

AMERICAN LEGAL HISTORY - I
Rutgers, Newark: Fall 2021
History 21:512:265:90
Location: On Line (Asynchronous)

Instructor: Joe Dwyer

Office Hours: By email at any time; by phone, if requested. No in-person hours due to Covid19.

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.

Course Approach - Asynchronous Learning

Each Sunday, course materials for the upcoming week will be posted in a folder on Canvas. Each week course materials will include Screen Recordings of Lectures for each topic and case excerpts from the cases relevant to each topic. You should follow the reading schedule below for the additional background readings to complete each week.

I do not anticipate having required digital "in person" meetings or discussions. I understand that people are busy and I think an asynchronous approach works well for this course. Your opportunities to grapple with course materials are in your responses to weekly questions. Not only are those weekly questions important for your semester grade, they are an important exercise in synthesizing and understanding more deeply, course materials.

If you are having a hard time with any aspect of the course content I will keep a discussion board in Canvas to address such questions, imagining it as if you were asking the question "in class." As such, my response would be

public for all students once posted via Canvas. If you would prefer to communicate via Canvas, that is also fine. If you feel the need for a one on one Zoom, we could take that approach as well.

Most importantly, please be mindful that Canvas will be used for all aspects of this course. It is where your materials will be posted, your weekly assignments will be due, and where you will submit your case project analysis and final exams.

Policy on Office Hours

As this is an asynchronous course, I will not have in-person office hours. The best way to communicate with me is via email. If you want a live meeting, we can set up an appointment at a mutually agreeable time for a Zoom meeting.

Course Requirements

Weekly Questions (Due each week on Friday):

Will be posted each Sunday, due the following Friday by 11:59 pm. These questions are essentially what would have been discussion points in a traditional class. They will allow you to participate in the discussion and will allow you to synthesize course materials. Please do not fall behind on your submissions of these responses as it will be hard to make them up as the semester progresses. Missing deadlines to submit your weekly questions will negatively impact your grade. However, DOING all of the weekly questions will guarantee that you LEARN more and are prepared for course exams. I will regularly respond to your weekly question responses as if we were engaging in a discussion about course materials. Each question will be worth 10 points and you will have AT MOST two questions per week.

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.

Attendance:

In lieu of formal attendance for our asynchronous course, your weekly question submissions will be evidence of your attendance each week.

Important Dates:

- Classes Begin - 9/1/21
- Labor Day (NO CLASS) - Monday 9/6
- Thanksgiving Recess - 11/24/21 - 11/28/21
- Classes End - 12/13/21
- Final Exams - 12/16/21 - 12/23/21

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. 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.

B. Weekly Questions (SEE ABOVE) Due Each Friday of the Course at 11:59 pm.

C. 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 17, 2021 which book you have selected.

- Allen, Danielle, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*, New York, Liverwright (2014), a fascinating and highly original interpretation of the Declaration of Independence as a profession of universal equality.
- Ellis, Joseph, *The Quartet: Orchestrating the Second American Revolution, 1783-1789*, New York, Knopf (2015), a very readable account of how the Constitution was drafted as told in the form of biographical sketches of George Washington, Alexander Hamilton, James Madison and John Jay.
- 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.
- Johnson, Walter, *Soul by Soul: Life Inside the Antebellum Slave Market*, Cambridge (MA) and London, Harvard University Press, 1999. An award winning history of the Louisiana slave trade which ably demonstrates how historians use legal records to write history.
- Waldstreicher, David, *Slavery's Constitution: From Revolution to Ratification*, Hill and Wang, New York, 2010. A thought provoking study of the critical role that slavery played in the drafting of the Constitution.

Grading

35% Final Exam (Due via Canvas no later than 11:59 pm on **December 17th.**)

- More details to be posted via Canvas

30% Midterm Exam (Due via Canvas no later than 11:59 pm on **October 15th.**)

15% Book Report (Due via Canvas no later than 11:59 on **November 12th.**)

- More details to be posted via Canvas

20% Weekly Questions (Due every Friday of the semester no later than 11:59 pm)

ALL SUBMISSIONS DUE VIA CANVAS

The grading scale is as follows.

90 - 100 A

87 - 89 B+

80 - 86 B

77 - 79 C+

70 - 76 C

60 - 69 D

59 or less F

Required Readings

You do not have to spend any money on the written materials. Course readings, lecture presentations, and recorded lectures will be posted each week on Canvas.

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/>

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 early in the semester as possible as accommodations are not retroactive. More information can be found at ods.rutgers.edu. Contact ODS at (973)353-5375 or via email at ods@newark.rutgers.edu.

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.

Support for Online Learning

- Link to "Technology Resources for Students" page: <https://coronavirus.rutgers.edu/technology-resources-for-students/>
- Contact information for OIT-Newark Help Desk: <https://runit.rutgers.edu/hd/>
- Link to RU-N "Technology LaunchPad": <https://runit.rutgers.edu/technology-launch-pad/>
- Contact information for OIT-Newark Help Desk: <https://runit.rutgers.edu/hd/>

Tentative Class Schedule

Note - Topics scheduled per week is a recommendation for managing your workload. All weekly materials will be posted, as noted above, on the Sunday preceding each week of the course.

Tentative Class Schedule

1. Week 1 (September 1 - 3) - **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 7 - 10) - **The Colonial Legal Experience and the Revolution**
 - The Mayflower Compact
 - The Virginia Charter – Ordinance of 1621
 - Declaration of the People 1676
3. Week 3 (September 13 - 17) - **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

September 17, 2021 – Advise of book report selection

4. Week 4 (September 20 - 24) - **The Constitution – Drafting and Ratification**
 - Constitutional Highlights
5. Week 5 (September 27 - October 1) - **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)
6. Week 6 (October 4 - 8) - **The Powers of the Federal Government - Part 2**
 - Dartmouth College v. Woodward, 17 U.S. 518 (1819) Excerpt
 - McCulloch v. Maryland (1821) Excerpt
 - Gibbons v. Ogden (1824)
7. Week 7 (October 11 - 15) - No New Assignments - MIDTERM DUE 10/15
8. Week 8 (October 18 - 22) - **Federalism under the Constitution, The Bill of Rights – the Powers of the Federal Government and its Relationship with Individuals - Part 1**
 - 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)
9. Week 9 (October 25 - 29) - **Federalism under the Constitution, The Bill of Rights – the Powers of the Federal Government and its Relationship with Individuals - Part 2**
 - 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)

10. Week 10 (November 1 - 5) - **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

11. Week 11 (November 8 - 12) - **Defining Race in the Law - North and South.**

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

12. Week 12 (November 15 - 19) - **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

13. Week 13 (November 22 - 24) - Thanksgiving Week - **The Meaning of Dred Scott**

- Compromise of 1820 and the Powers of Congress
- Dred Scott - Excerpts

14. Week 14 (November 29 - December 3) - **Civil War and the Reorganization of the Federal Government**

- Emancipation Proclamation
- The Prize Cases

15. Week 15 (December 6 - 10) - **Reconstruction**

- 13th, 14th and 15th Amendments
- US v. Cruikshank