Course Description

This is a survey course to examine the laws, public, and social policies impacting contemporary race relations in America from the 17th century to the present.

The emphasis is on constitutional law and the African-American experience. While some attention is devoted to suffrage movements and the history of disenfranchised groups in America; the internment of the Japanese American citizens in the infamous Korematsu case; the Indian Removal Acts, interracial marriages; and the segregation/desegregation of public school education, the focus is on people of color—principally the African American history and experience and its impact upon the law.

Materials

Although the title of the course is derived from the casebook by Prof. Derek Bell, of NYU Law School, the casebook we will be using is RACE LAW: Cases, Commentary, and Questions by E. Michael Higginbotham 2d edition.

The lectures are also drawn liberally from the legal scholarship of Professors Derek Bell; Randall Kennedy, Charles Lawrence III; Peter Irons; Emma Coleman Jordon; Dr. Genna Rae McNeil, John Hope Franklin, Michelle Alexander, Angela Davis, and Charles Ogletree.

Required Materials

1. F. Michael Higginbotham, RACE LAW Fifth Edition ("RL--")

2. INDEPENDENT RESEARCH Materials prepared by the students for a special assignment to be shared with the class) ("IR")
Recommended and optional readings
Please also see Appendix

The course will follow a chronological format covering major civil rights acts, and legislation, executive orders, as well as state and federal Supreme Court decisions over the span of 4 eras periods:

I. Slavery to Emancipation (1619 to 1876)
II. Emancipation to Segregation (1877 to 1896)
III. Segregation to Integration (1897 to 1954)
IV. Integration to Affirmative Action (1955 to 1973)
V. Affirmative Action to Reconciliation (1974 to 2017)
VI. Reconciliation to Freedom and Equality (2018 to)

Approach

The hallmark of the class is to engage in provocative class discussions about the assigned materials and all other historical and contemporary matters relevant to the subject matter discussed. Students will be required to submit weekly written assignments not to exceed 500 words. (50 Points).

The class will begin with an historical analysis of the Institution of Slavery in America, contrasted with the evolving concepts of freedom, and equality drawn from American Revolution, the Civil War, and Reconstruction to the present. Race Law emanates from the institution of slavery –an institution that was not only sanctioned by the federal government but condoned, preserved and ratified in the United States Constitution, as well.

We will be using films, guest speakers, and external programs to enhance and contextualize the matters to be discussed in class.

Weekly/ Bi-weekly written assignments will form the basis for individual student presentations as well as interactive and robust class discussions for the next class. Discussions too will be compared and contrasted with current events.

Students will also be divided into 4 teams/law firms:

i. Morris, Roberts and Associates
ii. Douglass, Taney & Lynch
iii. Sumner and Sessions
iv. Holder, Marshall & King
There will be an in class **mid term examination** covering Periods I through III. --- covering major Federal Acts, social justice policies, and major Supreme Court decisions case decisions, (1619 to 1896).

Finally, the course will conclude with a **Final Paper or Book Review** of the topics and materials covered in class.

Your team/firm will also be responsible for Final Class presentation to **propose, draft, promote and defend a Civil Rights Act** to enhance, amend, abrogate, or repeal the enforcement of current federal or state civil rights laws, or social polices (see Appendix)

Finally, the course will conclude with a **Final Paper or Book Review** of the topics and materials covered in class.

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### Final Grade

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<th>Points</th>
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<tr>
<td>Written Assignments</td>
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<td>Class Room Participation</td>
<td>50</td>
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<tr>
<td>Mid Term Exam</td>
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<td>Civil Rights Legislative Proposal</td>
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<td>Final Paper/ Book Review</td>
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<td><strong>Total</strong> =</td>
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### Learning Objectives

In this course, you will learn:

- the history and legislative intent of the specific congressional acts, the Reconstruction (Slave) Amendments and their relevance today,
- the history of resistance to civil rights,
- the rationales that form the basis of unequal treatment and discrimination,
- how to propose, draft and defend civil rights legislation
- to analyze factual and legal issues,
- to further enhance your written and verbal critical legal analysis skills
- to analyze the impact that slavery has had on past and current federal and
state laws, social justice policies and contemporary race relationships,
• to collaborate effectively with peers on team assignments,
• to understand the benefits and limitations laws have on reshaping attitudes and behaviors of discrimination

**Participation**

• You are expected to be an active participant in class discussion on a weekly basis. Our examinations of the assigned readings, video viewing, and library sessions may help you articulate your analysis and/or contribute to research ideas for your classmates.

• You may respectfully disagree with a colleague’s arguments but it is your obligation to do so based on the merits of the argument and not, for example, because it does not conform to your experience with the subject. If that is the case however, you may offer anecdotal evidence to support your claim but remember that the value of your experience is not worth more than any other classmate’s.

• It is possible and intellectually stimulating to respectfully disagree by challenging the merits (claims and evidence) of a colleague’s argument. Your personal biases are welcomed. You may ask a classmate to clarify or substantiate a claim if you wish. You may also reference other sources if you wish to refute the claim. There are established processes by which you may frame your challenge and you will discover some of these through your research and our analysis of Higginbotham’s RACE LAW and other texts.

**Topics, Class Lectures and Assignments**

**Assignment I**

1) What relevance, if any, does the study of the laws, customs and culture of the Institution of Slavery have upon current laws and contemporary race relations?

2) Do you agree or disagree with the below-referenced statement by Dr. Ben Carson, Secretary of HUD, Mar 6, 2017?

“I think people need to actually look up the word immigrant. Whether you’re voluntary or involuntary, if you come from the outside to the inside, you’re an immigrant. Whether you’re legal or illegal, you come from the outside to inside, you’re an immigrant. Slaves came here as involuntary immigrants but they still had the strength to hold on.”
3) In the Declaration of Independence Thomas Jefferson wrote that “all men are created equal endowed by their Creator with certain unalienable rights, among these are life, liberty and the pursuit of happiness...” The phrase “among these” suggests that there are other “unalienable rights”. Please list at least three “unalienable rights” with a 1-2 sentence explanation that you would have suggested for Jefferson to have included in his coveted Declaration.

Please explain
<table>
<thead>
<tr>
<th>Article/Motion/Writ</th>
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<td>Articles of Confederation (1776)</td>
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<td>Northwest Ordinance (1787)</td>
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<tr>
<td>United States Constitution</td>
<td>734-753</td>
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<tr>
<td>Northwest Ordinance</td>
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**COMPROMISES AND ACTS**

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<td>Kansas Nebraska Act (1854)</td>
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<td>Emancipation Proclamation (1863)</td>
<td>78, 181, 186, 191,195,196, 745, 739, 769, 773</td>
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<td>Compromise of 1850</td>
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**RL CASES**

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Hudgens v. Wright, 102;)

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<td>Roberts vs. School Committee of Boston (1849)</td>
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<td>Souther v. the Commonwealth (1851)</td>
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<td>4</td>
<td>SLAVERY FREE BLACKS &amp; SCOTUS</td>
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<td>The Amistad (1841)</td>
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<td>Prigg vs. Pennsylvania (1842)</td>
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BETRAYAL OF RECONSTRUCTION

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RACE and CITIZENSHIP

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7 SEPARATE BUT EQUAL

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8 SEGREGATION & HOUSING 372-395

Buchanan vs. Warley, (1917)
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SEGREGATION & EDUCATION (1896-1954)

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9 ROAD TO INTEGRATION

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MIDTERM

Brown v. Board of Ed II (1954)  458

964 CIVIL RIGHTS ACT  766-767

Loving vs. Virginia  (1967)  463

Massive Resistance

ATTEMPTS TO ERADICATE INEQUALITY

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VOTING RIGHTS
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White Primaries
Guest Lecture Road to Shelby County Vs. Holder
Voting Rights Act of 1965  600-
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777
(RL 606-626)

Shelby County v. Holder,  
133 S. Ct. 2612 (2013)  608-622

Washington vs. Davis (1976)  572

Swain vs. Alabama 380 U.S. 202 (1965)  IR

Commonwealth vs. Soares 377 Mass. 461 (1979)  IR  
(handout); and

Batson vs. Kentucky, 476 U.S 9 (1986)  577
McKlesky Vs. Kemp (1987)  583

12  STUDENT FINAL PRESENTATION

Race, Arrest and Mass Incarceration  693-710

RESPONSES to Film “13th”  
Ava Duvernay

Henry (Skip) Louis Gates

O.J. Simpson Trial  
Rodney King Beating;

RACE JUSTICE and POLICING BLACK MALES

Trayvon Martin

Jordan Davis

Walking Tour Crime Scene In Commonwealth vs Soares  693-727

13  STUDENT FINAL PRESENTATION
A child born to a Black mother in a state like Mississippi... has exactly the same rights as a white baby born to the wealthiest person in the United States. It’s not true, but I challenge anyone to say it is not a goal worth working for.

Justice Thurgood Marshall
Supreme Court of the United States
FINAL Team Legislative Proposal

During the last 2 or 3 classes, time permitting, each student team will present their draft a legislative proposal for vetting, to enhance and/or facilitate the enforcement of a civil right (s) of an individual, organization, or a group.

The proposal can be designed to abrogate a supreme court (State or Federal) decision, or replace, amend a current state or federal statute and/or regulation or policy, enabling act, a preexisting enactment that adversely impacts the civil rights of civil right(s) of an individual, organization, or a group.

The proposed legislation should be designed to resolve a recurrent problem that only a civil rights law or public policy can redress. Finally, the proposal must favorably impact individuals whom have been marginalized based upon their race, gender, sexual orientation color, faith, or national origin.

Each team is required to submit a memorandum that:
   a) States the title describes the proposal’s pros, cons 1 week prior to your presentation;
   b) The civil right that is being advanced, and/or protected;
   c) its intent, its benefits and adverse impact, if any.

Your presentation must have an historic, objective and thorough analysis of the problem and any and all challenges for its resolution.

Be creative. Your team’s presentation can take the form of: 1) round table discussion; 2) a proposal to a congressional committee, 3) a law firm’s litigation team meeting discussing the strengths and weaknesses of the Proposed Initiative; 4) A Debate 5) a lecture an appellate argument; 6) an en banc meeting of all the appellate judges.

POTENTIAL TOPICS

_______________________________
Please know that the below-referenced list of topics are ONLY suggestions, and you are NOT required to select from this list. You will not receive extra credit if you select a topic from this list.

1) Abrogating and reenacting the Section 4(b) formula eviscerated by the Supreme Court of the 1965 Voting Rights Act in Shelby County vs. Holder 570 U.S. _____ (2013) that rendered Section 5 enforce provisions ineffective.

2) Revised Defense of Marriage Act;

3) Employment as a Civil Right

4) Removal of a flag that represents “hate speech” so repugnant that it falls outside the protections of the first amendment...expediting applications for citizenship and adds or subtracts from the qualifications needed to become a U.S citizen; the proper or improper use of a public facility etc...

5) A law to enhance race neutral stops, arrests, charges and sentencing

6) Immigration policies and laws impacting Race, Gender, Sexual Orientation, National Origin or Religion

7) A Constitutional Amendment making public education a civil right

8) Alternative Sentencing for Hate Crimes

9) Alternative Sentencing for crimes against an Immigrant

10) A law that designates voter ID’s requirement as impermissible in federal elections unlawful “device” in Federal Elections.”

Syllabus is subject to Change
APPENDIX

Optional/ Supplementary & Recommended Readings

Materials that are part of the HISTORY OF CIVIL RIGHTS SUPPLEMENT PACKET from which some of the lectures and assignments are also drawn include:


Douglas Blackmon, Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II (New York: Doubleday, 2008).


Ta Nehisi Coates, There Is No Post-Racial America The Atlantic Monthly July/August 2015)


Lawrence Goldstone, *Inherently Unequal: Betrayal of Equal Rights by the Supreme Court (1865-1903)*


Peter Irons, *People’s History of the Supreme Court* Penguin Group / Books/History Law (USA) Inc. 375 Hudson Street, New York, New York 2014


5th Ave, New York, 2010)


Critical Race Theory, supra note 12, at xix–xxi. 45 This was not exclusively true. Prior to the emergence of CRT, Alan David Freeman, a prominent crit, had written an influential work showing how anti-discrimination law worked to legitimate race discrimination. His work emphatically rejected the bias construct of racial power in favor of an account of structural racism. And his work was emphatically critical (in fact, among the classic early CLS texts) in seeing legal discourse as a site of power and ideological legitimation rather. Subscribe to view the full document. Merican. L. Aw and. L. Iterature. Â Speakers: Patrick Barry, 3L, The Law School, The University of Chicago Straight from the Slaveholder’s Mouth: Law as Persuasion in the Anti-Slavery Speeches of Frederick Douglass Hilary Leewong, 2L, The Law School, The University of Chicago Shooting Blanks: Hapa Men and Mixed Race Sex in Kip Fulbeck’s Paper Bullets Benjamin Ogles, Ph.D. student, Department of Classics, The. University of Chicago A Strong and Beautiful Bug Paxton Williams, 2L, The Law School, The University of Chicago The Indictment of the Law and Notions of Masculinity in Ossie Davis’ Purlie Victorious. 11:15 to 12:00: Fatherh
Racism in the United States has existed since the colonial era, when white Americans were given legally or socially sanctioned privileges and rights while these same rights were denied to other races and minorities. European Americans—particularly affluent white Anglo-Saxon Protestants—enjoyed exclusive privileges in matters of education, immigration, voting rights, citizenship, land acquisition, and criminal procedure throughout American history. Non-Protestant immigrants from Europe, particularly Race, Racism & American Law. Race, Racism & American Law. Derrick A. Bell. Download (pdf, 42.15 Mb) Donate Read. See more of Race, Racism and the Law on Facebook. Log In. or. Create New Account. See more of Race, Racism and the Law on Facebook. Log In. Forgotten account? All parties and amici curiae tacitly agreed that Asian Pacific Americans are already adequately represented in the Law School and that they do not need the Law School to make a special commitment to them in order to be enrolled in significant numbers. Underlying this belief is the stereotype of Asian Americans as the model minority and the related erroneous assumption that Asian Pacific Americans are a uniform group. In reality, several Asian American groups are struggling to improve their socioeconomic status. These groups are usually not enrolled in higher education in significant numbers.