UNIVERSITY OF PENNSYLVANIA  
THE WHARTON SCHOOL  
SPRING SEMESTER  
2010  
SYLLABUS  
DIVERSITY AND THE LAW  
LGST 218-401  
PROFESSOR JOSÉ FELIPÉ ANDERSON

COURSE DETAILS  
Professor: José Felipé Anderson  
Time: Designated Mondays (see schedule of classes)  
3:00 p.m. - 6:00 p.m.  
Office Hours: Mondays 1:00 p.m.-3:00 p.m.  
(or by appointment)  
Office: Room 600  
Phone: 410-837-4398 (University of Baltimore)  
E-Mail: janderson@ubalt.edu  
Jfa2@upenn.edu  
Secretary: Gloria Joy 410-837-6798

Texts:  
Required:  

Recommended:  

For Research papers:  


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 double-spaced.

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 seventy five percent of the final grade. Class participation will count as twenty five 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 antebelumm 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 such as 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 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,


SCHEDULE OF CLASSES FOR SPRING 2010

January 18 Martin Luther King, Jr. Holiday

January 25

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.

State v. Mann (1829).
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).
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

February 1

THE COLONIAL EXPERIENCE WITH SLAVERY AND FREE BLACKS.
The Earliest Protest Against Slavery (1688).

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
Eugene Genovese, Roll, Jordan, Roll

February 8
SLAVERY, FREE BLACKS, AND THE AMERICAN REVOLUTION.
Declaration of the Causes and Necessity of Taking Up Arms (1775).
(Race Law pp. 681-683).
The 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).
Supplemental Readings:
Max Farrand, *The Framing of the Constitution*
Max Farrand, *The Records of the Federal Convention*
12
Frank Tannenbaum, *Slave and Citizen*
THE NORTHERN APPROACH TO FREE BLACKS (Connecticut and Massachusetts).
(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*

February 15

THE SOUTHERN APPROACH TO SLAVERY AND FREE BLACKS (Virginia).
*Hudgins v. Wrights* (1806).
(Race Law pp. 120-125, 130-133) (read carefully pp. 122-124).
In the Matter of Color.
(Chapter 2, pp. 50-57).
*Souther v. The Commonwealth* (1851).
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 United States v. The Amistad* (1840).
(Race Law pp. 133-141) (read carefully pp. 139-141).
Prigg v. The Commonwealth of Pennsylvania (1842).
(Race Law pp. 141-162, 190) (read carefully pp. 146-149).
The Fugitive Slave Act (1793).
(Race Law pp. 689-690).
The Fugitive Slave Act (1850).
(Race Law pp. 691-692).
Supplemental Readings:
Howard Jones, Mutiny on the Amistad
John Hope Franklin, Runaway Slaves

February 22

SLAVERY, FREE BLACKS, AND THE UNITED STATES SUPREME COURT.
Dred Scott v. Sandford (1857).
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.
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
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).
Supplemental Readings:
Randall Robinson, The Debt
THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.
United States v. Cruikshank (1875).
(Race Law pp. 239-250) (read carefully pp. 246-248).
The Black Code (1865).
(Race Law pp. 694-697).
Supplemental Readings:
Robert Kaczorowski, The Politics of Judicial Interpretation
March 1

THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION.  
*The Civil Rights Cases* (1883).  
(Race Law pp. 250-269) (read carefully pp. 252-259).  
Supplemental Readings:  
Eric Foner, *Reconstruction: America’s Unfinished Revolution*  
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).  
*Chae Chan Ping v. United States* (1889).  
*United States v. Wong Kim Ark* (1898).  
(Race Law pp. 308-311) (read carefully pp. 308-309).  
*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*  

March 8, Spring Break  

March 15

SEGREGATION  
THE CREATION OF THE SEPARATE BUT EQUAL DOCTRINE.  
*Strauder v. West Virginia* (1880).  
*Plessy v. Ferguson* (1896).  
Supplemental Readings:  
C. Vann Woodward, *The Strange Career of Jim Crow*  
EXPANDING THE SEPARATE BUT EQUAL DOCTRINE  
(Race Law pp. 360-76) (read carefully pp. 363-65).  
Supplemental Readings:  
Rayford Logan, *The Betrayal of the Negro*
RACIAL SEGREGATION AND HOUSING.
Buchanan v. Warley (1917).
Supplemental Readings:
Robert Weaver, *The Negro Ghetto*

**March 22** RACIAL SEGREGATION AND INTERSTATE COMMERCE
Supplemental Readings:
Genna McNeil, *Groundwork*
RACIAL SEGREGATION AND STATE ACTION.
(Race Law pp. 400-08) (read carefully pp. 402-06).
Supplemental Readings:
Loren Miller, *The Petitioners*
Gilbert Ware, *Grace Under Pressure*

**March 29**

INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE.
Cumming v. County Board of Education (1899).
(Race Law pp. 408-20) (read carefully. 414-15).
Gong Lum v. Rice (1927).

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

APPLYING THE SEPARATE BUT EQUAL DOCTRINE.
Missouri ex rel. Gaines v. Canada (1938).
Shades of Freedom.
(Chapter 12, pp. 164-66).
Gilbert Ware, *From the Black Bar*

**April 5**

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.**


18

Supplemental Readings:
Rachel Moran, *Interracial Intimacy*

**PART FIVE – ATTEMPTED ERADICATION OF INEQUALITY**

**April 12**

**RACE-CONSCIOUS REMEDIES.**

Executive Order 8802 (1941).
(Race Law pp. 698-99).


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. 700-01).

(Race Law pp. 500-13) (read carefully pp. 503-09).


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*

**April 19**

**MAINTAINING RACIAL INEQUITY.**

(Race Law pp. 552-69) (read carefully pp. 554-60).
(Race Law pp. 699-700).

April 26 Wrap - Up