

Title: No Trespassing!

Grade Level: 6 – 8

Time Allotment: Two 45 minute class periods

Overview: In the years immediately following the American Revolution, many citizens still felt ill-at-ease with the state of the union. Patriots felt the right to assert their victory over the land, and Loyalists felt oppressed and belittled over their defeat.

This activity allows students to explore these tensions through one of Alexander Hamilton's most famous and influential court cases from his time as a lawyer in New York City. *Rutgers v. Waddington*, in which Hamilton defended a Tory merchant, looked at several major issues of the time, such as relationships between Patriots and Loyalists, post-war legislation, and the burgeoning concept of judicial review. Students will re-enact the case in a "mock trial" setting, and learn more about the outcome and historical significance of the case using video segments from the PBS program *Rediscovering Alexander Hamilton*. As an optional extension activity, students can explore the modern implications of Hamilton's Federalist Papers.

This lesson is best used with students following a unit on the American Revolution.

Objectives:

Students will be able to:

- Explain why the Trespass Act was declared unlawful;
- Describe the conflicts between citizens that arose in the aftermath of the American Revolution;
- Articulate multiple perspectives on a significant issue or event in history;
- Demonstrate understandings of the verdict of the *Rutgers v. Waddington* case;
- Discuss how the *Rutgers v. Waddington* case set a precedent for the practice of judicial review.

Standards

<http://www.nchs.ucla.edu/Standards/historical-thinking-standards-1>

Historical Thinking Standard 2

The student comprehends a variety of historical sources:

Differentiate between historical facts and historical interpretations **but acknowledge that the two are related; that the facts the historian reports are selected and reflect therefore the historian's judgement [sic] of what is most significant about the past.**

Historical Thinking Standard 3

The student engages in historical analysis and interpretation:

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Consider multiple perspectives **of various peoples in the past by demonstrating their differing motives, beliefs, interests, hopes, and fears.**

Historical Thinking Standard 5

The student engages in historical issues-analysis and decision-making:

Identify issues and problems in the past **and analyze the interests, values, perspectives, and points of view of those involved in the situation.**

- Marshal evidence of antecedent circumstances** and current factors contributing to contemporary problems and alternative courses of action.
- Identify relevant historical antecedents** and differentiate from those that are inappropriate and irrelevant to contemporary issues.
- Formulate a position or course of action on an issue** by identifying the nature of the problem, analyzing the underlying factors contributing to the problem, and choosing a plausible solution from a choice of carefully evaluated options.
- Evaluate the implementation of a decision** by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives.

<http://www.nchs.ucla.edu/Standards/us-history-content-standards/us-era-3>

Standard 1

The causes of the American Revolution, the ideas and interests involved in forging the revolutionary movement, and the reasons for the American victory.

Explain the consequences of the Seven Years War and the overhaul of English imperial policy following the Treaty of Paris in 1763. [[Marshal evidence of antecedent circumstances](#)]

Compare the arguments advanced by defenders and opponents of the new imperial policy on the traditional rights of English people and the legitimacy of asking the colonies to pay a share of the costs of empire. [[Consider multiple perspectives](#)]

Media Resources:

Websites:

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[“The case of Elizabeth Rutgers versus Joshua Waddington, determined in the Mayor’s Court, in the City of New York, August 6, 1786”](#)

An excellent primary source document, this book published by Bradstreet Press in 1866, details the particulars of the *Rutgers v. Waddington* trial. Available to read free online at OpenLibrary.org, this is a valuable resource for students looking for more background information on the case. Please note that the original typesetting used may be difficult for students to read.

Video:

- **An 18th Century Court Today**

A recreation of the *Rutgers v. Waddington* case, argued by Alexander Hamilton in the 18th century.

- **The Federalists Today**

A moot court case citing the Federalist Papers, written by Alexander Hamilton.

Materials:

For each student in the class:

- *Rutgers v. Waddington* Case Dossier

Prep for Teachers:

Prior to teaching this lesson, you will need to:

Preview all of the video segments and websites used in the lesson.

Download the video clips used in the lesson to your classroom computer(s) or prepare to watch them using your classroom’s Internet connection.

Bookmark all websites that you plan to use in the lesson on each computer in your classroom. Using a social bookmarking tool such as [delicious](#) or [diigo](#) (or an online bookmarking utility such as [portaportal](#)) will allow you to organize all the links in a central location.

Make copies of the *Rutgers v. Waddington* Case Dossier Handout for all students, except those acting as court recorder(s) or jury members.

For more information on the case, you may wish to consult or have your students read [“The case of Elizabeth Rutgers versus Joshua Waddington, determined in the Mayor’s Court, in the City of New York, August 6, 1786”](#) available at OpenLibrary.org.

Before the “mock trial” begins, arrange the desks or seats in the classroom in the style of the Mayor’s Court, with desks at the front for the Mayor and the five Aldermen, a desk (or desks) at the side of the room for the court recorder(s), desks in the center of the room for the plaintiff, defendant, and their attorneys, and desks in the back of the room for the jury members or observers.

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INTRODUCTORY ACTIVITY

1. Tell students that following the American Revolution and the ratification of the Treaty of Paris, tensions lingered among the people living in the colonies – now the United States of America. Hostility remained between the Patriots, who had been against the Crown, and the Loyalists (or Tories), who had been in favor of the colonial British government. Loyalists were persecuted and treated badly in many areas of the country – even though it was strictly forbidden in the terms of the Treaty of Paris to do so. The New York State legislature established a law known as the Trespass Act, allowing residents who had fled their homes and businesses during British military occupation to sue Loyalists for unauthorized use of and damage to their property.
2. Explain to students that Alexander Hamilton, who would go on to become the first Secretary of the Treasury and a key figure in George Washington’s administration, was also a lawyer in New York for a short period following the American Revolution. Tell students that Hamilton was known for defending Loyalists in his court cases – not because he himself was a Loyalist or because he agreed with their views, but because he believed that everyone deserved a fair trial regardless of their political views.
3. Tell students that one of Hamilton’s most famous cases in the time he practiced law was that of *Rutgers v. Waddington*. Tried in the New York City Mayor’s Court in 1784, the case saw a Patriot widow suing a Tory merchant for damages to her property during the Revolution, under the conditions of the Trespass Act. The case has become notable in United States history for helping to establish the precedent of judicial review. Judicial review is the means by which legislative and executive actions are subject to review and even removal or invalidation when they are found to be in violation of or incompatible with the Constitution.

LEARNING ACTIVITY

1. The case of *Rutgers v. Waddington* was important not just for the establishment of judicial review, and advancement of Alexander Hamilton’s legal career, but for changing the attitudes of Patriots and Loyalists in the aftermath of the Revolution. Explain to students that during the American Revolution, British soldiers and Loyalists would commonly live and work in properties abandoned by Patriots in areas that were occupied by the British army. Ask students if they think this practice was fair. Why or why not? Remind students that the British government and many Loyalists still perceived that colonies as being under British rule. Ask students to think about how they would feel if this practice continued today, and soldiers – or even just citizens with opposing viewpoints – were allowed to live in their homes or work in their offices without their permission. Is that fair? What if it is during wartime, and the soldiers and citizens would face severe penalties if they disobeyed the orders to occupy your home? Encourage discussion among students.
2. Tell students that you would like them to reenact the case of *Rutgers v. Waddington* in class. Students will portray the roles of the major figures in the case, including the defendant Joshua Waddington, defense attorney Alexander Hamilton, plaintiff Elizabeth Rutgers, New York Attorney General Egbert Benson, Mayor James Duane, the court recorder, the bailiff, additional defense and prosecution attorneys, and five city aldermen. (*Note to educator: In order to include all students in the class, you may wish to stage more than one trial, or create more roles for the students to fill, such as attorneys’ aides, jury members,*

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- community members, or extra court recorders. These roles are not necessarily historically accurate, but they will allow more of your students to participate in the mock trial experience.)* Ask for student volunteers or assign students to act in each of the roles.
3. Distribute the “Rutgers v. Waddington Case Dossier” handout to all students, except those acting as court recorder(s) or jury members. Explain to students that the court recorder(s) or jury members would not want to have any bias or background information going into the case. Give students class time to review the information in the Dossier and prepare statements and arguments as necessary, or ask them to review for homework. Students may research their roles or the particulars of the case further if they wish. Set up the classroom for the “mock trial” (see Prep for Teachers section).
 4. Have students, in their assigned roles, act out the *Rutgers v. Waddington* court case, following the steps outlined below:
 - 1) The bailiff will lead the plaintiff, defendant, and their attorneys into the courtroom. The bailiff will then ask everyone in the courtroom to rise while the judge and aldermen enter. The bailiff should remind the court recorder(s) to take accurate notes of the proceedings of the case.
 - 2) The attorneys for the plaintiff will make their opening statements first, and then the attorneys for the defendant will make their opening statements.
 - 3) The Plaintiff’s Case: The prosecution argues their case and asks the plaintiff, Elizabeth Rutgers, to testify. She may be cross-examined by the defense. The prosecution argues its case on behalf of Elizabeth Rutgers.
 - 4) The Defendant’s Case: The defense will argue its case and ask its defendant, Joshua Waddington, to testify. He may be cross-examined by the prosecution.
 - 5) The prosecution will present its closing argument on behalf of Elizabeth Rutgers first; then the defense will present its closing argument on behalf of Joshua Waddington.
 - 6) The Mayor and Aldermen (and jury, depending on how your “mock courtroom” is set up) will deliberate on a decision. If they need more information or a reminder of the details of the case, they may consult the notes taken by the court recorder(s), but no additional documents or materials.
 - 7) Once a decision has been made, the Mayor will present it to the courtroom.
 5. Ask the students why they made the decision they did, based on the facts and arguments of the case? Do they think their decision is the same as the historical verdict? Is it the same as another modern judge would have ruled? For homework, ask each student to write a one-page essay on their interpretation of the case and class verdict, from the perspective of the role they played in the trial.

CULMINATING ACTIVITY

1. Tell students that they are going to see a video clip of another “mock trial” of the *Rutgers v. Waddington* case, argued in a modern courtroom by historical re-enactors. As students watch the clip, ask them to observe and write in their notebooks the similarities and differences to the arguments put forth in their own classroom mock trial. Play clip, “An 18th Century Court Today.” When the clip is over, review students’ observations with the class. How similar or different was

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- their trial from the trial in *The People's Court*? How close was their verdict to Judge Milian's?
2. Explain to students, as mentioned in the clip, that in the actual trial in 1784, Mayor James Duane ruled that Elizabeth Rutgers would only be reimbursed £791, for rents lost during Joshua Waddington's claimed civilian occupation of the property, rather than the original £8,000 sum asked for. One of, if not the, major reasons for this verdict was Hamilton's compelling argument that New York's Trespass Act of 1783 was, in fact, unlawful – that it went against the conditions of the Treaty of Paris signed to end the American Revolutionary War. This not only established that Alexander Hamilton was skilled at making legal arguments and interpreting important political documents – a talent that would come in handy when writing the Federalist Papers just a couple years later – but it helped to launch the process of judicial review, wherein a previously established law could be declared unlawful.

EXTENSION ACTIVITY

1. If students are interested in learning more about Hamilton's talent for interpreting the word of the law, you may wish to teach them about the Federalist Papers. Explain that the Federalist Papers were a series of 85 essays, published in 1787 and 1788 supporting the ratification of the Constitution. While authorship of the Federalist Papers was officially anonymous at the time of publication, it was speculated (and confirmed, after his death) that just about two-thirds of the essays were written by Alexander Hamilton. The others were written by James Madison and John Jay.
2. Explain to students that although the Federalist Papers were written over 200 years ago, they remain important documents in the interpretation of United States law to this day. Tell students that you are going to show them a video clip of a "moot court" – similar to the one they staged in class – in which lawyers invoke Hamilton's Federalist essays to decide on a verdict. As students watch the clip, ask them to observe what the lawyers and judges are specifically citing from the Federalist papers, and how it applies to their modern legal decision. Have students write observations down in their notebooks. Play clip, "The Federalists Today." When clip is finished, ask students to share their observations with the class.
3. Ask students if they think that Hamilton's arguments regarding the Constitution should be used in modern courtrooms and legal arguments today? Why or why not? Encourage discussion among students.

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RUTGERS V. WADDINGTON CASE DOSSIER

Joshua Waddington occupied the brew-house of Elizabeth Rutgers on Maiden Lane in New York City during American Revolutionary War, under orders of British military authority. Waddington made the necessary improvements to the property to operate it as a brewery for British troops. Following Waddington's occupation of the property it was damaged by fire.

New York State Trespass Act of 1783: The text of the Trespass Act states "That it shall, and may be lawful for any person or person, who are, or were inhabitants of this state, and who, by reason of the invasion of the enemy, left his, her, or their place or places of abode, who have no voluntarily put themselves into the power of the enemy, since they respectively left their places of abode, his, her, or their heirs, executors, or administrators, to bring an action of trespass against any person or person, who may have occupied, injured, or destroyed his, her, or their estate, either real or personal, within the power of the enemy."

*In other words...*many Patriot citizens left their homes and businesses during British military occupation. Once their property was abandoned, British soldiers and Loyalist citizens would live and work in the Patriot properties. The Trespass Act allowed Patriots to seek compensation for the occupation of their property, as well as payment for any possible damage done.

1783 Treaty of Paris: This treaty formally ended the American Revolutionary War, and acknowledges the freedom of the thirteen colonies to be sovereign states. Under the treaty, the individual state legislatures were recommended to recognize that rightful owners of confiscated lands "provide for the restitution for estates, rights, and properties, which have been confiscated belonging to real British subjects." The declared intention of the treaty was to "forget all misunderstandings and differences" between both parties.

*In other words...*by signing the Treaty of Paris, Great Britain recognized the independence of the United States of America. The United States agreed not to persecute Loyalists that remained in America, and to permit Loyalists that left America during the war to return to the country.

Elizabeth Rutgers – PLAINTIFF: Mrs. Elizabeth Rutgers is a Patriot widow and property owner. She fled from her property in New York City during the American Revolution, when British military forces occupied the city. She did not return to New York City at any point during the war. She has chosen to sue Joshua Waddington under the conditions of the Trespass Act, whom she believes forcefully occupied her property. Her suit against Mr. Waddington is for £8,000, to cover what she claims is a fair reimbursement for property damages and value of rents lost.

How might Elizabeth Rutgers feel going into this trial? As a Patriot, she has been on the rebelling side of a war for independence. She has been away from her home and business for nearly five years, while her city was dominated by enemy troops, and her property occupied by Loyalists. Is Mrs. Rutgers looking for something other than monetary compensation?

Joshua Waddington – DEFENDANT: Mr. Joshua Waddington is a Loyalist, or Tory, merchant. He occupied and operated the brew-house belonging to Mrs. Elizabeth Rutgers by order of the British military during their occupation of New York City.

During his occupation, which the plaintiff claims lasted from August 13, 1778 to March 17, 1783, Mr. Waddington invested in repairing and making necessary improvements to the brew-house in order to operate it properly. Mr. Waddington claims he only occupied the property between September 28, 1778 and April 30, 1780, as a licensed merchant under the protection of the British army, and paid the appropriate property taxes. After April 1780, Mr. Waddington claims that other licensed merchants occupied the property and paid taxes for the remainder of the British occupation.

How might Joshua Waddington feel going into this trial? As a Loyalist, he was on the side that ultimately lost the war. The government on which he depended has been disbanded and a new one established in its place. Now he is being sued for an extremely large sum of money for obeying the authority of his government under wartime conditions. How will Mr. Waddington be able to adapt his Loyalist views to the new independent America?

Counsel for the PLAINTIFF – Attorney General of New York State Egbert Benson, John Lawrence, William Wilcox, Colonel Robert Troupe: Led by the Attorney General of New York Egbert Benson (who also happens to be the nephew of Mrs. Elizabeth Rutgers), the prosecution argues that the Trespass Act is valid under the New York State legislature and this a legitimate basis for a lawsuit. They also argue that the war that Britain waged against the Americans who were fighting for independence was unjust, and that the unjust party has no rights in war – therefore the Loyalists could not claim any rights to property during wartime for any reason. A final argument points out that the Treaty of Paris implied an amnesty for all damaged and injured inflicted on citizens during the war, and used this as a justification for Mrs. Rutgers reimbursement.

How might the counsel for the plaintiff feel when prosecuting this case? As prominent figures in the newly-formed, independent United States, what is at stake for them? Do they have anything to prove by winning?

Counsel for the DEFENDANT – Alexander Hamilton, Brockhorst Livingston, Morgan Lewis: Alexander Hamilton, leader of the defendant’s counsel, is himself a Patriot, and actively supported the United States’ independence. However, his job as a lawyer is to provide Mr. Waddington, a Loyalist, with a good defense and a fair trial. Hamilton and the defense make several arguments to try and declare the case null and void. He argues that the Trespass Act violates the Treaty of Paris, which was ratified by the United States Congress and therefore overrides the New York State legislature. He cites the “Law of Nations” – the body of laws that govern relations between international entities – which claims that citizens should not be held legally responsible for actions committed during wartime as ordered by military forces. He counters the prosecution’s argument for amnesty based on the Treaty of Paris, claiming that it does not apply to Mr. Waddington as his occupation was not directly related to the war. Lastly, he argues that as a loyal British subject, the Trespass Act should not even apply to Mr. Waddington.

How might the counsel for the defense – especially Alexander Hamilton, a noted Patriot – feel when defending this case? Do they face internal conflict between their beliefs and their professional responsibilities? What is at stake for them?

New York Patriot: You are an observer or jury member at the trial. You, like Mrs. Rutgers, fled the city during the war, and have come back to live in your original home. Your property may also have been occupied by British troops or Loyalist citizens during

the Revolution. You are grateful that the colonies are no longer under the tyrannical rule of the Crown, and look forward to the new, independent government of the United States.

New York Loyalist: You are an observer or jury member at the trial. You remained in New York City during the war, and you may have been ordered, like Mr. Waddington, to operate a business abandoned by a Patriot. You had no problem with the British colonial government before the Revolution. In fact, you liked it so much that you're thinking of moving your family to London – people might be a little nicer to you there.

New York City Mayor's Court:

Mayor: James Duane, Esquire

Aldermen: Benjamin Blagge, William W. Gilbert, William Neilson, Thomas Randal, and Thomas Ivers, Esquires.