

Shara Davis, Instructor
Fall 2019
History 265
#08239, 21:512:265
Hill Hall 102
Tuesdays 6:00 p.m. - 9:00 p.m.

Office Hours: Tuesdays 4:50 p.m. - 5:50 p.m. & by appointment
Office Location: Conklin Hall 153/152
Email address: shara.davis@rutgers.edu

Course Description

History 265 is a survey course of selected topics in American legal history from the colonial period through Reconstruction. Topics covered include the development of the legal system in the United States, the Constitution, and law as it related to commerce, marriage, women's rights, crime, and slavery. 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.

There are two basic approaches to the teaching of legal history. The first is the study of how the legal system and particular laws developed. This approach is familiar to those in the legal profession--lawyers, judges and law professors. The second approach focuses on how law functions in and affects society. I plan to incorporate both approaches in the course. You will need some background in the mechanics of the law--both procedural and substantive--in order to appreciate how the law functions in society. However, as students of history, rather than as students of law, we have a strong interest in understanding how law affected society as a whole, not merely how the law functioned for those who were directly involved in the legal system (i.e., legislators, judges, lawyers, and interested parties). We will also examine how historical events shaped the law.

Learning Goals

At the successful completion of History 265, students should be able to identify basic themes and developments in American legal history; to apply critical thinking skills about the interplay of law, politics, and social history; to read historical legal documents; and to understand and analyze contemporary legal issues using the debates of the past.

Blackboard

We will be using the web-based Blackboard course software <http://blackboard.newark.rutgers.edu>. Be sure that you have created a Net ID; you'll need it to access the site. I will post the syllabus and syllabus updates there, and I'll also post all course documents and assignments. You are required to print all documents posted to Blackboard and bring them to class.

Course Materials

No textbook is required for this course; all readings will be posted to the Course Documents section of Blackboard.

Course Requirements

Film Analysis and Response. Watch a film set during the time period covered by this course (in America prior to 1896). Write a two to three page critical analysis of the film that considers the the film's portrayal of the impact of law on society and law's role in the creation or solving of a social problem or concern. You should consider whether the film adequately provides a nuanced understanding of the social problem and the role of law. Your essay should include a brief summary of the film, but that summary should include only the details of the film you plan to discuss and must not be longer than a half page of the essay.

Any film that takes place in the time period covered by this course will work for this assignment, but the assignment may be easier if you choose a film where law or a law-related social institution (such as slavery) plays an important role. You might consider films like *Amistad*, *12 Years a Slave*, *Lincoln*, *Django Unchained*, *Pudd'nhead Wilson*, *Glory*, or *The Crucible*.

This assignment is due October 22, 2019 via Turnitin.

Midterm Exam. A midterm exam that covers course readings, films, and lectures (up to and including the October 22 class) will be held during class on October 29, 2019. The exam will consist of very short (a few sentences) and longer essay questions (1-2 pages).

Case Analysis and Response. Choose a case decided during the time period covered by this course (in America prior to 1896) that is not on the syllabus. You will use the case to complete a will complete a two-part assignment. For the first part of the assignment, you will write a single-spaced case brief that identifies the parties, procedural history, facts, issues, holding, rationale, the concurring opinions and

rationales, and dissenting opinions and rationales. The case brief should not exceed one page in length.

In the second part of the assignment, you will conduct a critical analysis of the case. In your analysis, explain how the case relates to a social issue, its impact on the body of law related to that social issue, whether you agree or disagree with the Court's ruling and why. Please also discuss if/how the case relates to the *current* laws for the social issue it addresses. This part of the assignment should be double-spaced and should be one to two pages in length.

This assignment is due December 10, 2019 via Turnitin.

Final Exam. A final exam that covers *all* course readings, films, and lectures will be held on December 17, 2019 from 6:20 p.m. to 9:20 p.m. The exam will consist of very short (a few sentences) and longer essay questions (1-2 pages).

Participation. Participation includes attendance, attention, and preparation, speaking up in class, and completion of homework assignments. Cutting class, arriving late, leaving early, or internet use (texting, emailing, or general net-surfing) will lower your participation grade because you are not participating if you are doing those things.

Grading

Your final grade will be based on your performance on these components of the course:

- Midterm Exam: 30%
- Final Exam: 35%
- Film Analysis & Response: 15%
- Case Analysis & Response: 15%
- Participation: 5%

Attendance

Any student who misses **four 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." Situations that count as "excused absences" are given here: http://catalogs.rutgers.edu/generated/nwk-ug_0608/pg23613.html

Even if you are absent, you are responsible for all assignments. If you miss class due to illness or emergency, consult another (reliable) student. You are expected to come to the next class fully caught up on all readings and assignments.

Use of Electronic Devices

Cell phones, tablets, laptops, and other electronic devices are banned for all purposes in this class. Be sure to print out any class readings because you will not be allowed to use an electronic device to look at them online. Instructor will provide a class dictionary, which can be used during class discussions and exams to look up any unknown words. Students who use electronic devices in class will have their participation grade lowered one step for each violation of this policy.

Meetings with Instructor

Students are encouraged to meet with instructor if confused about any assignments. If students are not able to meet with instructor during regular office hours, additional times may be scheduled. Regular office hours are Tuesdays from 4:50 p.m. to 5:50 p.m.

Academic Integrity Policy

The Rutgers University Academic Integrity Policy defines plagiarism as “the use of another person’s words, ideas, or results without giving that person appropriate credit.” Committing plagiarism is a serious offense that results in severe consequences. Rutgers instructors are required to report students who violate this policy to the director of their department and to the Office of Student Judicial Affairs.

The most common academic integrity violations by students are:

- “Copying word for word (i.e., quoting directly) from an oral, printed, or electronic source without attribution.”
- “Paraphrasing without proper attribution, i.e., presenting in one’s own words another person’s written words or ideas as if they were one’s own.”
- “Submitting a purchased or downloaded term paper or other materials to satisfy a course requirement.”

The Rutgers University Academic Integrity Policy establishes levels of violations and recommends sanctions. Depending on the severity of the case and the level of the violation, the sanctions for these violations include: failure in the course, mandatory participation in a series of noncredit academic integrity workshops, and/or suspension.

If you are in doubt as to what constitutes plagiarism or are concerned that you are misappropriating someone's words or ideas, speak immediately with your instructor. For more information, you can also consult the Rutgers University Academic Integrity Policy, which can be found at the link below.

https://slwordpress.rutgers.edu/academicintegrity/wp-content/uploads/sites/41/2014/11/AI_Policy_2013.pdf

Academic Integrity Honor Pledge

All students must include the following academic integrity honor pledge and their signature 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 [or assignment].

Students with 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 they 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's 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 website at <http://ods.rutgers.edu/students/registration-form>. For more information, please visit the Office of Disability Services in the Paul Robeson Campus Center, Suite 219 or contact odsnewark@rutgers.edu.

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

Course Topics & Reading Schedule

(subject to change with notice)

- T, Sept. 3 Course Introductions. Overview of legal system and courts. How to read a legal opinion and write a case brief.
- Read before class: Tinker v. Des Moines (1969); Marbury v. Madison (1803)
- T, Sept. 10 *English and Colonial Law*
- Read Magna Carta (1215); Dale's Laws (1611); Third Virginia Charter (1612); Mayflower Compact (1620); Laws of the VA Assembly (1619); Constitution for VA (1621); Laws & Liberties of Massachusetts (1648); English Bill of Rights (1689); Locke's Second Treatise on Government (1690)
- T, Sept. 17 *The Law of Business, Commerce & Trade*
- Read Dartmouth College v. Woodward (1819); McCullough v. Maryland (1819); Gibbons v. Ogden (1824); Charles River Bridge Case (1837); Farwell v. The Boston and Worcester Railroad Co. (1842)
- T, Sept. 24 *The Law of Society: Women & Marriage*
- Read Blackstone on Women in the Eyes of the Law (1765); Notes on Women and the Law in the Colonial Era; Against Universal Suffrage (1821); Wightman v. Coates (1833); Mississippi's Married Women's Property Act (1839); Declaration of the Seneca Falls Convention (1848); Bradwell v. Illinois (1873)
- T, Oct. 1 *The Law of Crime & Punishment I*
- Read Greenberg, Crime, Law Enforcement, and Social Control in Colonial America; The Salem Witch Trials (1692); Cases of Conscience Concerning Evil Spirits Personating Men (1692); The Wonders of the Invisible World (1693)
- T, Oct. 8 *The Laws of Servitude, Race, & Slavery I*
- Read Finkelman, Slavery in the United States: Persons or Property?; Hall, Finkelman & Ely, Law and Colonial Society: Slavery; Virginia Statutes on

Slavery (1662-1669); Mumford, After Hugh: Statutory Race Segregation in Colonial America

T, Oct. 15 *The Laws of Servitude, Race, & Slavery II*

Read Virginia Slave Codes of 1705; South Carolina Servant Regulations (1761); Somerset v. Stewart (1772) Pennsylvania's Act for Gradual Emancipation (1780); Fugitive Slave Act (1783); New Jersey Slave Code of 1798

T, Oct. 22 **FILM ANALYSIS & RESPONSE I due at 6:00 p.m. via Turnitin**

The Law of Crime & Punishment II

Read Liebman & Poling, Perspectives on Policing in 19th Century America; Barnes, The Historical Origin of the Prison System in America

T, Oct. 29 **MIDTERM EXAM**

T, Nov. 5 *The Road to Independence*

Watch Before Class: Liberty! The American Revolution, Part 1
<https://www.youtube.com/watch?v=XEMQSDhvtx0&t=933s>

Watch Before Class: Liberty! The American Revolution, Part 2
<https://www.youtube.com/watch?v=Ftqrv4l55-c>

Read Zenger's Case (1735); Virginia Stamp Act Resolutions (1765); Resolutions of the Stamp Act Congress (1765); Declaratory Act (1766); Common Sense (1776); John Adams' Thoughts on Government (1776)

T, Nov. 12 *American Independence & The Constitution*

Read Declaration of Independence (1776); The Articles of Confederation (1781); The Constitutional Convention: Proposals for Government (1787); Constitution of the United States (1787); Judiciary Act (1789); The Alien and Sedition Acts (1798)

T, Nov. 19 *The Laws of Race & Slavery III*

Read North Carolina v. Mann (1829); Prigg v. Pennsylvania (1842); Fugitive Slave Act (1850); Roberts v. City of Boston (1850); What to the Slave is the Fourth of July (1852); Massachusetts Personal Liberty Act (1855); Dred Scott v. Sandford (1857)

T, Nov. 26 **THANKSGIVING BREAK - Follow Thursday Schedule - No Class**

T, Dec. 3 *The Civil War*

Read South Carolina Ordinance of Secession (1860); The Constitution of the Confederate States of America (1861); Abraham Lincoln First Inaugural Address (1861); Ex Parte Merryman (1861); The Emancipation Proclamation (1863); Lincoln's Second Inaugural Address (1865)

T, Dec. 10 **CASE ANALYSIS & RESPONSE due at 6:00 p.m. via Turnitin**

Reconstruction & the 13th, 14th & 15th Amendments to the Constitution

Read Black Codes of Alabama & Mississippi (1865); Civil Rights Act (1866); Veto of Civil Rights Act (1866); Slaughterhouse Cases (1873); Civil Rights Cases (1883); Plessy v. Ferguson (1896); Harris, Whiteness as Property

T, Dec. 17 **FINAL EXAM 6:20-9:20 p.m.**