Race and the Law, Spring '24, AAAS 212-1/PSCI 214-1

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This course deals with questions raised at the intersection of the study of law and sociological and political science studies of the politics and practice of race in the United States. While studying major court decisions concerning race and slavery, segregation/de-segregation, employment discrimination law, and criminal justice, we will examine questions such as: what is the role of the legal system in constituting and perpetuating the racial order of the United States? How do judges decide cases? Are their decisions based on legal texts, such as statutes, the Constitution, and precedent? What is the role of a judge's personal values and external political pressure? To what extent do court rulings reflect more than they shape what actually happens outside of the legal system? How, if at all, do they shape public opinion? What are the advantages and disadvantages of courts as a tool for social change? Do answers to these questions vary by area of law and/or historical period? The course is largely discussion-based and will include readings in case law, critical legal studies, critical race theory, and works in political science and sociology.

Readings:

I expect students to come to class, to have read the material assigned for that day, and to be ready to discuss it. Most of what you will get out of this, or any course, depends on this. I will supply all of the readings for this class through a social e-reader called Perusall. There is a link to Perusall at the bottom of the course homepage on Blackboard. Once in Perusall, you will see a list of the reading assignments for the course. Most of the work for this course will involve reading the assignments, reflecting upon them, and discussing them with your classmates (on Perusall and in class). I've given more details about how Perusall works below.

Grades are based on:

Two three-page papers, 10% for the first, and 20% for the second
Midterm (take-home), 10%
Final (in class), 30%
Perusall, 20% (I'll explain what this is in class)
Participation, 10%

Late papers will be penalized a half letter grade a day.

Some points about your papers:
1. Establish a focus. A good paper has a thesis, a central idea or claim that it is making, and it presents an argument supporting that thesis. You should be able to make an outline of your paper, which will at the same time be the skeleton of the argument you are making. It is often helpful to write out the outline – in sentence form, not simply as a list of topics – before writing the paper or, at least, the final draft. A good way to think about your paper is to ask yourself, "What do I want my readers to believe after they have read my paper? What reasons can I offer them to think that?" If you can answer these questions succinctly, you're off to an excellent start.
2. Title. The title should express the main idea or focus of your paper, preparing your reader to see immediately

what you're going to say, and why it's interesting.
3. Structure and organization. The paper should have a clear structure, with an introduction presenting the central question or problem you are addressing, a body that sets out a logical development of the reasons and evidence you are offering, and a conclusion that ties the paper together. In the longer paper it is often useful to provide section headings. The introduction should generally state your main thesis, and provide an overview of the structure of the argument, to make it easier for your reader to follow it.
4. Style. I expect your papers to be well-written. Your sentences should be simple and clear. You should avoid obvious errors; use spell check. You should write more than one draft. And you should proofread them before handing them in.
5. Guides. There are a number of excellent guides for good writing. Strunk and White *The Elements of Style* is a classic, especially for grammar and word usage; it also offers a useful set of "principles of composition." I especially recommend Joseph Williams, *Style: Toward Grace and Clarity*. His work is particularly helpful in offering examples of how awkward passages can be rewritten, using rules or principles that are fairly concrete and address specific issues such as clarity, cohesion, emphasis, etc. (these are all chapter headings in his book). Anthony Weston, *A Rulebook for Arguments*, offers a helpful discussion of how to develop (and express) an argument in a tight, logical way.
6. Grading. "B" papers will fulfill the foregoing criteria adequately. "A" papers will do more. They will not only be clearly and forcefully written, but they will show evidence of deep engagement with the issues. They will argue something interesting, and thought-provoking.

How Perusall Works

I have not placed any book orders with the bookstore. I will be supplying the books for this course (with a few exceptions – in some courses, there will be one or two books you need to buy) through an online reading software package called "Perusall." All of the reading assignments for the semester must be completed through this online software package, which you can access by clicking on the Perusall link on the bottom of the course's Blackboard homepage.

Reasons I am doing this: *Perusall* helps you master readings faster, understand the material better, and get more out of the class. To achieve this goal, you will be collaboratively annotating the readings with others in the class. The help you'll get and provide your classmates (even if you don't know anyone personally) will get you past confusions quickly and will make the process more fun. While you read, you'll receive rapid answers to your questions, help others resolve their questions (which also helps you learn), and advise me, the instructor, how to make class time most productive. You can start a new annotation thread in *Perusall* by highlighting text, asking a question, or posting a comment; you can also add a reply or comment to an existing thread. Each thread is like a chat with one or more members of your class, and it happens in real time. Your **goals** in annotating each reading assignment are 1. to stimulate discussion by posting good questions or comments, 2. to help others by answering their questions, and 3. to identify and evaluate the main claims in the piece.

Rubric: Research shows that by annotating thoughtfully, you'll learn more and get better grades, so here's what "annotating thoughtfully" means: Effective annotations *deeply engage points/arguments in the readings, stimulate discussion, offer informative questions or comments, and help others by addressing their questions or confusions.* To help you connect with classmates, you can "mention" a classmate in a comment or question to have them notified by email (they'll also see a notification immediately if online), and you'll also be notified when your classmates respond to your questions. For each assignment I will evaluate the annotations you submit on time (see below). Based on the overall body of your annotations, you will receive a score for each assignment as follows

> 10 = demonstrates **exceptionally thoughtful and thorough reading of the entire** assignment; student has engaged with others, asked questions others want answered, answers questions, and made important insights.
> 7-9 = **demonstrates thoughtful and thorough reading of the entire assignment**; occasionally engages with others, asks questions, and so forth. Some comments state the obvious or are the equivalent of saying "amen" or just free associating, as when someone says, "based off of what he said, I think" and then

goes on to talk about something only tangentially related to the question or issue at hand.
4-6 = demonstrates superficial reading of the entire assignment Or thoughtful reading of only part of the assignment; comments state the obvious, are trivial, often irrelevant.
<4 = demonstrates superficial reading of only part of the assignment; comments state the obvious, are trivial, often irrelevant.

How many annotations do I need to enter?

When I look at your annotations I want them to reflect the effort you put in your study of the text. It is unlikely that that effort will be reflected by just a few thoughtful annotations per assignment. At the other extreme, 30 per assignment is too many, unless a number of them are superficial or short comments or questions (which is fine, because it is OK to engage in chat with your peers). Somewhere in between these two extremes is about right and, thoughtful questions or comments that stimulate discussion or thoughtful and helpful answers to other students' questions will earn you a higher score for the assignment. Note, also, that to lay the foundation for understanding the in-class activities, you must familiarize yourself with each assignment *in its entirety*. Failing to read and annotate across the entire assignment will result in a lower score.

What does "on time" mean?

The work done in class depends on you having done the reading in advance, so it is necessary to complete the reading and post your annotations before the deadline to receive credit. I allow a late annotation period of two days during which the credit for your annotations linearly decreases from 100% at the deadline to 0% at the end of the late annotation period. Similarly, to encourage you to talk to each other, there is a reply window after each deadline during which you can continue to reply, for full credit, to questions posted by others. However, the number of additional points you can earn after the deadline is capped at the credit you receive for annotations made on that assignment before the deadline.

Jan 17 **Introduction**

Background thoughts: What is a legal system? What is race? What causes racism? How do legal systems and racism interact? What concepts do scholars use to think about these issues?

Jan 22 Lawrence Friedman and Grant Hayden, chs. 1-2 of *American Law: an Introduction*, (New York: Oxford University Press), 2017.

Jan 24 Frederickson – "Reflections of a Comparative Historian," in *The Comparative Imagination: On the History of Racism, Nationalism, and Social Movements*, (Berkely, CA: University of California Press), 1997.

Jack Balkin – "The Constitution of Status," 106 *Yale Law Journal*, 2312, 1996-7

Jan 29 Karen and Barbara Fields, "Slavery, Race, and Ideology in the United States of America," in *Racecraft: The Soul of Inequality in American Life*, (New York: Verso), 2012.

Constitution and Slavery

Jan 31 Constitution of the United States of America (Appendix to *Race Law*)

Gordon Wood, "Interests and Disinterestedness in the Making of the Constitution"

Feb 5 Paul Finkelman, "Slavery and the Constitutional Convention: Making a Covenant with Death," in eds. Richard Beeman, Stephen Botein, and Edward Carter II, *Beyond Confederation*: *Origins of the Constitution and American National Identity*, (Chapel Hill, NC: University of North Carolina Press), 1987.

Antebellum Law

Feb 7 George Frederickson, chs. 1-2, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914.*

James Henry Hammond, "The Mudsill, or Cotton is King Speech," March 4, 1858.

Feb 12 *Race Law*, pp. 3-30 – *State v. Mann*

Feb 14 *Race Law*, 95-161 – Free Blacks in the North and the South

Feb 19 *Dred Scott*, in *Race Law*, pp. 165-192

Mark Graber, "No Better Than They Deserve: "Dred Scott" and Constitutional Democracy," *Northern Kentucky Law Review* 34, no. 4 (2007): 589-618.

Reconstruction Amendments – Did the amendments matter? Were legal processes merely a reflection of political forces or did they have an independent influence on the everyday effects of the amendments?

Feb 21 Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution,* Introduction and Ch. 1

Re-read amendments 13, 14, and 15

Feb 26		Foner, ch. 2 and *Race Law*, pp. 238-54
		Slaughterhouse Cases (1873)
Feb 28		Foner, ch. 3
		Race Law, pp. 254-301
		Cruikshank (1875) and *Civil Rights Cases* (1883)
Mar 4		Foner, ch. 4 and epilogue
	Jim Crow	
Mar 6		Introduction and chs. 1-2, Williamjames Hull Hoffer, *Plessy v. Ferguson: Race and Inequality in Jim Crow America*, (Lawrence, KS: University of Kansas Press), 2012.
Mar 9-17	**Spring Break!**	
Mar 18		Hull Hoffer, ch. 3, Tourgée-Walker brief, and Ferguson brief
Mar 20		Hull Hoffer, ch. 4 and *Plessy*
Mar 25		Melissa Milewski – " From Slave to Litigant: African Americans in Court in the Postwar South, 1865–1920," *Law and History Review,* August 2012, Vol. 30, No. 3
Mar 27		Klarman, *Brown v. Board of Education and the Civil Rights Movement*, chs. 1-2
		Giles v. Harris (optional)
	Civil Rights Era	
Mar 29		Klarman, ch. 3 and *Brown v. Board of Education*
Apr 1		Derrick Bell, "*Brown v. Board of Education* and the Interest Convergence Dilemma"
Apr 3		Klarman, chs. 4-5
Apr 8		Klarman, chs. 6-7
	Contemporary Issues: although there are many areas of law that affect or reflect efforts to end/maintain racial subordination, we don't have time to deal with all of them. Most treatments of race and law cover busing (since it is a direct result of *Brown*), affirmative action in education, hiring, and contracting, employment discrimination, voting, housing, and a variety of other areas. We will focus on criminal justice and employment discrimination.	
	Employment	
Apr 10		Derrick Bell, *Race, Racism, and the Law*, pp. 149-180

	1964 Civil Rights Act, Title VII
Apr 15	*McDonnell Douglas Corp v. Green* (1973)
	Griggs v. Duke Power (1973), *Washington v. Davis* (1976), *Feeney* (1979), *Wards Cove* (1989), and *Ricci* (2009)
Apr 17	Robert Bork, "Civil Rights – a Challenge," in *New Republic*
	Allan David Freeman, "Legitimizing Racial Discrimination through anti-discrimination Law," in *Critical Race Theory*

Criminal Justice

Apr 22	Randall Kennedy, "History: Unequal Enforcement," in *Race, Crime, and Law*, (New York: Vintage), 1998.
Apr 24	Michelle Alexander, pp. 40-139, *The New Jim Crow*
Apr 26	Alexander, pp. 140-220
Apr 29	James Forman, "Racial Critiques of Mass Incarceration: Beyond the New Jim Crow," *NYU Law Review*, 87:21, 2012.