***Advanced Constitutional Law Seminar: Fourteenth Amendment: Racial Equality (LAW 6936) (2 credits)***

*Professor Nancy E. Dowd*

*Spring semester 2020*

*Wednesday 4-6:00, HH354*

*Contact information:* [dowd@law.ufl.edu](mailto:dowd@law.ufl.edu)*; 352-273-0930; office HH 317*

***Office hours Tuesday 3-4:****30 p.m. (please feel free to stop by or email for an appointment at other times)*

***Course website:*** *on TWEN*

***Required texts: Ibram X. Kendi, Stamped from the Beginning: The Definitive History of Racist Ideas in America (2016)***

***Additional readings:***

***The 1619 Project*** <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>

Selected US Supreme Court cases (follow links to full cases)(on TWEN under Course Materials)

Selected law review articles on the 13th and 14th amendments (on TWEN under Course Materials)

***Recommended reading: The Nickel Boys by Colson Whitehead (2019)(a novel)***

***Seminar Description, Purpose, and Goals***

The focus of this seminar is the Fourteenth Amendment to the Constitution and the goal of racial equality, within the larger scope of civil rights and social justice. The Fourteenth Amendment encompasses critical principles of equality, liberty, justice and dignity under doctrines of equal protection and fundamental rights (including nearly all of the Bill of Rights and substantive due process rights). The seminar will explore the history, interpretation, and modern context of application of the amendment to secure its primary purpose, equality on the basis of race. One case of particular focus will be *Brown v. Board of Education*. While we will focus on race, we will also be exploring the meaning and application of the broad scope of the Fourteenth Amendment as the embodiment of core civil rights and civil liberties. As part of the seminar you will identify a topic for an in-depth seminar paper that can focus either on racial equality or any other topic within 13th or 14th Amendment jurisprudence.

The reading weeks of the class (weeks 1-10) will include (1) identifying relevant data and issues of equality; (2) core cases; (3) reading from the 1619 Project; (4) selected law review articles; and (5) *Stamped from the Beginning* by Ibram X. Kendi as a primary historical text.

You will be asked to reflect on the reading prior to class and propose a discussion question for the class, in a journal entry due prior to the start of class. Each member of the class will be responsible for signing up for a week when they will start the discussion of the reading with their question.

Concurrent with the reading you will select a paper topic for an in-depth research paper. The last three sessions of the seminar will be devoted to presentations of the papers, and critical feedback from the other members of the seminar.

Your paper may focus on any aspect of the Thirteenth or Fourteenth Amendment; you are not limited to the specific focus of the seminar on racial equality nor on *Brown v. Board of Education*. So, for example, if you are interested in the right of privacy, you may choose to do a paper in that area. You may consider the relevance of other disciplines to your topic, such as history, the social sciences, or other disciplines as they inform legal doctrine under the Fourteenth Amendment.

If you are interested in pursuing a paper related to race and the Fourteenth Amendment, or specifically on *Brown v. Board of Education* and the broad subject of educational equality, please come see me if you would like to explore suggested topics. These might include, for example, slavery and the Constitution; interpretation of the 14th during Radical Reconstruction; the meaning and evolution of segregation/Jim Crow; or the identification of the scope and nature of contemporary inequalities (eg economic, housing, employment, policing as well as education).

The goal of the seminar is to give you an opportunity to seriously reflect upon and consider the relationship and actual functioning of law and public policy. Your discussions with others as well as your research are vehicles to achieve that goal. I encourage you if possible to identify an organization that might benefit from your research. This paper may also be a writing sample that can be used to demonstrate the sophistication of your research skills and your analytic capabilities.

Finally, the form of your paper is not limited to a traditional research paper. It might, for example, be a brief, an advocacy paper, or some other construction of your project that reflects the thorough research expected and careful analysis.

***Learning Outcomes:*** By the end of this course students will have (1) explored the range of issues relating to constitutional law and specifically the Fourteenth Amendment and concepts of equality, liberty, justice and dignity, through reading, discussion, and research; (2) engaged in discussion and problem solving discussions typical of legal practice and policy work; (3) identified a topic for in-depth research for a substantial paper; (4) received additional research instruction in legal research tools for complex research; and (5) drafted, received input and feedback, and finalized a substantial research paper.

***Instructional Methods***: The course is structured as a participatory seminar, where every student is engaged in the learning process. This includes shared responsibility for raising key questions about the reading or during presentations, contributing critique and suggestions. Differences in potential policies and problem solving will be explored. In addition, each student will meet one-on-one with the instructor to produce the best possible seminar paper in both substance and writing, which might in addition be useful to a real-world client or organization, or be used as a writing sample.

***Assignments/Schedule:***

January 15: Identifying inequalities and constitutional foundations

Identifying inequalities: contemporary issues and data. Each student should bring to class at least one report, statistic, study, article, book or collection of data relevant to issues of racial equality and identifying where things stand. We will develop a list of key issues.

*Read one of the essays contained in the 1619 project (see link above and also on TWEN under Course Materials)(18 essays) and for your first journal entry, report back on what you read and your response. Please let the class know your choice so that each person can pick a distinct essay from those included in the 1619 project. Once you decide, please send an email to all members of the seminar. You can do so under the Email tab on TWEN, and then select all as receivers of your email)*

Core caselaw: We will review foundational 13th and 14th Amendment cases. This will be a review of your basic Constitutional Law cases.

January 22 Interpretive issues

1. Gregory E. Maggs, A Critical Guide to Using the Legislative History of the Fourteenth Amendment to Determine the Amendment’s Original Meaning, 49 Connecticut Law Review 1069 (2017)(entire article)
2. Alexander Tsesis, Into the Light of Day: Relevance of the Thirteenth Amendment to Contemporary Law, 112 Columbia L. Rev. 1447-1458 (2012)

January 29: Interpretive issues and the specific example of education

1. Eric Foner, The Supreme Court and the History of Reconstruction—and Vice-Versa, 112 Columbia L. Rev. 1585-1604 (2012)
2. Justin Collings, The Supreme Court and the Memory of Evil, 71 Stanford L. Rev 265-341 (2019) **Read:** Introduction, 267-70; introduction to each section (Parts I, II, III); Part III-D, The Roberts Court, 325-335; and Conclusion, 335-41
3. Read one of the following articles (half of the class to read each one): email Professor Dowd to select one article, read entire article.

Derek Black, *The Fundamental Right to Education*, 94 Notre Dame L Rev 1059-1113 (2019)

Goodwin Liu, Education, Equality and National Citizenship, 116 Yale L.J. 330-411 (2006)

February 5: *Stamped from the Beginning*, Prologue and Part I, chapters 1, 2, 3, 4, 5 (1-65)

February 12: *Stamped from the Beginning*, Part II, chapters 7, 9, 10, 11, 12 (79-91, 104-158)

February 19: *Stamped from the Beginning*, Part III, chapters 16, 17, 18, 19, 20 (202-262)

February 26: *Stamped from the Beginning*, Part IV, chapters 21, 22, 23 (263-322)

SPRING BREAK

March 11: *Stamped from the Beginning*, Part IV, chapters 24, 25, 26, 27, 28, 29 (323-380)

March 18: *Stamped from the Beginning*, Part V, chapters 30, 31, 32, 33, 34 (381-456)

March 25: *Stamped from the Beginning*, Part V, chapters 35, 36, 37 and Epilogue (456-511)

April 1 presentations

April 8 presentations

April 15 presentations

Topic and bibliography February 5

Outline and introduction March 13

Rough draft due April 17

Final draft due May 7 *(if this creates a problem for you due to competing deadlines, please see me well in advance of the deadline for an accommodation)*

***Seminar grade***

Your final grade in the seminar will be determined based on your research paper and satisfactory completion of the other seminar requirements.

In addition to your research paper, you are required to: (1) submit your journals during the reading weeks as described below, and (2) participate in the class as described below. These are ungraded assignments. If your journals are not satisfactory or if you do not participate as described below, then this may result in a deduction of up to one grade (eg, from an A to an A-) in your final grade.

***Journal***

During the reading weeks, please submit a weekly journal entry *prior to each seminar meeting* reflecting on the reading and including at least one question for discussion that you will bring to the class. Your journal entry should be submitted on TWEN, in the dropbox, under the heading “Journal”. Please do not describe the reading; rather, critically evaluate and respond to the reading. There is no minimum or maximum page requirement; as a guideline, 1-2 pages is fine (double spaced). You will receive feedback on your journal.

***Class Participation***

Class participation during reading weeks will involve leading and/or participating in the discussion of the reading and other subjects for discussion in the seminar. During the reading weeks, we will rotate the student who will begin our discussion of the reading, and also rotate the responsibility for one person to be the community notetaker for the class. Notes should be emailed to the class as a group through TWEN.

During the class presentation weeks, when each student presents their project, we will be discussing the projects and every class member will be expected to provide constructive feedback to the presenter and copied to Professor Dowd, which can be done through the email function on TWEN.

***Paper***

The paper will be an in-depth research paper, a critical examination of a topic related to the seminar. A rough guideline is 20-25 pages, with 20-25 sources, but this is not a rigid requirement; it depends very much on the project you choose.

Each student will submit a topic proposal, bibliography, a rough draft and a final paper. You must meet with me to discuss each phase prior to the final paper.

Every phase should be submitted in writing on TWEN under the box titled “Paper”. All deadlines for the paper are on or before 5 pm on the dates below:

Topic and bibliography February 5

Outline and introduction March 13

Rough draft due April 17

Final draft due June 5

Research guidance: Professor Christopher Vallandingham is available to provide additional research guidance.

***Preparation time/workload*:** It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class. In addition, you will spend approximately an equivalent amount of time researching and writing your paper over a similar time period to the readings.

***Attendance and Absence Policy***

Attendance will be taken at each class meeting by sign in sheet. Students are allowed 2 absences during the course of the semester. An absence is counted if you are not present for the full class. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course.

***You may have no more than two absences from the seminar. If you exceed two absences you will be dropped from the course.***

***Laptop policy:*** In past semesters, I have found in-class laptop use distracting, for me and for students (including both those who were using laptops and those who were not). Accordingly, I am asking you **not** to turn on your laptops during class (and please turn off your cellphone and any other device unless you must be available for an emergency call), with the exception of the person taking notes for the seminar.

***College of Law Policies:***

Academic honesty:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Grading scale:

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Accommodations:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.