

**NEW YORK UNIVERSITY SCHOOL OF LAW**

**FALL SEMESTER**

**2007**

**S Y L L A B U S**

**RACE, VALUES, AND THE AMERICAN LEGAL PROCESS**

**LO6.3512.001**

**MICHAEL HIGGINBOTHAM**

## COURSE DETAILS

Professor: Michael Higginbotham  
Time: Designated Fridays (see schedule of classes)  
11:05 a.m. - 12:55 p.m.  
Course Category: Seminar  
Classroom: Vanderbilt Hall 202  
Office Hours: Fridays 1:30 - 2:30 p.m. (or by appointment)  
Office: Library Study Room 8  
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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 New York University Professional 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 New York University Professional Bookstore.
- F. Michael Higginbotham, *RACE LAW: Cases, Commentary, and Questions* (Second Edition) (Durham: Carolina Academic Press 2005). Available in hardback at the New York University Professional Bookstore.

## **Recommended**

- Jill Abramson and Jane Mayer, *Strange Justice: The Selling of Clarence Thomas* (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* (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).
- Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975).
- James Crawford, *Hold Your Tongue: Bilingualism and the Politics of "English-Only"* (New York: Addison-Wesley Publishers, 1993).
- David Brion Davis, *The Problem of Slavery in the Age of Revolution* (Ithaca: Cornell University Press, 1975).
- Richard Delgado, *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995).
- Frederick Douglass, *The Life and Times of Frederick Douglass* (New York: Wordsworth Publishing Company, 1996).
- W.E.B. DuBois, *John Brown* (New York: Random House, Inc., 2001).
- W.E.B. DuBois, *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 Fredrickson, *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., eds., *A Common Destiny: Blacks and American Society* (Washington D.C.: 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 Antebellum South* (New York: Alfred A. Knopf, Inc., 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, Values, and the American Legal Process is a 2 credit Seminar Course. Students are required to complete an examination or to write a research paper in partial fulfillment of the course requirements. The paper must have a length of not less than 25 pages plus endnotes, and must be typed and double-spaced. Those students wishing to receive Part-A writing credit must complete papers with a length of not less than 30 pages plus endnotes, and are required to submit an outline and a first draft for review and evaluation. 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 completing the Part-A writing requirement will receive 3 credits instead of the normal two.

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 must discuss their research topics with and get approval for them from Professor Higginbotham. Individual topic discussion meetings may be arranged and a list of possible topics will be made available. Topics selected from this list receive automatic approval without request. For those doing Part-A writing, outlines of papers are due September 14 and first drafts of papers are due November 9. For those doing Part-A or Part-B writing, final papers are due December 20, 2007. Late papers will be accepted but will be reduced by one full letter-grade. There are no exceptions to these rules.

In general, 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 and 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

The members of each firm should be familiar with the background and career of the firm's senior founder, and should be prepared during the latter-half of the course to speculate how he or she would view the problems under study, and what strategies he or she would propose.

Final grades will be based primarily on the quality of the examination or research paper or papers; however, class participation will be considered as well. Should you exercise the examination option, your

test will count as sixty-six percent of the final grade. Should you exercise the A-level option, your draft will count as thirty-three percent and your final paper will count as thirty-three percent of the final grade. Should you exercise the B-level option, your paper will count as sixty-six 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 first 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 courts and the 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 with their fellow men" 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, employment, and the administration of justice. By applying our understanding of the magnitude and nature of slavery gained from our 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 creating racial equality.

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, race and hate speech, and race and language.

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

The late Judge A. Leon Higginbotham, Jr., Chief Judge Emeritus of the United States Court of Appeals for the Third Circuit, developed the rationale for this course in his book, *IN THE MATTER OF COLOR*, and in the following articles: "Yearning to Breathe Free: Legal Barriers Against and Options in Favor of Liberty in Antebellum Virginia", *New York University Law Review* 68 (1993), pp. 1213-1271; "Racial Purity and Interracial Sex In The Law of Colonial and Antebellum Virginia", *Georgetown Law Journal* 77 (1989), pp. 1967-2029; "Rather Than the Free: Free Blacks In Colonial and Antebellum Virginia", *Harvard Civil Rights Civil Liberties Law Review* 26 (1991), pp. 17-66; "45 Years In Law and Civil Rights", *Ebony Magazine* (November 1990), pp. 82-86; "Property First, Humanity Second: The Recognition of the Slave's Human Nature In Virginia Civil Law", *Ohio State Law Journal* 50 (1989), pp. 511-561; "Race, Sex, Education, and Missouri Jurisprudence: Shelley Versus Kraemer In A Historical Perspective", *Washington University Law Quarterly* 67 (1989), pp. 673-702; "De Jure Housing Segregation in the United States and South Africa: The Difficult Pursuit for Racial Justice", *University of Illinois Law Review* 4 (1990), pp. 763-877; "Racism In American and South African Courts: Similarities and Differences", *New York University Law Review* 65 (1990), pp. 479-587; "The Life of the Law: Values, Commitment, and Craftsmanship", *Harvard Law Review* 100 (1987), pp. 795-816; "The Law Only As An Enemy: The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia", *North Carolina Law Review* 70 (1992), pp. 969-1070; "A Tribute to Justice Thurgood Marshall", *Harvard Law Review* 105 (1991), pp. 55-66; "An Open Letter to Justice Clarence Thomas From a Federal Judicial Colleague", *University of Pennsylvania Law Review* 140 (1992), pp. 1005-1028; "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); "To the Scale and Standing of Men", *The Journal of Negro History*, Volume LX, No. 3 (July 1975); "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; "Race in American Law", paper presented at the Bicentennial Conference on American Law: The Third Century, sponsored by New York University School of Law, New York, New York, April 27, 1976; "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 31**

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.

### 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).

Supplemental Readings:

Robert Cover, *Justice Accused*

**September 7**

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 14**

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 21** 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 28** 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 5 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 12 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 19**

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 26**

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*

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*

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*

**November 2**

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 9** 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).  
(Race Law p. 699).

Civil Rights Act (1964) (Federally Assisted Programs).  
(Race Law p. 699).

Fair Housing Act (1968) (Housing).  
(Race Law pp. 700-701).

*Adarand Constructors Company v. Peña* (1995).  
(Race Law pp. 500-513) (read carefully pp. 503-509).

*Grutter v. Bollinger* (2003).  
(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 16** 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*

**November 23** NO CLASS

**PART SIX – RECENT CONTROVERSIES**

**November 30** 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).

### Supplemental Readings:

Richard Delgado, *Critical Race Theory: The Cutting Edge*

## RACE AND LANGUAGE.

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

### Supplemental Readings:

James Crawford, *Hold Your Tongue*

## RACE AND THE ADMINISTRATION OF JUSTICE.

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

### Supplemental Readings:

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:

Mari Matsuda, *Words That Wound*

## **PART SEVEN – APPENDIX**

**December 7**

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).