

UNIVERSITY OF BALTIMORE SCHOOL OF LAW

FALL SEMESTER

2007

S Y L L A B U S

RACE AND THE LAW

LAW 823 (511/4493)

MICHAEL HIGGINBOTHAM

COURSE DETAILS

Professor: Michael Higginbotham

Time: Designated Mondays (see schedule of classes)
1:30 - 4:15 p.m.

Course Category: Upper-Level Limited Enrollment Elective

Classroom: Angelos Law Center Room 206

Office Hours: Mondays 5:00-6:00 p.m.
Tuesdays and Thursdays 8:00-9:00 p.m.
(or by appointment)

Office: Angelos Law Center Room 414

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Office: Angelos Law Center Room 400

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Texts:

Required:

A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York: Oxford University Press, 1978). Available in hardback or paperback at the University of Baltimore Bookstore.

A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (New York: Oxford University Press, 1996). Available in hardback or paperback at the University of Baltimore Bookstore.

Michael Higginbotham, *RACE LAW: Cases, Commentary, and Questions* (Second Edition) (Durham: Carolina Academic Press, 2005). Available in hardback at the University of Baltimore Bookstore.

Recommended:

(New
York: Houghton Mifflin Company, 1994).

Jack Bass, *Unlikely Heroes* (New York: Simon and Schuster, 1981).

Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992).

Mary Frances Berry, *Black Resistance/White Law* (New York: Appleton-Century-Crofts, 1971).

John W. Blassingame, *The Slave Community*, 2nd edition (New York: Oxford University Press, 1979).

Sheryl Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (New York: Public Affairs, 2004).

Haven:
Yale University Press, 1975).

James Crawford, *Hold Your Tongue: Bilingualism and the Politics of "English-Only"* (New York: Addison-Wesley Publishers, 1993).

Cornell
University Press, 1975).

Richard Delgado, *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995).

Wordsworth
Publishing Company, 1996).

W.E.B. Du Bois, *John Brown* (New York: Random House, Inc., 2001).

W.E.B. Du Bois, *The Suppression of the African Slave-Trade* (New York: Literary

Classics of the United States, 1986).

Christopher Edley, *Not All Black and White: Affirmative Action and American Values* (New York: Hill and Wang, 1996).

Max Farrand, *The Framing of the Constitution* (New Haven: Yale University Press, 1966).

Max Farrand, *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1966).

Don E. Fehrenbacher, *The Dred Scott Case, Its Significance In American Law and Politics* (New York: Oxford University Press, 1978).

Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988).

John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Vintage Books, Random House, 1999).

George Frederickson, *The Black Image in the White Mind* (New York: Harper & Row, 1971).

Eugene Genovese, *Roll, Jordan, Roll: The World the Slaveholders Made* (New York: Vintage Books, Random House, 1975).

Joseph Graves, *The Emperor's New Clothes: Biological Theories of Race at the Millennium* (New Brunswick: Rutgers University Press, 2002).

Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness In Representative Democracy* (New York: The Free Press, 1994).

Ian Haney-Lopez, *White By Law: The Legal Construction of Race* (New York: New York University Press, 1996).

Morton Horwitz, *The Warren Court and the Pursuit of Justice* (New York: Hill and Wang, 1998).

Gerald David Jaynes and Robin M. Williams, Jr., Ed., *A Common Destiny: Blacks and American Society* (Washington DC: National Academy Press, 1989).

Kevin Johnson, *Mixed Race America and the Law* (New York: New York University Press, 2002).

Howard Jones, *Mutiny on the Amistad* (New York: Vintage Books, Random House, 1987).

Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968).

Robert Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876* (Philadelphia: University of Pennsylvania Press, 1985).

Randall Kennedy, *Race, Crime, and the Law* (New York: Pantheon Books, Random House, 1997).

Richard Kluger, *Simple Justice* (New York: Vintage Books, Random House, 1977).

Leon Litwack, *North of Slavery* (Chicago: University of Chicago Press, 1961).

Rayford Logan, *The Betrayal of the Negro From Rutherford B. Hayes To Woodrow Wilson* (New York: MacMillan, 1970).

Mari Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder: Westview Press, 1993).

Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983).

Loren Miller, *The Petitioners* (New York: Pantheon Books, 1966).

Rachel Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2001).

Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton & Co., 1975).

Toni Morrison and Claudia Lacour, Eds., *Birth of a Nationhood: Gaze, Script,*

and

Spectacle in the O.J. Simpson Case (New York: Pantheon Books, 1997).

Gunnar Myrdal, *An American Dilemma* (New York: Pantheon Books, 1975).

James Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001).

Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982).

Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991).

Randall Robinson, *The Debt: What America Owes To Blacks* (New York: Penguin Putnam, 2000).

J.A. Rogers, *Sex and Race: A History of White, Negro, and Indian Miscegenation in the Two Americas* (St. Petersburg: Helga M. Rogers, 1989).

Girardeau Spann, *The Law of Affirmative Action* (New York: New York University Press, 2000).

Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Alfred A. Knopf, 1967).

Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York: Vintage Books, Random House, 1946).

Mark Tushnet, *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest* (Princeton: Princeton University Press, 1981).

Gilbert Ware, *William Hastie, Grace Under Pressure* (New York: Oxford University Press, 1984).

Gilbert Ware, Ed., *From the Black Bar: Voices For Equal Justice* (New York: Capricorn Books, G. P. Putnam & Sons, 1976).

Robert Weaver, *The Negro Ghetto* (New York: Russell & Russell, 1967).

David Wilkins, *American Indian Sovereignty and the United States Supreme Court: The Masking of Justice* (Austin: The University of Texas Press, 1997).

William Julius Wilson, *The Declining Significance of Race* (Chicago: University of Chicago Press, 1978).

William Julius Wilson, *The Truly Disadvantaged: The Inner City, The Underclass and Public Policy* (Chicago: University of Chicago Press, 1987).

William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Vintage Books, 1997).

C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1982).

Frank H. Wu, *Yellow: Race In America Beyond Black And White* (New York: Basic Books, 2001).

Both required and recommended reading materials will be placed on reserve in the law library.

COURSE REQUIREMENTS

Race and the Law is a 3 credit Limited Enrollment Elective Course. Class attendance is mandatory. Students who miss more than two class sessions, excused or unexcused, will not be permitted to submit a paper. Students are required to write a research paper in partial fulfillment of the course requirements. The paper must have a length of not less than 20 pages plus endnotes and must be typed and double-spaced. Students achieving a final grade of C- or better will receive the scholarly upper-level research and writing credit. Students may submit a first draft for review. Submission of this draft is optional. The first draft must have a length of not less than 15 pages plus

endnotes and must be typed and double-spaced. Students may use endnotes or footnotes, whichever they prefer. Those using footnotes should take this into consideration in satisfying suggested page-length guidelines for their papers.

Students may write on any topic of their choice as long as it is within the scope of the subject-matter of the course. Students should discuss their research topics with, and must get approval for them from, Professor Higginbotham. Students may request an individual topic discussion meeting. In order to facilitate the selection of topics, a list of suggested subjects will be made available. Topics selected from this list receive automatic approval without request. Submission of a draft is optional. For those so inclined, first drafts of papers will be due October 22 for those students whose last names begin with the letters A-K and October 29 for those students whose last names begin with the letters L-Z. Final papers will be due December 13, 2007. Late first-draft papers will not be accepted. Late final papers will be accepted but will be reduced by one full letter-grade. There are no exceptions to these rules.

Generally, the assigned materials will be read by the entire class. However, for some specialized and more detailed inquiry, the class will be divided into four law firms. On various days the members of each firm will represent a particular client or will comment on additional readings and their relevance to the materials being studied by the entire class. All students are required to thoroughly read the assigned materials for each class and are encouraged to read the supplemental materials. At least one member of each law firm should be prepared to discuss the assigned material for the firm. Such preparation will facilitate discussion and encourage the exchange of ideas. A list of the firm members will be distributed during the second week of class.

The law firms will be as follows:

- Firm A: The John Newton Firm
- Firm B: The Harriet Tubman Firm
- Firm C: The Fred Korematsu Firm
- Firm D: The Lloyd Gaines Firm

Final grades will be based primarily on the quality of the research paper; however, class participation will be considered as well. Your final paper will count as sixty-six percent of the final grade. Class participation will count as thirty-four percent of the final grade.

COURSE DESCRIPTION

The course will examine the use of the law both to perpetuate and eradicate racial injustice in the United States from the inception and rise of slavery during the colonial period through the racial desegregation decision of the United States Supreme

Court in *Brown v. Board of Education* in 1954 to the present. The goals of the course are to achieve an understanding of the role of law in its social context, especially with regard to the use of legal institutions and law in the creation and maintenance of systems of racial injustice; and, as a corollary, to examine the potential and limits of the use of law (especially litigation) as a tool for social change.

The course will begin with an examination of the analytical framework for the study of race and the law. Two subjects will be covered; racial prejudice and race classification.

The course will then focus on the role of law in the introduction and development of the slave system. The subsequent expansion and entrenchment of the institution of slavery in the new nation will be examined next through a case and statutory study of antebellum slavery law. Several cases from various northern courts will be studied as well. The major institutions focused upon will be the state courts and the state legislatures with regard to their role in the preclusion or allowance of traditional family relations, educational options, due process in the courts, and other "rights" for slaves and free blacks.

We will also explore the political debates and the handling of the slavery issue in the formulation of those documents central to the federal government, e.g., the Declaration of Independence, the Articles of Confederation, and the Constitution. In addition, we will look at the federal judiciary's treatment of slavery and the status of blacks.

The foci will not be limited merely to the rules of law adopted by the courts or the legislatures. A major issue for exploration will be the values and priorities of the individuals in power and a probing of how these values and principles affected their choice of options and the rules of law adopted. We will analyze the "prejudices which judges share" as suggested by Oliver Wendell Holmes when he wrote:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, *even the prejudices which judges share with their fellow-men*, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (emphasis added)

During the latter-half of the course, we will follow the role of American law in the attempted eradication of racial segregation and discrimination against African Americans, Asian Americans, Latinos/as, and American Indians, concentrating predominantly on their treatment by the Congress and the Supreme Court. Thus, the inquiry will focus on the successes as well as the failures of American legal institutions during the nineteenth and twentieth centuries, and includes examination of the passage and subsequent judicial interpretation of the Thirteenth and Fourteenth Amendments. Subjects covered include citizenship, sovereignty, transportation, housing, education, marriage, employment, business, voting, and the criminal justice system. By applying

our understanding of the magnitude and nature of slavery gained from earlier study, students may better comprehend what the amendments were designed to eliminate and evaluate the nature and extent of the legal system's endeavors in this regard.

Next, the course will examine recent controversies involving race with specific focus on the jurisprudence of Justice Clarence Thomas, the administration of justice, critical race theory, hate speech, and the Official English Movement.

The course will conclude with an examination of "Ghosts of Jim Crow", a discussion of "hot topics", and a summary session on race and the future of America.

The rationale for this course was developed by the late Judge A. Leon Higginbotham, Jr., Chief Judge Emeritus of the United States Court of Appeals for the Third Circuit, in his book, *IN THE MATTER OF COLOR*, and in the following articles: "Racism and the Early American Legal Process, 1619-1896", 407 *ANNALS* (May 1973), pp. 1-17; Book Review of *Race, Racism and American Law*, by Derrick A. Bell, Jr., in the *University of Pennsylvania Law Review*, Vol. 122, No. 4 (April 1974); "The Impact of the Declaration of Independence", *Crisis Magazine* (Winter 1975), p. 82; "To the Scale and Standing of Men", *The Journal of Negro History*, Volume LX, No. 3 (July 1975), p. 347; "From Racism to Affirmative Action--Will Universities Span the Gap?", *Black Law Journal*, Vol. 4, No. 2 (1975), p. 230; "Dream of Freedom", *Journal of Human Relations* 13 (1965), pp. 166-177; "From Presidential Fact Finding Commissions to Justice for Blacks - Can We Bridge the Gap", *Pursuit of a Culture and Human Dignity*, Scholars/Statesmen Lecture Series, No. 2, Dillard University, 1970-71; "What Kind of Vaccine?", *American Journal of Pharmacy* 143 (1971), pp. 78-80; "As If Bound With Them", *The Hourglass* 4 (1971); "The Black Prisoner, America's Caged Canary", contained in *Violence: The Crisis of American Confidence*, edited by Hugh Davis Graham (Baltimore: Johns Hopkins Press, 1971), pp. 103-125; "Channel Change Through Law - Reason", *Texas Southern University Law Review* 2 (1971), pp. 180-186; "Racism and the American Legal Process: Many Deeds Cry Out to be Done", *Progress in Africa and America*, Scholars and Statesmen Series, No. 3, Dillard University, 1971-72; "Dream Deferred", *Crime and Delinquency* 18 (1972), pp. 30-34; "The Priority of Human Rights in Court Reform", address delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota, April 7-9, 1976, contained in *Federal Rules Decisions* 70, pp. 134-158; "The Relevance of Slavery: Race and the American Legal Process", *Notre Dame Lawyer* 54 (1978), pp. 171-180; "Is Slavery Relevant to Corrections Today?", *Corrections Today* 41 (1979), p. 8; Foreword to "Roles of the Black Lawyer: A Symposium," *Black Law Journal* 7 (1981), pp. 1-4; Foreword to *Blacks in the Law: Philadelphia and the Nation*, by Geraldine Segal (Philadelphia: University of Pennsylvania Press, 1983); and Foreword to *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*, by Genna Rae McNeil (Philadelphia: University of Pennsylvania Press, 1983).

Critical reviews of *IN THE MATTER OF COLOR* appear in: *The New York Times Book Review*, Sunday, June 18, 1978 (by Eugene Genovese); *ABA Journal* 64 (1978), pp. 693-697; *Brooklyn Law Review* 46 (1979-80), pp. 167-173; *Harvard Journal of Legislation* 16 (1979), pp. 269-273; *Harvard Law Review* 92 (1979), pp. 1391-1394; *Howard Law Journal* 23 (1980), pp. 141-147; *John Marshall Journal* 12 (1979), pp. 731-737; *Maryland Law Review* 39 (1980), pp. 652-656; *Notre Dame Lawyer* 54 (1978), pp. 181-198; *Seton Hall Law Review* 9 (1978), pp. 621-624; *Southwestern University Law*

Review 11 (1979), pp. 749-753; *Texas Law Review* 56 (1980), pp. 1319-1329; *University of Chicago Law Review* 45 (1978), pp. 906-918; and *University of Pennsylvania Law Review* 127 (1979), pp. 1475-1482.

SCHEDULE OF CLASSES

August 20 OVERVIEW: Discussion of the course subject-matter and requirements (Syllabus pp. 1-22, Race Law (Dedication, Foreword, Preface, History Timeline, and Introduction) pp. v, xxxi-xliv, 3-4, 703-710) (please read this material prior to the initial session).

PART ONE – ANALYSIS AND FRAMEWORK

THE RACIAL PREJUDICES THAT JUDGES SHARE.

State v. Mann (1829).

(Race Law pp. 61-84) (read carefully pp. 62-65) (please read this material prior to the initial session).

Supplemental Readings:

Robert Cover, *Justice Accused*

August 27 RACE CLASSIFICATION.

The Nature of Race, Definitions of Race, and Myths of Racial Purity.
(Race Law pp. 4-45).

Shades of Freedom.
(Chapter 4, pp. 34-42).

People v. Hall (1854).

(Race Law pp. 46-61) (read carefully pp. 47-50).

Supplemental Readings:

Joseph Graves, *The Emperor's New Clothes*

J.A. Rogers, *Sex and Race*

Kevin Johnson, *Mixed Race America*

PART TWO – SLAVERY

September 10 THE COLONIAL EXPERIENCE WITH SLAVERY AND FREE BLACKS.

The Earliest Protest Against Slavery (1688).
(Race Law pp. 680-681 or In The Matter Of Color p. 267).

In The Matter Of Color.
(Chapter 2) (read carefully pp. 22-40).

Shades of Freedom.
(Chapters 3-4, pp. 18-34).

In The Matter Of Color.
(Chapters 3, 4, 6 and 7).

Firm A: Massachusetts (Chapter 3) (read carefully pp. 89-98)
Firm B: Pennsylvania (Chapter 7) (read carefully pp. 299-305)
Firm C: Georgia (Chapter 6) (read carefully pp. 216-218, 252-256)
Firm D: New York (Chapter 4) (read carefully pp. 100-109)

Supplemental Readings:

Mary Frances Berry, *Black Resistance/White Law*
Winthrop Jordan, *White Over Black*
Orlando Patterson, *Slavery and Social Death*
Orlando Patterson, *Freedom In The Making*

THE ENGLISH EXPERIENCE WITH SLAVERY AND FREE BLACKS.

In The Matter Of Color.
(Chapters 8, 9 and 10) (read carefully pp. 320-329).

In The Matter Of Color.
(Chapter 2, pp. 50-57).

Supplemental Readings:

Eugene Genovese, *Roll, Jordan, Roll*

SLAVERY, FREE BLACKS, AND THE AMERICAN REVOLUTION.

In The Matter Of Color.
(Chapter 11) (read carefully pp. 375-383).

Declaration of the Causes and Necessity of Taking Up Arms (1775).
(Race Law pp. 681-683).

Declaration of Independence (1776).

(Race Law pp. 683-686).

Supplemental Readings:

Edmund Morgan, *American Slavery, American Freedom*

David Brion Davis, *The Problem of Slavery in the Age of Revolution*

SLAVERY, FREE BLACKS, AND THE CONSTITUTION.

The Articles of Confederation (1781).

(Race Law pp. 686-687).

The Constitution (1789).

(Race Law pp. 85-94, 666-667, 669, 673) (read carefully pp. 86-90).

Supplemental Readings:

Max Farrand, *The Framing of the Constitution*

Max Farrand, *The Records of the Federal Convention*

Frank Tannenbaum, *Slave and Citizen*

September 17 THE NORTHERN APPROACH TO FREE BLACKS (Connecticut and Massachusetts).

Crandall v. The State of Connecticut (1834).

(Race Law pp. 98-114, 672) (read carefully pp. 100-110).

Roberts v. The City of Boston (1850).

(Race Law pp. 114-120) (read carefully pp. 117-119).

Supplemental Readings:

Leon Litwack, *North of Slavery*

THE SOUTHERN APPROACH TO SLAVERY AND FREE BLACKS (Virginia).

In The Matter Of Color.

(Chapter 2, pp. 40-50, 58-60).

Hudgins v. Wrights (1806).

(Race Law pp. 120-125, 130-133) (read carefully pp. 122-124).

In The Matter Of Color.

(Chapter 8, footnote 9, pp. 469-470).

Souther v. The Commonwealth (1851).
(Race Law pp. 126-129) (read carefully pp. 126-128).

Slave Auction Handbill (1852).
(Race Law pp. 129-130).

Supplemental Readings:

Mark Tushnet, *The American Law of Slavery*
John W. Blassingame, *The Slave Community*
Kenneth Stampp, *The Peculiar Institution*

September 24 SLAVERY, FREE BLACKS, AND THE UNITED STATES SUPREME COURT.

United States v. The Amistad (1840).
(Race Law pp. 133-141) (read carefully pp. 139-141) (Firms A and B).

Prigg v. The Commonwealth of Pennsylvania (1842).
(Race Law pp. 141-162, 190) (read carefully pp. 146-149) (Firms C and D).

Dred Scott v. Sandford (1857).
(Race Law pp. 162-195) (read carefully pp. 167-179).

Northwest Ordinance (1787).
(Race Law pp. 687-689).

Fugitive Slave Act (1793).
(Race Law pp. 689-690).

The Missouri Compromise (1820).
(Race Law pp. 690-691).

Fugitive Slave Act (1850).
(Race Law pp. 691-692).

Shades of Freedom.
(Chapter 5, pp. 61-67).

Supplemental Readings:

John Hope Franklin, *Runaway Slaves*
Howard Jones, *Mutiny on the Amistad*
Don Fehrenbacher, *The Dred Scott Case*
W.E.B. DuBois, *The Suppression of the African Slave-Trade*

THE BEGINNING OF THE END OF SLAVERY.

The Case of John Brown (1859).
(Race Law pp. 196-204).

Supplemental Readings:

Frederick Douglass, *The Life and Times of Frederick Douglass*
W.E.B. DuBois, *John Brown*

PART THREE – RECONSTRUCTION, CITIZENSHIP, AND SOVEREIGNTY

October 1 THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.

The Emancipation Proclamation (1863).
(Race Law pp. 692-693).

The Freedmen’s Bureau (1865).
(Race Law pp. 693-694).

The Slaughterhouse Cases (1873).
(Race Law pp. 205-239) (read carefully pp. 225-232).

United States v. Cruikshank (1875).
(Race Law pp. 239-250) (read carefully pp. 246-248).

The Black Code (1865).
(Race Law pp. 694-697).

The Civil Rights Cases (1883).
(Race Law pp. 250-269) (read carefully pp. 252-259).

Shades of Freedom.
(Chapters 6, 7, and 8, pp. 75-107).

Supplemental Readings:

Randall Robinson, *The Debt*
Robert Kaczorowski, *The Politics of Judicial Interpretation*
Eric Foner, *Reconstruction: America’s Unfinished Revolution*

October 8 RACE AND CITIZENSHIP.

Ozawa v. United States (1922).
(Race Law pp. 269-278) (read carefully pp. 271-274).

People v. De La Guerra (1870).
(Race Law pp. 278-281).

Elk v. Wilkins (1884).
(Race Law pp. 281-290) (read carefully pp. 283-287).

Chae Chan Ping v. United States (1889).
(Race Law pp. 290-295) (read carefully pp. 292-294).

United States v. Wong Kim Ark (1898).
(Race Law pp. 295-299) (read carefully pp. 296-297).

Korematsu v. United States (1944).
(Race Law pp. 299-308) (read carefully pp. 300-303).

Restitution For Internment (1988).
(Race Law p. 701).

Supplemental Readings:

Ian Haney-Lopez, *White By Law*
Frank Wu, *Yellow*

RACE, AMERICAN INDIANS, AND SOVEREIGNTY.

Johnson and Graham's Lessee v. M'Intosh (1823).
(Race Law pp. 311-319) (read carefully pp. 313-318) (Firms A and B).

Indian Removal Act (1830).
(Race Law pp. 697-698).

The Cherokee Nation v. The State of Georgia (1831).
(Race Law pp. 319-338) (read carefully pp. 319-322) (Firms C and D).

Supplemental Readings:

David Wilkins, *American Indian Sovereignty*

PART FOUR – SEGREGATION

October 15

THE CREATION OF THE SEPARATE BUT EQUAL DOCTRINE.

Strauder v. West Virginia (1880).
(Race Law pp. 339-345) (read carefully pp. 340-343).

Plessy v. Ferguson (1896).
(Race Law pp. 345-359) (read carefully pp. 348-352).

Shades of Freedom.
(Chapter 9, pp. 108-115, 117-118).

Supplemental Readings:

C. Vann Woodward, *The Strange Career of Jim Crow*

EXPANDING THE SEPARATE BUT EQUAL DOCTRINE.

Berea College v. Commonwealth of Kentucky (1908).
(Race Law pp. 360-376) (read carefully pp. 363-365).

Supplemental Readings:

Rayford Logan, *The Betrayal of the Negro*

October 22

LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION
AND HOUSING.

Buchanan v. Warley (1917).
(Race Law pp. 376-390) (read carefully pp. 385-388).

Shades of Freedom.
(Chapter 10, pp. 119-126).

Supplemental Readings:

Robert Weaver, *The Negro Ghetto*

LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION
AND INTERSTATE COMMERCE.

Morgan v. Commonwealth of Virginia (1946).
(Race Law pp. 390-400) (read carefully pp. 392-396).

Supplemental Readings:

Genna McNeil, *Groundwork*

LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION
AND STATE ACTION.

Shelley v. Kraemer (1948).
(Race Law pp. 400-408) (read carefully pp. 402-406).

Supplemental Readings:

Loren Miller, *The Petitioners*
Gilbert Ware, *Grace Under Pressure*

INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE.

Cumming v. County Board of Education (1899).
(Race Law pp. 408-420) (read carefully pp. 414-415).

Gong Lum v. Rice (1927).
(Race Law 420-438) (read carefully pp. 423-425).

Shades of Freedom.
(Chapter 9, pp. 115-117).

Supplemental Readings:

George Fredrickson, *The Black Image In The White Mind*

October 29

APPLYING THE SEPARATE BUT EQUAL DOCTRINE.

Missouri ex rel. Gaines v. Canada (1938).
(Race Law pp. 438-450) (read carefully pp. 445-447) (Firms A and B).

McLaurin v. Oklahoma State Regents For Higher Education (1950).
(Race Law pp. 450-452) (read carefully pp. 451-452) (Firm C).

Sweatt v. Painter (1950).
(Race Law pp. 452-455) (Firm D).

Shades of Freedom.
(Chapter 12, pp. 164-166).

Supplemental Readings:

Gilbert Ware, *From the Black Bar*

THE END OF STATE-MANDATED SEGREGATION.

Brown v. Board of Education (Brown I) (1954).
(Race Law pp. 455-467) (read carefully pp. 459-463).

Supplemental Readings:

Morton Horwitz, *The Warren Court*
Richard Kluger, *Simple Justice*
Gunnar Myrdal, *An American Dilemma*

APPLYING THE *BROWN* RATIONALE.

Loving v. Virginia (1966).
(Race Law pp. 467-477) (read carefully pp. 471-473).

Shades of Freedom.
(Chapter 4, pp. 42-45).

Supplemental Readings:

Rachel Moran, *Interracial Intimacy*

PART FIVE – ATTEMPTED ERADICATION OF INEQUALITY

November 5 RACE-CONSCIOUS REMEDIES.

Shades of Freedom.
(Chapter 2, pp. 7-17).

Executive Order 8802 (1941).
(Race Law pp. 698-699).

Brown v. Board of Education (Brown II) (1955).
(Race Law pp. 479-483) (read carefully pp. 481-482).

Milliken v. Bradley (1974).
(Race Law pp. 483-500) (read carefully pp. 491-493).

Civil Rights Act (1964) (Public Accommodations).
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Civil Rights Act (1964) (Federally Assisted Programs).
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(Race Law pp. 500-513) (read carefully pp. 503-509).

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(Race Law pp. 513-540) (read carefully pp. 516-527).

Supplemental Readings:

Jack Bass, *Unlikely Heroes*
Derrick Bell, *Faces At The Bottom Of The Well*
Sheryl Cashin, *The Failures of Integration*
Christopher Edley, *Not All Black and White*
Gerald Jaynes and Robin Williams, *A Common Destiny*
Girardeau Spann, *The Law of Affirmative Action*
William Julius Wilson, *Declining Significance of Race*
William Julius Wilson, *The Truly Disadvantaged*

November 12 MAINTAINING RACIAL INEQUITY.

Washington v. Davis (1976).
(Race Law pp. 541-545) (Firms A and B).

Shades of Freedom.
(Chapter 11, pp. 127-151).

Batson v. Kentucky (1986).
(Race Law pp. 545-552) (read carefully pp. 546-550) (Firms C and D).

McCleskey v. Kemp (1987).
(Race Law pp. 552-569) (read carefully pp. 554-560) (Firms A and B).

Shades of Freedom.
(Chapter 13, pp. 169-182).

Voting Rights Act (1965).
(Race Law pp. 699-700).

Shaw v. Reno (1993).
(Race Law pp. 569-588) (read carefully pp. 571-574) (Firms C and D).

Supplemental Readings:

William Julius Wilson, *When Work Disappears*
Lani Guinier, *The Tyranny of the Majority*
Randall Kennedy, *Race, Crime, and the Law*

PART SIX – RECENT CONTROVERSIES

November 19 RACE, VALUES, AND JUSTICE THOMAS.

The Jurisprudence of Justice Clarence Thomas.
(Race Law pp. 589-617).

Supplemental Readings:

Jill Abramson, *Strange Justice*

CRITICAL RACE THEORY.

Meaning and Critiques.
(Race Law pp. 628-648).

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RACE AND LANGUAGE.

Race and the Official English Movement.
(Race Law pp. 655-664).

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James Crawford, *Hold Your Tongue*

RACE AND THE ADMINISTRATION OF JUSTICE.

Race and the Judicial Process.
(Race Law pp. 617-627).

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Toni Morrison, *Birth of a Nationhood*

RACE AND HATE SPEECH.

Race, Hate Speech Regulation, and Freedom of Expression.
(Race Law pp. 648-655).

Supplemental Readings:

PART SEVEN – APPENDIX

November 26 RACE AND THE FUTURE.

Shades of Freedom.
(Chapter 2, pp.7-17).

Ghosts of Jim Crow.
(selected portions to be distributed).

SUMMARY LECTURE: What have we learned and where do we go from here?

Shades of Freedom.
(Introduction Chapter, pp. xxiii-xxxii).

Conclusion.
(Race Law pp. 665-666).