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HIST 369-001: Law and Society in History

Alison Lefkovitz

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Law and Society in History

Hist 369

Fall 2020



Professor Alison Lefkovitz

Email: alison.lefkovitz@njit.edu

Class time: Tuesday and Thursday, 11:00 AM-12:20 PM

Location:

<https://njit.webex.com/njit/j.php?MTID=m22c3cbb3dabe30a3f1fcb770d1d5a639>

Password: 369

Office hours: Tuesday and Thursday, 12:30-1:30; and by appointment.

Location: <https://njit.webex.com/meet/alefkovi>

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 and careful reading of the assigned texts. This class will mix lecture and discussion. You will be evaluated on whether you actively and regularly participate in discussion. This will look different during our synchronous online course than it does in face-to-face classrooms. I do not expect you to keep your camera on (though I do hope for some cute pet sightings from at least some of you over the course of the semester). But I will evaluate you on whether you speak up in class, on the chat, in polls, and in the online activities. (150 points)
- 2) Weekly discussion board posts. These should QUOTE at least one of that week's assigned readings. Each response should be at least a paragraph long and address the theme I assign for that week. Responses that fulfill the assignment will receive full credit. The response is due on Wednesday by midnight. (250 points)
- 3) 2-3 page short paper. In this paper, you should select a case on slavery on Nexis-Uni 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 Nexis-Uni and to use legal cases as historical documents. **Due OCTOBER 1.** (250 points)
- 4) 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 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 15.** (300 points) You will first turn in a 1-2 page proposal stating what case, which side, what sources, and what historical vantage point you will be using. **Due NOVEMBER 19.** (50 points)

- 5) **SERVICE LEARNING OPTION.** You may opt to participate in a pilot service learning option for this course. In this option you will spend 20-30 hours volunteering online with a local organization that deals with law or policy-related issues. Some potential collaborators include the ACLU, the Donald Payne School mock trial team, etc. This is an opportunity for you to put your skills to use in the community, to gain new real-world skills, and make professional connections. At the end you will turn in a 3 page paper describing how this class informed your volunteering. Instead of the 8-10 page final paper, your historian's brief will be reduced to 5-6 pages. The option will also translate into a small amount of extra credit (approximately 50 points). You must decide by October 1 whether you will participate in the service learning option. **DUE DECEMBER 1.**

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.
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.
g) demonstrate information literacy	Short paper; Long paper.

Code of Conduct:

--This semester will be an extraordinary one in many ways, and I think patience with one another will be our only way of making it through. I will be as understanding as I can be along the way with the sole exception of academic dishonesty (see below). If you have any trouble, confusion, or worry, please reach out. We can figure something out.

--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.

-- *Academic Integrity is the cornerstone of higher education and is central to the ideals of this course and the university. Cheating is strictly prohibited and devalues the degree that you are working on. As a member of the NJIT community, it is your responsibility to protect your educational investment by knowing and following the academic code of integrity policy that is found at:*

<http://www5.njit.edu/policies/sites/policies/files/academic-integrity-code.pdf>.

*Please note that it is my professional obligation and responsibility to report any academic misconduct to the Dean of Students Office. **Any student found in violation of the code by cheating, plagiarizing or using any online software inappropriately will result in disciplinary action. This may include a failing grade of F, and/or suspension or dismissal from the university.** If you have any questions about the code of Academic Integrity, please contact the Dean of Students Office at dos@njit.edu*

Assigned Texts

Most readings will be available on **Canvas**. The following required texts will be available at the bookstore for purchase.

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

Tuesday, September 1

--Introduction

Thursday, September 3

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

--Virginia Laws of Slavery and Servitude

2. Establishing American Law

Thursday, September 10

--The Constitution of the United States (1788)

--The Bill of Rights (1789)

Class Writing Topic: What inspired the Bill of Rights?

3. The Power of the Courts

Tuesday, September 15

--*Marbury v. Madison* (1803)

Thursday, September 17

--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

Tuesday, September 22

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

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

Thursday, September 24

--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 19th century?

5. Slavery

Tuesday, September 29

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

Thursday, October 1

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

--Martha Jones, "*Hughes v. Jackson*: Race and Rights Beyond Dred Scott," *North Carolina Law Review*, (June 1, 2013); U of Michigan Public Law Research Paper No. 375. Available at SSRN: <https://ssrn.com/abstract=2326787>

LAST DAY TO JOIN SERVICE LEARNING

SHORT PAPER DUE

6. Emancipation

Tuesday, October 6

--13th, 14th, and 15th Amendments

Thursday, October 8

-- Khalil Muhammad, "Where Did all the White Criminals Go? Reconfiguring Race and Crime on the Road to Mass Incarceration," *Souls: A Critical Journal of Black Politics, Culture, and Society* (2011), 72-90.

Class Writing Topic: Did the 13th amendment fail?

7. The Limits to Reconstruction

Tuesday, October 13

--*Plessy v. Ferguson* (1896)

Thursday, October 15

-- The Slaughterhouse Cases (1873)

--*Bradwell v. Illinois* (1873)

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

Class Writing Topic: Did the 14th amendment fail?

8. The Law During the Progressive Era I

Tuesday, October 20

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

Thursday, October 22

--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

Tuesday, October 27

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

Thursday, October 29

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

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

10. Remaking Citizenship

Tuesday, November 3

--The Page Act

Thursday, November 5

--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 (June 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

Tuesday, November 10

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

--More Perfect Podcast: American Pendulum 1

Thursday, November 12

--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

Tuesday, November 17

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

--Tim Lovelace, "King Making: *Brown v. Board* and the Rise of a Racial Savior," *American Journal of Legal History* 57 (December 2017), 393-446.

Thursday, November 19

--*Griswold v. Connecticut* (1965)

FINAL PAPER PROPOSAL DUE

13. The Right to Privacy

Tuesday, November 24

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

Thursday, November 26

--No class for Thanksgiving!

14. The War on Drugs

Tuesday, December 1

--*Gonzalez v. Raich* (2005)

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

SERVICE LEARNING PAPER DUE

Thursday, December 3

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008), chapters 3-4.

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

Tuesday, December 8

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008), chapters 5-6.

Thursday, December 10

--Sudhir Venkatesh, *Gang Leader for a Day: A Rogue Sociologist Takes to the Streets* (Penguin, 2008), chapters 7-8.

16. Final

Tuesday, December 15
FINAL PAPER DUE

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