

**Law and Society in History**  
**HIST369**  
**Fall 2013**



Professor Alison Lefkowitz

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Class time: Monday and Thursday, 1:00-2:25 pm

Class room: TIER 111

Office hours: Monday and Thursday, 10:00am-12:00noon

Office hours location: Cullimore Hall 327

This course examines the history of American law from the colonial period into the present. To do so we will examine case law, secondary material written by legal scholars, and cultural representations of the law over time. The course explores first how the concept and practice of law changed through such transformative events as the Revolution, the rise of a market economy, the Civil War, the rise of the large federal state, the civil rights revolution, and more. The class will also interrogate the ways in which the legal system treated people of different genders, races, classes, religions, and sexualities differently and in doing so, helped produce those categories. In other words, how has the law both reflected and created inequality over time? Finally we will explore the separations between the ways in which the law was written, understood, and lived.

**Learning Outcomes**

- a) track the changes and continuities in the American legal system
- b) identify how these changes came to pass in class discussion and written assignments
- c) engage in debate on the relationship between power and the law
- d) assess interpretive approaches and biases in secondary sources
- e) make arguments using legal documents as primary sources
- f) relate historical changes to present day legal issues.

g) demonstrate information literacy through the use of appropriate source material and original research and the ability to cite properly

The following assignments will gauge students' success with these learning outcomes.

- 1) Attendance, participation, and careful reading of the assigned texts. This class will mix lecture and discussion. You will be expected to participate in discussion. If you miss more than 4 classes **for any reason**, you will receive no more than 75 points in this category. You will also need to actively participate to get points in this category. (150 points)
- 2) Weekly response papers. These should be no more than a page in length and QUOTE at least two of that week's assigned readings. Each response should address the theme I assign for that week. Responses that fulfill the assignment will receive full credit, though comments on some responses will be your primary guide to my expectations for writing papers. The response is due on Thursday by class-time. Late responses will not be accepted. (150 points)
- 3) 2-3 page short paper. In this paper, you should select a case on slavery from before the Civil War on Lexis-Nexis and place it in its historical context. Use the case to make an argument about the assumptions the ruling demonstrates about slavery and the rule of law before the Civil War. This paper is designed to help you learn to use Lexis-Nexis and to use legal cases as historical documents. (100 points)
- 4) A midterm. The exam will have identifications/short answer questions and one essay based on the themes and readings in the first half of the course. The midterm will be on **October 21**. (200 points)
- 5) 8-10 page final paper. In this paper, you will be responsible for writing a historical brief on a recent US Supreme Court Case that you will select from several options I provide you. Your aim is to use historical research to support one side of the case. For example, you might show that the "tradition" a law was based on has no historical basis or that that the circumstances that justified that law have changed over time. We will examine sample cases in class that were influenced by historical reasoning in order to get a sense of what this should look like. **Due December 13**. (300 points) You will first turn in a proposal stating what case, which side, what sources, and what historical vantage point you will be using. **Due November 21**. (100 points)

### **Code of Conduct:**

--Though I hope we disagree on many different issues, I expect you to treat the class, your fellow students, and me with respect at all times.

--No cell phones, no texting, no gchatting, no facebook, etc. If students cannot conduct themselves without disruption, I will disallow computers in the classroom.

--Plagiarism and other forms of academic dishonesty are unacceptable. You will be submitting papers via turnitin. For further information on academic dishonesty and the policy I will follow if I discover any problems, see: <http://www.njit.edu/academics/pdf/academic-integrity-code.pdf>

### **Assigned Texts**

Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008).

Michael Willrich, *Pox: An American History* (Penguin, 2011).

## **1. Introduction**

**Thursday, September 5**

--Orrin S. Kerr, "How to Read a Legal Opinion: A Guide for New Law Students," 11 Green Bag 2 (2007), 51-63.

## **2. The Law in the Colonies**

### **Monday, September 9**

--Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly*, 48 (Jan. 1991), 19-49.

--Virginia Laws of Slavery and Servitude

### **Thursday, September 12**

--Michael Meranze, "Penalty and the Colonial Project: Crime, Punishment, and the Regulation of Morals in Early America" in *The Cambridge History of Law in America, Volume 1* (Cambridge University Press, 2011).

-- James Otis, "The Rights of the British Colonies" (1764)

Class Writing Topic: Summarize the reading and relate it to a current event or something in your own life.

## **3. Establishing American Law**

### **Wednesday, September 16**

--The Declaration of Independence (1776)

--Jack P. Greene, "The American Revolution," *American Historical Review* 105 (Feb. 2000), 93-102.

### **Friday, September 19**

--The Constitution of the United States (1788)

--The Bill of Rights (1789)

--*Marbury v. Madison* (1803)

Class Writing Topic: Was the new American legal system a significant break from the English system?

## **4. The Market and the Law**

### **Monday, September 23**

--*Dartmouth College v. Woodward* (1819)

--*McCulloch v. Maryland* (1819)

--*Charles River Bridge v. Warren Bridge* (1837)

--Jill Norgren, "Lawyers and the Legal Business of the Cherokee Republic in Courts of the United States, 1829-1835," *Law and History Review* (Autumn 1992), 253-314.

### **Thursday, September 26**

--*Farwell v. Boston Railroad* (1842)

--William Novak, "Public Economy and the Well-Ordered Market: Law and Economic Regulation in 19th-Century America." *Law & Soc. Inquiry* 18, no. 1 (1993): 1-32.

Class Writing Topic: Was there a free market in the early 19<sup>th</sup> century?

## **5. Slavery**

### **Monday, September 30**

--*State v. Mann*, 13 N.C. 263 (1830)

--Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," 108 *Yale Law Journal* 109 (1998).

### **Thursday, October 3**

--*Dred Scott v. Sandford* (1857)

--Gautham Rao, "The Federal *Posse Comitatus* Doctrine: Slavery, Compulsion, and Statecraft in Mid-Nineteenth Century America," *Law and History Review*, vol. 26, no. 1 (January, 2008).  
SHORT PAPER DUE

## **6. Emancipation**

### **Monday, October 7**

--Eric Foner, "Rights and the Constitution in Black Life during the Civil War and Reconstruction," *Journal of American History*, vol. 74, no. 3 (Dec., 1987), 863-883.

### **Thursday, October 10**

--13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments

--Barbara Y. Welke, "When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914," *Law and History Review* 13 (1995), 261-316.

Class Writing Topic: Was the rise of Jim Crow inevitable?

## **7. The Limits to Reconstruction**

### **Monday, October 14**

--*Bradwell v. Illinois* (1873)

--*Plessy v. Ferguson* (1896)

--Susan Glaspell, "A Jury of Her Peers" (1903)

### **Thursday, October 17**

--The Slaughterhouse Cases (1873)

--*Lochner v. New York* (1905)

--Amy Dru Stanley, "Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America," *The Journal of American History*, 1992.

Class Writing Topic: Choose a case assigned for this week. How would American history have changed if the ruling had gone the opposite direction?

## **8. The Law During the Progressive Era I**

### **Monday, October 21**

--IN-CLASS MIDTERM

### **Thursday, October 24**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), Prologue, chapters 1-2

## **9. The Law During the Progressive Era II**

### **Monday, October 28**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), chapters 3-5

### **Thursday, October 31**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), chapters 6-8

Class Writing Topic: TBD

## **10. Remaking Citizenship**

### **Monday, November 4**

--The Page Act

--Mae M. Ngai, "The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924," *Journal of American History*, vol. 86, no. 1 (Jun., 1999).

Class Writing Topic: TBD

### **Thursday, November 7**

CLASS CANCELLED

## **11. The New Deal and World War II**

### **Monday, November 11**

--*Schechter Poultry v. United States* (1935)

--Reuel E. Schiller, "The Era of Deference: Courts: Expertise, and the Emergence of New Deal Administrative Law," *Michigan Law Review*, vol. 106, no. 3 (December, 2007), 399-442.

### **Thursday, November 14**

--United States Government, "Japanese Relocation," (1942)

--Margot Canaday, "Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill," *Journal of American History*, vol. 90, no. 3 (December 2003), 935-957.

Class Writing Topic: TBD

## **12. The Rights Revolution**

### **Monday, November 18**

--*United States v. Carolene Products* (1938) ), footnote 4

--*Brown v. Board of Education* (1954)

--*The Heart of Atlanta Motel v. United States* (1964)

### **Thursday, November 21**

--*Loving v. Virginia* (1967)

--*Reed v. Reed* (1971)

--Serena Mayeri, *Reasoning from Race*, chapter 1.

FINAL PAPER PROPOSAL DUE

## **13. The Right to Privacy**

### **Monday, November 25**

--*Griswold v. Connecticut* (1965)

--*Roe v. Wade* (1973)

--*Lawrence v. Texas* (2003)

### **Tuesday, November 26**

--*Illinois v. Caballes* (2005)

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008). Chapters 1-2.

Class Writing Topic: TBD

## **14. The War on Drugs**

### **Monday, December 2**

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008). Chapters 3-5.

### **Thursday, December 5**

--*Gonzalez v. Raich* (2005)

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008). Chapters 6-8.

Class Writing Topic: TBD

## **15. Contemporary Law**

### **Monday, December 9**

--*Grutter v. Bollinger* (2003)

--*Citizens United v. Federal Election Commission* (2010)

### **Monday, December 13**

FINAL PAPER DUE