COURSE DETAILS

Professor: José F. Anderson
Time: Designated Mondays (see schedule of classes)
       3:00 p.m.- 6:00 p.m.
JMHHF 94
Office Hours: Mondays 1:00 p.m.-3:00 p.m.
(or by appointment)
Office: Room 666
Phone: 410-837-4398 (University of Baltimore)
E-Mail: janderson@ubalt.edu
       Jfa2@upenn.edu
Secretary: Deborah Thompson  410-837-6798

Texts Required:


Recommended:


For Research:


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


**COURSE REQUIREMENTS**

Diversity and the Law is a 3 credit Limited Enrollment Elective Course. 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 doubles paced.

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.

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 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

**SCHEDULE OF CLASSES**

**Class 1:** OVERVIEW: Discussion of the course subject-matter and requirements (Syllabus pp. 1-21; 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.

Supplemental Readings:
Robert Cover, Justice Accused

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

Supplemental Readings:
Joseph Graves, The Emperor’s New Clothes
J.A. Rogers, Sex and Race
Kevin Johnson, Mixed Race America

PART TWO - SLAVERY

Class 2: THE COLONIAL EXPERIENCE WITH SLAVERY AND FREE BLACKS.

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.

Supplemental Readings:
Eugene Genovese, Roll, Jordan, Roll

Class 3: SLAVERY, FREE BLACKS, AND THE AMERICAN REVOLUTION.


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.


Supplemental Readings:
Max Farrand, The Framing of the Constitution
Max Farrand, The Records of the Federal Convention
Frank Tannenbaum, Slave and Citizen

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).

Supplemental Readings:
Leon Litwack, North of Slavery

Class 4: THE SOUTHERN APPROACH TO SLAVERY AND FREE BLACKS (Virginia).

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

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

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

The Fugitive Slave Act (1793). (Race Law pp. 689-690).
Supplemental Readings:
Howard Jones, *Mutiny on the Amistad*
John Hope Franklin, *Runaway Slaves*

**Class 5: SLAVERY, FREE BLACKS, AND THE UNITED STATES SUPREME COURT.**

The Northwest Ordinance (1787). (Race Law pp. 687-689).
The Missouri Compromise (1820). (Race Law pp. 690-691).

Supplemental Readings:
Don Fehrenbacher, *The Dred Scott Case*

THE BEGINNING OF THE END OF SLAVERY.


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

**PART THREE - RECONSTRUCTION, CITIZENSHIP, AND SOVEREIGNTY**

THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.


Supplemental Readings:
Randall Robinson, *The Debt*

THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.


Supplemental Readings:
Robert Kaczorowski, *The Politics of Judicial Interpretation*
Class 6: THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.


Supplemental Readings:
Eric Foner, *Reconstruction: America’s Unfinished Revolution*

RACE AND CITIZENSHIP.


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

March 5 Spring Break

Class 7: SEGREGATION THE CREATION OF THE SEPARATE BUT EQUAL DOCTRINE.


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

EXPANDING THE SEPARATE BUT EQUAL DOCTRINE


Supplemental Readings:
Rayford Logan, *The Betrayal of the Negro*
RACIAL SEGREGATION AND HOUSING


Supplemental Readings:
Robert Weaver, *The Negro Ghetto*

Class 8: RACIAL SEGREGATION AND INTERSTATE COMMERCE


Supplemental Readings:
Genna McNeil, *Groundwork*

RACIAL SEGREGATION AND STATE ACTION.


Supplemental Readings:
Loren Miller, *The Petitioners*
Gilbert Ware, *Grace Under Pressure*

Class 9: INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE.


Supplemental Readings:
George Fredrickson, *The Black Image In The White Mind*

APPLYING THE SEPARATE BUT EQUAL DOCTRINE

Gilbert Ware, *From the Black Bar*

Class 10: THE END OF STATE-MANDATED SEGREGATION.

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

**APPLYING THE BROWN RATIONALE.**


**Supplemental Readings:**
Rachel Moran, *Interracial Intimacy*

**PART FIVE - ATTEMPTED ERADICATION OF INEQUALITY**

**Class 11: RACE-CONSCIOUS REMEDIES.**

**Supplemental Readings:**
Jack Bass, *Unlikely Heroes*
Derrick Bell, *Faces At The Bottom of the Well*
Christopher Edley, *Not All Black and White*
Gerald Jaynes and Robin Williams, *A Common Destiny*
James Patterson, *Brown v. Board of Education*
Girardeau Spann, *The Law of Affirmative Action*
William Julius Wilson, *Declining Significance of Race*
William Julius Wilson, *The Truly Disadvantaged*

**Class 12: MAINTAINING RACIAL INEQUITY.**