

AMERICAN LEGAL HISTORY—SPRING 2023—ASSIGNMENTS

This assignment sheet divides the semester into 13 weeks. Each week's heading has the reading for the week. For some, there's one big topic. For other weeks, there will be a different topic on Monday and Tuesday. If any links to do not work, please tell Professor Russell ASAP via [email](#).

Week 1. JANUARY 17

INTRODUCTION

--[1 The Records of the Virginia Company of London \(1619-20\) at 241-47 \(Susan Myra Kinsbury ed. Gov't Printing Office 1906-35\).](#)

Week 2. JANUARY 23-24

17TH-CENTURY LIBERTY, STATUTES, AND COURTS IN MASSACHUSETTS AND VIRGINIA

--[John Childe, Remonstrance and Petition of Robert Child to Massachusetts General Court, in New-England's Jonas Cast up at London \(1646\), reprinted in 4 Peter Force, Tracts and Other Papers, Relating Principally to the Origin, Settlement, and Progress of the Colonies of North America no. 3, at 8-14 \(Washington, Wm. Q. Force 1846\).](#)

--[John Winthrop, Little Speech on Liberty \(1645\), in The History of New England, from 1630 to 1649, at 228-30 \(Boston, Little Brown & Co. 1853\).](#)

--[The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts, at iii-50 \(Harvard Univ. Press, facsimile ed. 1929\) \(1648\).](#)

--[Colonial Justice in Western Massachusetts \(1639-1702\): The Pynchon Court Record, An Original Judges' Diary of the Administration of Justice in the Springfield Courts in the Massachusetts Bay Colony 203-13 \(Joseph H. Smith ed., Harvard Univ. Press 1961\).](#)

--[William Bradford, Of Plimoth Plantation 459-66, 473-75 \(Wright & Potter Printing Co. 1900\).](#)

--[H\[enry\] R\[ead\] McIlwaine \(1864-1934\), ed, Minutes of the Council and General Court of Colonial Virginia, 1622-1632, 1670-1676, with Notes and Excerpts from Original Council and General Court Records, into 1683, Now Lost \(Richmond : The Colonial Press, Everett Waddy Co., 1924\).](#)

WEEK 3. JANUARY 30-31

NATIVE PEOPLE & 17TH-CENTURY LABOR, RACE, AND SLAVERY IN THE CHESAPEAKE

NATIVE PEOPLE

--G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 1.

--[Tecumseh to Governor Harrison at Vincennes \(1810\), in The World's Famous Orations 14-15 \(Williams Jennings Bryan ed., Funk & Wagnalls 1906\).](#)

--[3 James Kent, Commentaries on American Law \(6th ed., New York, William Kent 1848\).](#)

--[John W. Nobel, Sec'y of the Interior, Rules of Indian Courts and "What is an Indian?", H.R. Doc No. 1, pt. 5 at 28-37 \(1892\).](#)

17TH-CENTURY LABOR, RACE, AND SLAVERY IN THE CHESAPEAKE

--G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 2.

- [Virginia Act of General Assembly, Jan. 6, 1639-40, 2d ser. 4 Wm & Mary Q. 145, 146-47 \(1924\).](#)
- [Proceedings of the County Court of Kent \(1648-1676\), in 54 Archives of Maryland 224-25, 246-48 \(J. Hall Pleasants ed., Md. Historical Soc'y 1937\).](#)
- [Records and Files of the Quarterly Courts of Essex County \(The Essex Inst. 1913\) \(1664\).](#)

--[1 William Waller Hening, The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature in the Year 1619 \(R. & W. & G. Barton 1923\).](#)

WEEK 4. FEBRUARY 6-7

REVOLUTION, EXCESSES OF DEMOCRACY, AND THE CONSTITUTION

- [The Declaration of Independence \(U.S. 1776\).](#)
- [Pa. Const. of 1776](#)
- [John F. Grimke's Eyewitness Account of Camden Court Riot, April 27-28, 1785, 83 S.C. Hist. Mag. 209, 210-213 \(Robert A. Becker ed. 1982\).](#)
- [Camden Memorial \(1785\), in Grimke Family Papers \(S.C. Historical Soc'y\).](#)
- [David Ramsay to Thomas Jefferson \(Apr. 7, 1787\) in 11 The Letters of Thomas Jefferson, 279-80 \(Julian Boyd ed., Princeton Univ. Press, 1955\).](#)
- [2 David Ramsay, The History of South-Carolina, from Its First Settlement in 1670, to the Year 1808 at 391-401, 425-33 \(Charleston, David Longworth 1809\).](#)
- [Execution Sales Act, no. 1293, S.C. Statutes at Large \(1785\).](#)

WEEK 5. FEBRUARY 13-14

THE EVERYDAY LAW OF SLAVERY, THE CONSTITUTION, CIVIL WAR, RECONSTRUCTION, AND THE KLAN PROFESSOR OF LAW

- [Jacob B. Wheeler, A Practical Treatise on the Law of Slavery \(New York, Alan Pollock; New Orleans, Benjamin Levy 1837\).](#)
- [Slaves and Free Persons of Color, ch. 107, §§ 26-77, in Revised Code of North Carolina, Enacted by the General Assembly at the Session of 1854 \(Boston, Little Brown & Co. 1855\).](#)
- [George Fitzhugh, Sociology for the South \(Richmond, A. Morris 1854\).](#)
- [Slavery in the United States Constitution.](#)
- [Dred Scott v. Sandford, 60 U.S. \(19 How.\) 393 \(1857\).](#)
- [CONSTITUTIONS OF THE UNITED STATES \(1787\) AND THE CONFEDERATE STATES OF AMERICA \(1861\).](#)
- [Abraham Lincoln, The Emancipation Proclamation \(Jan. 1, 1863\).](#)
- [Abraham Lincoln, Second Inaugural Address \(Mar. 4, 1865\).](#)
- [Civil Rights Act, ch. 4-6, Miss. Laws \(1865\).](#)
- [Reconstruction Amendments](#)
- [Civil Rights Act of 1866, ch. 31, 14 Stat. 27 \(1866\).](#)
- [William Stewart Simkins, Professor of Law Univ. of Tex., Why the Ku Klux \(November 1914\), in 4 The Alcalde 735 \(1916\).](#)
- [Thomas D. Russell, 'Keep Negroes Out of Most Classes Where There Are a Large Number of Girls': The Unseen Power of the Ku Klux Klan and Standardized Testing at The University of Texas, 1899-1999](#)

WEEK 6. FEBRUARY 20-21

ENTREPRENEURSHIP, USE OF (NON-SLAVE) PROPERTY, CORPORATIONS, REBELLION, AND REGULATION

- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapters 3.
- [The Northwest Ordinance \(1787\)](#).
- [Public Lands Statutes, in Public Statutes at Large in the United States \(1796-1850\)](#).
- [Merritt v. Parker, 1 N.J.L. 460 \(N.J. 1795\)](#)
- [Review of Joseph K. Angell, A Treatise on the Common Law in Relation to Water Courses, 2 Am. Jurist 25, 30-34 \(1829\)](#).
- [Snow v. Parsons, 28 Vt. 459 \(1856\)](#).
- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 4.
- [Alfred B. Street, The Council of Revision of the State of New York](#) (Albany, W. Gould 1859).
- [Andrew Jackson, Veto of the Second Bank \(July 10, 1832\)](#), in 2 James D. Richardson, *A Compilation of the Messages and Papers of the Presidents 1789-1897* (1900).
- [The Rebellion at Homestead, 1892 Harper's Wkly. 674](#).
- [Lochner v. New York, 198 U.S. 45 \(1905\)](#).

WEEK 7. FEBRUARY 27-28

CRIME: FROM THE 17TH CENTURY, THROUGH PENITENTIARIES, AND THE NEW JIM CROW

- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 5.
- [Proceedings of the Provincial Court of Maryland 1663-1666, in 49 Archives of Maryland \(J. Hall Pleasants ed., Md. Historical Soc'y 1932\)](#).
- [Gustave de Beaumont & Alexis de Tocqueville, On the Penitentiary System in the United States and Its Application in France \(1833\)](#).
- [Charles Dickens, American Notes For General Circulation 81-93 \(London, Chapman & Hall 1850\)](#).
- [Penitentiary Law, § 25, Tenn. Laws \(1829\)](#).

WEEK 8. MARCH 6-7

WOMEN'S LEGAL STATUS, MARRIAGE, AND DIVORCE

- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 6.
- [Colonial Justice in Western Massachusetts \(1639-1702\): The Pyncheon Court Record, An Original Judges' Diary of the Administration of Justice in the Springfield Courts in the Massachusetts Bay Colony 203-13 \(Joseph H. Smith ed., Harvard Univ. Press 1961\)](#). PP. *-15-17, ONLY
- [Jesse Root, REPORTS OF CASES ADJUDGED IN THE SUPERIOR COURT AND SUPREME COURT OF ERRORS FROM JULY, A. D. 1789, TO JUNE, A. D. 1793 VOL. I \(NEW YORK: THE BANKS LAW PUBLISHING CO., 1899\) \[Just read the section titled "On Marriage" that starts on p. 11.\]](#)
- [Elizabeth Cady Stanton, Declaration of Sentiments and Resolutions at the Seneca Falls Convention \(1848\)](#).
- [Wightman v. Coates, 15 Mass. 1 \(1818\)](#).
- [Askew v. Dupree, 30 Ga. 173 \(1860\)](#).
- [Keen v. Keen, 184 Mo. 358 \(1904\)](#)

- [Keen v. Keen: All that Father Giveth \(Video \[13:55\]\)](#)
- Completely optional: [Keen v. Keen Record before the Supreme Court of the United States](#)
- [Divorce Act, ch. 89 § 2, Me. Laws \(1847\)](#).
- [Divorce Act, ch. 116 § 1, Me. Laws \(1849\)](#).

WEEK 9. MARCH 20-21

MARRIED WOMEN'S PROPERTY, ADOPTION, AND ABORTION

- [Married Woman's Property Act, ch. 200, §§ 1-4, N.Y. Laws \(1848\)](#).
- [White v. White, 5 Barb. 474 \(N.Y. 1849\)](#).
- [Buckley v. Wells, 33 N.Y. 518 \(1865\)](#).
- [Massachusetts Adoption Act](#).
- [Commonwealth v. Bangs \(MA, 1812\)](#).
- [California Statutes about Abortion](#)
- [People v. Rankin et al. \(CA, 1937\)](#)

WEEK 10. MARCH 27-28

BLOOD ON THE TRACKS, THE LEGAL PROFESSION, AND YOUR SOUL

- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 7.
- [Farwell v. Boston & Worcester R.R., 45 Mass. \(4 Met.\) 49 \(1842\)](#).
- [Crystal Eastman, Work Accidents and the Law \(1910\)](#).
- Video: *A Trip Down Market Street (1905)*.
- [Death Calendar in Industry for Allegheny County](#)
- G. Edward White, *American Legal History: A Very Short Introduction* (2014), Chapter 8.
- [Alexis de Tocqueville, Democracy in America, ed. J.P. Mayer, trans. George Lawrence \(1835; New York: Harper & Row, 1969\), Vol. I, Chap. 8](#).
- [John Dean Caton, EARLY BENCH AND BAR OF ILLINOIS \(Chicago: Chicago Legal News Company, 1893\)](#)
- [Joseph G. Baldwin, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI A Series of Sketches \(1853\)](#)
- [Henry W. Taft, A Century and a Half at the New York Bar \(1938\)](#).
- [Robert Taylor Swaine, The Cravath Firm and Its Predecessors \(Ad Press 1946-48\)](#).

WEEK 11. APRIL 3-4

LEGAL EDUCATION, DIPLOMA PRIVILEGE, FORMALIST JURISPRUDENCE, THE LEGAL REALIST RESPONSE PLUS THE PROGRESSIVE ERA AND IMMIGRATION

- [Columbia College Law School Act, ch. 202, N.Y. Laws \(1860\)](#).
- [Christopher Columbus Langdell, Summary of the Law of Contracts \(1871\)](#).
- [Joseph C. Hutcheson, Jr., *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision*, 14 Cornell L. Q. 274 \(1929\)](#).
- [Fred Rodell, *Goodbye to Law Reviews*, 23 Va. L. Rev. 38 \(1936\)](#).

Interesting but entirely optional:

- [Robert L. Hale, "Coercion and Distribution in a Supposedly Non-Coercive State," 38 Political Science Quarterly \(1923\), 470-478](#).

AFTERWORD: POST-REALIST LEGAL SCHOLARSHIP [50:14] Suitable for a long-run, workout, or just relaxing, at-home listening. All ages.

PROGRESSIVE ERA AND IMMIGRATION

--[Buck v. Bell, Superintendent of State Colony Epileptics and Feeble Minded, 274 U.S. 200 \(1927\)](#).

--[Declan O'Rourke, Chronicles of the Great Irish Famine](#) (Spotify) (Listening to this album, which makes me weep, is optional.)

--[Tom Russell, "Mary Clare Malloy" feat. Dolores Keane](#) (Spotify) (optional but worth it if you have access to Spotify.)

--[Edison Company, Emigrants landing at Ellis Island](#).

--[Chinese Exclusion](#)

WEEK 12. APRIL 10-11

DEPRESSION, NEW DEAL, AND CIVIL RIGHTS

—[Bing Crosby, Brother Can You Spare a Dime?](#) [3:11]

—[Bank Run, It's a Wonderful Life](#) [4:00]

—[Louis Armstrong & The Mills Brothers, The W.P.A.](#) [2:46]

—[Dorothea Lange's Moving Photographs of the Depression Era](#)

—[Franklin D. Roosevelt, First Inaugural Address \(March 4, 1933\)](#)

—[Franklin D. Roosevelt, Executive Order 9066 \(February 19, 1942\)](#)

--[Jackson v. City of Denver \(1942\)](#)

--[Sweatt v. Painter \(USSC, 1950\)](#)

--[Brown v. Board of Education \(USSC, 1954\)](#).

--[Martin Luther King, Jr., Letter from a Birmingham Jail](#).

Totally optional, but consider watching:

—[Mrs. America on Hulu](#)

—[The Trial of the Chicago 7 on Netflix](#)

—Judas and the Black Messiah (Gone, apparently, from HBO Max.)

WEEK 13. APRIL 17-18

STONEWALL, PRIDE, AND THE CONSERVATIVE COUNTERREVOLUTION

--[Mattachine Society](#).

--[The Stonewall Inn](#).

--[Obergefell v. Hodges \(USSC, 2015\)](#) [Read the summary at the top and Justice Kennedy's opinion.]

—[Abraham Lincoln, Address at Gettysburg \(1863\)](#)

—[Louis Brandeis, Opportunity and the Law](#) (1914)

2021 FINAL EXAMINATION

[Russell Memo on Writing](#)

[Russell Video about Memo on Writing](#)

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