

**History of American Law to 1877**  
**History 1119-401**  
**Fall 2023**  
**Tues & Thurs, 1:45-3:15pm (3:05pm)**  
**Annenberg 110**

This class is required for the *Legal Studies and History Minor*, a joint endeavor of the History Department and Wharton, and also counts for the \*new\* *Political History concentration* in History.

NOTE: This is the Fall 2023 Syllabus. I update and tweak the syllabus every time I teach the class. But students who want a feel for the Fall 2024 version of the class will nonetheless gain a good sense of the course here.

Professor Sarah Gronningsater

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Office Hours: Tuesdays noon-1pm, Thursdays noon-1pm \*\*\*please make appointment in advance\*\*\*

College Hall 309A (note this is different from my old office!)

Graduate Graders:

*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: 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 and how Americans have used law, from varying positions of power, to shape their worlds. Ideally, students will leave the class with sharper critical thinking and reading skills.

### *Assignments and Assessments*

Most of the 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 *6 class sessions* for which they will help generate questions and discussion based on the readings for that day. Students will give us their top 8 choices, and we will try to assign students 6 classes from among their top choices. If there are too many people who choose one topic, we reserve the right to redirect. Discussion posts, which should be 1-2 strong paragraphs, *must be submitted on Canvas, under “Discussions,” by 8pm the night before class*. The first 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 (93%) means you fulfilled the assignment. A Check plus means you really, really went above and beyond with detail, analysis, and 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.” Late discussion posts will incur a penalty in points, losing ten percentage points for each day late. *Graders and the professor will read the 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 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.

Discussion posts should *not* simply summarize or report on the readings. The goal is for students to analyze the readings and draw connections among the readings and between readings and lecture. This was always the requirement *before* ChatGPT. But given this new AI world, it is especially important that you pick apart the primary sources, quote interesting bits from the sources, and compare/contrast readings in ways that humans do. You should be grappling with the readings on the syllabus.

There will be six short and very straightforward *in-class* reading quizzes. The quizzes will be based on the *lectures and readings covered since the previous quiz*. Students who attend lecture and do the reading will perform well on the quizzes. Quizzes will take place at the very start of class on the day they are scheduled. They usually take 10-15 minutes to complete.

There will be one in-person midterm on October 19, 2023, in class during our regular time.

There will be a final in-person exam. *The College Registrar sets the final exam date for some time in December, to take place during final exam period, after reading period*. We find out what this date is a few weeks into fall semester. *This date/time is set by the College and not movable*.

## *Cheating*

Under no circumstances will we tolerate cheating of any kind. All student work on assignments, quizzes, and exams must be a student's 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)*, available on *Path@Penn*. *We love and appreciate these. Please do it. We also appreciate an explanatory email sent directly to all the teachers.*

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. (It really is in students' best interest to show up for every lecture during the semester, barring illness or emergencies.) We take attendance in class—it will be noted when certain faces fail to appear regularly.

Students may make up a missed quiz, but only if it's in a timely manner (ideally, same week) and if communication from the student has been *proactive* and if the student's performance in the class has otherwise been consistent/engaged/satisfactory. *We highly recommend you not miss quizzes without legitimate cause. Missed quizzes will deeply affect your attendance grade and ability to pass the class.*

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 me know that I 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 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 and can help connect you to new buddies); 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. 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.

### *Grade Breakdown:*

Attendance/Communication, including being present in body and mind (we take this seriously): 5%

Six Discussion Posts: 12% (2% each)

Six In-Class Quizzes: 24% (4% each)

Midterm (written bluebook exam in class): 25%

Final (written bluebook exam at time/location set by College Registrar): 34%

*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.*

### Grade Translations:

A+: 98-100%

A: 93-97%

A-: 90-92%

B+: 88-89%

B: 83-87%

B-: 80-82%

C+: 78-79%

C: 73-77%

C-: 70-72%

D+: 68-69%

D: 63-57%

F: 62 and below

A note on extra credit. Every semester, there are a few students right on the edge of, say, a B+ and an A, within a tenth of a point. Students in this situation who are fully present in class and committed to learning (not distracted by the internet on their laptops, no unexcused absences, respectful to others, accountable/proactive/communicative) will be pushed up to the higher grade. *This is a course where being a good citizen matters.* In our experience, students who approach the class in this spirit get way more out of the class, which is our ultimate goal.

### *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 learn more deeply and easily 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 – August 29, 2023

No assigned reading

2. Foundations – August 31, 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)  
Powhatan Conceptions of Property/James Smith Describes Powhatan Government (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 – September 5, 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 – September 7, 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 – September 12, 2023

William Bradford “A Horrible Case of Bestiality” (1642)  
“Schools” in *Book of General Lawues and Libertyes of Massachusetts* (1641, 1648)  
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 – September 14, 2023

Act for Defraying the Publick and Necessary Charge...Maintaining the Poor (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 – September 19, 2023

Canassatego's Speech on Behalf of the Six Nations, July 7, 1742<sup>1</sup>  
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 – September 21, 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 – September 26, 2023

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 at the Start of Revolution– September 28, 2023

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

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<sup>1</sup> N.B. This is a different speech than the one we read in Hist 1110: Hamilton's America. :-)

11. The (National) Constitutional Moment – October 3, 2023

The Virginia Plan, the New Jersey Plan, The Slave Trade Clause (1787)  
Northwest Ordinance (July 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 – October 5, 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)  
William Hamilton to John Jay (1796)

*Quiz 3*

13. Voting, Partisanship, and Democracy for Some in the New Republic – October 10, 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)  
Jacob Henry Pleads for Political Equality (N.C. 1809)

**Thursday, October 12: FALL BREAK, NO CLASS**

14. Judicial Review – October 17, 2023

*Rutgers v. Waddington* (N.Y. 1784)  
Alexander Hamilton, *Federalist* 78 (1788)  
*Albany Register* editorial on constitutional interpretation and judicial review (1799)  
*Marbury v. Madison* (U.S. 1803)  
Thomas Jefferson on Judicial Review (1804-1823)

15. Midterm – October 19, 2023

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

16. Pigs, Police Power, and Public Safety – October 24, 2023

William Blackstone on Police Power and Relevant Examples (1769)  
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 – October 26, 2023

US Constitution Clauses Related to the Missouri Crisis of 1819-1821  
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)  
Second Missouri Crisis (“Constitution of Missouri” article from 1820 New York newspaper)

18. How did Lawyers wind up running things? – October 31, 2023

James Kent, *Lecture in Law* (1824)  
Alexis de Tocqueville, *Democracy in America* (1840)  
Obituary of Robert Morris of Massachusetts (1882)  
Carrie Kilgore of Philadelphia on Female Judges (1901)

*Quiz 4*

19. NO CLASS – November 2, 2023 – FLEX DAY (optional hang out with your professor, eat food, be merry)

20. Federal Supremacy v. States’ Rights – November 7, 2023

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

21. Indian Removal – November 9, 2023

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

22. Labor in the Era of Industrialization – November 14, 2023

*Commonwealth v. Hunt* (Mass. 1842)  
*Farwell v. The Boston and Worcester Railroad Co.* (Mass. 1842)  
Female Bookbinders on Strike in Philadelphia (1835)

*Quiz 5*

23. Marriage and Custody: *The D’Hauteville Case* (1840) – November 16, 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)  
New York’s Married Women’s Property Act (1848)  
Francis Ellen Watkins Harper, “We Are all Bound up Together” (1866)

24. Property in Persons – November 21, 2023 (*Penn runs Thursday class schedule this Tuesday*)

*State v. Mann* (N.C. 1829)  
*State of Missouri v. Celia, A Slave* (Mo., 1855)

**Thursday, November 23: Thanksgiving Break, No Class**

25. Resisting Slavery - November 28, 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)  
“Meetings of Colored Citizens of New York,” *North Star* (1850)

26. The Break Up – November 30, 2023

Abraham Lincoln’s speech at Peoria, protesting Kansas-Nebraska Act (1854)  
Frederick Douglass on sectional tensions and the 1860 election of Abraham Lincoln (1881)  
South Carolina Declaration of Secession (1860)  
Confederate Constitution (1861)  
Lieber Code (1863)

27. Reconstruction – December 5, 2023

*Harper’s Weekly* image of Combahee Ferry Raid/Image of Harriet Tubman (1863)  
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 6*

28. The Limits of the Reconstruction Amendments – December 7, 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