

MEDICINE AND HEALTH LAW IN MODERN AMERICA

HIST 378 Honors

FALL 2023 SYLLABUS

Prof. Stephen Pemberton
Federated Department of History
New Jersey Institute of Technology

Class Meetings

1:00-2:20 PM Mondays & Wednesdays
Central King Building (CKB) 207

Office Hours

Mondays 2:45–4:00 p.m. and by appointment.

Contact Information

Cullimore Hall 329
Phone: 973-596-5716
Email: stephen.pemberton@njit.edu
Pronouns: he/him/his

This course examines the legal, social, and political aspects of medical and public health practice in the United States from 1900 to the present. Historical cases are the focus throughout the course, and will include discussions of quarantine, immunization, sterilization, cigarette smoking, contraception and abortion, end-of-life decision-making, and various controversies related to bodily autonomy. Course themes include the rights and responsibilities of physicians and patients, the roles of government in promoting health, the tensions between civil liberties and public health, the history of U.S. health law, as well as evolving notions of bodily autonomy, health privacy, harm, liability, uncertainty, and proof as they relate to the histories of law, medicine, and public health in modern U.S. society.

Learning Outcomes

By the end of the course, students will be able to:

- *Identify* and *correlate* key historical actors and events since 1900 in the U.S. and how they have shaped and influenced medicine, public health, and law in American society.
- *Identify* and *describe* various controversies in medicine and health law of the last century, and *explain* how medical, public health, and legal practitioners approach the issues for better and/or worse.
- *Write* effective essays that *describe* and critically *evaluate* the merits of a certain argument in a specific place and time.
- *Demonstrate* information literacy consistent with being an upper-level undergraduate: including (1) locating, retrieving, and evaluating information relevant to writing at the undergraduate level; (2) organizing, synthesizing, and communicating information in clear, persuasive prose; and (3) producing written work that employs principles consistent with the ethical and legal uses of information.

Prerequisites

Grade C or better in HUM 102 and a 200-level Humanities or History course or their equivalents. Honors College student or permission of instructor.

Course Webpage (Canvas)

There is a Canvas webpage for this course that the professor and class will utilize throughout the semester. The course webpage contains the syllabus, assignments, readings, and other features that will enhance your learning experience this semester.

Please consult this website regularly, preferably at least once before every class meeting.

Canvas access [here](#) with your UCID.

Office Hours

My regular office hours are Mondays from 230-4 pm, or by appointment.

Please email me at least a day in advance for an appointment.

Students have the option of meeting me virtually (on Zoom) or in person (Cullimore 329) for office hours. Please indicate your preferred mode for meeting when emailing for an appointment.

The Zoom link for meeting me virtually is accessible via our Canvas course page.

Readings

Students should follow the semester schedule to determine what readings to complete for each class period.

The readings for this course are identified in the syllabus and Canvas webpages.

These readings include historical documents (i.e., primary sources) and scholarly essays, articles, book chapters and contemporary news media (i.e., secondary sources).

All readings for the course will be posted on the course webpage as pdfs.

Assignments and Grading

The primary goal of this course is to promote critical thinking about medicine, public health, and law in their relation to U.S. society – both past and present. All students will be evaluated on their written and oral communication. The course grade is based on the completion of the assignments in addition to the professor's assessment of each student's participation throughout the course.

<u>Assignments</u>		<u>Grading Scale for Course Grade</u>
Participation	10 %	A = 89.5 to 100
Quizzes	10 %	B+ = 86.5 to 89.4
Reading Responses	35 %	B = 79.5 to 86.4
Midterm Essay	25 %	C+ = 76.5 to 79.4
Final Project	20 %	D = 59.5 to 69.4
		F = 59.4 to 0
<hr/> Course Grade		100 %

Participation (10% of Course Grade)

The class participation grade will reflect both the student's presence in the classroom and their consistency and improvement in engaging the subject matter across the course. Students should promptly communicate any concerns about their ability to meet the following requirements with the professor.

Attendance Policy. This course is taught in person. Missing even a single class is not recommended. However, each student is allowed to miss three full class periods without penalty to their participation grade. It is highly recommended that you consult with the professor about any missed class time beyond two absences. Class time missed beyond the three “excused” classes will result in substantial reductions in the student's participation grade (as calculated as a percentage of formal contact hours for the semester). The professor will consider excusing repeat absences under extraordinary circumstances that can be verified by the Dean of Students Office. See policy on “Student Accommodations” below for further details. Overall, attendance will constitute half of the course participation grade.

Student Engagement. The student's verbal and non-verbal engagements with class activities account for the other third of the participation grade. Each student should come to class promptly and regularly, actively listen to the online presentations, and be prepared to ask questions and discuss the readings assigned for the day. Students should respect the learning environment by arriving on time and staying the full term of the session. Students who participate regularly and constructively in discussion will be rewarded with higher grades in their final participation grade. A student must contribute to the learning environment to receive full credit in this area. Meeting the professor in office hours also counts positively toward participation. The professor will also consider improvement and other factors in his assessment of each student's participation grade, and he reserves the right to award extra credit to students who make substantial contributions to the learning environment.

Quizzes (10% of Course Grade)

The professor will evaluate the student's competency at discussing the readings in writing, in part, by assessing student performance on online quizzes (usually short-answer or multiple-choice questions related to the day's assigned reading). The act of doing these regular quizzes is an important and comparatively easy way for students to see if they are grasping the main subject matter and/or key points from the course reading. Your final grade on the quizzes will be composed of your top 10 quiz grades.

Reading Responses (35% of Course Grade)

The professor will evaluate the student's competency at discussing the readings in writing, in part, by assessing student performance on reading response essays. Each of these assignments will require the student to respond in formal writing to reading-based questions – typically, by answering a question as directed. Collectively, reading responses will count as **35%** of the final course grade.

There are 4 reading response assignments in the course. You must complete at least 3 of these reading responses during the semester. You must complete the first two reading response assignments then complete at least one of the remaining three reading response assignments. If you complete all four reading responses, your final reading response grade in the course will be composed of your top 3 reading response grades.

Midterm Essay (25% of Course Grade)

This essay will address a major theme and/or era related to cigarette smoking and public health. A choice of paper topics and guidelines for the writing assignment will be distributed on Canvas during the first week of the cigarette smoking and public unit.

Final Project (20% of Course Grade)

The final project will address a major issue or theme in the course. A choice of assignments will be distributed on Canvas before Thanksgiving Break.

Respect for Persons and the Learning Environment

In the interest of an open exchange of ideas and collegiality, everyone participating in the class should strive to respect their classmates as persons. The professor will make every effort to facilitate a respectful environment for learning, but students should keep in mind their own responsibilities in the classroom.

Web-surfing, texting and social media usage that is unrelated to class is disruptive of a respectful learning environment. Students are therefore expected to limit cell phone, tablet, and lap top use to class-related activities only during our designated class times.

The professor reserves the right to ask you to leave the classroom for any behaviors that do not meet the expectations of a proper, professional learning environment.

AI Policy

Artificial Intelligence is here, and many programs utilizing AI have applications for work and school. It is arguably best if you refrain from using AI software on the writing assignments in this course. If you do use AI software on an assignment, you must indicate on the assignment what software you utilized and for what purposes. Failure to do so risks being investigated for an academic integrity violation. Further guidelines for AI use are found on the Canvas webpage for this course.

Academic Integrity and Plagiarism

Academic integrity is *enforced* in this course. 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 [here](#).

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 on the assignment or course itself, 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.

Students are also responsible for upholding the integrity of NJIT by reporting any violation of academic to the [Dean of Students Office](#). The identity of the student filing any academic integrity violation will always remain anonymous.

Tutorials that explain acceptable academic writing for this course are available at the Van Houghton library website. The Library maintains another web page on how to cite sources in your academic writing [here](#). Proper citation will help you avoid plagiarism. I prefer that students use the author-date citation format from the [Chicago Manual of Style \(CMS\)](#) in their writing for this course.

Tutorials on how to evaluate appropriate online source material can be found [here](#).

Tutorials appropriate to doing coursework in a history class, such as this one, can be found [here](#).

NJIT Librarians are the experts to contact to field your questions about how the library's resources can help you succeed in this class. Their contact information is [here](#) and [here](#).

Again, all students are expected to abide by the norms outlined in these websites, this syllabus as well as the course webpage for this class, and students will be penalized for failure to do so. Please consult the professor if you have any concerns about academic integrity, academic reading, writing and citation, plagiarism or their meanings in actual practice.

Students will also be required to submit their original written work to [Turnitin.com](#), an online service used by NJIT instructors to detect plagiarism and irregularities in sourcing and citation of the written word and claims. Details for using the service will be provided along with guidelines for the specific writing assignments.

Student Accommodations and Privacy

If a student needs accommodation for illness, death in family, religious reasons, etc., University Policy dictates that the student must inform the [Dean of Students Office](#). Instructors can only accommodate a student at the direction of the Dean's Office.

Students requiring an accommodation for a disability should also contact NJIT's [Office of Accessibility Resources and Services \(OARS\)](#). Their email is oars@njit.edu. OARS will communicate your specific needs to the professor, ensuring that your disability-related

accommodations for the class and assignments are met without your having to divulge any private health information to the professor or anyone else in the class.

Students who have concerns that might impact their learning experience beyond the issues stated above may identify the nature of that concern with the professor so that he may advise you appropriately. As your professor, I will hold all individual communication with students in confidence.

Guidance on Covid-19 and other potentially communicable conditions

If you are feeling unwell on the day of class and have any reason to suspect that your symptoms may be the result of communicable infection, you should take appropriate care of yourself and not feel compelled to attend class.

If you think you have Covid-19, or if you think you have had contact with someone with Covid-19, NJIT policy is to write covid.notify@njit.edu so the university can document your status. That email address is monitored by a health professional.

Requests for excused absences or accommodations due to any Covid-19 related issues in your life, should be documented through the [Dean of Students Office](#) (DOS). Please contact DOS at dos@njit.edu. DOS will subsequently notify each of your instructors, letting them know that you require accommodations for a health condition. DOS will not disclose the nature of that condition. No instructor on campus has the right to know the particulars of your health status. That is your private information to share (or not) as you see fit.

These reporting systems are designed to ensure your privacy as well as protect the community.

Semester Schedule

Wed, Sept 6. Introduction: Medicine & Health Law in Modern America

Read course syllabus and visit course webpage.

Begin In-Class Documentary: *Typhoid Mary: The Most Dangerous Woman in America*

Mon, Sept 11. Public Health Law & the Limits of Liberty

Reading:

Judith Walzer Leavitt, “A Menace to the Community: Law and the Limits of Liberty,” Chapter 3 of *Typhoid Mary: Captive to the Public’s Health* (Boston: Beacon Press, 1996), pp. 70-95. (25 pages)

Complete In-Class Documentary: *Typhoid Mary: The Most Dangerous Woman in America*

Wed, Sept 13. Disease Carriers & the Tension between Civil Liberties & Public Health

Re-read: Leavitt, “A Menace to the Community: Law and the Limits of Liberty”

Thurs, Sept 14. Assignment Due

Complete Reading Response 1 (Required)

Mon, Sept 18. The U.S. Constitution – “Constitution Day”

Assignment:

Complete Quiz 1 Before Class

Reading:

“14th Amendment, Section 1” in Andrew Arnold, *A Pocket Guide to the U.S. Constitution* (New York: Learning Solutions, 2011), pp. 109-125. (13 pages)

Read this selection from “Introduction” to Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 3-18, 26-27. (18 pages)

After reading the above, examine the “Facts of the Case”, “Question”, and “Conclusion” sections of these three landmark U.S. Supreme Court cases:

- *Slaughterhouse Cases* (1873) <https://www.oyez.org/cases/1850-1900/83us36>
- *Lochner v. New York* (1905) <https://www.oyez.org/cases/1900-1940/198us45>
- *Muller v. Oregon* (1908) <https://www.oyez.org/cases/1900-1940/208us412>

Wed, Sept 20. Bubonic Plague Comes to America

Reading:

Alan Kraut, “A Plague of Nativism: The Cases of Chick Gin and ‘Typhoid Mary’,” in *Germes, Genes, and the ‘Immigrant Menace’* (Basic Books, 1994), pp. 78-104. (26 pages)

Mon, Sept 25. “A Plague of Nativism”

Reading (required):

Wong Wai v Williamson, U.S. Circuit Court, Northern District of California 103 F. 1, May 28, 1900.

Jew Ho v. Williamson, U.S. Circuit Court, Northern District of California 103 F. 10, June 15, 1900

Reading (recommended):

Orin Kerr, “How to Read a Legal Opinion: A Guide for New Law Students” (2007)

Wed, Sept 27. Compulsory Vaccination: *Jacobsen v Massachusetts* (1905) and *Zucht v King* (1922)

Assignment:

Complete Quiz 2 Before Class

Reading:

Read these selections on compulsory vaccination from Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 51-57, 102-117. (23 pages)

The SCOTUS decision on *Jacobsen v Massachusetts* (1905) can also be found online here: <https://www.oyez.org/cases/1900-1940/197us11>

Mon, Oct 2. The Sanitationist State, Quarantinism, and Civil Liberties

Reading:

Read these selections from John Fabian Witt, *American Contagions: Epidemics and the Law from Smallpox to Covid-19* (New Haven: Yale University Press, 2020), pp. 1-11, 35-60, 80-83. (41 pages)

Tues, Oct 3. Assignment Due

Complete Reading Response 2 (Required)

Wed, Oct 4. Eugenics & Involuntary Sterilization I

Reading:

Harry Bruinius, "A Forgotten Gravestone," Chapter 4 of *Better for All the World: The Secret of Forced Sterilization and America's Quest for Racial Purity* (New York: Vintage Press, 2006), pp. 50-77 (27 pages)

Tomorrow's Children (1934): In-class movie (excerpt)

Mon, Oct 9. Eugenics & Involuntary Sterilization II

Assignment:

Complete Quiz 3 Before Class

Reading:

Read selection on *Buck v. Bell* from Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 117-122. (6 pages)

Read selection on *Skinner v. Oklahoma* from Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 62-65. (3 pages)

Examine these two U.S. Supreme Court cases, including opinions and dissents:

- *Buck v Bell* (1927) <https://www.oyez.org/cases/1900-1940/274us200>
- *Skinner v Oklahoma* (1942) <https://www.oyez.org/cases/1940-1955/316us535>

The Eugenics Crusade (2018): In-class documentary (excerpt)

Wed, Oct 11. What changed between *Buck v. Bell* (1927) & *Skinner v. Oklahoma* (1942)?

Reading:

"Deciding Skinner," Chapter 9 of Victoria Nourse, *In Reckless Hands: Skinner v Oklahoma and the Near Triumph of American Eugenics* (New York: Norton, 2008), pp. 135-159 (27 pages)

Friday, Oct 15. Assignment Due

Complete Reading Response 3

Mon, Oct 16. Cigarette Smoking & the Rise of Big Tobacco (Culture & Persuasion)

Assignment:

Complete Quiz 4 Before Class

Reading:

Allan Brandt, Chapter 3 “Engineering Consent,” in *The Cigarette Century: The Rise, Fall, and Deadly Persistence of a Product that Defined America* (Basic Books, 2007), pp. 68-101. (34 pages)

In-class discussion of midterm essay assignment

Wed, Oct 18. Cigarette Smoking & Disease (Proof & Uncertainty)

Assignment:

Complete Quiz 5 Before Class

Reading:

Brandt, Chapter 6 “Constructing Controversy,” in *The Cigarette Century*, pp. 159-207. (43 pages)

Mad Men (2007-08) and *Thank You For Smoking* (2005): In-class movie (excerpts)

Mon, Oct 23. “This Product is Dangerous to Your Health” (Strict Liability)

Assignment:

Complete Quiz 6 Before Class

Reading:

Brandt, Chapter 10 “Nicotine Is the Product,” in *The Cigarette Century*, pp. pp. 318-356. (39 pages)

Wed, Oct 25. Cigarettes and Public Health in the 1990s and early 2000s

Assignment:

Complete Quiz 7 Before Class

Reading:

Brandt, “Mr. Butts Goes to Washington,” in *The Cigarette Century*, pp. 357-400. (43 pages)

The Insider (1999): In-class movie (Excerpts)

Mon, Oct 30. Smoking and Public Health Today / Menthol & E-Cigarettes

Reading:

Collected readings on Menthol & E-Cigarettes [on Canvas]

Wed, Nov 1. Discussion of Menthol & E-Cigarettes / Midterm Essay

Assignment:

Work on Midterm Essay

Friday, Nov 3. Assignment Due

Complete Midterm Essay

Mon, Nov 6. Contraception & the Right to Privacy

Assignment:

Complete Quiz 8 Before Class

Reading:

Martha J. Bailey, “How Contraception Transformed the American Family,” *The Atlantic Monthly*, June 16, 2015.

Read selection on “*Griswold v. Connecticut*” from Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 65-69. (4 pages)

Examine selection on “*Griswold v. Connecticut*” from *The First Amendment Encyclopedia*:
<https://www.mtsu.edu/first-amendment/article/579/griswold-v-connecticut>

Read this U.S. Supreme Court case, including opinions and dissents:

- *Griswold v Connecticut* (1964) <https://www.oyez.org/cases/1964/496>

Recommended:

Explore this website on the History of the Contraceptive Pill:
<https://www.pbs.org/wgbh/americanexperience/films/pill/>

Wed, Nov 8. Therapeutic Abortion & Abortion Law Reforms in the 1960s

Reading:

Leslie Reagan, “Law Making and Law Breaking in an Epidemic,” in *Dangerous Pregnancies: Mothers, Disabilities, and Abortion in Modern America* (University of California Press, 2010), pp. 139-179. (30 pages)

Mon, Nov 13. Understanding the Age of *Roe v. Wade* (1973)

Assignment:

Complete Quiz 9 Before Class

Reading:

Read selection on *Roe v. Wade* from Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 69-74. (5 pages)

Read this overview of *Webster v. Reproductive Health Services* (1989)
<https://embryo.asu.edu/pages/webster-v-reproductive-health-services-1989>

Then examine these U.S. Supreme Court cases, including opinions and dissent:

- *Roe v. Wade* (1973) <https://www.oyez.org/cases/1971/70-18>
- *Webster v. Reproductive Health Services* (1989)
<https://www.oyez.org/cases/1988/88-605>
- *Planned Parenthood of Southeastern Pennsylvania v. Casey*
<https://www.oyez.org/cases/1991/91-744>

Wed, Nov 15. Abortion Debates since *Roe v. Wade* and the *Dobbs* Decision (2022)

Reading:

Examine this U.S. Supreme Court case with special attention to Justice Alito's opinion and Justice Kagan's dissent:

- *Dobbs vs. Jackson Women's Health Organization* (2022)
<https://www.oyez.org/cases/2021/19-1392>

Mon, Nov 20. Medicine and Healthcare in the wake of *Dobbs* (2022)

Reading:

News coverage on the Intended & Unintended Effects of *Dobbs* (pdf packet on Canvas)

Assignment:

Complete Reading Response 4, due after class (option)

THANKSGIVING BREAK

Mon, Nov 27. The Right-to-Die in America? / Final Project Introduction

Book Chapter:

Peter Filene, "Death on Trial," in *In the Arms of Others: A Cultural History of the Right-to-Die in America* (Ivan R. Dee Publishers, 1998), pp. 11-46. (35 pages)

Wed, Nov 29. Death with Dignity

Assignment:

Complete Quiz 10 Before Class

Reading:

Peter Filene, "The Subjectivity of Dying," in *In the Arms of Others: A Cultural History of the Right-to-Die in America* (Ivan R. Dee Publishers, 1998), pp. 74-95. (21 pages)

Examine this New Jersey Supreme Court case:

- *In Re Quinlan* (1976) <https://law.justia.com/cases/new-jersey/supreme-court/1976/70-n-j-10-0.html>

Mon, Dec 4. Advanced Directives

Assignment:

Complete Quiz 11 Before Class

Reading:

Peter Filene, "A Tapestry of Relatedness," in *In the Arms of Others: A Cultural History of the Right-to-Die in America* (Ivan R. Dee Publishers, 1998), pp. 161-183. (23 pages)

Read this U.S. Supreme Court case, including opinions and dissents:

- *Cruzan v. Director, Missouri Department of Health* (1989)
<https://www.oyez.org/cases/1989/88-1503>

Wed, Dec 6. Assisted Death and the Law

Assignment:

Complete Quiz 12 Before Class

Reading:

Examine these U.S. Supreme Court cases, including opinions and dissents:

- *Vacco v. Quill* (1997) <https://www.oyez.org/cases/1996/95-1858>
- *Washington v. Glucksberg* (1997) <https://www.oyez.org/cases/1996/96-110>
- *Gonzales v. Oregon* (2006) <https://www.oyez.org/cases/2005/04-623>

Read selection on “Oregon’s Death with Dignity Act” in Lynne Curry, *The Human Body on Trial: A Sourcebook with Cases, Laws, and Documents* (Indianapolis: Hackett Publishing Co., 2002), pp. 198-205. (7 pages)

Skim this website by the advocacy group “Death with Dignity” to see the status and timelines associated with these Acts across the U.S.:

- <https://deathwithdignity.org/states/>
- <https://deathwithdignity.org/states/oregon/>
- <https://deathwithdignity.org/states/new-jersey/>

Mon. Dec 11. When Doctors Make Mistakes: What to Know

Reading:

Atul Gawande, “When Doctors Make Mistakes,” in *Complications: A Surgeon’s Notes on an Imperfect Science* (New York: Picador, 2002), pp. 47-74. (27 pages)

Wed. Dec 13. Discussion of Course Themes (Mandatory Session)

Final Project Due