEASE BRING BLUE BOOKS)