

AMERICAN LEGAL HISTORY II

Rutgers, Newark: Summer II 2020

History 21:512:266

Time: Asynchronous

Location: Online

Instructor: Joe Dwyer

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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 Approach - Asynchronous Learning

Each Sunday, course materials for the upcoming week will be posted in a folder on Blackboard. Each week course materials will include Screen Recordings of Lectures for each topic and case excerpts from the cases relevant to each topic. You should follow the reading schedule below for the additional background readings to complete each week.

I do not anticipate having required digital “in person” meetings or discussions. I understand that people are busy and I think an asynchronous approach works well for this course. Your opportunities to grapple with course materials are in your responses to weekly questions. Not only are those weekly questions important for your semester grade, they are an important exercise in synthesizing and understanding more deeply, course materials.

If you are having a hard time with any aspect of the course content I will keep a discussion board in Blackboard to address such questions, imagining it as if you were asking the question “in class.” As such, my response would be public for all students once posted via Blackboard. If you would prefer to communicate via Blackboard, that is also fine. If you feel the need for a one on one Google Meet (the platform that I find works best for me), we could take that approach as well.

Most importantly, please be mindful that Blackboard will be used for all aspects of this course. It is where your materials will be posted, your weekly assignments will be due, and where you will submit your case project analysis and final exams.

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. Weekly Questions
2. Midterm exam
3. Final exam
4. Withdrawal deadlines:
 - a. July 6 - 10, 2020 - Withdrawals receive 50% tuition refund and “W” grade
 - b. July 13 - August 5, 2020 - Withdrawals receive no refund and “W” grade

Grading:

45% Final Exam (Due via Blackboard no later than 11:59 pm on August 12th.)

- More details to be posted via Blackboard

30% Case Project Analysis (Due via Blackboard no later than 11:59 on July 24th)

- More details to be posted via Blackboard

25% Weekly Questions (Due every Friday of the session no later than 11:59 pm)

ALL SUBMISSIONS DUE VIA BLACKBOARD

Grade scale (for grades submitted to transcripts):

A: 89.5-100

B+: 85-89.4

B: 79.5-84.9

C+: 75-79.4

C: 69.5-74.9

D: 59.5-69.4

F: 0-59.4

Required Texts:

Hall, Kermit L., Paul Finkelman, and James W. Ely, Jr. *American Legal History Cases and Materials* - Fifth Edition. . ISBN - 0190253266.

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 uncopied 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.

Tentative Class Schedule

1. Week 1 (July 6 - 10) - Course Introduction & The 14th Amendment Part I (Challenges; Citizenship & Due Process)
 - a. Relevant Cases
 - i. Dred Scott v. Sandford
 - ii. Slaughterhouse Cases
 - iii. U.S. v. Cruikshank
 - iv. Civil Rights Cases
 - v. Elk v. Wilkins
 - vi. U.S. v. Wong Kim Ark
 - vii. Insular Cases
 - b. Readings
 - i. Hall, et al. - 266 - 291, 294 - 312
2. Week 2 (July 13 - 17) - 14th Amendment Part II (Equal Protection) Intro to Law and the Civil Rights Era
 - a. Relevant Cases
 - i. Bush v. Gore
 - ii. Regents of University of California v. Bakke
 - iii. Obergefell v. Hodges
 - iv. Plessy v. Ferguson
 - v. Brown v. Board of Education
 - b. Readings
 - i. Hall, et al. - 282 - 291, 509 - 512, 517 - 524, 675 - 682, 509 - 516

3. Week 3 (July 20 - 24) - Law and the Civil Rights Era

a. Relevant Cases

- i. Powell v. Alabama
- ii. Shelley v. Kraemer
- iii. Heart of Atlanta Motel, Inc. v. U.S.
- iv. Loving v. Virginia
- v. NAACP v. Alabama
- vi. Cox v. Louisiana
- vii. Edwards v. South Carolina
- viii. Brown v. Louisiana
- ix. Adderley v. Florida

b. Readings

- i. Hall, et al. - 509 - 516

4. Week 4 (July 27 - 31) - The Rise of Antitrust and Labor Law - Early Industrial American and the New Deal

a. Relevant Cases

- i. U.S. v. E.C. Knight and Co.
- ii. In re Jacobs
- iii. In re Debs
- iv. Schechter v. United States
- v. United States v. Boulder

b. Readings

- i. Hall, et al. - 375 - 381, 388 - 396, 485 - 498

5. Week 5 (August 3 - 7) - Civil Liberties in Wartime - World War I and World War II

a. Relevant Cases

- i. Schenck v. U.S.
- ii. Abrams v. U.S.
- iii. Debs v. U.S.
- iv. Hirabayashi v. U.S.
- v. Korematsu v. U.S.
- vi. Ex Parte Endo
- vii. Ex Parte Quirin

b. Readings

- i. Rehnquist - Chapters 2, 3, 7, 9, 14, and 15 - 18
- ii. Hall, et al. - 429 - 437, 441 - 455

6. Week 6 (August 10 - 14) - Civil Liberties in Wartime - The Cold War and the Global War on Terror

a. Relevant Cases

- i. Dennis v. U.S.
- ii. Yates v. U.S.
- iii. Cole v. Young
- iv. Rosenberg v. U.S.
- v. Loyalty Oath/Affirmation Cases
- vi. Hamdi v. Rumsfeld
- vii. Hamdan v. Rumsfeld

viii. Rumsfeld v. Padilla

ix. Rasul v. Bush

x. Boumediene v. Bush

b. Readings

i. Supplemental readings to be assigned