

Dr. Victor Jew  
Visiting Assistant Professor  
Fall 2003

University of Wisconsin-Madison  
Fall 2003

History 331  
UNITED STATES CONSTITUTIONAL HISTORY AND LEGAL DEVELOPMENT

The Anglo American Colonial Era through Reconstruction,  
17th Century through 1877

**Syllabus and Reading Schedule**

Class Meets on Tuesdays and Thursdays from 2:30 to 3:45 p.m. in Room **360** SCIENCE HALL.

Pertinent Professor Information: My office is in 4118 George Mosse Humanities Building. My office phone number is: 265-6033 and my UW email address is TBA.

My office hours this term are on Thursdays, from 11:00 to 12:00 p.m. **AND BY APPOINTMENT.** Please call, email, or see me to make an appointment if you wish. (Email is the best way to reach me.)

**PURPOSE:** History 331 is a one semester lecture course that examines constitutional history and legal development from the colonial period of Anglo America, through the nation making of the early U.S. republic, to the breaking of that "first" republic in the 1860's and its eventual reconstruction. (Students wishing to continue the study of U.S. legal and constitutional developments after the 1860's and 1870's might consider taking the Winter-Spring 2004 course on Asian American legal history. In that course we will examine such issues as the development of 14th Amendment jurisprudence, the formation of the modern administrative state, and the contested definition of national citizenship in U.S. law.) Both classes examine the interactions between the law and broader changes in politics, society, and culture. They pay particular attention to the effect of "change over time" on the legal system and the U.S. constitutional order.

Some of the themes of History 331 this term include: 1) a survey of the institutional and ideological legacies of the colonial Anglo American experience upon American legal development; 2) the emergence of American constitutionalism and the development of two important themes in U.S. constitutional history -- powers and rights; and 3) the influence of two major social formations upon law and constitutionalism: the "market revolution" of the 19th century and the ideological deployment of "race."

**GRADING:** There will be TWO in-class "midterm" exams. The FINAL will be composed of a two hour in-class examination. All examinations are ESSAY tests to be written in bluebooks.

The grade breakdown is as follows: FIRST MIDTERM: 25 percent, SECOND MIDTERM: 25 percent, FINAL IN-CLASS EXAMINATION: 50 percent. The FIRST midterm will be held on Thursday, October 9. The SECOND midterm will be held on Thursday, November 12. The FINAL examination's time is TBA.

**NOTE:** You **MUST** take **ALL** the written exams (and fulfill all their requirements) to pass the course. Failure to do so results in a **F** as your final grade. You are **STRONGLY** advised to attend the Tuesday-Thursday lectures. All of the exams require a mastery and "thinking through" of **BOTH** the lectures and the readings. You cannot do well by skipping the lectures.

**READINGS:** Christopher Tomlins, ed., The Many Legalities of Early America (2001)  
 Edward Countryman, ed., What Did the Constitution Mean to Early Americans? (1999)  
 Stanley I. Kutler, ed., The Supreme Court and the Constitution  
 Melton McLaurin, Celia, A Slave (1991)

Supplemental/Not required (You may purchase and read these books, if you wish, in order to supplement the lectures and the required readings. They are only supplemental. They are not required.)

Peter Charles Hoffer, The Great New York Conspiracy of 1741. Slavery, Crime, and Colonial Law University Press of Kansas.

Peter Charles Hoffer, The Salem Witchcraft Trials. A Legal History.

Richard F. Biesel. Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877 1991.

#### SEMESTER SCHEDULE

**September 2 to October 9**

**From Colonies to Republics, to the New Republic  
 1600's to 1780's**

Lecture Topics Will Include: Colonial origins of Anglo-American

legal and constitutional experience; the role and significance of the American Revolution for legal and constitutional development; the ideological origins of American constitutionalism; the Convention of 1787 and the Ratification "miracle."

**READ:** For September 4 read the following essays from Christopher Tomlins, The Many Legalities of Early America: the essays by Tomlins ("Introduction: The Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History") and Bruce Mann ("Afterword: The Death and Transfiguration of Early American Legal History.")

**READ:** For September 9 and 11 read the following from Tomlins, The Many Legalities of Early America: the essays by Barry Gaspar and Katherine Hermes.

**READ:** For September 16 to 18 read the following from Tomlins: the essays by Ann Marie Plane; Linda L. Sturz; John Kolp and Terri Snyder (this is a co-written piece); and William M. Offutt, Jr..

**READ:** For September 23 to October 7, read from Edward Countryman, What Did the Constitution Mean to Early Americans?: the Preface, Part Two "Introduction"; and the Part Three essays by Kramnick, Patterson, and Lewis.

**FIRST IN-CLASS MIDTERM: Thursday, on October 9.**

**October 14 to November 13**

**Constitutional Development, the Federal Judiciary, and the United States Supreme Court: Forging an Influence, 1789 to 1824.**

Lecture Topics: The Creation of the Federal Judiciary, The Marshall and Taney Courts; The U.S. Supreme Court and the changing U.S. economy in the nineteenth century.

**READ:** For October 14 and 16 read the following cases from KUTLER: Chisholm vs. Georgia, Van Horne's Lessee vs. Dorrance, Calder vs. Bull.

**READ:** For October 21 and 23, read from KUTLER: Marbury vs. Madison, Eakin vs. Raub, and Martin vs. Hunter's Lessee.

**READ:** For October 28 and 30, read from KUTLER: McCulloch vs. Maryland, Fletcher vs. Peck, and Dartmouth College vs. Woodward.

**READ:** For November 4 and November 11, read from KUTLER: Gibbons vs. Ogden, Willson vs. Black Bird Creek Marsh, Barron vs. Baltimore,

**SECOND IN-CLASS MIDTERM: Thursday, November 12**

November 18 to December 11  
The Peculiar Institution and its Legal and Constitutional  
Effects (and After Effects), 1824 to 1877

**READ:** For November 18 and 20 read ALL of McLaurin's Celia.

**READ:** For November 25 read from KUTLER: Prigg vs. Pennsylvania, Dred Scott vs. Sandford.

**READ:** For December 2 to the 11th. Dred Scott vs. Sandford (review), the Slaughterhouse Cases, and the Civil Rights Cases.