

## AMERICAN LEGAL HISTORY II

Rutgers, Newark: Fall 2021

History 21:512:266:90

Time: Asynchronous

Location: Online via Canvas

Instructor: Joe Dwyer

Contact Information: [josdwyer@newark.rutgers.edu](mailto:josdwyer@newark.rutgers.edu)

Office Hours - Please feel free to contact me via email at any time. I will respond within 24 hours.

If you would like to set up an individual conference via Zoom/Google Meet, please let me know and we can schedule that as well.

Course Description: This is a survey course on selected topics in American legal history from the late nineteenth century to today. The course will be taught primarily through the lens of three major topics - the evolution of the 14th Amendment, Civil Liberties in Wartime, and Protest and the First Amendment, Protest, and Political Speech. For the most part we will focus on constitutional law and how the Supreme Court has dealt with critical issues relevant to each of the aforementioned topics. 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 investigation in other courses.

This course will focus primarily on how law functions in and affects society. As students of history, rather than as students of law, we have a strong interest in understanding how the law affects society as a whole, not merely how the law functions for those directly involved in the legal system – i.e. the legislators, the judges, the lawyers and the individuals. America's legal history is inextricably linked to historical development. The case law that has defined who we are as a people has been predicated on the society in which the issues arose.

In terms of teaching method, the course will feature pre-recorded lectures based on assigned reading materials. The assigned readings for any week will combine readings from our texts, supplemented by cases and journal articles. Finally, please note that for those of you considering a career in the law, this course is not offered as a pre-law course because there is no particular course of study that will help you get into law school. The course will, however, call for you to exercise research, critical analysis, and logical argumentation skills that will help in preparation for law school.

### 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 Google Meet (the platform that I find works best for me) or 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 contemporary topic project and final exams.

#### 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 Requirements

1. Weekly Questions
2. Midterm exam
3. Contemporary Topic Project
4. Final exam

#### 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

#### 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% Contemporary Topic Project (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**

Contemporary Topic Project: The Contemporary Topic Project will be outlined in more detail during the semester. In short, you will be required to select from among the following contemporary legal issues related to those discussed in class. You will be required to conduct research into legal developments within your topic that have occurred in the last five years (2016 - 2021). Likely topics to be selected are as follows:

- Detention of Suspected Terrorists
- Use of Drone Warfare
- Voting Rights
- Citizenship
- Antitrust Law
- Implication of Proposed Laws Against Domestic Terrorism

Weekly Questions (Due each week on Friday):

Will be posted each Sunday. 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.

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.

Attendance:

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

Grade scale (for grades submitted to transcripts):

- A: 89.5-100
- B+: 85-89.4
- B: 79.5-84.9
- C+: 75-79.4
- C: 69.5-74.9

D: 59.5-69.4

F: 0-59.4

### Required Texts:

Hall, Kermit L., Paul Finkelman, and James W. Ely, Jr. *American Legal History Cases and Materials* - Fifth Edition. . ISBN - 0190253266.

Lewis, Anthony. *Freedom For the Thought That We Hate: A Biography of the First Amendment*. New York, 2007. ISBN - 1606710982

Rehnquist, William. *All the Laws But One: Civil Liberties in Wartime*. New York, 1998. ISBN - 0679767320

### 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/>

### Honor Code

**You must include the following Rutgers Honor Code Pledge on all examinations and major course assignments submitted for grading: “On my honor, I have neither received nor given any unauthorized assistance on this examination (assignment). (Name) (Signature – typing your name is fine) (Date).”**

### 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](https://ods.rutgers.edu). Contact ODS at (973)353-5375 or via email at [ods@newark.rutgers.edu](mailto: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](mailto: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](mailto: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](mailto: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](mailto:TitleIX@newark.rutgers.edu). Incidents may also be reported by using the following link: [tinyurl.com/RUNReportingForm](http://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](mailto: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](http://tinyurl.com/RUNCARE) or emailing [careteam@rutgers.edu](mailto: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](mailto: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.**

1. Week 1 (September 1 - 3) - Course Introduction
2. Week 2 (September 7 - 10) - 14th Amendment: History and Challenges
  - Required Readings:
    - Hall, et al. - 266 - 291
  - Case Excerpt Readings:
    - Dred Scott v. Sandford
    - Slaughterhouse Cases
    - U.S. v. Cruikshank
    - Civil Rights Cases
    - US v. Harris
3. Week 3 (September 13 - 17) - 14th Amendment: Citizenship and Due Process
  - Required Readings:
    - Hall, et al. - 294 - 312, 397 - 398, 438
  - Case Excerpt Readings:
    - Elk v. Wilkins
    - U.S. v. Wong Kim Ark
    - Insular Cases
    - Regan v. King
    - Hurtado v. California
    - Lochner v. New York
4. Week 4 (September 20 - 24) - 14th Amendment: Equal Protection
  - Required Readings:
    - Hall, et al. - 294 - 312, 397 - 398, 438
  - Case Excerpt Readings:
    - Lum v. Rice
    - Plessy v. Ferguson
    - Brown v. Board of Education

- Regents of the University of California v. Bakke
  - Bush v. Gore
  - Obergefell v. Hodges
5. Week 5 (September 27 - October 1) - Civil Rights Law
- Required Readings:
    - Hall, et al. - 509 - 516
    - Selected articles to be assignment via Canvas
  - Case Excerpt Readings:
    - Moore v. Dempsey
    - Powell v. Alabama
    - Norris v. Alabama
    - Shelley v. Kraemer
    - Brown v. Board of Education
6. Week 6 (October 4 - 8) - Civil Rights Law
- Required Readings:
    - Hall, et al. - 509 - 516
    - Selected articles to be assignment via Canvas
  - Case Excerpt Readings:
    - NAACP v. Alabama
    - Browder v. Gayle
    - Cox v. Louisiana
    - Edwards v. South Carolina
    - Hamm v. City of Rock Hill
    - Heart of Atlanta Motel, Inc. v. U.S.
    - Brown v. Louisiana
    - Adderley v. Florida
    - Loving v. Virginia
7. Week 7 (October 11 - 15) - No New Assignments - MIDTERM DUE 10/15
8. Week 8 (October 18 - 22) - Industrial America and the Rise of Antitrust and Labor Law
- Required Readings:
    - Hall, et al. - 375 - 381, 388 - 396
  - Case Excerpt Readings:
    - U.S. v. E.C. Knight and Co.
    - Northern Securities Co. v. US
    - Swift and Co. v. US
    - Hammer v. Dagenhart
9. Week 9 (October 25 - 29) - Antitrust, Labor Law, the New Deal

- Required Readings:
  - Hall, et al. - 485 - 498
- Case Excerpt Readings:
  - NLRB v. Jones and Laughlin Steel Corp.
  - US v. Darby

10. Week 10 (November 1 - 5) - Civil Liberties in Wartime - World War I

- Required Readings:
  - Rehnquist - Chapters 2, 3, 7, 9, and 14
  - Lewis - Chapter 7
  - Hall, et al. - 429 - 437
- Case Excerpt Readings:
  - Schenck v. U.S.
  - Abrams v. U.S.
  - Debs v. U.S.

11. Week 11 (November 8 - 12) - Civil Liberties in Wartime - World War II

- Required Readings:
  - Rehnquist - Chapters 15 - 18
  - Lewis - Chapter 7
  - Hall, et al. - 441 - 455
- Case Excerpt Readings:
  - Hirabayashi v. U.S.
  - Korematsu v. U.S.
  - Ex Parte Endo
  - Ex Parte Quirin

12. Week 12 (November 15 - 19) - Civil Liberties in Wartime - The Cold War

- Required Readings:
  - Lewis - Chapter 7
  - Selected articles to be assigned
  - Hall, et al - 557 - 561
- Case Excerpt Readings:
  - Dennis v. U.S.
  - Yates v. U.S.
  - Cole v. Young
  - Loyalty Oath/Affirmation Cases

13. Week 13 (November 22 - 24) - Thanksgiving Week - Introduction - Global War on Terror

14. Week 14 (November 29 - December 3) - Global War on Terror

- Required Readings:
  - Selected articles to be assigned.
- Case Excerpt Readings:
  - Rumsfeld v. Padilla
  - Rasul v. Bush
  - Boumediene v. Bush

15. Week 15 (December 6 - 10) - Legality and Morality of Drone Warfare

- Required Readings:
  - Selected articles to be assigned via Canvas
- Case Excerpt Readings:
  - N/A