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

**Strongly recommended:**
- Horwitz, *Transformation of American Law, 1780-1860*

**Required books:**
- Miller, *The Crucible*
- Tushnet, *Slave Law in the American South: State v. Mann in History and Literature*
- Papke, *The Pullman Case : The Clash of Labor and Capital in Industrial America*

**Other Materials:**
- *Indicates printed materials contained in a course packet for sale at Campus Design and Copy and from last semester’s students.** Indicates materials handed out in class. The syllabus also refers to the [web site](http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm), “Famous Trials,” 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,” 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. I have scheduled two showings of one required film during evenings (7-9:30 pm) in May. The film will be shown on the 3rd floor of Gordon Hall, and is 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 the 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 and procedures used for 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 lectures. The class is larger than any of us might wish; but with a little assertiveness 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 suggest the nature of 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 U. S.

The syllabus is subject to change in response to class discussion. You will get the current 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 on my home page at http://www.umass.edu/legal/people.htm by selecting “333” under “class homepages.”

It is absolutely essential that the artifact materials be read and studied before the class 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 helps 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: includes in class discussion & internet work
- **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 covering the entire course and distributed at the beginning of May. 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 be given at the start of class and will test your knowledge of the artifact under study, including the readings done for the day on which the quiz is given. The second two quizzes will be given at the end of class, and 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.

**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**

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. This work will be especially important to anyone who has not done college-level work in American history. Chapters in Zinn are assigned at the beginning of each of the cultural periods, and it is recommended that they be read early in our study of that period.

Horwitz’s Transformation of American Law: 1780-1860 is also strongly suggested but not required. This book is, in my judgment, a brilliant piece of legal studies scholarship; and although it is complex and difficult, it is well worth the effort for anyone who is seriously interested in doing Legal Studies. The syllabus contains several assignments in the book, but I will be lecturing on those topics. Doing the reading will help you to understand the lectures and to ask questions that will deepen your understanding of some very important material. Because of the size and difficulty of the book, I am not requiring that you purchase and read it. You should be able to pass the quiz by attending the lectures.

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 will be NO CLASS MEETING on April 13 because of a religious holiday that I observe. 4) There is one required film, shown on two evenings in May as indicated on syllabus.

* indicates a reading to be found in the course packet on sale from Campus Design & Copy or last semester’s 333 students (email addresses to be handed out in class).
** indicates a reading to be handed out in class prior to the date for which it is assigned.
*** indicates a reading from an assigned or recommended book.

I. Introduction: The World View in Culture and Law (2/2 & 2/7)
   ** Murphey, "Place of Beliefs in Modern Culture"
   ** Lukes, excerpts from Individualism (Religious, Political, Economic)

II. Puritans: Theocracy and Individual Salvation
   [***Zinn: chapters 1-3]

        Artifacts> The Trial of Anne Hutchinson:
                (2/9) **Erickson, Wayward Puritans.
                (2/14) discussion continued
        The Salem Witch Trials:
                (2/16) Go to the web site “Famous Trials,” located at http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm, and click on “Salem Witch Trials of 1692.” Explore the Salem Witch Trials site and learn something about the trials from the materials there. Respond to questions distributed in the previous class. Take notes or print something that you think might be helpful to our understanding of the whole conflict. Bring your notes or print-outs to class on 2/16.

                (2/21)—NO CLASS, MONDAY SCHEDULE
                (2/23) *** Miller, The Crucible (read in entirety for this date)
                (2/28) * Nissenbaum, "Witchcraft & Social Identity"
Lecture> (3/2)  

***First Paper Due by Noon, Monday, March 6 in 102 Gordon Hall***

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

[Zinn: chapters 4-9]

Artifacts> Trial of John Peter Zenger:
(3/7) Read atty Hamilton’s **transcript of the trial.  
(3/9) Go to the “Famous Trials” web site at: http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm, click on John Peter Zenger Trial (1735). Read some of the allegedly libelous NY Journal articles; use this site, its links and other internet research to learn something new about the characters, context or significance of the trial. Write a paragraph about each site, what you learned and your evaluation of each site. Bring your log to class as a 1-page paper discussing something significant that you learned about the Zenger case. Attach site print-outs if you like.

Law of slavery:
(3/14) *Virginia Slave Code 1705; *Declaration of Independence; *State v. Mann (read opinion); ***Tushnet, Slave Law in the American South, Chapter 2. 
(3/16) QUIZ. Read ***Tushnet, Chapters 3 & 4.

SPRING BREAK 3/18-3/27

Meaning of the American Revolution
(3/28) Boston Massacre and Shays’ Rebellion in same class. Bring internet research on Massacre (start with Famous Trials site and then proceed with same assignment as for Zenger). Shay’s Rebellion film, in class.

(3/30) **Case of the Philadelphia Cordwainers (distributed 3/28) Bring a list of the names of the major “players” and their roles.
(4/4) QUIZ, discussion of Cordwainers continued.

Lecture> (4/6, 11) Individualism & Tyranny of the Majority: *de Toqueville, Democracy in America
For (4/11) read pages 168-171 and pages 269-297. **QUIZ**

NO CLASS 4/13—religious observance


(4/18) Read Introduction, Chapter I, pp. 99-116, Chapter V.
(4/20) Read pages 180-210, Chapter VIII. **QUIZ**

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

[Zinn: chapters 10-15]


Artifacts> The Pullman Strike & the Two Trials of Eugene Debs

(5/2) Papke, Chapters 3 & 5; *Stone, excerpts from Darrow for the Defense.*

**Racial Equality, Corporate Power, & Women on the Victorian Pedestal:**

(5/4) *Plessy v. Ferguson;* *Lochner v. N.Y.;* *Muller v. Oregon*

**See Film > (Th. 5/4 or M. 5/8)> "Inherit the Wind" (evening, 3rd floor Gordon Hall);**

(5/9 & 5/11) Read **Ginger,** excerpts from *Six Days or Forever?* Go to “Famous Trials” web site at [http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm](http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm), “Scopes ‘Monkey’ Trial 1925.” Look at Mencken account of the trial, the creationist criticism of “Inherit the Wind,” and other links or web sites to add to your understanding of the issue then & now.

V. Since 1945: The Mushroom Cloud, the Internet, Earth as Seen from its Moon and 9/11. (5/16)

**FINAL PAPER DUE DURING EXAM WEEK**