The following books for the course are available from the Jeffrey Amherst Bookstore text annex in the center of Amherst:

**Strongly recommended:**

**Required:**
Horwitz, *Transformation of American Law, 1780-1860*
Miller, *The Crucible*
Tushnet, *Slave Law in the American South: State v. Mann in History and Literature*

**Other Materials:** *indicates printed materials, some of which will be handed out in class and others of which are contained in a course packet* for sale at Campus Design and Copy, Student Union Rm. 403. The syllabus also contains a number of references to the web site, “Famous Trials,” which is located at [http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm](http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm). You are required to do the assignments based on consulting this site. You should also make yourself familiar with the library resource, “America: History and Life” which is a database available through the on-line library.

There is considerable reading for the course. Each day you should bring to class the readings which the syllabus indicates are for discussion that day. Because of quirks in the academic schedule, two religious holidays that fall on class days, and a conference I must attend, we miss three class sessions that we really need. To make up for this, I have scheduled **two required films** during evenings (7-9:30 pm) in November and December. In each case the films, which will be shown on the 3rd floor of Gordon Hall, are offered on two evenings so as to make it more likely that you will find a time that you can attend. You should consult the syllabus now and be sure that you can attend one showing of each film. If this is a problem for you, notify me immediately.

*** The Approach and Expectations of the Course ***

For purposes of this course, the word ‘culture’ will be used broadly, as it is in anthropology or archaeology, rather than narrowly as in ‘popular culture’ or ‘high-brow culture’. The word ‘law’ will also be used broadly, as it is in Legal Studies courses and in the multi-disciplinary idea of “law and society”--not meaning merely a set of rules governing conduct, but meaning the many different ways of understanding the process by which human social systems and conflict are defined and managed and by which a culture’s beliefs are changed, re-enforced and legitimized.

This course is an exploration of American law and history through a technique which might be called ”above-ground archaeology." One might also describe what we will be doing as the study of "material culture," that is, of material artifacts that carry the society's deep-level imprint. The artifacts we will be studying--reports of conflicts processed in part by institutions of law--are a kind of hybrid of the traditional written sources used in history and the material artifacts studied by archaeologists. They are legal artifacts: the words and actions produced by or
filtered through legal institutions. By interpreting these legal artifacts we will try to uncover part of the basic belief structure of American society at various times between 1630 and 1930.

More simply, we will be studying trials, judicial opinions, legislation, strikes, police actions, public panics, and political movements--and descriptions of the conflict surrounding each--as if they were pieces of pottery found at an archaeological dig. We will be examining these artifacts of American law in order to learn what we can about the belief structure of the culture that produced the artifacts. We will be studying law as evidence of cultural history.

The course is meant to be more of a conversation and an exploration than a lecture, though the syllabus lists several ‘discussion/lectures.’ The class is larger than any of us might wish; but with a little assertiveness and help from you, I can learn everyone's name, stay aware of the quality of your participation, and try to be responsive to your interests and complaints. We will study three American cultures: the New England Puritan period beginning in Massachusetts in 1630 and ending with the witch trials of 1692, the period from 1700 to the start of the Civil War in 1860, and the period from 1865 to the stock market crash of 1929.

One of our central purposes will be to gain experience in the interpretation of legal artifacts as one of the ways of "doing legal studies." We are using a multi-disciplinary, conflict-focused technique for studying legal materials. Our emphasis will be on getting beyond formal legal analysis, to cultural interpretations of the artifacts studied. I will be more demanding about how exploratory, well-reasoned, carefully defended, and well-grounded in fact your interpretations are, than I will be about whether your interpretations agree with established scholarship, though the latter is of course not irrelevant.

Because American law and history, and their complex interaction, are such vast topics, we will focus our work where possible on one central theme--individualism. Individualism takes many forms and means many things, depending upon time, place, and perspective. Part of our inquiry will therefore involve delving into the changing meaning of individualism in the three cultural periods that we will be studying. A few brief readings on individualism will be presented to help maintain this focus. We will use the last class of the semester to apply the techniques we have practiced to cultural symbols and legal artifacts from the period 1945 to the present. This is usually an interesting but difficult thing to do, since we are so much creatures of our own time; so we will try to combine it with a retrospective on individualism in the United States.

The syllabus is subject to change in response to the pace of class discussion. You will get a general idea of the course requirements from this syllabus; but you should remember that it is your responsibility to keep up with changes in the assignments, their order and their pace, and to contribute to possible changes in direction by participating actively in class and by consulting with me outside of class. The syllabus will be found on-line by clicking on my home page at http://www.umass.edu/legal/people.htm and then selecting “333” under “class homepages.”

It is absolutely essential that the artifact materials be read and studied before the classes in which they are to be discussed. The discussion does not work if you are not fully prepared. When this happens, you don't enjoy the course and neither do I. The quality of this educational experience is more in your own hands than you might imagine.

The readings are sometimes primary source materials (judicial opinions, trial transcript excerpts, first-hand accounts of conflict) drawn from earlier historical periods. Sometimes they are secondary-source discussions of the conflict being studied. Once in a while we will examine more abstract or theoretical discussions of cultural beliefs. If you are not prepared to put out the
energy it takes to read and think about materials, many of which are not written in contemporary style, you may find this course burdensome and should think carefully about whether you might be more productive with the approach of another course. On the other hand, dealing with materials and conflicts from another era is stimulating and challenging, and it might help develop useful skills and approaches for understanding the role of law in society today.

Grading

Informed class participation will count. Careful preparation before class is essential to listening, making comments, and asking questions. Before you come to class, spend some time thinking about why the conflict we are studying unfolded as it did. You should bring to class your copy of the readings and some ideas and questions about the meaning of the conflict in the minds of the disputants.

Grades will be calculated according to the following distribution (#=maximum points):

- **Participation** = 10 points/100
- **First paper** = 25 points
- **Quizzes** = 30 points (there are 4 quizzes, you get the three best grades)
- **Final paper** = 25 points, if you choose 5-page paper on last section of syllabus, = 35 points, if you choose 10-page paper on entire course.

If you do the math you’ll see that in order to qualify for an A- or an A, you must choose the ten-page final paper; although you are not guaranteed to get the higher marks simply for trying the longer paper. You cannot get above a B+ if you choose to write the 5-page final paper.

There will be two (2) graded papers. The first paper (5 pages) analyzes an artifact studied during the work on the Puritan period. The final paper (5 OR 10 pages) will be either an analysis of a legal artifact drawn from the final period we study (1865-1929), in the case of the 5-page paper; OR in the case of the ten-page paper, an essay written on a topic based on the entire course and distributed at the beginning of December. Whichever paper you choose to write will be due during exam week. There will be no final exam.

There will be four quizzes given during the study of the period between 1700 and 1860. The first two listed quizzes will test your knowledge of the readings done for the day on which the quiz is given. The second two quizzes will test your knowledge of the ideas covered in the readings and lecture on de Toqueville and then on Horwitz. Each quiz will be worth ten points, and only the three best scores will be counted toward your final grade.

I will consider the possibility of supervising honors independent study if approached by a small number of interested students.

**Note on academic honesty:** This course has been given several times, and I have kept copies of almost all of the papers. Still, I know that there are old copies floating around that could be adapted to new topics, and I know that papers can be purchased on the internet and elsewhere. I also know that pressures sometimes make it seem easier to cut corners where individual work is required. Please do not devalue your own education, insult me, sacrifice your integrity, or undermine the University's reputation for excellence by yielding to temptation or pressure. I will be accommodating about deadline extensions where merited; but I have been, and will continue to be merciless when it comes to academic dishonesty.

**Topics and Assignments**

3
Zinn's *People's History of the United States* is background reading, strongly suggested in order to establish a common narrative of basic events and to challenge a one-sided version of American history to which some of us have been exposed. Several chapters in Zinn are assigned at the beginning of the study of each of the cultural periods, and it is recommended that they be read by the end of our study of that period.

Please Note: 1) Materials should be read and studied BEFORE the day on which they are scheduled for discussion; 2) Dates are subject to change depending on our discussion, discovery of new materials, etc. It is YOUR responsibility to be aware of these changes. Consult course web page for changes; 3) There is NO CLASS MEETING on 10/4 and again on 10/11 and 10/13. A paper is assigned for the missed week. There are two required films, each shown on two evenings as indicated on syllabus.

   * Murphey, "Place of Beliefs in Modern Culture"
   * Bellah, et. al., “Culture and Character”

II. Puritans: Theocracy and Individual Salvation
   [Zinn: chapters 1-3; *Lukes, excerpts from *Individualism: "America," “Religious Individualism”]

   Artifacts> The Trial of Anne Hutchinson: *Erickson (9/20 & 9/22)
   The Salem Witch Trials: *Miller, *The Crucible* (9/27); *Nissenbaum, "Witchcraft & Social Identity" (9/29); Go to the web site “Famous Trials.”
   [http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm](http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm) and click on Salem Witch Trials of 1692. Learn something new about the significance of the trials from the materials there. Bring notes or something printed to class.

   NOTE: No class 10/4; religious holiday.

   Nature of Individualism in Puritan Culture: *Morgan, “Puritan Family;”
   *Green, “The New England Puritans.”

   NOTE: There will be no Legal 333 class meeting on Tuesday, Oct. 11 or on Thursday, Oct 13.
   BUT

   **** Your First Paper is Due by Noon, Monday, Oct. 17, in 102 Gordon Hall****

III. Individual Accomplishment and the Tyranny of the Majority in Revolutionary
& Ante-Bellum America

[Zinn: chapters 4-9; *Lukes, “Political Individualism”]

Artifacts> Trial of John Peter Zenger: “*Transcript* (10/18) QUIZ; and (10/20) go to “Famous Trials” http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm and click on John Peter Zenger Trial (1735). Read some of the allegedly libelous NY Journal articles, and learn something new about the characters, context and significance of the trial from the other materials at the web site.

Law of slavery: (10/25) *Virginia Slave Code 1705; *Declaration of Independence; *State v. Mann (read opinion); Tushnet, Slave Law in the American South: State v. Mann in History and Literature, chapter 2. (10/27) QUIZ. Read Tushnet, chapters 3 & 4.

Meaning of the American Revolution (11/1):
   *Case of the Philadelphia Cordwainers (distributed in class, 10/25)


IV. Power, Modernism, and the Fragmented World View: the increasing role of law in the legitimation of belief, 1865-1929

[Zinn: chapters 10-15; re-read second part of Murphey]

The Machine as Symbol of the Times: “I regard my employees as I do a machine”(11/17)
   *Mumford and Bryce* on "The Machine."
   *Josephson, Excerpts from The Robber Barons
   * Bellah, et. al., “The Entrepeneur,” “The Manager.”
   *Lukes, “Economic Individualism.”

Film (11/15 or 17))> Building the Panama Canal (evening, 3rd floor Gordon Hall)

Artifacts> The Pullman Strike & the two trials of Eugene Debs: (11/22) *Brecher, "Strike!" *Stone, excerpts from Darrow for the Defense.

The Scopes “Monkey” Trial: Science, Faith and Politics
Film (12/5 or 6)> "Inherit the Wind" (evening, 3rd floor Gordon Hall); (12/6 & 8 discussion): Read *Ginger, excerpts from Six Days or Forever? *Larsen, excerpts from Summer for the Gods; Go to “Famous Trials” at http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm and click on “Scopes ‘Monkey’ Trial 1925.” Read links on Mencken’s account of the trial, evolution controversy and other links of your choosing to see what this adds to your understanding of the trial and the issue’s significance. Other materials on the struggle over Darwinism in the schools in the present day will be presented.

V. Since 1945: The Mushroom Cloud, the Internet, Earth as Seen from its Moon and 9/11. (12/13) Materials TBA.

FINAL PAPER DUE DURING EXAM WEEK