Instructor: Joe Dwyer
Office Hours: By email at any time; by phone, if requested.
Contact Information: josdwyer@newark.rutgers.edu

Course Description:
This is a survey course of selected topics in American legal history from the colonial period through Reconstruction: the development of the legal system in the United States; the Constitution and federalism; and slavery in the legal system. As with any survey course, we cannot cover every issue, nor can we cover even the selected issues in depth. However, I hope that by the end of the semester you will have a good working knowledge of these topics so that you can go on to more in-depth investigations in other courses.

In the segment on the development of the legal system, we will examine the sources of American law, i.e., how American law incorporated and distinguished itself from the English legal system, and how law is created and implemented in a democratic republic. In the segment on the Constitution, we will examine the sources from which the framers drew in creating the Constitution, the competing and/or complementary spheres of power for the federal and state governments under the structure created by the Constitution and the role of the federal judiciary in creating a unified nation state. In the last segment of the course, we will examine how the law supported and legitimized the enslavement of Africans, the central role of slavery in the Articles of Confederation and the Constitution, and the court battles over the Fugitive Slave Acts of 1793 and 1850. We will conclude with a close examination of the Supreme Court’s infamous decision in Dred Scott v. Sandford and the post-Civil War constitutional amendments dealing with slavery.

Course Objectives:
1. To become acquainted with the basic themes and developments in American Legal History;
2. To develop critical thinking skills about the interplay of law, politics, and social history;
3. To learn how to read historical legal documents;
4. To provide a historical perspective that facilitates better understanding and analysis of contemporary legal issues by grounding them in the debates of the past.

Office Hours
Office Hours are by arrangement. Please reach out via email to set up either in person or virtual office hours.

Course Requirements

Course Requirements

1. Attendance
   Attendance is mandatory. You must show up for class on time, having read the day’s assigned material and be prepared to discuss it. I will take attendance. Course materials will be posted the Sunday prior to our weekly meeting. You should consume all posted course materials BEFORE we meet each Thursday. Excusable grounds for leaving before the end of class may include illness or child-care
issues. Any student who misses eight or more sessions through any combination of excused and unexcused absences will not earn credit in this class. Such students should withdraw to avoid getting an F. The University’s guidance on excused absences can be found here - http://catalogs.rutgers.edu/generated/nwk-ug_0608/pg23613.html

2. **Participation**
   I appreciate that some of you may be shy about speaking up in class, but do not be too concerned about this. Participation includes attendance, attention and preparation as well as speaking up in class. Cutting class, arriving late or leaving early, and excessive internet use (texting, emailing or general net-surfing) will lower your participation grade because you cannot be participating if you are doing those things.

3. **Homework.** Homework will be assigned in the form of short writing assignments or questions directed to that week’s assigned readings. You will have at least THREE homework assignments for the semester. Homework will not be assigned weekly but you will be notified well in advance when homework is due. Homework will collectively count for 15% of your final grade.

4. **Book Report:** The Book Report will be outlined in more detail during class. More information also available below. TENTATIVE DUE DATE via Canvas → March 28, 2024

5. **Midterm exam - In-Person → Thursday, February 29, 2024**

6. **Final exam - Take-Home - Due via Canvas → May 6, 2024**

**Grading:**
30% Final (Due via Canvas)
30% Midterm (In-person)
20% Book Report (Due via Canvas)
15% Homework (Due via Canvas)
5% Participation

**Exams:**
You will have a choice of essay prompts for each exam. Prompts will be posted well in advance of the exam due date. I will also upload a video description of each prompt and how I think you should think about responding to each. This will allow for you to consider each prompt while also having time to reach out via email to ask questions.

**Important Dates**
- Classes Begin - Tuesday, January 16, 2024
- Spring Break - 3/9 - 3/17, 2024
- Classes End - Monday, April 29, 2024
- Final Exam - Due via Canvas by May 8, 2024
Graded Assignments:

A. Midterm and Final Exams. You will have a choice of essay prompts for each exam. Prompts will be posted well in advance of the exam due date.

B. Book Report. Rather than have you do a research paper, I want you to read one complete book as part of the course. You will read the book and write an analytical essay in which you will identify the primary argument made by the author, review the historical evidence that the author used in support of that argument and provide a critical reaction to the book. Feel free to disagree with the author, but be prepared to back up your argument. The book report should be 4 to 6 pages, or 1,000 to 1,500 Words.

Here is a list of books from which you can choose. All are readily available either through the Rutgers Library system or from booksellers, virtual or brick and mortar. (If you are looking for used books try www.abebooks.com or www.exlibris.com.) Feel free to send me an email if you have any questions about these choices. (I am open to suggestions if there is a legal history that is not on the list but that you are eager to read.) Please let me know via email by September 23, 2023 which book you have selected.

- Breen, T.H. & Innes, Stephen. *Myne Owne Ground: Race and Freedom on Virginia's Eastern Shore, 1640-1676*, Oxford (2004). During the earliest decades of Virginia history, some men and women who arrived in the New World as slaves achieved freedom and formed a stable community on the Eastern shore. Holding their own with white neighbors for much of the 17th century, these free blacks purchased freedom for family members, amassed property, established plantations, and acquired laborers. T.H. Breen and Stephen Innes reconstruct a community in which ownership of property was as significant as skin color in structuring social relations. Why this model of social interaction in race relations did not survive makes this a critical and urgent work of history.


- Gordon-Reed, Annette, *Thomas Jefferson and Sally Hemings: An American Controversy, Charlottesville (VA) and London, University of Virginia Press, 1997*. A forensic analysis of the evidence concerning the sexual relationship between Thomas Jefferson and his enslaved mistress, Sally Hemmings. This is a prequel to Prof. Gordon-Reed’s multiple award winning The Hemings of Monticello. While perhaps not as well known, this earlier book is a wonderful example of how the lawyer’s forensic techniques can be applied to history.


Supreme Court decision that for the first time addressed the meaning and significance of the hopeful Reconstruction amendment.


The grading scale is as follows.

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<tr>
<th>Score Range</th>
<th>Grade</th>
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<tbody>
<tr>
<td>90 - 100</td>
<td>A</td>
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<tr>
<td>87 - 89</td>
<td>B+</td>
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<tr>
<td>80 - 86</td>
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<td>77 - 79</td>
<td>C+</td>
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<td>70 - 76</td>
<td>C</td>
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<tr>
<td>60 - 69</td>
<td>D</td>
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<tr>
<td>59 or less</td>
<td>F</td>
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**Required Readings**
You do not have to spend any money on the written materials. Course readings will be posted every Sunday prior to our weekly meeting on Thursday.

**Policy on Academic Integrity (Cheating and Plagiarism)**
All students are required to sign the Rutgers Honor Code Pledge. To receive credit, every assignment must have your signature under the following phrase: “On my honor, I have neither received nor given any unauthorized assistance on this examination / assignment.” Plagiarism will not be tolerated. Any use of the ideas or words of another person without proper acknowledgment of credit will result in penalties up to and possibly including a course grade of F. Cheating on exams will result in an automatic F. Your work will be digitally checked for plagiarism. Note that the uncited usage of uncopyrighted material such as Wikipedia entries still constitutes plagiarism.

Please also familiarize yourself with Rutgers’ Academic Integrity Policy available at - [http://academicintegrity.rutgers.edu/](http://academicintegrity.rutgers.edu/)

**Accommodation and Support Statement**
Rutgers University Newark (RU-N) is committed to the creation of an inclusive and safe learning environment for all students and the University as a whole. RU-N has identified the following resources to further the mission of access and support:

For Individuals with Disabilities: The Office of Disability Services (ODS) is responsible for the determination of appropriate accommodations for students who encounter barriers due to disability. Once a student has completed the ODS process (registration, initial appointment, and submitted documentation) and reasonable accommodations are determined to be necessary and appropriate, a Letter of Accommodation (LOA) will be provided. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as
For Individuals who are Pregnant: The Office of Title IX and ADA Compliance is available to assist with any concerns or potential accommodations related to pregnancy. Students may contact the Office of Title IX and ADA Compliance at (973) 353-1906 or via email at TitleIX@newark.rutgers.edu.

For Absence Verification: The Office of the Dean of Students can provide assistance for absences related to religious observance, emergency or unavoidable conflict (e.g., illness, personal or family emergency, etc.). Students should refer to University Policy 10.2.7 for information about expectations and responsibilities. The Office of the Dean of Students can be contacted by calling (973) 353-5063 or emailing deanofstudents@newark.rutgers.edu. For Individuals with temporary conditions/injuries: The Office of the Dean of Students can assist students who are experiencing a temporary condition or injury (e.g., broken or sprained limbs, concussions, or recovery from surgery). Students experiencing a temporary condition or injury should submit a request using the following link: https://temporaryconditions.rutgers.edu.

For English as a Second Language (ESL): The Program in American Language Studies (PALS) can support students experiencing difficulty in courses due to English as a Second Language (ESL) and can be reached by emailing PALS@newark.rutgers.edu to discuss potential supports.

For Gender or Sex-Based Discrimination or Harassment: The Office of Title IX and ADA Compliance can assist students who are experiencing any form of gender or sex-based discrimination or harassment, including sexual assault, sexual harassment, relationship violence, or stalking. Students can report an incident to the Office of Title IX and ADA Compliance by calling (973) 353-1906 or emailing TitleIX@newark.rutgers.edu. Incidents may also be reported by using the following link: tinyurl.com/RUNReportingForm. For more information, students should refer to the University’s Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct located at http://compliance.rutgers.edu/title-ix/about-title-ix/title-ix-policies/.

For support related to interpersonal violence: The Office for Violence Prevention and Victim Assistance can provide any student with confidential support. The office is a confidential resource and does not have an obligation to report information to the University’s Title IX Coordinator. Students can contact the office by calling (973) 353-1918 or emailing run.vpva@rutgers.edu. There is also a confidential text-based line available to students; students can text (973) 339-0734 for support.

For Crisis and Concerns: The Campus Awareness Response and Education (CARE) Team works with students in crisis to develop a support plan to address personal situations that might impact their academic performance. Students, faculty and staff may contact the CARE Team by using the following link: tinyurl.com/RUNCARE or emailing careteam@rutgers.edu. For Stress, Worry, or Concerns about Well-being: The Counseling Center has confidential therapists available to support students. Students should reach out to the Counseling Center to schedule an appointment: counseling@newark.rutgers.edu or (973) 353-5805. If you are not quite ready to make an appointment with a therapist but are interested in self-help, check out TAO at Rutgers-Newark for an easy, web-based approach to self-care and support: https://tinyurl.com/RUN-TAO. For emergencies, call 911 or contact Rutgers University Police Department (RUPD) by calling (973) 353-5111.
Tentative Class Schedule

1. Week 1 - January 18 - Introduction Law During the Colonial Era and Revolutionary War
   ● Introduction - An overview of the course. An introduction to the legal system.

2. Week 2 - September 14 - The Colonial Legal Experience and the Revolution
   ● The Mayflower Compact
   ● The Virginia Charter – Ordinance of 1621
   ● Declaration of the People 1676

3. Week 3 - January 25 - The Constitution and Law in the Early United States
   ● Prelude to the Constitution
     ○ Declaration of Independence
     ○ Constitution of Pennsylvania (1776)
     ○ Constitution of New Jersey (1776)
     ○ Articles of Confederation

4. Week 4 - February 1 - The Constitution – Drafting and Ratification
   ● Constitutional Highlights

5. Week 5 - February 8 - The Powers of the Federal Government - Part 1
   ● Dartmouth College v. Woodward, 17 U.S. 518 (1819) Excerpt
   ● McCulloch v. Maryland (1821) Excerpt
   ● Gibbons v. Ogden (1824)

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   ● McCulloch v. Maryland (1821) Excerpt
   ● Gibbons v. Ogden (1824)

   ● The Bill of Rights – Constitution Amendments I-X
   ● The Alien and Sedition Acts & The Virginia and Kentucky Resolutions
   ● Marbury v. Madison - Excerpts
   ● Barron v. Baltimore (1833)
8. Week 8 - February 29 - MIDTERM In-Person on 2/29

   ● The Bill of Rights – Constitution Amendments I-X
   ● The Alien and Sedition Acts & The Virginia and Kentucky Resolutions
   ● Marbury v. Madison - Excerpts
   ● Barron v. Baltimore (1833)

SPRING BREAK

10. Week 10 - March 21 - Martial Law in Early America
    ● Quartering Act & 3rd Amendment
    ● Massachusetts Government Act
    ● War of 1812
    ● Civil War - Lincoln, Habeas Corpus, and Martial Law - General Order No. 141

    ● Virginia Slave Code of 1705
    ● New Jersey Slave Code of 1798
    ● Pennsylvania’s Act for Gradual Emancipation – 1780

12. Week 12 - April 4 - The Meaning of Dred Scott
    ● Compromise of 1820 and the Powers of Congress
    ● Dred Scott - Excerpts

13. Week 13 - April 11 - Divisions between North and South and the Collapse of Constitutional Compromise
    ● Prigg v. Pennsylvania
    ● Ableman v. Booth
    ● US v. The Amistad
    ● The Fugitive Slave Act of 1850
    ● Excerpts from the Cornerstone Speech

    ● Emancipation Proclamation
    ● The Prize Cases

15. Week 15 - April 25 - Reconstruction
    ● 13th, 14th and 15th Amendments
    ● US v. Cruikshank