

# Law and Society in History

## Hist369/Hist 369H

### Fall 2017



Professor Alison Lefkowitz

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Class time: Monday and Thursday, 2:30-3:55 pm

Class room: CKB 314

Office hours: Monday, 10:30-11:30 am; Thursday 10:30am-2:00pm; and by appointment

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 literature 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 emergence 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 separation between the ways in which the law was written, understood, and lived. Prerequisites: Hum 101, Hum 102 and one from among Hum 211, Hum 212, and Hum 213 or their equivalents with a grade C or better.

#### 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. To excel in this course, you are expected to be able to locate and use web AND library resources effectively and cite them correctly. Davida Scharf is an expert researcher and our librarian for the History Department. She has prepared online research guides that you may find useful. She is available for help during her office hours, or by appointment. Her contact information, calendar, and research guides are available here: <http://researchguides.njit.edu/scharf>. Please take advantage of her expertise.

The following assignments will gauge students' success with these learning outcomes. Students will be graded on a scale where 100-90 percent is an A; 89.9-80 is a B; 79.9-70 is a C; 69.9-60 is a D; and 59.9 and below is an F.

- 1) Participation, careful reading of the assigned texts, and pop quizzes if necessary. This class will mix lecture and discussion. You will be graded on whether you actively participate in discussion, and you must be present to participate. If you miss more than 4 classes, you will receive no more than 75 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. The response is due on Thursday by class-time. Late responses will not be accepted. (175 points/100 points HONORS)
- 3) 2-3 page short paper. In this paper, you should select a case on slavery on Lexis-Nexis and place it in its historical context. *You may not use cases we read in class.* 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. **Due OCTOBER 5.** I will deduct points for late papers. You also must turn late papers in online **and** as a hard copy. (150 points/125 points HONORS)
- 4) A midterm. The exam will cover the themes and readings in the first half of the course. The midterm will be on **OCTOBER 19.** (200 points/175 points HONORS)
- 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 18.** (300 points) I will deduct points for late papers. You also must turn late papers in online **and** as a hard copy. 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.** I will deduct points for late proposals. You also must turn late proposals in online **and** as a hard copy. (25 points)

- 6) HONORS ONLY: Pick ONE of the following assignments (125 points HONORS):
- a. Book review. Choose one book from a selection of monographs to write a 5-page book review. The review should summarize the arguments and main bodies of evidence from the book, highlight its contributions, and identify its largest flaws. You should also identify the audience that the book will appeal to most. Each component of the review is required even if each section is not given equal weight. The due date will be based on the book you choose.

OR

  - b. War on Drugs proposal. 5 pages. Use sources from the class and additional research to craft a legal and political strategy for reworking the War on Drugs. This means you should formulate a legal strategy to convince SCOTUS of your perspective AND a plan for getting the public to support your perspective. See, for example, Schmidt’s account of the sit-in movement. **Due DECEMBER 11.**

a) track the changes and continuities in the American legal system	Participation; Weekly response papers; Midterm; Long paper.
b) identify how these changes came to pass in class discussion and written assignments	Participation; Weekly response papers; Midterm; Long paper.
c) engage in debate on the relationship between power and the law	Participation; Weekly response papers; Short paper; Midterm; Long paper; HONORS PAPER.
d) assess interpretive approaches and biases in secondary sources	Participation; Weekly response papers; Long paper.
e) make arguments using legal documents as primary sources	Participation; Weekly response papers; Short paper.
f) relate historical changes to present day legal issues	Participation; Weekly response papers; Long paper; HONORS PAPER.
g) demonstrate information literacy	Short paper; Long paper; HONORS PAPER.

**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, texting, facebook, etc. If students cannot conduct themselves without disruption, I will disallow computers in the classroom. Anyone who wishes to use a laptop must sit in the front two rows of the classroom.
- Plagiarism and other forms of academic dishonesty are unacceptable. You will be required to pass a quiz to demonstrate your knowledge of academic dishonesty before you will be allowed to turn in any other work. You will be submitting all written work via

turnitin. For further information on academic dishonesty and the policy I will follow if I discover any problems, see: <http://integrity.njit.edu/index.html>

### **Assigned Texts**

Most readings will be available on **moodle**. The following required texts will be available at the bookstore for purchase. They are also available on a 2-hour reserve at the NJIT library:

Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008). ISBN: 978-0143114932

Michael Willrich, *Pox: An American History* (Penguin, 2011). ISBN: 978-0143120780

### **1. Introduction**

#### **Thursday, September 7**

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

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

#### **Monday, September 11**

--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).

--Virginia Laws of Slavery and Servitude

#### **Thursday, September 14**

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

--The Declaration of Independence (1776)

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

### **3. Establishing American Law**

#### **Monday, September 18**

--The Constitution of the United States (1788)

--The Bill of Rights (1789)

#### **Thursday, September 21**

--*Marbury v. Madison* (1803)

---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.

Class Writing Topic: Were the courts powerful in the new American legal system?

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

#### **Monday, September 25**

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

--*McCulloch v. Maryland* (1819)

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

## **Thursday, September 28**

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

--William Novak, "Public Economy and the Well-Ordered Market: Law and Economic Regulation in 19th-Century America" *Law & Social Inquiry* 18 (Winter 1993), 1-32.

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

## **5. Slavery**

### **Monday, October 2**

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

--Ariela J. Gross, "Slavery, Anti-Slavery, and the Coming of the Civil War," in *The Cambridge History of Law in America, Volume 2* (Cambridge University Press, 2011), 280-312.

### **Thursday, October 5**

--*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), 1-56.

SHORT PAPER DUE

## **6. Emancipation**

### **Monday, October 9**

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

### **Thursday, October 12**

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

--*Plessy v. Ferguson* (1896)

Class Writing Topic: Was the Civil War successful?

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

### **Monday, October 16**

--The Slaughterhouse Cases (1873)

--*Bradwell v. Illinois* (1873)

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

### **Thursday, October 19**

--IN-CLASS MIDTERM

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

### **Monday, October 23**

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

### **Thursday, October 26**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), chapter 3.

Class Writing Topic: Did doctors or lawmakers have more power during the pox outbreak?

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

### **Monday, October 30**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), chapters 4, 6.

**Thursday, November 2**

--Michael Willrich, *Pox: An American History* (Penguin, 2011), chapter 8.

Class Writing Topic: Should parents be allowed to exempt their children from vaccines? Legally? Morally?

**10. Remaking Citizenship**

**Monday, November 6**

--The Page Act

--Sacco and Vanzetti Summation for the Defense

LAST DAY TO WITHDRAW

**Thursday, November 9**

--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: Compare the late nineteenth and early twentieth century immigration system (prior to implementation of the Immigration Act of 1924) to today's system.

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

**Monday, November 13**

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

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

**Thursday, November 16**

--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: Was the new federal state more intrusive or less intrusive than local government in the colonial and early republic eras?

**12. The Rights Revolution**

**Monday, November 20**

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

--Christopher W. Schmidt, "Divided by Law: The Sit-Ins and the Role of the Courts in the Civil Rights Movement," *Law and History Review* 33 (February 2015), 93-149.

**Tuesday, November 21**

--*Reed v. Reed* (1971)

FINAL PAPER PROPOSAL DUE

**13. The Right to Privacy**

**Monday, November 27**

--*Griswold v. Connecticut* (1965)

--*Katz v. United States* (1967)

--*Roe v. Wade* (1973)

**Thursday, November 30**

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

Class Writing Topic: Was Supreme Court Justice Douglas correct that the “spirit” of the Bill of Rights grants Americans a right to privacy that cannot be infringed on?

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

##### **Monday, December 4**

--*Gonzalez v. Raich* (2005)

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

##### **Thursday, December 7**

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

Class Writing Topic: What laws or policies have created the situation that Venkatesh observes in *Gang Leader for a Day*? What laws would you change?

#### **15. Contemporary Law**

##### **Monday, December 11**

--*Shelby County v. Holder* (2013)

HONORS OPTION 2 DUE

#### **16. Final Exams**

##### **Monday, December 18**

FINAL PAPER DUE

*\* I reserve the right to make any changes to the syllabus that I deem necessary.\**