

AMERICAN LEGAL HISTORY II

Rutgers, Newark: Fall 2019

History 21:512:266

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

Location: Hill Hall - 104

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. 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 20% of your final grade.

4. Drop and withdrawal deadlines:

- a. The last date for students to drop a course with no penalty: 1/28/20
- b. The last date to withdraw from a course with a "W" grade: 3/30/20

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 → April 7, 2020

6. Midterm exam - March 12, 2020

7. Final exam - May 15, 2020 - 3-6 PM

Grading:

25% Final

25% Midterm

20% Case Project

20% Homework

10% Participation

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/academic-integrity-policy/>

Accommodation and Support Statement:

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

- **Students with Disabilities:** Rutgers University welcomes students with disabilities into all of the University's educational programs. The Office of Disability Services (ODS) is responsible for the determination of appropriate accommodations for students who encounter barriers due to disability. In order to receive consideration for reasonable accommodations, a student with a disability must contact ODS, register, have an initial appointment, and provide documentation. Once a student has completed the ODS process (registration, initial appointment, and documentation submitted) and reasonable accommodations are determined to be necessary and appropriate, a Letter of Accommodation (LOA) will be provided to the student. The student must give the LOA to each course instructor, followed by a discussion with the instructor. This should be completed as early in the semester as possible as accommodations are not retroactive. More information can be found at ods.rutgers.edu. Contact ODS: (973) 353-5375 or ods@newark.rutgers.edu.
- **Religious Holiday Policy and Accommodations:** Students are advised to provide timely notification to instructors about necessary absences for religious observances and are responsible for making up the work or exams according to an agreed-upon schedule. The Division of Student Affairs is available to verify absences for religious observance, as needed: (973) 353-5063 or DeanofStudents@newark.rutgers.edu.

- Counseling Services: Counseling Center Room 101, Blumenthal Hall, (973) 353-5805 or <http://counseling.newark.rutgers.edu/>.
- Students with Temporary Conditions/Injuries: Students experiencing a temporary condition or injury that is adversely affecting their ability to fully participate in their courses should submit a request for assistance at: <https://temporaryconditions.rutgers.edu>.
- Students Who are Pregnant: The Office of Title IX and ADA Compliance is available to assist students with any concerns or potential accommodations related to pregnancy: (973) 353-1906 or TitleIX@newark.rutgers.edu.
- Gender or Sex-Based Discrimination or Harassment: Students experiencing any form of gender or sex-based discrimination or harassment, including sexual assault, sexual harassment, relationship violence, or stalking, should know that help and support are available. To report an incident, contact the Office of Title IX and ADA Compliance: (973) 353-1906 or TitleIX@newark.rutgers.edu. To submit an incident report: tinyurl.com/RUNReportingForm. To speak with a staff member who is confidential and does NOT have a reporting responsibility, contact the Office for Violence Prevention and Victim Assistance: (973) 353-1918 or run.vpva@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.

The Writing Center

The Writing Center (<http://www.ncas.rutgers.edu/writingcenter>), located in Room 126 of Conklin Hall, offers writing tutoring and writing workshops to all undergraduate students currently enrolled in classes on the Rutgers-Newark campus. Their tutors work to help students become more independent readers and writers capable of responding well to the demands of writing within the university. The Writing Center is available free

of charge. Please consider taking advantage of these services to strengthen your reading, writing, and research skills.

CLASS ASSIGNMENTS

1. January 21, 2020 – Introduction
 - Course Overview
 - Introduction to the Legal System, Constitution, and Review of Reconstruction
 - Required Readings:
 - N/A
2. January 23, 2020 - What is Legal History and how can we approach the topic?
 - Required Readings:
 - N/A
3. January 28, 2020 - 14th Amendment - Historical Background (Reconstruction)
 - Required Readings:
 - Hall, et al. - 266 - 291
4. January 30, 2020 – 14th Amendment - Challenges
 - Required Readings:
 - Hall, et al. - 266 - 291
 - Relevant Cases:
 - Dred Scott v. Sandford
 - Slaughterhouse Cases
 - U.S. v. Cruikshank
 - Civil Rights Cases
5. February 4, 2020 - 14th Amendment and Citizenship
 - Required Readings:
 - Hall, et al. - 294 - 312
 - Relevant Cases:
 - Elk v. Wilkins
 - U.S. v. Wong Kim Ark
 - Insular Cases
6. February 6, 2020 - Due Process
 - Required Readings:
 - Hall, et al. - 397 - 398, 438
 - Relevant Cases:
 - Hurtado v. California (Scope)
 - Gitlow v. New York (Incorporation)
7. February 11, 2020 – 14th Amendment – Equal Protection

- Required Readings:
 - Hall, et al. - 282 - 291, 509 - 512
- Relevant Cases:
 - Plessy v. Ferguson
 - Brown v. Board of Education

8. February 13, 2020 - 14th Amendment – Equal Protection

- Required Readings:
 - Hall, et al. - 517 - 524, 675 - 682
- Relevant Cases:
 - Baker v. Carr
 - Bush v. Gore
 - Regents of University of California v. Bakke
 - Obergefell v. Hodges

9. February 18, 2020 - Civil Rights

- Required Readings:
 - Hall, et al. - 509 - 516
 - Selected articles to be assignment via Blackboard
- Relevant Cases:
 - Powell v. Alabama
 - Shelley v. Kraemer
 - Heart of Atlanta Motel, Inc. v. U.S.
 - Loving v. Virginia

10. February 20, 2020 – Civil Rights

- Required Readings:
 - Hall, et al. - 509 - 516
 - Selected articles to be assignment via Blackboard
- Relevant Cases:
 - Brown v. Board of Education
 - Heart of Atlanta Motel, Inc. v. U.S.
 - Loving v. Virginia

11. February 25, 2020 – Freedom of Speech and Protest – Civil Rights

- Required Readings:
 - Hall, et al. - 509 - 516
 - Selected articles to be assigned via Blackboard
- Relevant Cases:
 - NAACP v. Alabama
 - Cox v. Louisiana
 - Edwards v. South Carolina
 - Brown v. Louisiana
 - Adderley v. Florida

12. February 27, 2020 - Industrial America and the Rise of Regulation

- Required Readings:
 - Hall, et al. - 375 - 381, 388 - 396
- Relevant Cases:
 - U.S. v. E.C. Knight and Co.
 - In re Jacobs
 - In re Debs

13. March 3, 2020 – Regulation and the New Deal

- Required Readings:
 - Hall, et al. - 485 - 498
- Relevant Cases:
 - Schechter v. United States
 - United States v. Boulder

14. March 5, 2020 - Civil Liberties in Wartime – WWI

- Required Readings:
 - Rehnquist - Chapters 2, 3, 7, 9, and 14
 - Lewis - Chapter 7
 - Hall, et al. - 429 - 437
- Relevant Cases:
 - Schenck v. U.S.
 - Abrams v. U.S.
 - Debs v. U.S.
- Midterm Prompts Distributed

15. March 10, 2020 - Civil Liberties in Wartime – WWI

- Required Readings:
 - Rehnquist - Chapters 7, 9, and 14
 - Lewis - Chapter 7
 - Hall, et al. - 429 - 437
- Relevant Cases:
 - Debs v. U.S.

16. March 12, 2020 - MIDTERM

- In-Class Essays

MARCH 14 → MARCH 21 - SPRING BREAK

16. March 24, 2020 – Civil Liberties in Wartime – WWII

- Required Readings:
 - Rehnquist - Chapters 15 - 18
 - Lewis - Chapter 7
 - Hall, et al. - 441 - 455

- Relevant Cases:
 - Hirabayashi v. U.S.
 - Korematsu v. U.S.
 - Ex Parte Endo
 - Ex Parte Quirin
- Extension - Trump v. Hawaii

17. March 26, 2020 - Civil Liberties in Wartime – WWII

- Required Readings:
 - Rehnquist - Chapters 15 - 18
 - Lewis - Chapter 7
 - Hall, et al. - 441 - 455
- Relevant Cases:
 - Hirabayashi v. U.S.
 - Korematsu v. U.S.
 - Ex Parte Endo
 - Ex Parte Quirin
- Extension - Trump v. Hawaii

19. March 31, 2020 - Civil Liberties in Wartime – Cold War

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

20. April 2, 2020 – 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. April 7, 2020 -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
22. April 9, 2020 – 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
23. April 14, 2020 - 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
24. April 16, 2020 – Civil Liberties in Wartime - Global War on Terror - Drone Strikes:
- Movie:
 - “Eye in the Sky”
23. April 21, 2020 - Civil Liberties in Wartime & Political Protest
- Transition:
 - Reflection and Conclusion
 - Introduction
25. April 23, 2020 - 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
26. April 28, 2020 - Freedom of Speech - Digital Speech
- Required Readings:
 - Selected articles to be assigned.

- Relevant Cases:
 - TBD

27. April 30, 2020 – Freedom of Speech - Digital Speech

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

Final exam - May 15, 2020 - 3-6 PM