Lawyers in American Society

Professor Bernard Hibbitts
University of Pittsburgh School of Law

Course Description

This course examines the role of lawyers in American society from colonization to the present day. It explores not only the trajectory and implications of lawyers’ increasing dominance of the domestic legal system over some four centuries, but also their huge and sometimes problematic influence over the basic constructs and shifting patterns of American politics, business, letters, education, communication and war, an influence that has allowed lawyers (not businessmen, not
doctors, not professors, not clergy, not engineers…) to largely define what it means to be an American. It considers how ordinary citizens and members of other professional groups have reacted to lawyers in their many social incarnations, and it assesses how embracing and occasionally rejecting their self-appointed role as “essential Americans” has affected lawyers themselves. It concludes with an investigation of where lawyers stand in American society today, assessing whether they have succeeded or failed in their larger ambitions to lead, and how they might better serve both society and themselves in uncertain times.

Although this course may be of particular interest to those contemplating a legal career, it is pointedly designed to engage students in history, political science, sociology and the general humanities who would like to develop a deeper understanding of the role and power of the legal profession and the dynamics of American society as a whole.

Class Schedule

Introduction

Class 1 - Lawyers as “Essential Americans”

Lawyers ubiquitous in contemporary America – cultural centrality of lawyers reflected in pervasive anti-lawyer sentiment – lawyers historically fundamental to the American political and legal system – classical models for lawyer leadership – the lawyer as the quintessential American figure – comparisons with lawyers in other countries – how lawyers have defined America, and who (and what) is “American”

Founding Lawyers (1500-1789)

Class 2 – Lawyers as Explorers

The English Inns of Court as “incubators of empire” – Inns of Court lawyers as investors, organizers, and propagandists of exploration – early lawyer voyages to America – Inns of Court men at Jamestown – first trials at Jamestown and the legalization of American life

Class 3 – Lawyers as Colonists

Lawyers as designers of colonial political structures – lawyers and Native Americans – lawyers lose political influence in Virginia when it becomes a royal colony – lawyers marginalized in New England

Class 4 – Lawyers as Revolutionaries

Lawyers as agents of post-Restoration empire – promoting commercialization – lawyers become agents of (self-interested) political reform – lawyers dominate the Revolutionary movement – Patriot lawyers confront Loyalist lawyers – lawyers as Revolutionary heroes
Class 5 – **Lawyers as Framers**

Lawyers and post-war debt-collecting – Shays Rebellion and discontent – lawyers as designers of the Constitution – the Federalist papers – anti-Federalists and anti-lawyer sentiment – a republic of lawyers

*Organic Intellectuals: Building the First Lawyer-State (1789-1840)*

Class 6 - **Lawyers as Legislators**

Lawyer-statesmen in the new republic – lawyers in Congress and the White House – Daniel Webster as archetype

Class 7 - **Lawyers as Judges**

Lawyers versus lay judges – lawyers assume the bench – “lawyering” the federal judiciary – a new style of judging – John Marshall and judicial review – lawyers hold the balance of power

Class 8 - **Lawyers as Citizens**

Juries and the community – lawyers’ rhetorical styles – constructing community through legal speech – courthouses as early community centers – “court days” and circuit-riding – lawyers living and working in the community – lawyers as first citizens – lawyers as de Tocqueville’s “American aristocracy”

Class 9 - **Lawyers as Educators**

Training citizens for democracy – Noah Webster frames the American language – lawyers and the common schools – lawyers write school textbooks – lawyers as teachers – lawyers extend instruction in public orations and lyceum lectures

Class 10 - **Lawyers as Writers**

Law and literature – novels, plays and poetry by lawyers – Brackenridge to Irving – lawyers’ depictions of themselves – lawyers’ non-fiction – lawyers as historians – lawyers as newspaper publishers and editors – public and mercenary motivations

Class 11 - **Lawyers as Warriors**

Lawyers as military men in a demilitarized state – militia and public service – professional motivations for military service – consequences of a “lawyerized” military for American war-waging

Class 12 - **Lawyers as Businessmen**

Lawyers and the market economy in the Jacksonian age – crafting corporations – lawyers as directors and investors – lawyers in canal companies and railways – lawyers as businessmen – effects on business; effects on lawyers
Lawyers for Their Country: Manifest Destinies (1840-1870)

Class 13 - Lawyers as Expansionists

Lawyers and the push west – nationalist, ideological and professional ambitions – economic concerns and the search for fees – John Sullivan and “Manifest Destiny” – lawyers and filibustering – why were lawyers at the Alamo? – Sam Houston and William Walker – expansion as a vehicle for slavery

Class 14 - Lawyers as Enemies

Political and rhetorical breakdown – lawyers as sectional champions – cause lawyering against (and for) slavery – lawyers and the failure of compromise – the coming of Civil War – failure of the lawyer-state – lawyers take to the battlefield – a lawyers’ war – lawyers in victory and defeat

Class 15 - Lawyers in Retreat

Lawyers and Reconstruction – dismay and disillusionment – the lawyer shifts from public figure to private counselor – disruption of the legal profession and legal leadership in the South

Disengagement: The Professional Turn (1870-1930)

Class 16 - Lawyers Associate

The depoliticization of the bar – bar associations spread – the rise of large law firms – lawyers and city business clubs – lawyers congregate with businessmen in city skyscrapers – lawyer join businessmen moving to city suburbs

Class 17 - Lawyers Incorporate

Lawyers as agents of corporate wealth and power – lawyers and new incorporation laws – fees and increasing professional wealth – law as a business – lawyers move their homes away from city centers

Class 18 - Lawyers and Empire

Lawyers and the imperialist turn – lawyers as agents of revolt (Hawaii) and expansion (Cuba) – the resistance of Moorfield Story and the Anti-Imperialist League – Elihu Root runs the War Department – lawyers as American territorial administrators
Class 19 - **Lawyers as Gatekeepers**


Class 20 - **Lawyers in Management**

Lawyers assume senior management roles in major corporations (between robber barons and MBAs) – lawyers as corporate leaders – Gary and Taylor at US Steel, Owen Young at GE – impact on industrial policy – lawyers, labor relations and profit

Class 21 - **Lawyers in Government**

The New Deal – lawyers go to Washington – the “boys with their hair on fire” – female and Jewish lawyers in government service – government as a “safety valve” for discontented lawyers in the Depression – lawyers lead the state in the World War II – lawyers and McCarthyism

Class 22 - **Lawyers in Community**

Lawyers and the civil rights movement – federalizing legal aid – the (re)birth of storefront lawyering - lawyers and feminism – broadened access to legal education for women and minorities – lawyerization of social movements

Class 23 – **Lawyers in Entertainment**

From learning to leisure - lawyers and the corporatization of sport – lawyers in radio – the American Bar Association preaches citizenship on the airwaves - lawyers and film – William Hays and the Production Code – depictions of lawyers in movies and early TV – Atticus Finch as fictional lawyer archetype

*The Decline of Lawyers (1970-2017)*

Class 24 - **Lawyers Exposed**

Social disruption and signs of professional disarray – the Watergate scandal – John Dean and the lawyers – lawyer advertising reshapes the professional image – lawyers criticized for their ethics, lifestyles and wealth – too many lawyers/too much litigation?
Class 25 - **Lawyers Attacked**

Business turns on lawyers - cutting back legal aid – legislative moves against law school clinics – the AMA versus the ABA

Class 26 - **Lawyers Co-opted**

Lawyers (re)absorbed into the private sector – the professional dominance of corporate law and lawyers – changing images of lawyers in film and television – lawyers withdraw from public/legislative service – lawyer leave management to MBAs – losing a cultural lynchpin – consequences for government, business, and society

Class 27 - **Lawyers Replaced**

Lawyers and new technology – technology as legal tool, technology as suppressive/political device – law firms in economic decline – legal services disaggregated and outsourced – law schools in demographic decline – the end of lawyers?

*What Next for Lawyers? (2017- )*

Class 28 - **Lawyers Today and Tomorrow**

Are lawyers still “essential Americans”? – who might take their place in society? – how would America work with a marginalized or disempowered legal profession? – is professionalization part of the problem? – how might lawyers re-engage with American society? – the future of lawyers in the American republic

**Readings**

There is no textbook for this course; readings for individual classes (generally primary and/or contemporary source documents) will be assigned be the instructor.

**Evaluation and Grading**

Evaluation in this seminar is mostly based on four short papers (no more than 10 pages each) on central questions related to the course materials and themes. The questions will be set by the instructor. Students will have two weeks to write each paper. Each paper will constitute 20% of the final grade. The remainder of the grade is based on various forms of class participation.