

HTS 3085, Spring 2007
MWF, 3:05 -3:55
D. M. Smith 304

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LAW, TECHNOLOGY, AND POLITICS

Introduction

This course examines the complex interactive relationship between technology and the law during the course of American history. The United States is often described as a nation of laws and lawyers. It is widely considered the world's most litigious society. It is also at the forefront of technological innovation, and has been throughout much of its history. Perhaps no two elements have exerted a more profound influence over American lives and American society.

Law and technology share some basic attributes. Both can be fundamentally constraining. Law, by definition, lays down rules. It evolves in part through a system of precedent, which anchors law in the past, thus distinguishing it from virtually all other realms of a society that notoriously has little time for history. Technologies such as electric power systems and communications systems can be extraordinarily resistant to change; frequently we express frustration about feeling "trapped by the system" or dependent on machines we do not control. These technologies function so well (most of the time) largely because they operate within rigid constraints imposed by nature and by precedent. In this respect, they sound a lot like the law.

Yet if law and technology can often seem to be confining, they are also associated with individual rights and the fulfillment of personal desires. Both quickly bring the word liberty to mind. Law, with its bill of rights and provisions for seemingly endless avenues of redress for grievances, is the ultimate guardian of the individual. Technology is widely celebrated for providing each successive generation with unprecedented personal freedom. (Just think of automobile ads, or cellphone plans, or the latest slogan from Microsoft, which speaks of "your potential.") And technology is routinely portrayed as an outlet for personal creativity, in the form of individual inventors, figures so revered that we protect them with grants of monopoly under law in the form of patents.

Patents, like so much of law, involve a fundamental compromise. We tolerate a perceived evil – monopoly – in hopes of gaining some larger social benefit involving change. In this respect, patents encapsulate the fundamental qualities of law and technology as we approach them in this course. Both the history of law and the history of technology are essentially about change within constraint. They are about ongoing compromise. And these parallel dynamic processes of change interact continually, not just through the patent system, but through a range of issues, statutes, regulations, and trials. New technologies continually challenge law; and law continually shapes new

technology. Perhaps never has this been so evident as it is today, as the digital world takes shape before our eyes. But in this course, we will see that it has always been true.

And what of politics? Quite simply, we cannot see law apart from it. Law in America is not made by judges occupying some oracle, removed from the rough and tumble world of politics. Law emerges through politics: through the legislative process, through regulatory agencies, through individual disputes (which always have political overtones), through confirmation hearings, and so on. Our course is centered upon laws and courts, but it can never escape the larger political world in which the laws and courts function.

Required Books (available at Engineer's Bookstore)

Robert Kagan, Adversarial Legalism: The American Way of Law

Paul Starr, The Creation of the Media: The Political Origins of Modern Communications

Andrea Tone, Devices and Desires: A History of Contraceptives in America

Siva Vaidhyanathan, Copywrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity

Assignments and Grading

Readings in the four required books are an essential part of the course. They should be treated like homework. Complete them by the assigned date and be prepared to discuss them in class. If necessary, I will give spot quizzes on the readings. These will count toward the subsequent quiz or exam.

Each of the three quizzes will count 15%. The final exam will count 30%. A term paper of approximately ten double-spaced typed pages (2,500 words) discussing the arguments and significance of a Supreme Court case pertaining to the subject of this course will count 25%. Class participation, including attendance, will influence grades in borderline situations.

Attendance and Honor

This is a lecture/discussion class with no assigned textbook. Attendance is essential. So is participation, which can determine grades in borderline situations.

Students are expected to adhere to the GT Honor Code. Plagiarism will be treated harshly.

SCHEDULE

<u>Date</u>	<u>Topic</u>	<u>Readings</u>
1/8- 1/10	Orientation The Nature of Law	
I. The Current State of Affairs		
1/12-1/19	Adversarial Legalism	Kagan, Preface and Part I
1/22-1/26	Torts and Welfare	Kagan, pp. 99-180
1/29-1/31	Regulation	Kagan, pp. 181-252
2/2	Quiz One – in class portion	
II. Establishing Infrastructure		
2/5-2/9	Early Constitutionalism	Starr, pp. 1-82
2/12-2/16	Expanding Commerce	Starr, pp. 83-150; C&C, pp. 1-50
2/19-2/26	Continental Networks	Starr, pp. 153-230; C&C, pp. 50-80
2/28	Review	
3/2	Quiz Two – in class portion	
III. Regulating Industrial Society		
3/5-3/9	Risky Business	Starr, pp. 233-266; Tone, Part One
3/12-3/16	Insuring Health and Safety	Starr, pp. 267-294; Tone, Part Two
3/19-3/23	NO CLASS – SPRING BREAK	
3/26-4/2	Mass Media, Mass Society	Starr, pp. 295-402; C&C, Ch.3
4/4	Review	
4/6	Quiz Three – in class portion	

IV. Entangling Science

4/9-4/13	Health and Environment	Tone, Part Three
4/16-4/20	Cyberlaw	C&C, Ch. 4 and 5 plus Epilogue
4/23-4/27	Review	
5/2 (Wednesday), 11:30-2:20, Final Exam		