THE COMMON LAW AND AMERICAN RIGHTS: SEMINAR (2 credits)
Joyce Lee Malcolm
Fall, 2015

Office: 418, x9150, Office Hours: Tues. 1:00-1:45 pm; Thurs. 1:00-1:45 pm

SYLLABUS

Required Books
Theodore F.T. Plucknett, Concise History of the Common Law, Liberty Fund Books, paperback


*Joyce Lee Malcolm, ed., The Struggle for Sovereignty, vol. 1, Liberty Press, paperback. Purchase Recommended, but also available online

Recommended Book:
Lacey Baldwin Smith, This Realm of England, 1399-1688, 6th ed., paperback

“Let an Englishman go where he will, he carries as much of law and liberty with him as the state of things will bear.”
Richard West, Counsel to British Board of Trade, 1720

The individual rights Americans enjoy and the tactics the Constitution has devised to protect them are rooted in English common law. Understanding the common law tradition, therefore, is essential for an appreciation of the development of these rights and offers an insight into the minds of the Founders in incorporating them. This course will survey and analyze the key documents, cases and developments in that evolution from Magna Carta to American colonial charters, state constitutions, the federal Constitution and the drafting of our Bill of Rights. In the process the class will discuss the options and alternatives along the way, the rise and decline of strategies such as jury trial, judicial and community-based review of legislation, as well as recent Supreme Court decisions that look to common law for guidance.

REQUIREMENTS:

**Reading** is assigned for each class and should be read in advance in preparation for discussion.

**Grading** will be based on a final research paper (70%), your argument in an historic common law case (15%) and class participation (15%).
**Handouts:** will be distributed in advance or sent by TWEN.
PLEASE NOTE: The Davies reading for the first class will be sent by email.
**TWEN:** This course will be listed on TWEN. Please register.

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<th>DATE</th>
<th>TOPIC AND READING ASSIGNMENT</th>
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<tr>
<td><strong>September 1</strong></td>
<td>Checks and Balances: The King’s Prerogatives, the People’s Rights, God and the Law</td>
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<td><strong>September 8</strong></td>
<td>King by Divine Right versus Sir Edward Coke and the Law</td>
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<td><strong>September 22</strong></td>
<td>Descent into Civil War</td>
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September 29  Court in Session: Arguing Cases  
Presentations: Arguments and Judgments

October 6  Trying the King for Treason: Prosecution and Defence  
**Handout:** Transcript of Trial of Charles I  
Charles’ speech on the scaffold  
http://anglicanhistory.org/charles/charles1.html  
An Act for the Abolishing the Kingly Office  
http://www.revolutionsolution.com/act.html

October 20  Trial of the Regicides: Obeying the Government *de facto*: Prosecution and Defence// Defending Individual Rights  
Malcolm, Rous, “The Lawfulness of obeying the Present Government”  
pp. 393-404  
**Handout:** Transcript of Trials of Regicides

October 27  Martial Law vs. Common Law  
The Power of the Sword and the English Bill of Rights  
English Bill of Rights, 1689,  
http://avalon.law.yale.edu/17th_century/england.asp  
Toleration Act, 1689  
http://www.jacobite.ca/documents/1689toleration.htm  
**Handout:** Malcolm, *To Keep and Bear Arms*, chaps. 5, 6  
Mutiny Act, 1689  
Coronation Oath, old and new, 1685, 1689  
**Deadline for Research Topic to be Approved**

November 3  The Rights of American Colonists  
Virginia Charter, 1606  
avalon.law.yale.edu/17th_century/va01.asp  
Laws and Liberties of Massachusetts, 1648  
http://plaza.ufl.edu/edale/Laws%20and%20Liberties.htm  
Pennsylvania Charter of Liberties, 1701  
http://www.constitution.org/bcp/penncharpriv.htm

November 10  Slavery in England, Slavery in America: English air “too free”  
**Reading:**  
Review *Sommersett’s Case*, 1772  
Malcolm, “Slavery in the North and the American Revolution” (will be sent online)  
South Carolina Slave Code, 1740 (sent online)  
**Deadline for Outline and Preliminary Bibliography for Paper**

November 17  Key Colonial Cases on Individual Rights  
**Reading:** James Otis Case, http://www.nhinet.org/ccs/docs/writs.htm  
Thomas Paine, *Common Sense,*


November 24  Common Law Reflections and Departures in Declaration of Independence, the First State Constitutions, Judicial Review?

December 1  Common Law and Debates on the American Constitution and Bill of Rights

RESEARCH PAPERS DUE
December 15, noon