

# Law and Society in History: Honors

## Hist 369

### Spring 2024



Jacob Lawrence

Professor Alison Lefkovitz

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Class time: Tuesday and Thursday, 10:00AM-11:20AM

Location: CKB 114

Drop-in hours: Tuesday, 1:30-2:30, Thursday 11:30-1:30, and by appointment

Location: Cullimore 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.

#### 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. The librarians have prepared online research guides that you may find useful. Please take advantage of their 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. (100 points)
- 2) Discussion board responses. These should QUOTE at least two of that week's assigned readings. Responses that quote two documents and are posted before class will get full credit. Late responses will receive half credit at most. (200 points)
- 3) Mock Trial. You will be responsible for an assigned or volunteered role in a mock trial twice over the course of the semester. You will be evaluated based on your own performance. If you miss the day of the mock trial, you can make up this work by recording a short podcast about what happened in the trial in class. This news article should reflect what happened in our own trial rather than what happened in real life. You can do this by interviewing your peers. (50 points).
- 4) 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, to read legal cases, and to use them as historical documents. **Due FEBRUARY 15.** (150 points)
- 5) A midterm. The exam will cover the themes and readings in the first half of the course. The midterm will be on **MARCH 5**. Students who miss the midterm must contact me directly. (200 points)
- 6) Patent History blog post. You are responsible for writing an entry for [patenthistory.org](http://patenthistory.org) either individually or in groups of 2-4. You should choose a patent and place it in its historical context. The best entries will be published on the website. **DUE APRIL 25** (150 points)
- 7) 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 that were influenced by historical reasoning in class in order to get a sense of what this should look like. **Due MAY 3.** (250 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. The purpose of this proposal is to both ensure success on the final paper and to learn the art of proposing a project. **Due APRIL 11.** (50 points)

## Code of Conduct

-- 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 we might 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](mailto:dos@njit.edu)*

My addenda: please note self-plagiarism counts as plagiarism. You can use the same research but not the same language for more than one paper. You also may not use ChatGPT or other AI unless approved ahead of time by me.

--If you need support for any reason, please make use of our C-CAPS Staff at 973-596-3414.

### **Assigned Texts**

All readings will be available on **Canvas**.

#### **1. Introduction**

**Tuesday, January 16**

--Introduction

**Thursday, January 18**

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

**Friday, January 19**

MLK Day of Service (extra credit with selfie)

#### **2. Establishing American Law**

**Tuesday, January 23**

--Virginia Laws of Slavery and Servitude

**Thursday, January 25**

--The Constitution of the United States (1788)

--The Bill of Rights (1789)

Class Writing Topic: Which is the most important amendment and why?

### **3. The Power of the Courts**

**Tuesday, January 30**

--*Marbury v. Madison* (1803)

**Thursday, February 1**

--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? Are they now?

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

**Tuesday, February 6**

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

-- MOCK TRIAL: *Farwell v. Boston Railroad* (1842)

**Thursday, February 8**

--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**

**Tuesday, February 13**

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

**Thursday, February 15**

--*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>

SHORT PAPER DUE

### **6. Emancipation**

**Tuesday, February 20**

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

**Thursday, February 22**

-- Talitha LeFlouria, "'The Hand that Rocks the Cradle Cuts Cordwood': Exploring Black Women's Lives and Labor in Georgia's Convict Camps, 1865-1917," *Labor* (2011), 47-63.

Class Writing Topic: Did the 13<sup>th</sup> amendment fail?

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

**Tuesday, February 27**

--Civil Rights Cases (1883)

--*Plessy v. Ferguson* (1896)

**Thursday, February 29**

--Rabia Belt, "Ballots for Bullets? Disabled Veterans and the Right to Vote," *Stanford Law Review* 69 (2017).

Class Writing Topic: How and why did Reconstruction fail?

### **8. The Legacy of the 14<sup>th</sup> Amendment**

**Tuesday, March 5**

**MIDTERM**

**Thursday, March 7**

-- The Slaughterhouse Cases (1873)

--*Bradwell v. Illinois* (1873)

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

SPRING BREAK

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

**Tuesday, March 19**

--Michael Willrich, "The Least Vaccinated of Any Civilized Country: Personal Liberty and Public Health in the Progressive Era," *Journal of Policy History* (April 2009).

**Thursday, March 21**

-- MOCK TRIAL: *Jacobson v. Massachusetts* (1905)

Class Writing Topic: What can we learn about covid from the smallpox outbreak?

### **10. Remaking Citizenship**

**Tuesday, March 26**

--Briana Nofil, "Policing, Profits, and the Rise of Immigration Detention in New York's 'Chinese Jails,'" *Law and History Review* (November 2021), 649-677.

--*Meyer v. Nebraska* (1923)

**Thursday, March 28**

--Kara W. Swanson, "Inventing the Woman Voter: Suffrage, Ability, and Patents," *Journal of the Gilded Age and Progressive Era* (Oct 2020), 559-574.

Class Writing Topic: How did citizenship evolve during the early 20th century?

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

**Tuesday, April 2**

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

--More Perfect Podcast: American Pendulum 1

**Thursday, April 4**

--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 Civil Rights Movement**

**Tuesday, April 9**

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

**Thursday, April 11**

--Michael J. Klarman, "Has the Supreme Court Been More of a Friend or Foe to African Americans?" *Daedalus* (2011), 101-108.

FINAL PAPER PROPOSAL DUE

**13. The Rights Revolution and Its Limits**

**Tuesday, April 16**

--*Griswold v. Connecticut* (1965)

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

**Thursday, April 18**

--*Milliken v. Bradley* (1974)

Class Writing Topic: Is substantive due process Constitutional?

**14. The 80s and 90s**

**Tuesday, April 23**

--Donna Murch, "Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs," *The Journal of American History* (June 2015), 162-173.

**Thursday, April 25**

--*Planned Parenthood v. Casey* (1992)

--Jennifer L. Morgan, "Reproductive Rights, Slavery, and 'Dobbs v. Jackson,'" *Black Perspectives*, August 2, 2022, <https://www.aaihs.org/reproductive-rights-slavery-and-dobbs-v-jackson/>

PATENT BLOG ENTRIES DUE

MAY 3

FINAL PAPER DUE

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