Syllabus   Spring Semester 2006

                    History of the American Legal System

Texts:

1) Urofsky & Finkelman, *A March of Liberty: A Constitutional History of the United States*
   Volumes I & II (Oxford Univ. Press 2d ed. 2002)

2) Selected Readings: A Collection of Handouts

Course Rules:

Students must come to class prepared, or they may, in the discretion of the professor, be asked to
leave. The class will be taught in the format of the seminar, with each student expected to
contribute to weekly class discussion. There will be a final exam in May 2006.

January 18<u>th</u>:

       I. Colonial Antecedents
       II. The American Revolution
            A. Causes and Context
            B. Emerging Constitutional Theory

            Read: 1) *A March of Liberty*, pp. 1-60
            Read: 2) The Declaration of Independence (in back of book)

January 25<u>th</u>:

       I. After the Revolution: The Articles of Confederation
       II. Creating the Constitution
            A. Structure and Substance
            B. Constitutional Debate and Ratification

            Read: 1) *A March of Liberty*, pp. 61-119
            Read: 2) The Articles of Confederation (in back of book)

February 1st:

       I. Initial Implementation of the Constitutional System
            A. The Bill of Rights
            B. Washington's Presidency and the Emergence of National Political Parties
            C. The Alien and Sedition Acts

       II. The Supreme Court and the Early Republic
            A. Institutional and Jurisdictional Concerns
            B. Political Controversy and Judicial Review
            C. The Quest for Judicial Independence and the Law/Politics Distinction
            D. Impeachment of Federal Judges

            [assignment on next page]

Read: 1) *A March of Liberty*, pp. 120-164; 181-206
Read: 2) Federalist Paper No. 10 (James Madison) (handout)
Read: 3) Federalist Paper No. 78 (Alexander Hamilton) (handout)
Read: 4) The Kentucky and Virginia Resolutions (handout)

February 8th:

I. The Marshall Court
   A. Economic Liberty and Federalism
   B. The Scope of National Power
   C. The Contracts Clause

   Read: 1) *A March of Liberty*, pp. 207-47
   Read: 2) *Fletcher v. Peck* (1810) (handout)
   Read: 3) *Dartmouth College v. Woodward* (1819) (handout)

February 15th:

I. The Taney Court and Jacksonian Democracy
   A. Constitutional Theory: Strict Construction and the Concept of Public Welfare
   B. Corporate Enterprise and State Police Powers
   C. Indian Affairs
   D. States' Rights and the Nullification Controversy

   Read: 1) *A March of Liberty*, pp. 271-303; 316-36
   Read: 2) Defense of States' Rights (John Taylor 1820) (handout)
   Read: 3) South Carolina Exposition (John C. Calhoun1828) (handout)
   Read: 4) *Charles River Bridge v. Warren Bridge* (1837) (handout)

February 22nd:

I. Slavery
   A. The Peculiar Institution
   B. Abolitionist Theory

II. Conflicts Within the Ante-Bellum Constitutional System
   A. Westward Expansion
   B. Tensions Within Congress
   C. Judicial Review

   Read: 1) *A March of Liberty*, pp. 337-400

March 1st:

I. The Civil War
II. Early Reconstruction

   Read: 1) *A March of Liberty*, pp. 401-450
   Read: 2) Arthur Bestor, " The American Civil War as a Constitutional
   Crisis," 69 Am. Hist. Rev. 327 (1964) (handout)

March 8th:

    I. Reconstruction (cont'd)
          A. Conflict Between the President and Congress
          B. Federal Judicial Power

    II. Civil Rights in the Aftermath of Reconstruction

            Read: 1) *A March of Liberty*, pp. 451-499
            Read: 2) *Ex Parte Milligan* (1866) (handout)

March 22nd:

    I. Late Nineteenth-Century Constitutional Jurisprudence
          A. Liberty of Contract
          B. "Substantive" Due Process
          C. State Police Powers
          D. Business and Labor Organizations

            Read: 1) *A March of Liberty*, pp. 500-562; 566-571 (in vol. II.)
            Read: 2) *Slaughterhouse Cases* (1873) (handout)
            Read: 3) *Munn v. Illinois* (1877) (handout)
            Read: 4) "The Police Power" (Christopher J. Tiedeman 1886) (handout)

March 29th:

    I. The Constitution and World War I
          A. Federal Power
          B. Foreign Policy
          C. Freedom of Expression

    II. Due Process and the Taft Court
          A. A Broad Concept of Liberty
          B. Early Incorporation Theory
          C. Limitations

            Read: 1) *A March of Liberty*, pp. 598-628; 634-62
            Read: 2) "Freedom of Speech" (Zechariah Chafee, Jr. 1918) (handout)
            Read: 3) *Adkins v. Children's Hospital* (1923) (handout)
            Read: 4) *Meyer v. Nebraska* (1923) (handout)

April 5th:

   I. The New Deal and the Constitutional System
         A. Constitutional Problems of Early Depression-Era Reform Legislation
        B. Jurisprudential Concerns and Constitutional Interpretation
      C. Federalism
            Read: 1) *A March of Liberty*, pp. 663-686
            Read: 2) *New State Ice Co. v. Liebmann* (1932) (handout)
            Read: 3) *Home Bldg. & Loan Ass'n v. Blaisdell* (1934) (handout)
            Read: 4) *Nebbia v. New York* (1934) (handout)

April 12th:

    I. The New Deal and the Constitutional System (cont'd)
          A. Conflict Between the Court and the Other Branches of the Federal Government
          B. The Court Packing Plan
          C. Judicial Balancing and the Emergence of a New Constitutional Paradigm

             Read: 1) *A March of Liberty*, pp. 687-712
             Read: 2) The Court Packing Plan Documents (1937) (handout)
             Read: 3) *NLRB. v. Jones & Laughlin Steel Corp.* (1934) (handout)
             Read: 4) *Wickard v. Filburn* (1942) (handout)
             Read: 5) *West Coast Hotel Co. v. Parrish* (1937) (handout)
             Read: 6) Michael E. Parrish, "The Great Depression, the New Deal, and the American Legal Order," 59 Wash. L. Rev. 723 (1984) (handout)

April 19th:

    I. Civil Liberties and the Court: 1930s-1940s
          A. Selective v. Total Incorporation
          B. Freedom of Expression and Religion
          C. Japanese Relocation During World War II

             Read: 1) *A March of Liberty*, pp. 713-730; 740-748
             Read: 2) *United States v. Carolene Products Co*. (1938) (fn. 4) (handout)
             Read: 3) *Palko. v. Connecticut* (1937) (handout)
             Read: 4) *West Virginia Board of Education v. Barnette* (1943) (handout)
             Read: 5) *Adamson v. California* (1947) (Black, J., dissenting) (handout)

April 26th:

    I. The Cold War and Civil Liberties

    II. The Curious Saga of *Brown v. Board of Education* (1954)

             Read: 1) *A March of Liberty*, pp. 752-765; 773-792
             Read: 2) *Dennis v. United States* (1951) (handout)
             Read: 3) *Yates. v. United States* (1957) (handout)
             Read: 4) Bernard Schwartz, "*Brown v. Board of Education*" (1943) (handout)