

## Seminar in American Legal History

**Prof. Peter C. Hoffer**

**Fall 2009**

Legal history is the fastest growing area in our discipline—not in number of courses offered or books written—but as a research area. Younger historians are discovering the treasure trove of information in legal records, including the records of law firms, local courts, and legislative sessions papers. It is quite pleasing for legal historians to recognize the extent to which articles and books ostensibly on other topics employ legal materials or concepts.

Our purpose this fall is two fold: first, to sharpen the way you will use legal materials through a survey of the skills and concepts you will need to get the most out of the legal primary sources you have used or will use in your research and writing; and second, to tour the landscape of American legal history writing. The end result will be a better article or dissertation. For the first five weeks we will read and discuss five books, chronological in order but quite different in approach. Then you will present pieces of research and writing involving legal materials, laws, constitutions, and the like that you have already done for other classes and that you wish to perfect or that you are now beginning. Those who intend to use the seminar as a starting point for such a paper will present a work in progress. Grading will depend ninety percent on the final paper, with ten percent for your oral presentation and participation in class.

The following is a list of the books we'll read together and topics we discuss:

Week One: what is law? What is legal history? Why should we care?

Week Two: the law as an institution—courts, rules of procedure, the language of the law. Conley and O'Barr, Rules v. Relationships.

Week Three: the law as mirror of a time and place, law and society. Pagan, Anne Orthwood's Bastard.

Week Four: the formal law: statutes, doctrines and commentary. Horwitz, Transformation of American Law, 1780-1860.

Week Five: law as intellectual history; law and treatises; law and social sciences. Kens, Lochner v. New York.

Week Six: law and the Constitution; the idea of rights. Dierenfield, The Battle over School Prayer.

Weeks Seven-Fifteen, individual presentations.