

**RACE AND THE FOUNDATION OF AMERICAN LAW**  
**Model Syllabus and Learning Outcomes**

**Vision Statement:**

America has long proclaimed that, at its essence, it stands for justice. American legal history, paradoxically, gives us many examples of injustice. One of the most important examples of such injustice is racial hierarchy, specifically white supremacy. This course uses the insights of critical historical, sociological, and legal scholarship to analyze the forces that have led to the formation of our legal system and the role that established law plays in limiting the possibility of achieving true equality and the elimination of racial hierarchies. The course will give students specific analytic tools that will enable them to bring a critical approach to all areas of their legal education as well as to the nation’s legal system and framework. Students will also be encouraged to explore their professional identities and future role within that existing framework.

The course is divided into three sections: Historical Origins of White Supremacy; Systems of Racism; and Going Forward. The Historical Origins section covers colonization and the Discovery Doctrine; slavery; the framing of the Constitution; the Civil War Amendments/Reconstruction; and segregation and land ownership. This section of the course looks closely at how maintaining or creating racial hierarchy was a central tenet in the development of our legal doctrine. Systems of Racism covers mass incarceration; housing discrimination; voting suppression; public education; and legal education. Here, we will explore how current legal systems continue to maintain racial hierarchy while using less explicit language of discrimination. In the Going Forward section, the course takes a critical look at how racial hierarchy in the law could be dismantled and the impediments to that effort.

This three-credit course requires two and a half hours per week of class time as well as six hours of work outside the class room. The six hours of work is made up of: preparing for class with videos and readings, writing a weekly reflection, and outlining and drafting a final paper.

DATES	READINGS & ASSIGNMENTS
Week 1	<p><b>COURSE OVERVIEW: Defining Race, Talking About Race, Intersectionality</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Syllabus, Course Policies and Objectives</li> <li>➤ Jane Coaston, The Intersectionality Wars, Vox, May 28, 2019</li> <li>➤ Vivian Chou, How Science and Genetics are Reshaping Race, SITN, Harvard University, April 17, 2017</li> <li>➤ Seeing White Podcasts 1 and 2, Scene on Radio, PRX</li> <li>➤ Selected Readings from the writings of Derek Bell</li> <li>➤ Standards for the Classification of Federal Data on Race and Ethnicity, Office of Management and Budget, August 28, 2015</li> <li>➤ What Census Calls Us, Pew Research Center, February 6, 2020</li> <li>➤ Post Mortem: A Conversation Gone Wrong</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>

<p><b>Week 2</b></p>	<p><b>Historical Origins of White Supremacy: Colonization</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Howard Zinn, <i>A Peoples History of the United States</i>, Chapter One, Columbus, the Indians, and Human Progress</li> <li>➤ Robert J. Williams, <i>The American Indian in Western Thought: The Discourses of Conquest, The Norman Yoke: The American Indian and the Settling of United States Colonizing Legal Theory</i></li> <li>➤ Johnson v. McIntosh 21 U.S. 543 (1823)</li> <li>➤ Excerpt from Nikole Hannah-Jones, <i>The 1619 Project: A New Origin Story</i></li> <li>➤ Nathaniel Philbrick, <i>Mayflower, Epilogue: Conscience</i></li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<p><b>Week 3</b></p>	<p><b>Historical Origins of White Supremacy: Chattel Slavery</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Howard Zinn, <i>A People’s History of the United States</i>, Drawing the Color Line</li> <li>➤ Slave Laws of the State of Virginia (1723)</li> <li>➤ Henry Louis Gates, <i>The Classic Slave Narratives: The History of Mary Prince: A West Indian Slave</i></li> <li>➤ Frederick Douglass, <i>The Meaning of July Fourth for the Negro</i> (1852)</li> <li>➤ Dred Scott v. Sandford, 60 U.S. 393 (1856)</li> <li>➤ Excerpt from David Brion Davis, <i>Inhuman Bondage, The Rise and Fall of Slavery in the New World</i></li> <li>➤ Activity: Watch - <i>Traces of the Trade: A Story from the Deep North</i></li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<p><b>Week 4</b></p>	<p><b>Historical Origins of White Supremacy: Constitution/Views of Framers</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Paul Finkelman, <i>Three-Fifths Clause: Why Its Taint Persists</i>, <i>The Root</i>, Feb. 26, 2013</li> <li>➤ Juan F. Perea, <i>Race and Constitutional Law Casebooks: Recognizing the Proslavery Constitution</i>, <i>Michigan Law Review</i> (2012) &gt; Read Introduction, Sections I and IV, and Conclusion. Skim Section III.</li> <li>➤ Robert Cohen, <i>Was the Constitution Pro-slavery? The Changing View of Frederick Douglass</i>, <i>National Council for the Social Studies</i> (2008)</li> <li>➤ Prigg v. Pennsylvania, 41 US 539 (1842)</li> <li>➤ U.S. Constitution: Art. 1 - Sections 2, 8, &amp; 9; Art. 4 - Sections 2 &amp; 4; &amp; Art. 5.</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Submit Topic Proposal</li> </ul>
<p><b>Week 5</b></p>	<p><b>Historical Origins of White Supremacy: Reconstruction/Civil War Amendments</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Video: The Reconstruction Era and the Fragility of Democracy (13 min.)</li> <li>➤ Eric Foner, <i>Black Reconstruction: An Introduction</i> (2013)</li> <li>➤ Excerpt from Black Reconstruction in America, W.E.B. Dubois: Chapter VI <i>Looking Backward</i>, pgs. 133 – 144</li> <li>➤ Video: PBS.org, Slavery by Another Name, Read <i>Black Codes and Pig Laws</i>. Watch Origins of Black Codes (2 min.) and Laws to Criminalize Black Life (3 min.)</li> <li>➤ Closely Skim: 1865 Mississippi Session Laws, Chapter IV and VI</li> <li>➤ Reading on the promulgation and adoption of the Thirteenth Amendment</li> <li>➤ American Battlefield Trust, <i>The Jim Crow Era</i> (2020)</li> <li>➤ The Civil Rights Cases, 109 U.S. 3 (1883)</li> <li>➤ Plessy v. Ferguson, 163 U.S. 537 (1896)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<p><b>Week 6</b></p>	<p><b>Historical Origins of White Supremacy: Segregation and Land Ownership</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Henry Louis Gates, Jr., <i>The Truth Behind 40 Acres and Mule</i>, PBS.org</li> <li>➤ Video: Southern Homestead Act of 1866, Rick Edwards (5 min.)</li> <li>➤ Ta Nehisi Coates, We Were Eight Years in Power, Section I (pg. 164 – 172) and Section VI &amp; VII (pgs. 189 – 194)</li> <li>➤ Video: The Color of Law, <i>Segregated by Design</i>, by Richard Rothstein (18 min.)</li> <li>➤ Buchanon v. Warley, 245 US 60 (1917)</li> <li>➤ Corrigan v. Buckley, 271 U.S. 323 (1926)</li> <li>➤ Shelley v. Kraemer, 334 U.S. 1 (1948)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul> <p><b>GROUP PRESENTATION 1: Origins of White Supremacy</b></p> <ul style="list-style-type: none"> <li>➤ Group 1 Presentation</li> </ul>
<p><b>Week 7</b></p>	<p><b>Systems of Racism: Mass Incarceration/Abolition</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Paul Butler, <i>Let's Get Free</i>, ch. 1</li> <li>➤ Bruce Western, Mass Incarceration Visualized video</li> <li>➤ German Lopez, <i>Mass Incarceration in America, Explained in 22 Maps and Charts</i></li> </ul>

	<ul style="list-style-type: none"> <li>➤ Watch 13<sup>th</sup></li> <li>➤ Michelle Alexander, <i>The New Jim Crow</i>, ch. 5</li> <li>➤ Selected appellate and post-conviction relief cases where defendants raise the issue of draconian punishments unconstitutionally based on race</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<b>Week 8</b>	<p><b>Systems of Racism: Housing Discrimination and Policy Now</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Review 42 U.S.C. 3601-3619</li> <li>➤ R. Kahlenberg and K. Quick, <i>Attacking the Black-White Opportunity Gap That Comes from Residential Segregation</i>, (2019)</li> <li>➤ HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, Federal Register, Vol. 85, No. 186 (2020), Summary &amp; Section I – III</li> <li>➤ Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015)</li> <li>➤ N. Humber, <i>Fair Housing Enforcement in the Age of Digital Advertising: A Closer Look at Facebook’s Marketing Algorithms</i>, (2020)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<b>Week 9</b>	<p><b>Systems of Racism: Voting Suppression/Gerrymandering</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Voting Rights Act: Major Dates in History, ACLU, (2021)</li> <li>➤ Closely Skim Report: M. Firestone, et. al., <i>Keep the Polls Open: An Action Plan to Protect In-person Voting and Voting Rights in the Era of Covid-19</i>, (2020)</li> <li>➤ Video: Suppressed 2020: The Fight to Vote, (39 min.)</li> <li>➤ Michael Wines, <i>What is Gerrymandering and How Does it Work?</i>, New York Times, (2019)</li> <li>➤ Shelby County v. Holder, 570 US 529 (2013)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> <li>➤ First Draft of Final Paper Due</li> </ul>
<b>Week 10</b>	<p><b>Systems of Racism: Public Education</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Brown v. Board of Education 347 U.S. 483 (1954)</li> <li>➤ Derrick A. Bell, Jr., Brown v. Board of Education and the Interest-Convergence Dilemma, 93 Harv. L. Rev. 518 (1980)</li> <li>➤ Milliken v. Bradley 418 U.S. 717 (1974)</li> </ul>

	<ul style="list-style-type: none"> <li>➤ San Antonio Independent School District v. Rodriguez 411 U.S. 1 (1973)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<p><b>Week 11</b></p>	<p><b>Systems of Racism: Legal Education and the Profession</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Read Francesco Arreaga, <i>Law Schools Have A Moral and Social Responsibility to End Systemic Racism</i></li> <li>➤ Lucie White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Ms. G, 38 Buff. L. Rev. 1 (1990)</li> <li>➤ Read Daria Roithmayr, <i>Deconstructing the Distinction between Bias and Merit</i> pp.389-406 ONLY</li> <li>➤ Read Hutton-Work &amp; Guyse, <i>Requiring A Bar Exam in 2020 Perpetuates Systemic Inequities in the Legal System</i></li> <li>➤ Read Meera Deo, <i>Unequal Profession</i>, ch. 3 &amp; 4</li> <li>➤ Podcast, <i>Pictures in My Head: Black Law Deans Take on Racism in Legal Ed</i></li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul> <p><b>GROUP PRESENTATION 2: Systems of Racism</b></p> <ul style="list-style-type: none"> <li>➤ Group 2 Presentation</li> </ul>
<p><b>Week 12</b></p>	<p><b>Going Forward: Antiracist Lawyering/Decolonizing Education</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Read Justin Jouvenal, <i>Virginia Judge: Remove Courtroom Portraits</i></li> <li>➤ Watch Ibram X. Kendi, The Difference Between Being “Not Racist” and Antiracist</li> <li>➤ Review Racial Disparities in the Massachusetts Criminal System report.</li> <li>➤ Read, Paulo Freire, <i>Pedagogy of the Oppressed</i>, ch. 2</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>• Write a 500-word reflection</li> </ul>
<p><b>Week 13:</b></p>	<p><b>Going Forward: Mass Incarceration/Abolition</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Read Ta-Nehisi Coates, <i>The Black Family in the Age of Mass Incarceration</i></li> <li>➤ Jury Nullification: Acquitting Based On Principle</li> <li>➤ Read German Lopez, <i>Jury Nullification: Acquitting Based On Principle</i></li> <li>➤ Paul Butler, <i>Let’s Get Free</i>, ch. 9</li> <li>➤ Angela Y. Davis, <i>Are Prisons Obsolete</i>, Ch. 1 and 6 ONLY</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Review art website.</li> <li>➤ Listen to part 1 &amp; 2 of The Intercept podcast: Ruth Wilson Gilmore Makes the Case for Abolition</li> <li>➤ Read National Institute of Justice, <i>5 Things About Deterrence</i></li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul>
<b>Week 14</b>	<p><b>Going Forward: Reparations/Critical Race Theory</b></p> <p><b>READ</b></p> <ul style="list-style-type: none"> <li>➤ Ta-Nehisi Coates, The Case for Reparations, Atlantic Magazine (2014)</li> <li>➤ Kimberle Williams Crenshaw, Twenty Years of Critical Race Theory, 43 Conn. L. Rev. 1253 (2011)</li> <li>➤ Gary Peller, History, Identity, and Alienation Commentary: Critical Race Theory: A Commemoration, 43 Conn. L. Rev. 1479 (2011)</li> </ul> <p><b>ASSIGNMENT</b></p> <ul style="list-style-type: none"> <li>➤ Write a 500-word reflection</li> </ul> <p><b>GROUP PRESENTATION 3: Going Froward</b></p> <ul style="list-style-type: none"> <li>➤ Group 3 Presentation</li> </ul>
<b>Exam Period</b>	<b>Paper Due</b>

**ASSIGNMENTS AND GRADING:** You will receive a letter grade for this course as follows:

- **Professional Engagement (30%).** Professional Engagement includes all aspects of your engagement with this course. It includes Class Participation; attending and being on time for all classes; preparing for class by doing the readings and other assignments; bringing to class appropriate materials and readings; active participation in class discussions and group work, your own and your classmates' presentations, compliance with laptop and personal device rules, responding promptly to requests for information, and otherwise being a responsible and helpful citizen of this course. Throughout the semester, you will be required to engage in both small and large group discussions about concepts and cases raised throughout the semester.
- **Written Assignments (70%).**  
Reflections: (10%)  
 You are required to write 500-word reflections each week for this class. Some reflections will be guided prompts; others will be open ended. Be sure to review the syllabus on Bridges each week for access to assignment instructions and to stay up to date. Each reflection will

be worth 5 points. Your reflections will be evaluated on the depth of analysis, reflection, and perception; their readability for the intended audience and purpose; and their clear, organized, and grammatically correct writing. The expectation is that all reflections must be completed on time; points may be deducted for late submissions.

Final Paper (60%) At the end of the semester, you will write a final paper in which you evaluate topics covered in class. The paper will be evaluated on its depth of analysis and insight; its readability, and its clear, organized, and grammatically correct writing. Instructions and criteria to be provided during the semester.

**LEARNING OBJECTIVES**

**Upon successful completion of this course, students should be able to:**

**Doctrinal and Substantive Knowledge**

- Define and explain the historical role racial hierarchy has played in the development of specific aspects of the American legal system.
- Define and explain how these same forces of racial hierarchy are operating in contemporary legal systems.
- Define and explain current anti-racist efforts relevant to legal systems.

**Legal Analysis Skills**

- Identify the use of race and the operation of racial hierarchy in specific legal regimes.
- Assess the strengths and weaknesses of anti-racism initiatives.
- Examine certain laws appearing as race-neutral and discern its impact on minoritized populations.

**Writing Skills**

- Articulate in writing cohesive and logical legal assessments and arguments.
- Draft a variety of formal and informal types of legal communication.

**Oral Communication Skills**

- Communicate orally in an effective manner in a range of professional contexts.
- Convey individual perspectives on complex issues of racial hierarchy in a variety of settings.
- Formulate and deliver polished and organized oral presentations.