

The Advantages and Disadvantages of Multiracial Versus Single-Race
Focused “Race and the Law” Course Content
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This essay is a rumination about my personal experience in teaching a Race and the Law course with a number of different structural configurations. Primarily, the essay will compare the advantages and disadvantages to two particular methods for structuring the course. But I concede that many more methods do exist and may be preferable in different contexts and for different instructors. My comments are based on the experience of teaching “Race and the Law” as a two-credit seminar in a 14-session semester based on the following course description:

“Race and the Law” is a seminar that will evaluate the legal regulation of race in the United States. The object of the course is to examine the nexus between law and the construction of race as a concept and locus of identity. To this end, students will examine the legal ordering of individuals as members of racial groups and their treatment under the law across various timeframes.

One method for structuring a “Race and the Law” course with the objectives stated in the aforementioned course description is to structure the course around distinct legal themes (education, crime, etc.) and to then intertwine their applicability to various racial minorities. I have never elected to use this particular method because I was concerned that many of my students do not have an adequate grasp of history (racial or

otherwise) to engage in a useful discussion of contemporary race issues. It was my personal preference to instead use a structural method that would allow me to incorporate historical and social science materials that would enable students to engage in a more informed discussion.

Two methods that I have utilized for more fully incorporating history and social science data can be descriptively termed the “single-race focused” approach and the “multiracial focused” approach. The single-race focus concentrates on a single racial minority such as African Americans for in-depth historical analysis of how race and law are intertwined. (See Appendix I, Single-race Focused Sample Syllabus). The multiracial focus method broadens the inquiry to include the histories of more racial minority groups and other axes of oppression for a bigger picture of the connections to race and law. (See Appendix II, Multiracial Focused Sample Syllabus).

This essay will compare my experiences with each of these two methods. While each method has distinct pedagogical advantages and disadvantages, the essay concludes that the second method of multiracial historical inclusion may be most helpful to those instructors seeking to educate a population of students with scarce historical knowledge about the development of racial attitudes in the United States. The multiracial historical inclusion method gives such students the basic tools they need before they can begin to develop a sophisticated analysis of race and law issues.

I. Single-Race Focused Option:

When I taught my Race and the Law seminar with a focus on African American history, I would explain my decision to the students as follows:

The reason why the seminar centers itself upon the treatment of persons of African descent is because of the unique role the law has played in regulating the citizenship of African Americans. As Justice Marshall stated during the 200th anniversary of the U.S. Constitution, “Negroes were enslaved by law, emancipated by law, disenfranchised and segregated by law; and finally, they have begun to win equality by law.”¹ Furthermore, the ways in which other races and ethnic groups are racialized is informed by the history of regulating the status of persons of African descent.

While students were not always completely satisfied by this explanation, I found that the single focus on African Americans allowed me to use a highly structured and exacting teaching style that pushed students to think deeply about the ways in which law was implicated in the construction and regulation of race. My method for teaching was to demand a tight connection between the analysis of legal texts and their discussion of race. Students were not invited to simply propound their perspectives about their life experiences. Rather, they were compelled to support their statements with specific textual references.

For instance, the very first day of class I urged the students to consider the question of whether the Constitution is race-conscious or

¹ Thurgood Marshall, *The Constitution's Bicentennial: Commemorating the Wrong Document?*, 40 VAND. L. REV. 1337, 1340 (1987)

color-blind? They then had to go through each instance in which race or racism was implicated by the language of the Constitution. The classroom discussion was then centered on the ways in which presumably race-neutral language was used in provisions historically rooted in issues of race, and what may have accounted for the choice to use race neutral language. The subsequent class was then devoted to the English judicial treatment of slavery² as a mechanism for considering how global economies (with the continued use of slavery in the English colonies) permitted the English jurists to outlaw slavery in England itself.

Thereafter, students could then question why the U.S. colonies did not choose to follow the English legal precedents outlawing slavery that already existed at the time of the American Revolution. Systems of slavery would then be compared across the colonies along with the laws instituted to regulate them. The regional comparisons permitted the students to appreciate how demographic differences, political economy differences and the like could influence the regional regulation of slavery, while at the same time sharing the commonality of having law shape and create race by imbuing blackness with “enslaveability.” This lesson was underscored with the course assignment of listening to the audiotapes of interviews with former slaves collected by the Works Project Administration’s Federal Writers’ Project in the 1930s (and preserved by

² LEON HIGGINBOTHAM, JR. IN THE MATTER OF COLOR, RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD 313-355 (1980) (presenting the English cases outlawing slavery within England, like the Cartwright case, *Sommerset v. Stuart* and others).

the Smithsonian as the “Remembering Slavery” collection).³ Listening to the actual voices of former slaves talk about their own lives helped the students to appreciate the social and legal forces that constrained individual lives.

All the classes that followed then traced the ways in which law was complicit in maintaining the subjugation of African Americans by constructing a pejorative meaning for blackness. This was done with close readings of: the Fugitive Slave Act, Dred Scott, Plessy v. Ferguson, Jim Crow laws, Brown v. Bd. of Ed., and Loving v. Virginia. In turn, each of the cases would be accompanied with a set of readings that provided historical and theoretical tools for analyzing the social significance of each case.⁴

The great joy of this approach is to see how much students appreciate having a firm grasp of historical details regarding the evolution of race that has been denied them in most other educational settings. Even those rare students with a solid background in history or Black Studies are strongly benefited from the seminar’s focus on developing the critical reasoning skills that come from infusing the

³ REMEMBERING SLAVERY: AFRICAN AMERICANS TALK ABOUT THEIR PERSONAL EXPERIENCES OF SLAVERY AND FREEDOM (Ira Berlin ed. et al. 1998).

⁴ In addition to the Higginbotham text referred to in note 2, the students also read DONALD G. NIEMAN, PROMISES TO KEEP: AFRICAN-AMERICANS AND THE CONSTITUTIONAL ORDER, 1776 TO THE PRESENT (1991), and a variety of supplemental reading materials. See Appendix III, Supplemental Reading Materials Index.

examination of history and legal institutions with the tools of a Critical Race Theorist.⁵

Yet at the same time, some of the pedagogical frustrations of the single-race approach were that some students would not apply their newfound analytical skills to the contemporary issues of race. Rather, there were students who simply wanted to constrain their Critical Race Theorist lens to the archives of history. In addition, few students thought to apply these analytical skills to racial contexts other than that of African-Americans. It was primarily these two frustrations that led me to experiment with an alternative framework for teaching the Race and the Law course.

II. Multiracial Focus Approach Option:

Because I was concerned that switching from the single-race focused approach to a multiracial approach would mean that I might have to forego the thematic coherence that I had with the single-race focus, I decided to structure the course around the Westlaw casebook “Race and Races: Cases and Resources for a Diverse America.”⁶ In addition, because I had less historical expertise with the racial histories of many of the other pan-ethnic groups, it was helpful to have a single

⁵ The following pocket-sized book provides a useful introduction to the analytical tools of Critical Race Theory. RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001).

⁶ RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (Juan F. Perea et al. eds., 2000).

source that synthesized the vast literature. I have used the following organizational format for the multiracial focus approach. The first two sessions are devoted to the topics of defining race and racism.

Thereafter, two sessions are devoted to the examination of the historical particularities of four pan-ethnic groups: African Americans, American Indians, Latinos/as, and Asian Americans, along with two sessions regarding the legal construction of whiteness. The course then closes with two sessions examining the legal responses to racism.

While it pained me to condense the material on the African American experience with law down to two sessions from a 14-session treatment in my earlier incarnation of the seminar, I discovered that there were a number of benefits from the new organizational structure. By the end of the semester, students had an appreciation for the concept of systemic racism that had eluded many others when I used the single-race approach. The weekly reflection papers that each student was responsible for writing were more nuanced. It was my distinct impression that the heightened sophistication in the papers and classroom discussion was directly related to the greater exposure the students had to multiple histories of racism and struggle. Furthermore, there was a deeper understanding of the meaning of racial construction that I detected in the classroom assignment, "My First Race Awareness Moment." In that assignment I ask the students to devote one of their weekly Response Papers to describing the first moment they remember

becoming aware of the notion of race and then their own racial difference. When I had students do this exercise in the single-race focused structured course, the significance of the exercise eluded many of them. In contrast, when I assigned the exercise to the multiracial focused structured course, a greater number of students could appreciate how the question pushed them beyond static and unreflective notions of race divorced from social and historical contexts.

While each pan-ethnic group studied had distinct historical and political particularities for the students to learn, it was the exposure to all those histories of racism (even with the painfully abbreviated treatment) that gave the students an appreciation for how extensive and enduring are the systems for maintaining white privilege. Hence, I had much fewer students who by the end of the semester thought racism was a thing of the past. Furthermore, they were more adept at analyzing contemporary race issues because they were mindful of the operation of racial hierarchy in its many guises.

Conclusion:

As I conceded at the beginning of this essay, there are many more methods for structuring a Race and Law course than I have even mentioned here. My own experiences with using the single-race focused approach and the multiracial focus approach have led me to conclude that the multiracial approach better facilitates imparting to students the

basic tools they need before they can begin to develop a sophisticated analysis of race and law issues.

Appendix I
Single-Race Focused Course Sample Syllabus

RACE RELATIONS AND THE CONSTITUTION

Reading Material

LH = A. Leon Higginbotham, Jr. In the Matter of Color

DN = Donald G. Nieman, Promises to Keep

SUPP=Supplementary Reading Materials

Reading Assignments

1. Introduction
SUPP Class 1. Sources
2. English Experience with Slavery [Student Group 1 Response Papers Due]
LH 313-355
3. The Origins of Slavery in the Colonies [Student Group 2 Response Papers Due]
LH 19-60, 392-95
SUPP Class 3. Sources
4. Slavery in Pennsylvania [Student Group 1 Response Papers Due]
LH 267-310
5. Paths of Resistance [Student Groups 1 & 2 Response Papers Due]
SUPP Class 5. Sources

Smithsonian Audio tapes: “Remembering Slavery” on reserve [All students required to submit a Response paper this week reflecting on the Smithsonian audio tapes].
6. Democracy and Slavery [Student Group 2 Response Papers Due]
LH 371-389
DN 3-16
SUPP Class 6. Sources

7. Slavery and Citizenship: Dred Scott [Student Group 1 Response Papers Due]
DN 30-49
SUPP Class 7. Sources
8. The Civil War & The Reconstruction Legal Reforms [Student Group 2 Response Papers Due]
DN 50-77
SUPP Class 8. Sources
9. The Restoration/Redemption: Plessy v. Ferguson [Student Group 1 Response Papers Due]

DN 105-113
SUPP Class 9. Sources
10. The Violence of Segregation [Student Group 2 Response Papers Due]

DN 114-147
SUPP Class 10. Sources
11. The Civil Rights Movement: Brown v. Bd. Of Ed. [Student Group 1 Response Papers Due]

DN 148-188
SUPP Class 11. Sources
12. White-Race Consciousness: Loving v. Virginia [Student Group 2 Response Papers Due]
SUPP Class 12. Sources
13. The Backlash Against Civil Rights [Student Group 1 Response Papers Due]
DN 189-227
14. The Meaning of Race in the Modern World [Student Group 2 Response Papers Due]
SUPP Class 14. Sources

Please note that I may assign additional cases or other materials to supplement these assignments. In general, those materials will be placed on reserve at the law library and you will receive ample notice about these additional materials.

COURSE OBLIGATIONS

Attendance Policy:

The Law School Student Guide of Policies and Procedures states that “full-time attendance is required at the Law School” and is necessary “in order to be certified to bar

admission authorities.” See Student Guide, p. 2. Accordingly, I shall circulate an attendance sheet at the beginning of each class and each student shall be responsible for signing said sheet. Students are not allowed to sign on behalf of other classmates.

Weekly Response Papers:

On **alternate** class meetings you will be required to submit a one-page Response Paper regarding that day’s reading material. The Response Papers should delineate your analysis of the reading material and explore issues that you would like to have made a part of the classroom discussion. The Response Papers are not book reports that merely summarize the contents of the reading assignment.

Place your name and date at the top of your submission and leave it in the folder on office door Rm. S-153 **at 12:00 p.m. on Monday -- the day before our class meeting**. Submissions may also be faxed or emailed to the address on the syllabus. Late submissions will not be accepted. Failure to submit the mandated response papers in a timely manner for more than one class will result in a deduction of points from the final grade. The quality and consistency of all your Response Papers will contribute to the assessment of the final grade.

Take-Home Final:

The Take-Home Final will take the form of a question that will challenge your understanding of the course’s themes and issues and will require you to extensively support your analysis with substantive Bluebook references to the course materials. Additional references to sources outside of the course materials are optional. The Final must be a minimum of 25 pages double-spaced inclusive of single-spaced footnotes or endnotes.

Research Paper Option:

Students can elect to write a Research Paper in lieu of sitting for the Take-Home Final Examination only if their research paper topics have been authorized at the beginning of the semester. (Please note that you will still be responsible for submitting the Weekly Response Papers). The Research Paper must meet the same page requirements as the Take-Home Final. Those students who wish for their papers to be considered for the Senior Writing Requirement credit should notify me immediately and will be required to submit both a First Draft and a Final Paper.

Classroom Participation:

Classroom participation is a central feature of the seminar experience. Students will be expected to engage the materials and one another in a serious manner. Students

will also be called upon to elaborate upon the contents of their Weekly Response Papers as part of the classroom discussion. Therefore, a pattern of arriving late to class and/or poor attendance shall be deemed a failure to adequately participate in class. Furthermore, all students are responsible for discussing each week's reading assignment irrespective of which week the Weekly Response Paper obligation falls.

Appendix II
Multiracial-Focused Course Sample Syllabus

Race and the Law Syllabus

“Race and the Law” is a seminar that will evaluate the legal regulation of race in the United States. The object of this course is to examine the nexus between law and the construction of race as a concept and locus of identity. To this end, students will examine the legal ordering of individuals as members of racial groups and their treatment under the law across various timeframes.

All reading assignments listed below are from the assigned casebook Race and Races: Cases and Resources for a Diverse America (West Group 2000).

Week 1	Defining Racism (Part 1 of 2)	pp 1-50	
Week 2	Defining Racism (Part 2 of 2)	pp 50-90	
Week 3	African Americans and the Law (Part 1 of 2)	pp 91-130	Group 1 Paper
Week 4	African Americans and the Law (Part 2 of 2)	pp 130-172	Group 2 Paper
Week 5	American Indians and the Law (Part 1 of 2)	pp 173-207	Group 1 Paper
Week 6	American Indians and the Law (Part 2 of 2)	pp 208-245	Group 2 Paper
Week 7	Latinos/as and the Law (Part 1 of 2)	pp 246-303	Group 1 Paper
Week 8	Latinos/as and the Law (Part 2 of 2)	pp 304-366	Group 2 Paper
Week 9	Asian Americans and the Law (Part 1 of 2)	pp 367-397	Group 1 Paper

Week 10	Asian Americans and the Law (Part 2 of 2)	pp 397-428	Group 2 Paper
Week 11	The Legal Construction of Whiteness (Part 1 of 2)	pp 429-464	Group 1 Paper
Week 12	The Legal Construction of Whiteness (Part 2 of 2)	pp 464-499	Group 2 Paper
Week 13	Legal Responses to Racism (Part 1 of 2)	pp 1091-1122	Group 1 Paper
Week 14	Legal Responses to Racism (Part 2 of 2)	pp 1123-1154	Group 2 Paper

COURSE OBLIGATIONS

The Final Grade will be based on classroom participation, a submission of short weekly writing assignments and a Take-Home Examination. Students may submit a Research Paper in lieu of the Take-Home Examination only after having the paper topic certified with the Professor.

Weekly Reflection Papers:

On alternate class meetings you will be required to submit a one-page Response Paper regarding that day's reading material. The Response Papers should delineate your analysis of the reading material and explore issues that you would like to have made a part of the classroom discussion. The Response Papers are not book reports that merely summarize the contents of the reading assignment.

Place your name and date at the top of your submission and send it via e-mail **by 12:00 p.m. on Monday – the day before our class meeting**. Submissions may also be faxed to the number at the top of the syllabus or slipped under my office door by the same appointed deadline. Late submissions will not be accepted. Failure to submit the mandated Response Papers in a timely manner for more than one class will result in a deduction of points from the final grade. The quality and consistency of all your Response Papers will contribute to the assessment of the final grade.

Take-Home Final:

The Take-Home Final will take the form of a question or questions that will challenge your understanding of the course's themes and issues and will require you to extensively support your analysis with references to the course materials. Additional references to sources outside of the course materials are optional.

Research Paper Option:

Students can elect to write a Research Paper in lieu of sitting for the Take-Home Examination only if their research paper topics have been authorized at the beginning of the semester. (Please note that you will still be responsible for submitting the Weekly Response Papers).

Classroom Participation

Classroom participation is a central feature of the seminar experience. Students will be expected to engage the materials and one another in a serious manner. Students will also be called upon to elaborate the contents of the Weekly Response Papers as part of the classroom discussion. Therefore, a pattern of arriving late to class and/or poor attendance shall be deemed a failure to adequately participate in class. Furthermore, all students are responsible for discussing each week's reading assignment irrespective of which week the Weekly Response Paper obligation falls.

**Appendix III
Supplemental Reading Materials Index**

**Race Relations and the Constitution
Index of Supplemental Reading Materials**

Class 1. INTRODUCTION

Kermit L. Hall, William M. Wiecek, and Paul Finkelman, American Legal History: Cases and History pp. 66-68; 585-602 (Oxford 2d ed. 1996).

Thurgood Marshall, "The Constitution's Bicentennial: Commemorating the Wrong Document," 40 *Vanderbilt Law Review* 1337-1342 (1987).

Class 3. THE ORIGINS OF SLAVERY IN THE COLONIES

C. Vann Woodward, "Dangerous Liaisons," *N.Y. Review of Books*, Feb. 19, 1998 pp. 14-16.

Class 5. PATHS OF RESISTANCE

Kermit L. Hall, William M. Wiecek, and Paul Finkelman, American Legal History: Cases and History pp. 201-207 (Oxford 2d ed. 1996).

Howard Zinn, A People's History of the United States: 1492-Present, pp. 32-38 (Harper Perennial 1995).

James Oliver Horton, Free People of Color pp. 53-74 (Smithsonian Institution Press 1993).

Eugene D. Genovese, Roll Jordan Roll: The World The Slaves Made pp. 587-598 (First Vintage Books Edition 1976).

CLR James, A History of Negro Revolt pp. 19-21 (Race Today Publication, 3d ed. 1985).

Class 6. DEMOCRACY AND SLAVERY

Howard Zinn, A People's History of the United States: 1492-Present, pp. 39-58 (Harper Perennial 1995).

Class 7. SLAVERY AND CITIZENSHIP: Dred Scott

Juan F. Perea et al., Race and Races Cases and Resources for a Diverse America pp. 123-129 (West 2000).

A. Leon Higginbotham, Jr. Shades of Freedom: Racial Politics and Presumptions of the American Legal Process pp. 7-17 (Oxford 1996).

Lea VanderVelde and Sandhya Subramanian, "Mrs. Dred Scott," 106 Yale Law Journal 1033, 1103-1109 (1997).

Class 8. THE CIVIL WAR & THE RECONSTRUCTION

Kermit L. Hall, William M. Wiecek, and Paul Finkelman, American Legal History: Cases and History pp. 224-225 (Oxford 2d ed. 1996).

Derrick Bell, Race, Racism and American Law pp. 55-58 (Aspen 4th ed. 2000).

Geoffrey C. Ward et al., The Civil War: An Illustrated History pp. 178-181 (Alfred Knopf 1990).

Class 9. THE RESTORATION/REDEMPTION

Plessy v. Ferguson, 163 U.S. 537 (1896).

Ira Berlin, Slaves Without Masters pp. 381-395 (New Press 1974).

Class 10. THE VIOLENCE OF SEGREGATION

Robert L. Zangrando, The NAACP Crusade Against Lynching, 1909-1950 pp. 3-21 (Temple Univ. Press 1980).

Class 11. THE CIVIL RIGHTS MOVEMENT: Brown v. Bd. of Ed.

Brown v. Bd. of Ed., 347 U.S. 483 (1954).

Derrick Bell, Race, Racism and American Law pp. 205-209 (Aspen 4th ed. 2000).

Class 12. WHITE-RACE CONSCIOUSNESS: Loving v. Virginia

Loving v. Virginia, 388 U.S. 1 (1967).

Barbara J. Flagg, “‘Was Blind, But Now I See’: White Race Consciousness and the Requirement of Discriminatory Intent,” 91 Michigan Law Review 953, 969-991 (1993).

Leslie Bender & Daan Braverman, Power, Privilege and Law: A Civil Rights Reader pp. 22-33 (West 1995).

Class 14. THE MEANING OF RACE IN THE MODERN WORLD

Charles R. Lawrence III, “The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism,” 39 Stan. L. Rev. 317 (1987).