

AMERICAN LEGAL HISTORY II

Rutgers, Newark: Fall 2019

History 21:512:266

Time: Tues./Thurs.4-5:20 p.m.

Location: 211 Engelhard

Instructor: Joe Dwyer

Office Hours: By Appointment

Contact Information: josdwyer@newark.rutgers.edu

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 had 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 classes include lectures on the assigned reading materials for the day and class discussions about the readings. 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 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. 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. Excusable grounds for leaving before the end of class may include illness or child-care issues. If required to sign an attendance sheet, having a classmate sign in for you is a form of cheating and may lead to both the absent student and the forger receiving Fs. 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.

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. 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. Drop and withdrawal deadlines:

- a. The last date for students to drop a course with no penalty: 9/10/19
- b. The last date to withdraw from a course with a "W" grade: 11/4/19

5. Case Project: The Case Project will be outlined in more detail during class. In short, you will choose a case from those listed under our weekly sessions. You will be required to conduct an analysis of the case including the relevant legal and Constitutional issue along with the historical context in which the case occurred. You will also be required to read and incorporate the majority and dissenting opinions into your analysis. TENTATIVE DUE DATE → 11/12/19

6. Midterm exam - October 22, 2019

7. Final exam - Date TBD

Grading:

25% Final

25% Midterm

20% Case Project

15% Homework

15% Participation

Required Texts:

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

Meyer, Howard N. *The Amendment that Refused to Die: Amendment XIV*. New York, 1973. ISBN - 0801957680

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

White, G. Edward. *American Legal History - A Very Short Introduction*. Oxford, 2013. ISBN - 0199766002

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/academic-integrity-policy/>

Notification from The Office for Violence Prevention and Victim Assistance:

"Rutgers faculty are committed to helping create a safe learning environment for all students and for the university as a whole. If you have experienced any form of gender or sex-based discrimination or harassment, including sexual assault, sexual harassment, relationship violence, or stalking, know that help and support are available. Rutgers has staff members trained to support survivors in navigating campus life, accessing health and counseling services, providing academic and housing accommodations, and more. The University strongly encourages all students to report any such incidents to the University. Please be aware that all Rutgers employees (other than those designated as confidential resources such as advocates, counselors, clergy and healthcare providers as listed in Appendix A to **Policy 10.3.12**) are required to report information about such discrimination and harassment to the University. This means that if you tell a faculty member about a situation of sexual harassment or sexual violence, or other related misconduct, the faculty member must share that information with the University's Title IX Coordinator. If you wish to speak with a staff member who is confidential and does **not** have this reporting responsibility, you may contact the Office for Violence Prevention and Victim Assistance at (973)-353-1918, or at run.vpva@rutgers.edu.

Learn more about the office here: <http://counseling.newark.rutgers.edu/vpva>"

Disabilities:

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation: <https://ods.rutgers.edu/students/documentation-guidelines>. If the documentation supports your request for reasonable accommodations, your campus disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the

accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at: <https://ods.rutgers.edu/students/registration-form>.

For more information please the Office of Disability Services in the Paul Robeson Campus Center, in suite 219 or contact odsnewark@rutgers.edu.

Policy on Classroom Courtesy

Please keep cell phones in silent mode. As participation is 15% of your final grade, please remain engaged in the class and avoid being distracted by technology.

As to food and drink, I realize that this is a night class and you may want a snack to keep you going until we finish.

I look forward to lively but still decorous discussions. No shouting, angry outbursts, interrupting or talking over one another. Most importantly respect the opinions of your classmates. Having strong beliefs is good. Playing devil's advocate for an unpopular position is good. Heaping invective on those who disagree with you is bad and will have negative consequences.

As long as you are making a sincere inquiry, there is no such thing as a foolish question. Many of the concepts we cover will be new to you. If there is something you do not understand, just ask. Do not assume that you are the only one in the dark. There will probably be a dozen classmates similarly puzzled but who are afraid to ask. You will be benefitting all of us by raising your questions. So, ask away, although I may defer answering your query until a more appropriate point in the class.

Policy on Office Hours

My office hours are for you. Stop by with any questions you have about assignments, readings, classroom discussions, other pertinent topics, or just drop by to chat. If your schedule conflicts with my office hours, we can set up an appointment at a mutually agreeable time as I will be on campus from time to time.

CLASS ASSIGNMENTS

1. September 3, 2019 – Introduction
 - Course Overview
 - Introduction to the Legal System, Constitution, and Review of Reconstruction
 - Required Readings:
 - N/A

2. September 5, 2019 - What is Legal History and how can we approach the topic?
 - Required Readings:
 - White - ALL

3. September 10, 2019 - 14th Amendment - Historical Background (Reconstruction)

4. September 12, 2019 – 14th Amendment and Citizenship

- Required Readings:
 - Meyer - Chapters 4 - 11
- Relevant Cases:
 - Dred Scott v. Sandford
 - Elk v. Wilkins

5. September 17, 2019 - 14th Amendment and Citizenship

- Required Readings:
 - Meyer - Chapters 4 - 11
- Relevant Cases:
 - U.S. v. Wong Kim Ark
 - Insular Cases

6. September 19, 2019 - 14th Amendment - Challenges

- Required Readings:
 - Meyer - Chapters 12 - 21
- Relevant Cases:
 - Slaughterhouse Cases
 - U.S. v. Cruikshank
 - Civil Rights Cases

7. September 24, 2019 – 14th Amendment – Due Process

- Required Readings:
 - Meyer - Chapters 12 - 21
- Relevant Cases:
 - Hurtado v. California (Scope)
 - Gitlow v. New York (Incorporation)
 - Vitek v. Jones (Criminal)

8. September 26, 2019 - 14th Amendment – Equal Protection

- Required Readings:
 - Meyer - Chapters 22 - 26
- Relevant Cases:
 - Plessy v. Ferguson
 - Brown v. Board of Education

9. October 1, 2019 - 14th Amendment – Equal Protection

- Required Readings:
 - Meyer - Chapters 27 - 31
- Relevant Cases:
 - Baker v. Carr
 - Bush v. Gore
 - Regents of University of California v. Bakke
 - Obergefell v. Hodges

10. October 3, 2019 – Civil Rights

- Required Readings:
 - Selected articles to be assignment
- Relevant Cases:
 - Powell v. Alabama
 - Shelley v. Kraemer
 - Heart of Atlanta Motel, Inc. v. U.S.
 - Loving v. Virginia

11. October 8, 2019 – Civil Rights

- Required Readings:
 - Selected articles to be assignment
- Relevant Cases:
 - Brown v. Board of Education
 - Heart of Atlanta Motel, Inc. v. U.S.
 - Loving v. Virginia

12. October 10, 2019 - Freedom of Speech and Protest – Civil Rights

- Required Readings:
 - Selected articles to be assigned
- Relevant Cases:
 - NAACP v. Alabama
 - Cox v. Louisiana
 - Edwards v. South Carolina
 - Brown v. Louisiana
 - Adderley v. Florida

13. October 15, 2019 – Civil Liberties in Wartime – WWI

- Required Readings:
 - Rehnquist - Chapters 2, 3, 7, 9, and 14
 - Lewis - Chapter 7
- Relevant Cases:
 - Schenck v. U.S.
 - Abrams v. U.S.
 - Debs v. U.S.

Extension - Espionage Act → Pentagon Papers/Chelsea Manning

14. October 17, 2019 - Civil Liberties in Wartime – WWI

- Required Readings:
 - Rehnquist - Chapters 7, 9, and 14
 - Lewis - Chapter 7
- Relevant Cases:
 - Debs v. U.S.

Extension - Espionage Act → Pentagon Papers/Chelsea Manning

15. October 22, 2019 – MIDTERM EXAM

16. October 24, 2019 – Civil Liberties in Wartime – WWII

- Required Readings:
 - Rehnquist - Chapters 15 - 18
 - Lewis - Chapter 7
- Relevant Cases:
 - Hirabayashi v. U.S.
 - Korematsu v. U.S.
 - Ex Parte Endo
 - Ex Parte Quirin
- Extension - Trump v. Hawaii

17. October 29, 2019 - Civil Liberties in Wartime – WWII

- Required Readings:
 - Rehnquist - Chapters 15 - 18
 - Lewis - Chapter 7
- Relevant Cases:
 - Hirabayashi v. U.S.
 - Korematsu v. U.S.
 - Ex Parte Endo
 - Ex Parte Quirin
- Extension - Trump v. Hawaii

19. October 31, 2019 - Civil Liberties in Wartime – Cold War

- Required Readings:
 - Lewis - Chapter 7
 - Selected articles to be assigned
- Relevant Cases:
 - Dennis v. U.S.
 - Yates v. U.S.
 - Cole v. Young
 - Rosenberg v. U.S.
 - Loyalty Oath/Affirmation Cases

20. November 5, 2019 – Civil Liberties in Wartime – Cold War

- Required Readings:
 - Lewis - Chapter 7
 - Selected articles to be assigned
- Relevant Cases:
 - Cole v. Young
 - Rosenberg v. U.S.
 - Loyalty Oath/Affirmation Cases

21. November 7, 2019 - Civil Liberties in Wartime – Cold War

- Required Readings:
 - Lewis - Chapter 7
 - Selected articles to be assigned
- Relevant Cases:
 - Cole v. Young
 - Rosenberg v. U.S.
 - Loyalty Oath/Affirmation Cases

22. November 12, 2019 – Civil Liberties in Wartime – Global War on Terror –Rendition/Detention (CASE PROJECT DUE)

- Required Readings:
 - Lewis - Chapter 7
 - Selected articles to be assigned.
- Relevant Cases:
 - El Masri v. Tenet
 - Hamdi v. Rumsfeld
 - Hamdan v. Rumsfeld

23. November 14, 2019

24. November 19, 2019 – Civil Liberties in Wartime – Global War on Terror –Rendition/Detention

- Required Readings:
 - Selected articles to be assigned.
- Relevant Cases:
 - TBD

23. November 14, 2019 - Civil Liberties in Wartime – Global War on Terror –Rendition/Detention

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

25. November 21, 2019 - Civil Liberties in Wartime – Global War on Terror –Rendition/Detention/Drone Strikes

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

26. November 26, 2019 - Civil Liberties in Wartime - Global War on Terror - Drone Strikes:

- Movie:
 - “Eye in the Sky”

November 28, 2019 - NO CLASS - THANKSGIVING BREAK

27. December 3, 2019 – Civil Liberties in Wartime & Political Protest

- Transition:
 - Reflection and Conclusion
 - Introduction

28. December 5, 2019 – Freedom of Speech, Protest, and Political Speech – Political Protest

- Required Readings:
 - Lewis - Chapters 1 - 4, 9 - 10
- Relevant Cases:
 - Tinker v. Des Moines
 - Cohen v. California
 - NY Times Co. v. U.S.
 - Texas v. Johnson
 - U.S. v. Eichman
 - Virginia v. Black

29. December 10, 2019 - Freedom of Speech - Digital Speech

- Required Readings:
 - Selected articles to be assigned.
- Relevant Cases:
 - TBD

16. FINAL EXAM – TBD