

USCGould School of Law

Law 320: Law, Slavery, and Race
Units: 4
Fall 2022 – M. W. (12 – 1:20 p.m.)
Discussion Sections F.
Location: Law Bldg. TBA

Instructor: Professor Ariela Gross
Office: 440
Office Hours: M. W. (1:20 pm – 2 p.m.)
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Teaching Assistant: TBA
Office Hours: By Appointment

COURSE DESCRIPTION: This course will explore the interaction of law, slavery and race in the United States, as well as from a comparative perspective. We will read original documents, including excerpts of trial transcripts, appellate opinions, treatises, codes, and first-person narratives. We will study the way law, politics and culture interacted to shape the institution of slavery and the development of modern conceptions of race. Course lectures and discussions will focus on questions such as: Did different legal regimes (Spanish, French, British) foster different systems of race and slavery in the Americas? How did/does law work “on the ground” to shape the production of racial hierarchy and creation of racial identities? In what ways did slavery influence the U.S. Constitution? How has race shaped citizenship in the U.S., and how can we compare it to other constitutional regimes? How did race shape systems of labor and criminal justice, from Reconstruction through the present day? How have civil rights movements shaped the law during the twentieth century, and how has the meaning of “civil rights” changed? How have race, gender, and sexuality intersected in the regulation of families, marriage, sexual violence and sexual harassment, from slavery through the present day? The course will begin with the origins of New World slavery, race and racism, and move chronologically to the present day.

No Prerequisites or co-requisites

COURSE OBJECTIVES: This course aims to teach students legal and historical approaches to analyzing important social problems. Students will learn the history of a key institution in the United States and the Atlantic world, slavery; understand how ideas about race developed through legal and cultural practices; analyze key texts on the topics of law, slavery, and race; and understand the connections between slavery in the past and regimes of racial inequality in the present. Students will learn to read legal materials, including trial records, appellate judicial opinions, and statutes, and to use those sources as evidence for legal and historical arguments.

EVALUATION AND EXAMINATION:

Participation/Blackboard (20% of grade): All students will be required to attend class on Zoom, to read the assigned readings, and to participate in classroom discussion as well as discussion on Blackboard. If you cannot attend on Zoom synchronously because of illness, care responsibilities, time zone or technological issues on a given day, please let me know, and I will give you an alternate way to participate. All Zoom classes will be required.

Students will be assigned randomly to “panels” of 6 or 7 people who will be on call for each class to answer questions or raise issues for discussion. We may also at times divide into or in other random configurations to discuss a particular question. I will post ahead of time questions to consider for class and be prepared to discuss. Students will be required to post on Blackboard two discussion questions for your section five times in the semester on days discussion section is held; questions are due three hours before discussion section. Participation will be evaluated by students’ preparation, thoughtfulness, respect for others, and performance on short written reflections.

Examinations (55% of grade): There will be one midterm exam, on Oct. 5, which will count for 15% of the grade, format TBA, and three reading quizzes, each worth 5% of the grade, on Sept. 14 and Oct. . This exam will emphasize knowledge of the reading and material presented in class for the first half of the course. The final exam (25%) will be a take-home essay that will cover primarily but not exclusively material from after the midterm. Final exams will be due according to the day and time published in the Schedule of Class. Students with documented learning disabilities can be accommodated for examinations (as needed) by the University’s Office of Disability Services and Program (DSP), located in Student Union 301, Mon-Fri 8:30 a.m. - 5 p.m., 740-0776.

Written assignments (25% of grade): Students will write one short (2 page) primary source analysis (10%); and one 5-6 page paper (15%). For each paper, students will be provided with several topics to choose among. Written assignments will be graded down 1/3 of a grade for each day (1-24 hours) late. You cannot pass the course without turning in both papers.

Paper 1 (5-7 pages) is due at noon on Wednesday, September 16; the course TA will not answer questions regarding Paper 1 after 9:00 pm of Tuesday, September 15. Paper 2 (7-10 pages) is due at noon on Monday, November 2; the course TA will not answer questions regarding Paper 2 after 9:00 pm of Sunday, November 1.

Extra Credit: There will be occasional extra credit events throughout the semester, usually Wednesdays at 12-1 pm. They will involve reading ahead of time and preparing a short reflection on the reading and/or talk or presentation. Extra credit events will count the equivalent of participation and discussion questions for one class.

Also, there are optional readings on the syllabus (and on Blackboard) throughout the semester. You may, for extra credit, read and prepare a 5- minute presentation on the optional reading for any class period where there is optional reading assigned.

COURSE MATERIALS: The assigned materials will be posted on the class Blackboard page, under “Readings.”

Students occasionally seek recommendations for more general overviews of American legal history, as well as on American history more generally. Two overviews of American legal history are Kermit Hall, *The Magic Mirror* (1991) and Lawrence Friedman, *A History of American Law* (3d ed. 2005). For those who feel in need of more basic background in U.S. history, Brands et al., *American Stories* (4th ed. 2017) is an excellent U.S. history textbook (of which I'm a coauthor ☺) and *The Cambridge History of Law in America* is a very good collection of essays on legal history. I am also happy to discuss individually with students other sources that may be of help. From time to time, I will post on the class page links to some of the numerous useful websites that treat in depth various matters relevant to the course.

COURSE SCHEDULE AND READING ASSIGNMENTS:

August 22, 2022

1. Introduction: What Is Slavery? What is Race?

August 24, 2022

2. Origins of New World Slavery, The Slave Trade, Race and Law

VIDEO: Slave Ship in 3D (4 min.): <https://slavevoyages.org/voyage/ship#slave->

David Brion Davis, "The Origins and Nature of New World Slavery," *Challenging the Boundaries of Slavery*.

"The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, the African, Written by Himself." Vol 1: Chap. II.
Docsouth.unc.edu/neh/equiano1/equiano1.html#p45

August 26, 2022

Discussion Section: Introductions (no assignment)

August 29, 2022

3. Slave Codes and "Legal Transplants"

Las Siete Partidas, Title XXI Concerning Slaves (1251-65).

Code Noir (1685).

Carolina Act for the Better Ordering of Slaves (1690).

Optional:

Christopher Tomlins, *Freedom Bound: Law, Labor and Civic Identity in Colonizing English America, 1580-1865*, 401-508.

August 31, 2022

4. Race in the Colonial Era

Kathleen Brown, "Engendering Racial Difference, 1650-1670," Chapter 4 of *Good Wives, Nasty Wenches, Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia*.

Maria Elena Martinez, "The Black Blood of New Spain: *Limpieza de Sangre*, Racial Violence, and Gendered Power in Early Colonial Mexico," Wm. & Mary Q. (2004).

Optional:

Jennifer L. Morgan, "Some Could Suckle Over Their Shoulder": Male Travelers, Female Bodies, and the Gendering of Racial Ideology, 1500-1700."

Sept. 2, 2022

Discussion Section #1: Close readings of Slave Codes (Las Siete Partidas, Code Noir, and Carolina Act)

Sept. 5, 2022 No Class – Labor Day Holiday

Sept. 7, 2022

5. Slavery and Freedom: Manumission and Freedom Suits - Comparisons

Alejandro de la Fuente & Ariela Gross, *Becoming Free, Becoming Black: Race, Freedom, and Law in Cuba, Louisiana, and Virginia*, excerpts.

Selected freedom suits from St. Louis Circuit Court Records, Virginia Chancery Court Records.

Optional:

Martha Jones, "Leave of Court: African-American Claims-Making in the Age of *Dred Scott v. Sandford*."

Keila Grinberg, "Freedom Suits and Civil Law in Brazil and the United States."

Sept. 9, 2022

Discussion Section #2: Primary Source Analysis due

Close readings of freedom suits (choose from online sources)

Sept. 12, 2022

6. Race in the U.S. and Latin America, Nineteenth Century

Morrison v. White, Trial Transcript (1858).

Bryan v. Walton, Trial Transcript (1853, 1856, 1864).

Ariela Gross, *What Blood Won't Tell*, Introduction & Chaps. 1-2.

Optional:

Richard Turits, "Race Beyond the Plantation: Slavery, Free Persons of African Descent, and the Problem of Collective Identities in Spanish Santo Domingo."

Tanya Kateri Hernandez, "Spanish American whitening the race – the un(written) laws of 'blanqueamiento' and 'mestizaje,'" *Racial Subordination in Latin America*.

Sept. 14, 2022

7. Slavery, Race and Sexuality

Adrienne Davis, "'Don't Let Nobody Bother Yo Principle': The Sexual Economy of Slavery."

State v. Celia, A Slave (trial transcript & online materials).

Harriet Jacobs, *The Autobiography of Linda Brent*, excerpts.

Optional: Materials from The Celia Project.

Reading Quiz #1

Sept. 16, 2022

Discussion Section #3: Close readings of Celia case materials.

Sept. 19, 2022

9. The Law and Commerce of Slavery

Johnson v. Wideman, 24 S.C.L. 325 (1839).

Icar v. Suares (transcript).

Henry Bibb, Narrative of the Life of Henry Bibb, an American Slave, 101-11 (Chapter IX).

Solomon Northup, Twelve Years a Slave (1853) 78-88 (Chapter VI).

Gross, Slavery, Antislavery & The Coming of The Civil War, 280-98.

Optional: Debra Blumenthal, *Enemies and Familiars: Slavery and Mastery in Fifteenth-Century Valencia*, “Talking Tools.”

Sept. 21, 2022

10. Slavery and Criminal Law

State v. Mann.

State v. Will.

Sally Hadden, *Slave Patrols*, excerpts.

Slave Code of North Carolina (1854) (excerpts)

T.R.R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (1858), 36-41, 97-101

Optional: Eugene Genovese and James Oakes on State v. Will and State v. Mann.

Sept. 23, 2022

Discussion Section #4: Close readings of State v. Mann, State v. Will, and codes.

Sept. 26, 2022

11. Slavery and the U.S. Constitution, Part I: National Politics

Slavery-Related clauses of the U.S. Constitution.

Frederick Douglass, Speech on The Dred Scott Decision.

John C. Calhoun, Resolutions.

Ariela Gross, “Slavery, Antislavery & The Coming of the Civil War,” 298-312.

Sept. 28, 2022

12. Slavery and the U.S. Constitution, Part II: The Federal System

Somerset v. Stewart, Lofft 1, 98 Eng. Rep. 499 (K.B. 1772)

Dred Scott v. Sandford.

Optional: Prigg v. Pennsylvania.

Sept. 30, 2022

Discussion Section #5: Mid-Term Review

Oct. 3, 2022 In Class Midterm.

Oct. 5, 2022 Class Cancelled: Yom Kippur

Oct. 7, 2022 Discussion Section #6: Go over Midterm

Oct. 10, 2022

13. Emancipation and the Meaning of Freedom

Reconstruction Chronology – U.S.

Mississippi "Black Code" (1866)

Congressional Joint Committee on Reconstruction (1866) -- Hearings on Mississippi

The Reconstruction Amendments

Letter from Jourdan Anderson to his former master.

VIDEO: Reconstruction, episode 1.

Report of Colonel Aurelio Aguilera, Guantanamo, 1879.

The case of Andreas Queseda.

Optional: C. Vann Woodward, "Forgotten Alternatives"; Henry Ravenel's Journal and selected WPA narratives; Leon Litwack, *Been In The Storm So Long*, 263-74.

Oct. 12, 2022

14. Citizenship after Slavery

Civil Rights Act of 1875.

Civil Rights Cases (1883)

Plessy v. Ferguson.

Rebecca Scott, "Public Rights, Social Equality, and the Conceptual Roots of the *Plessy* Challenge."

Optional: Rebecca Scott, Degrees of Freedom: Louisiana and Cuba after Slavery (2005), 253-269.

Oct. 14, 2022 No Discussion Section; Fall break

Oct. 17, 2022

15. African American Marriage and Citizenship During Reconstruction

Nancy F. Cott, *Public Vows*, 77-104

Tera Hunter, *Bound in Wedlock*, chap. 6.

Optional: Laura Edwards, "Marriage is the Foundation of all our Rights"

Oct. 19, 2022

16. Post-slavery Labor Systems

A Sharecropper's Contract (1882)

David M. Oshinsky, "American Siberia," Chapter Three of *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996), 55-84

Walter F. White, "'Work or Fight' in the South," *The New Republic*, 18 (March 1, 1919), 144-46

Optional: Pete Daniel, "The Vortex of Peonage," in *The Shadow of Slavery: Peonage in the South, 1901-1969* (Champaign-Urbana: Univ. of Illinois Press, 1972), 19-42

Reading quiz #2.

Oct. 21, 2022

Discussion Section #7: What are civil rights? What is citizenship?

Oct. 24, 2022

17. Lynch Law and Disfranchisement

Ida B. Wells-Barnett, *Southern Horrors: Lynch Law in All Its Phases* (1892), reprinted in Trudier Harris, comp., *Selected Works of Ida B. Wells-Barnett* (New York: Oxford University Press, 1991), 14-45, and in Jacqueline Jones Royster, ed., *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900* (Boston: Bedford Books, 1997), 49-72

Robert M. Goldman, "Massacre at Colfax Courthouse," Chapter 3 of *Reconstruction and Black Suffrage: Losing the Vote in Reese and Cruikshank* (Univ. of Kansas Press, 2001), 42-51

Narrative of Leon Alexander, in *Remembering Jim Crow*, William Chafe *et al.*, eds. (New York: New Press, 2001)

Oct. 26, 2022

18. Race and Jim Crow in the Twentieth Century, Part I: The Scottsboro Case

Film: Scottsboro: An American Tragedy

Oct. 28, 2022

Discussion Section #8: Discuss Scottsboro: An American Tragedy

Oct. 31, 2022

19. Race and Jim Crow in the Twentieth Century, Part II: Interracial Marriage, Immigration, and the Definition of Whiteness

Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' In Twentieth-Century America," 83 J. Amer. Hist. 44 (June 1996).

U.S. v. Thind (1923)

Optional:

Tanya Kateri Hernandez, "Spanish American whitening the race – the un(written) laws of 'blanqueamiento' and 'mestizaje,'" *Racial Subordination in Latin America*.

Gross, *What Blood Won't Tell*, Chap. 3

Nov. 2, 2022

20. Race and Jim Crow in the Twentieth Century, Part III: Criminal Justice

Elizabeth Hinton, *From The War on Poverty to the War on Crime: The Making of Mass Incarceration in America*, Introduction & ch. 9.

Optional: Michelle Alexander, *The New Jim Crow*, chap. 6.

Nov. 4, 2022

Papers Due.

No Discussion Section.

Nov. 7, 2022

21. Race and Jim Crow in the Twentieth Century U.S., Part IV: Housing and Economic Opportunity

Ira Katznelson, *When Affirmative Action Was White*, chaps 1-2.

Richard Rothstein, *The Color of Law*.

Optional: Beryl Satter, *Family Properties: How the Struggle Over Race and Real Estate Transformed Chicago and Urban America*, chap. 2.

Nov. 9, 2022

22. Race and Civil Rights: Part I

Risa Goluboff, *The Lost Promise of Civil Rights*, excerpts.

Ken Mack, *Representing The Race*, excerpts.

Reading Quiz #3.

Nov. 11, 2022

No Discussion Section: Veteran's Day.

Nov. 14, 2022

23. Race and Civil Rights: Part II

Westminster v. Mendez

Ariela Gross, “The Caucasian Cloak.”

Brown v. Board of Education

Milliken v. Bradley

Derrick Bell, Brown v. Board of Education and the Interest Convergence Dilemma

Nov. 16, 2022

24. Race and Civil Rights: Part III: Intersectionality

Kim Crenshaw, Demarginalizing The Intersection of Race and Sex

Angela Harris, Race and Essentialism in Feminist Legal Theory

Rogers v. American Airlines

Price Waterhouse v. Hopkins

Nov. 18, 2022

Discussion Section #9: What difference did Brown v. Board of Education make? For whom?

Nov. 21, 2022 Class Cancelled

Nov. 28, 2022

26. Race and Civil Rights, Part IV: Colorblind Constitutionalism

Ariela Gross, A Grassroots History of Colorblind Conservative Constitutionalism

Neil Gotanda, A Critique of “Our Constitution is Colorblind”

Parents Involved vs. Seattle.

Fisher v. University of Texas at Austin

Daniel Sabbagh, “U.S. Affirmative Action in Comparative Perspective”

Nov. 30, 2022

24. Race Today: The Memory of Slavery, Reparations Movements and Racial Politics Today

Black Lives Matter materials

Nikole Hannah Jones on Reparations

Mayor Mitch Landrieu’s Speech on Confederate Monuments

Optional: Ariela Gross, “‘All Born to Freedom’: Comparing the Law and Politics of Race and the Memory of Slavery in the U.S. and France”

Dec. 2, 2022

Discussion Section #10: What difference does history make?

Optional Exam Review

Take-Home Exam

Statement on Academic Conduct and Support Systems

Academic Conduct

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Section 11, *Behavior Violating University Standards*<https://scampus.usc.edu/1100-behavior-violating-university-standards-and-appropriate-sanctions/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct/>.

Discrimination, sexual assault, and harassment are not tolerated by the university. You are encouraged to report any incidents to the *Office of Equity and Diversity* <http://equity.usc.edu/> or to the *Department of Public Safety* <http://capsnet.usc.edu/department/department-public-safety/online-forms/contact-us>. This is important for the safety whole USC community. Another member of the university community – such as a friend, classmate, advisor, or faculty member – can help initiate the report, or can initiate the report on behalf of another person. *The Center for Women and Men* <http://www.usc.edu/student-affairs/cwm/> provides 24/7 confidential support, and the sexual assault resource center webpage sarc@usc.edu describes reporting options and other resources.

Support Systems

A number of USC’s schools provide support for students who need help with scholarly writing. Check with your advisor or program staff to find out more. Students whose primary language is not English should check with the *American Language Institute* <http://dornsife.usc.edu/ali>, which sponsors courses and workshops specifically for international graduate students. *The Office of Disability Services* and *Programs* http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html provides certification for students with disabilities and helps arrange the relevant accommodations. If an officially declared emergency makes travel to campus infeasible, *USC Emergency Information* <http://emergency.usc.edu/> will provide safety and other updates, including ways in which instruction will be continued by means of blackboard, teleconferencing, and other technology.