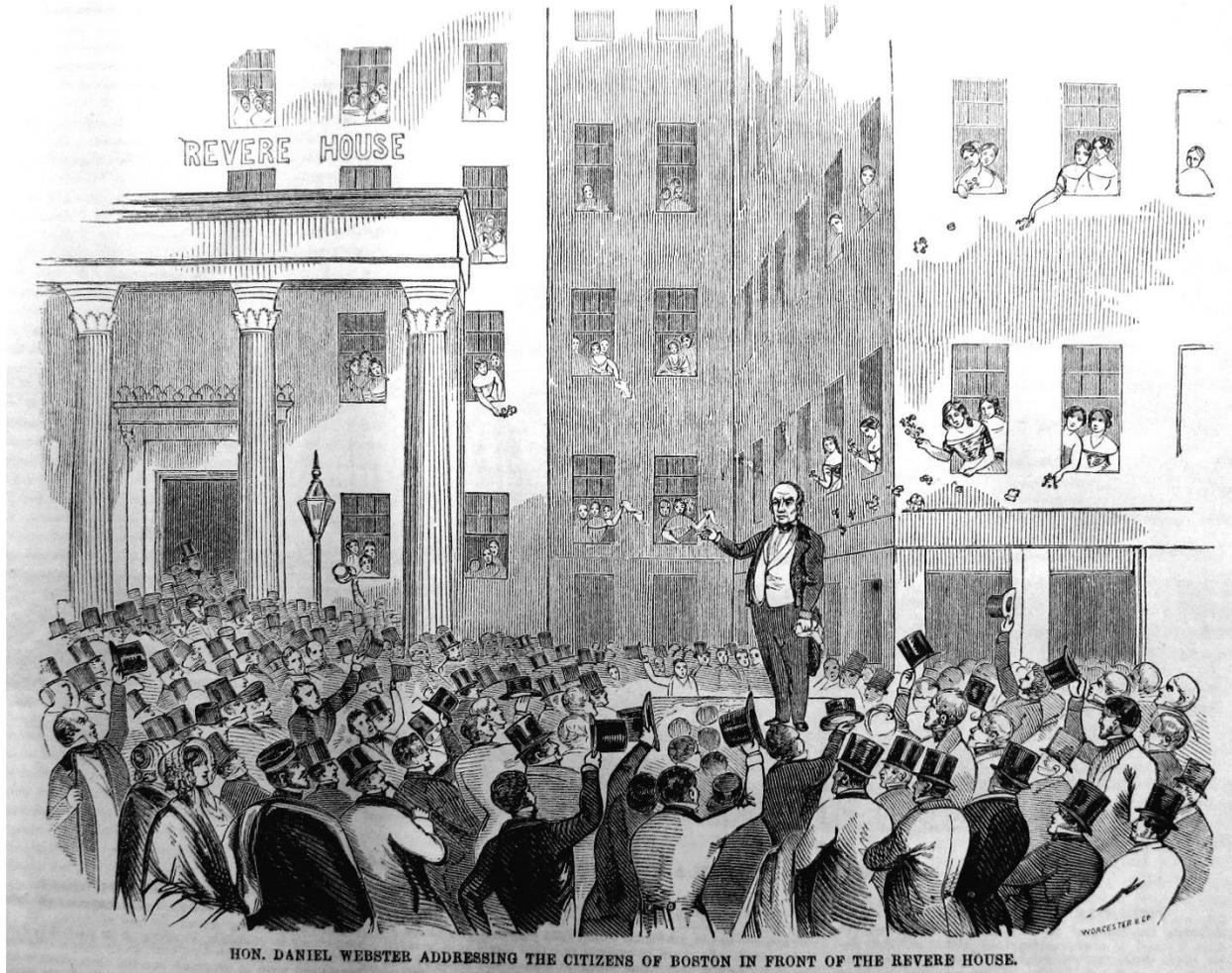


Lawyers in American Society



HON. DANIEL WEBSTER ADDRESSING THE CITIZENS OF BOSTON IN FRONT OF THE REVERE HOUSE.

Professor Bernard Hibbitts
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Fall 2018 | TuTh 11:00-12:15
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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 (August 28) – American Lawyers: Who They Are and What They Do

Lawyers in contemporary America – size and structure of the legal community – an occupation, a profession or a class? – private and public activities of lawyers – how we learn about lawyers – anti-lawyer sentiment – lawyers historically fundamental to American culture – lawyers have defined who and what is “American” – the lawyer as quintessential American – remembering the “grand tradition” of lawyering (and what happened to it) – course overview

Lawyers and the American Enterprise (1500-1789)

Class 2 (August 30) – Lawyers as Founders

The “real” Founding Fathers – lawyers in Tudor England – 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 – establishing representative government – why have we forgotten?

Class 3 (September 4) – Lawyers as Colonials

Lawyers lose political influence in Virginia when it becomes a royal colony – lawyers initially marginalized in New England – lawyers as instruments of empire and commerce – successors to the clergy – early lawyers in Pittsburgh

Class 4 (September 6) – Lawyers as Revolutionaries

Lawyers as agents of the post-Restoration British 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 – what happened to the lawyers who “lost”

Class 5 (September 11) – 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 (September 13) – Lawyers as Leaders

Lawyers as community leaders – constructing community through legal speech – classical models and legal learning – courthouses as early community centers – “court days” and circuit-riding

Class 7 (September 18) – Lawyers as Judges

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

Class 8 (September 20) – Lawyers as Legislators

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

Class 9 (September 25) – Lawyers as Educators

Lawyers educating lawyers – educating citizens in law – writing law texts for schools – lawyers and general education – lawyers as teachers – Noah Webster frames the American language – lawyers and the common schools – lawyers and the lyceum movement

Class 10 (September 27) – Lawyers as Writers

Law and literature – lawyers as articulators of value – 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 (October 2) – Lawyers as Businessmen

Lawyers and the market economy in the Jacksonian age – lawyers as advocates of business – lawyers crafting corporations – lawyers as directors and investors – lawyers in canal companies and railways – lawyers as businessmen – effects on business; effects on lawyers

Class 12 (October 4) – 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

Lawyers for Their Country: Manifest Destinies (1840-1870)

Class 13 (October 9) – 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 (October 11) – 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 (October 16) – 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 – the disruption of legal education and the rise of the case method at Harvard

Disengagement: The Professional Turn (1870-1930)

Class 16 (October 18) – Lawyers Associate

Professionalization after the Civil War – bar associations spread – “depoliticizing” the bar – ethics codes – lawyers join “large” law firms – law schools surge - the case method spreads – Socrates, science and Darwin – law students and law reviews

Class 17 (October 23) – **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 and city business clubs – lawyers congregate with businessmen in city sky scrapers and suburbs – the splintering of the bar – government lawyers, personal injury lawyers, legal aid lawyers - corporation lawyers and labor lawyers in Pittsburgh

Class 18 (October 25) – **Lawyers and Empire**

Lawyers and the imperialist turn – an international business agenda – lawyers as agents of revolt and expansion (Hawaii/Panama/Cuba) – the resistance of Moorfield Story and the Anti-Imperialist League – Elihu Root runs the War Department – lawyers as American territorial administrators - US law firms establish foreign offices

Class 19 (October 30) – **Lawyers as Gatekeepers**

Changing American demographics – lawyers and Protestant nativism – the early legal aid movement - lawyers and the Immigration Restriction League – Madison Grant and racism – the Immigration Act of 1924 – restricting bar entry and legal education – limiting law school to college graduates – suppressing correspondence law schools and evening law schools – impact on Jews, women and African Americans

Re-engagement: Building the Second Lawyer-State (1930-1970)

Class 20 (November 1) – **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 (November 6) – **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 (November 8) – **Lawyers in Culture**

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

Class 23 (November 13) – **Lawyers in Community**

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

The Decline of Lawyers (1970-2017)

Class 24 (November 15) – **Lawyers Attacked**

A shifting economic/political environment – business turns on lawyers – attacks on legal aid – the Powell Memorandum – legal conservatives (re)organize – condemning the “litigation explosion” – too many lawyers?

Class 25 (November 20) – **Lawyers Exposed**

The Watergate scandal – John Dean and the lawyers – lawyers and the delegitimation of government – lawyer advertising reshapes the professional image – lawyers on TV – lawyers criticized for their ethics, lifestyles and wealth – revamping the legal ethics codes

Class 26 (November 27) – **Lawyers Commodified**

Lawyers in the private sector – the rise of billable hours – the professional dominance of corporate law and lawyers – lawyers and globalization – a second “Gilded Age” for lawyers

Class 27 (November 29) – **Lawyers Displaced**

Lawyers and technology – computerization and the billable hour – legal research goes electronic – the 2008 financial shock – legal services disaggregated and outsourced via the internet – virtual law firms – can robots be lawyers?

What Next for Lawyers? (2017-)

Class 28 (December 4) – **Lawyers Reborn**

Are lawyers (still) “essential Americans”? – how would/does America work with a marginalized or disempowered legal profession? – is professionalization part of the problem? – the future of lawyers in the American republic – retrenchment, renaissance, reformation, or revolution?

Readings

There is no textbook for this course; readings for individual classes (generally primary and/or contemporary source documents) will be assigned by the instructor and will be made available on Pitt's Courseweb Blackboard system.

Evaluation and Grading

Evaluation in this seminar is mostly based on four short papers (between 8 and 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 assignment and due dates for the papers are as follows:

Paper #1 – assigned September 6, due September 20

Paper #2 – assigned October 4, due October 18

Paper #3 – assigned October 25, due November 9

Paper #4 – assigned November 20, due December 4

The remainder of the grade is based on various forms of class participation.