

**History of American Law to 1877**  
**History 1119-401**  
**Spring 2023**  
**Tues & Thurs, 1:45-3:15pm (3:05pm)**

**\*DRAFT\* - subject to change**

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Office Hours: Tues., 12:30-1:30pm in College Hall 216C \*please make appointment\*

Wed., 4:30-5:30pm \*please make appointment\*

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*Course Description*

**First, welcome! We are so happy to have you in our American History class.**

This course is designed to explore basic themes and events in early American legal history. Because of the richness of the subject matter and the wealth of sources available, we will be selective in our focus. The course will emphasize several major areas of legal development that run throughout colonial and early national history:

The state: including topics such as war and other military or police action, insurrection, revolution, regulation, courts, economic policy, and public health.

Labor: including race and racially-based slavery, varied forms of servitude and labor coercion, household labor, industrialization, unionization, and market development.

Property: including property in persons, land, and business, and the role of lawyers in promoting the creation of wealth.

Private spaces: including family, individual rights, sexuality, gender, and private relations of authority.

Constitutionalism: various methods of setting norms (rules, principles, values) that create, structure, and define the limits of government power and authority in colonial/imperial, state, and national contexts.

Democracy and belonging: including questions of citizenship, voting rights, and participation in public life.

By placing primary sources within historical context, the course will expose students to the ways that

legal change has affected the course of American history and contemporary life. The course will be conducted primarily in lecture format, but I invite student questions and participation. We will proceed more or less chronologically. In the end, the central aim of this course is to acquaint students with a keen sense of the ways that law has operated to liberate, constrain, and organize Americans. Ideally, students will come away with sharper critical thinking and reading skills, as well.

### *Assignments and Assessments*

Most of course materials are primary sources (cases, statutes, constitutions, pamphlets, and so on). These materials are posted on the course website on Canvas (under “Files”). All students will be responsible for 5 class sessions for which they will help generate questions and discussion based on the reading for that day. Students will give us their top 8 choices, and we will try to assign students 5 classes from among their top choices. If there are too many people who choose one or another topic, we reserve the right to re-direct. Discussion posts, which should be 1-2 strong paragraphs, *must be submitted on Canvas, under “Discussions,” 24 hours before class.* The first discussion posts will be due for Class 4 readings (no students need to post for classes 1-3).

Discussion posts will receive a Check minus, Check, or Check plus. A Check means you fulfilled the assignment and will receive full credit for it. A Check plus means you really, really went above and beyond with detail and/or insight. You can get an A (93%) on this portion of the class with all Checks. Check pluses and minuses will be taken into account at the very end of the semester if a student is on the fence with the final grade. We expect Check pluses to be rare and hope that Check minuses are even rarer. Failure to complete the assignment will result in an “F.” *Graders and the professor will read all discussion posts as they are due; we will often reply to interesting posts.* If you do *not* hear from a grader, this means you earned a Check. So, as long as you do the required work, you are all set with your Check. If you earned a Check plus or a Check minus, you *will* hear directly from one of your teachers.

There will be five short and very straightforward *in-class* reading quizzes. The quizzes will be based on the lectures and the readings. Students who attend lecture and do the reading will perform well on quizzes. Quizzes will take place at the very start of class on the day they are scheduled. They usually take 15 minutes to complete.

There will be one midterm on February 28, 2023, in class.

There will be a final in-person exam. We will provide more details on format later in the semester, but in general, it will be similar to the midterm.

### *Cheating*

Under no circumstances will we tolerate cheating of any kind. All student work on assignments, quizzes, and exams must be their own; students must complete each graded component of the class independently. Students who cheat on a given assignment, quiz, or exam will fail that component. Given that students must successfully complete and pass all components of the class in order to pass the course, cheating on one component will result in a failing grade in the course overall.

### *Attendance and Technology*

Students are expected to attend every lecture, on time. Students who miss lecture should fill out a *course action notice (CAN)*. *We love and appreciate these. Please do it. We also appreciate an email.*

If you need to miss more than a lecture here or there and/or have difficulties getting notes from a friend, please

contact the professor and the graders in a joint email in order to catch up on missed material. (It really is in students' best interest to show up for every lecture during the semester, barring illness or emergencies.) This is a small-ish lecture —it will be noted when certain faces fail to appear regularly.

We are not recording lectures, nor are we providing Zoom links. This is not to be mean—and those of you have taken class with us before know that we care deeply about student learning and experience—but rather to set you up to get the most out of this class, to get the most out of being on a vibrant college campus, and to prepare you for much of the real world. Zoom is a great tool (say, for a one-on-one Office Hours appointment on a cold, dark winter night), but we want to be thoughtful about how and when we use it. We will help you make up material if you have legitimate reasons you have to miss class.

The teachers are here to help students learn—to gain knowledge, to build skills, and to enjoy themselves, even! Students should feel welcome to reach out with course-related enthusiasms. Students are encouraged to use office hours. But this next part is just as important: while we love interacting with you and helping you, a reminder that you are in college in part to become an independent, resourceful, confident adult – exercise those muscles, too. We appreciate your efforts to take initiative and responsibility.

In short: do the reading; come to class; if you *must* miss class, fill out a Course Action Notice and do the reading carefully on your own and get notes from a friend if you can (it's always good to make NEW friends in class, too, and we encourage that); once you've done everything you can to get on top of the material on your own, please feel very welcome to come meet with us with any questions and ideas.

Many students like to take notes on laptops; this practice is fine. However, please try your best not to open any other applications other than note-taking documents or the Canvas page for this course during lecture. Keep in mind that students who are trying to pay attention to class can get distracted by, say, someone's open [insert your favorite social media platform here] or an email account a few rows ahead.

### *Masks*

This class is mask optional. We are very respectful of those you want to wear masks, either all the time or selectively.

### *Grade Breakdown:*

Attendance (we take this very seriously): 5%

Five Discussion Posts: 10% (2% each)

Five In-Class Quizzes: 25% (5% each)

Midterm (written): 25%

Final: 35%

*Students must pass and complete every element of the class, including attendance and each discussion post and each quiz, to pass the course overall. We will allow for some flexibility if a student needs to make up or to retake a quiz for a good reason. Similarly, we expect discussion posts to be posted on time (8pm the night before class), but we are also human, and we will work with students who need some occasional flexibility for legitimate reasons. Talk to us! Our goal is for you to learn and to feel fulfilled in your learning.*

### *Course Schedule*

Note: In several instances, students will be reading excerpts of the titles below, rather than the entire source. The documents themselves make clear where text is omitted. **Students are expected to do all of the reading; the weekly page limit is moderate for this reason.**

**\*\*\*Ideally, you should do the readings *before* the class lecture on that topic. You'll get so much more out of the class that way, and you'll also stay on top of the work on a consistent basis.\*\*\***

Students should read the assigned texts in the order they appear on the syllabus.

1. Introductions – January 12, 2023

No assigned reading

2. Foundations – January 17, 2023

David Carpenter and Nicholas Vincent on Magna Carta (video on Canvas, see “Assignments”)  
Magna Carta (1215)  
Lawes Divine, Morall and Martial (known as “Dale’s Laws”) (1612)  
Instructions to George Yeardley, or the “Great Charter” (November 18, 1618)  
Proceedings of the Virginia Assembly (July 30, 1619)

3. Constitutionalism in Early America – January 19, 2023

The Mayflower Compact (1620)  
John Winthrop, “A Model of Christian Charity” (1629)  
Fundamental Orders of Connecticut (1639)  
Roger Williams, “The Bloody Tenent of Persecution for Cause of Conscience” (1644)  
Massachusetts Body of Liberties (1641)  
The Fundamental Constitutions of Carolina (1669)  
William Penn, First Frame of Government (1682)  
The New-York Charter of Libertyes (1683)

4. Slavery and Labor – January 24, 2023 (\*\*\*First discussion posts of the semester are due, from the students who signed up for this week\*\*\*)

Materials on 17<sup>th</sup>-century slavery  
Parliament of Great Britain, Transportation Act of 1717 (“An Act for the...Effectual Transportation of Felons”)

*Quiz 1*

5. Law and Society in Colonial America – January 26, 2022

William Bradford “A Horrible Case of Bestiality” (1642)  
Excerpts from the Salem Witchcraft Papers (1692)  
William Blackstone, *Commentaries on the Laws of England*, “Husband and Wife” (1765)

Act for the Better Securing the Payments of Debts...Subject a Feme Covert...(S.C. 1712)  
Act Concerning Feme-Sole Traders (Pa. 1718)

6. Poverty and Poor Law – January 31, 2023

Act for Defraying the Publick and Necessary Charge... Maintaining the Poore (N.Y. 1683)  
Act for...the Restraint of Vagrants (Va. 1744)  
Act for Employing and Better Maintaining the Poor (Va. 1755)  
Act for the Relief of the Poor in the Counties of Ulster and Orange (N.Y. 1762)  
Huntington, New York, Overseers of the Poor Records (1752-1819)

7. Tensions in the Empire: Land, Taxes, Slavery – February 2, 2023

Canassatego's Speech on Behalf of the Six Nations, July 7, 1742  
Royal Proclamation of 1763  
The Stamp Act (1765)  
Memorial of the Stamp Act Congress (1765)  
*Somerset v. Stewart* (King's Bench, 1772)

8. From Resistance to Revolution: Building A Case – February 7, 2023

The English Bill of Rights (1689)  
John Locke, *Two Treatises of Government* (1689-1690)  
John Dickinson, *Letters from a Farmer in Pennsylvania* (1767-68), Letter #2  
Sam Adams, *Boston Gazette*, February 27, 1769  
Declaration and Resolves of the Continental Congress (1774)  
Petition for Freedom by a Great Number of Blacks (1774)

*Quiz 2*

9. The Rebellion in Law – February 9, 2022

Tom Paine, *Common Sense* (1776)  
Declaration of Independence (1776)  
[James MacPherson], *The Rights of Great Britain Asserted against the Claims of America* (London, 1776)  
John Dickinson, *An Essay of a Frame of Government for Pennsylvania* (1776)

10. State Constitutions under the Articles of Confederation – February 14, 2023

Pennsylvania Constitution of 1776, including Declaration of Rights (1776)  
Virginia Declaration of Rights (1776)  
The New York Constitution (1777)  
The South Carolina Constitution (1776)  
The Articles of Confederation (1777)

11. Constitutional Moment – February 16, 2023

The Virginia Plan, the New Jersey Plan, The Slave Trade Clause (1787)  
Speech of James Wilson (Philadelphia October 1787)

The Federal Farmer, two letters (Poughkeepsie October 1787)  
James Madison, *Federalist* 10 (1787)  
North Carolina Ratifying Convention, Declaration of Rights and Other Amendments (1788)

12. Slavery and Abolition in the New Republic – February 21, 2023

Pennsylvania's Gradual Abolition Act (1780)  
New York Council of Revision Report on Gradual Abolition Bill (1785)  
Slave Trade Debates in Congress (1790)  
Fugitive Slave Act (1793)

13. Voting, Partisanship, and Democracy for Some in the New Republic – February 23, 2023

Alien and Sedition Acts (1798)  
Act to Prevent Frauds and Perjuries at Elections...Keep Slaves from Voting (N.Y. 1811)  
Voting Clause in Connecticut Constitution (1818)  
Black Petitioners Protest Potential Disfranchisement (1821)  
Voting Clause in New York Constitution (1821)  
Voting Clause in North Carolina Constitution (1835)  
Petition for Women's Rights from Six Women in Jefferson County, N.Y. (1846)

14. Midterm – February 28, 2023

*The graders will hold review sessions in advance of the midterm.*

15. Judicial Review – March 2, 2023

*Rutgers v. Waddington* (N.Y. 1784)  
Alexander Hamilton, *Federalist* 78 (1788)  
*Marbury v. Madison* (U.S. 1803)  
Thomas Jefferson on Judicial Review (1804-1823)

**PENN SPRING BREAK – March 4-12, 2022**

16. Pigs, Police Power, and Public Safety – March 14, 2023

South Carolina Act for Building Gunpowder Magazine (1770)  
New York Laws on Fire, Gunpowder, and Deer (1788)  
New York City Common Council Debates on Swine Law (1817-1818)  
Petitions from Pig Owners (1821-22)  
*Cheatham v Shearon* (Tenn. 1851)

17. The Missouri Question – March 16, 2023

Northwest Ordinance (1787)  
Petition to Keep Slavery out of Louisiana (1804)  
House Amendment to Bar Slavery in Louisiana (1804)  
The Tallmadge Amendment (1819)  
John Scott Argues in Favor of Slavery in Missouri (1819)

James Tallmadge, Jr. on the Missouri Question (1819)  
Map of Missouri Compromise (1820)  
The Second Missouri Crisis (“Constitution of Missouri” article from 1820)

*Quiz 3*

18. NO CLASS – March 21, 2023

19. How did Lawyers wind up running things? – March 23, 2023

James Kent, *Lecture in Law* (1824)  
Alexis de Tocqueville, *Democracy in America* (1840)

20. Federal Supremacy v. States’ Rights – March 28, 2023

Kentucky Resolutions (1798)  
Virginia Resolutions (1799)  
*McCullough v. Maryland* (U.S. 1819)  
South Carolina Ordinance of Nullification (1832)  
John C. Calhoun on Nullification (1830)  
James Madison, Notes on Nullification (1834)

21. Indian Removal – March 30, 2023

Cherokee Nation and Andrew Jackson messages (1829-1830)  
Indian Removal Act (1830)  
*Worcester v. Georgia* (U.S. 1832)  
Andrew Jackson to John Coffee on *Worcester v Georgia* (1832)

22. Labor in the Era of Industrialization – April 4, 2023

*Commonwealth v. Hunt* (Mass. 1842)  
*Farwell v. The Boston and Worcester Railroad Co.* (Mass. 1842)

23. Marriage and Custody: *The D’Hauteville Case* (1840) – April 6, 2023

Review of Michael Grossberg’s book on the 1840 D’Hauteville Child Custody Case  
Peleg W. Chandler, *Review of the d’Hauteville case* (1841)

*Quiz 4*

24. Property in Persons – April 11, 2023

*State v. Mann* (N.C. 1839)  
*State of Missouri v. Celia, A Slave* (Mo., 1855)

25. Resisting Slavery - April 13, 2023

Arrest of the Slave George Kirk Cartoon (1846)  
American Anti-Slavery Society, *Fugitive Slave Law* (1856)  
“The Slave Bill in Operation,” *Brooklyn Daily Eagle* (1850)  
“First Case Under the Fugitive Slave Bill,” *Gloucester Telegraph* (1850)  
“Meeting of the Colored People in the Park,” *Evening Post* (1850)

26. The Break Up – April 18, 2023

South Carolina Declaration of Secession (1860)  
Confederate Constitution (1861)  
Lieber Code (1863)

27. Reconstruction – April 20, 2023

13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> Amendments  
1866 Civil Rights Act  
Henry McNeil Turner on the Fifteenth Amendment (1870)  
1875 Civil Rights Act

*Quiz 5*

28. The Limits of the Reconstruction Amendments – April 25, 2023

*Slaughterhouse Cases* (U.S. 1873)  
*Minor v. Happersett* (U.S. 1875)

Final Exam: The date and classroom location of the final exam are determined by the registrar 1-2 months into the semester