

**Colloquium in American History:
American Legal History II
Fall 2016
History 730/Law 602**

“The study of law can be disappointing at times, a matter of applying narrow rules and arcane procedure to an uncooperative reality; a sort of glorified accounting that serves to regulate the affairs of those who have power—and that all too often seeks to explain, to those who do not, the ultimate wisdom and justness of their condition.

But that’s not all the law is. The law is also a memory; the law also records a long-running conversation, a nation arguing with its conscience.”
Barack Obama, *Dreams from My Father* (1995).

LEARNING OBJECTIVES

Through an examination of the long civil rights movement, broadly conceived, the goal of this course is to introduce graduate and law students to an important interdisciplinary literature. There are two main objectives of this course. First, students will learn about the complex relationship between law and social change in American history. Students will examine the roles of courts, policymakers, and the people themselves in making history. Second, the course should help students incorporate legal-historical insights into their professional work. To pursue these ends, students will analyze the role of law in structuring American conceptions of dignity, freedom, and opportunity.

REQUIRED TEXTS

Kyle Volk, *Moral Minorities and the Making of American Democracy* (Oxford University Press, 2014).

Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Harvard University Press, 2011).

Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Harvard University Press, 2012).

Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford University Press, 2010).

Nancy MacLean, *Freedom is Not Enough: The Opening of the American Workplace* Paperback Edition. (Harvard University Press, 2008).

Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Harvard University Press, 2016).

Martha Minow, *In Brown's Wake: Legacies of America's Educational Landmark* (Oxford University Press, 2012).

Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (Spiegel and Grau, 2014).

There will also be required readings available through this course's TWEN website at <http://lawschool.westlaw.com>

BASIC COURSE REQUIREMENTS

These requirements apply to *all the students* in this course.

First, students are expected to read the course assignments and be prepared to participate actively in *every* class discussion. Laptops are not allowed in this seminar without an accommodation.

Second, every student must co-lead at least one class discussion.

Third, every student must write a 2,500-word essay (due at 5pm on Friday, October 28) that analyzes all the assigned readings in Part I. *Brown* and Social Change.

ADDITIONAL REQUIREMENTS

Graduate students (and law students who choose not to exercise the law school writing requirement) must revise and resubmit their initial analytical essays. The revised essay (due at 5pm on Friday, December 16) should be 5,000 words and must incorporate all the assigned readings in Part II. Beyond *Brown*.

LAW SCHOOL WRITING REQUIREMENT

Law students may use this course for their Writing Requirement Papers. The guidelines for these papers are listed in the Student Handbook. Students using the course to satisfy the writing requirement will also make a presentation to the class on **November 28**.

GRADING

3 Credits (without writing requirement)

Analytical Essay	75%
Class Participation	25%

3 Credits (with writing requirement)

Analytical Essay	25%
Writing Requirement	50%
Class Participation	25%

Academic Misconduct— Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV’s function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at: <https://www.unlv.edu/studentconduct/student-conduct>.

Copyright—The University requires all members of the University Community to familiarize themselves **with** and to follow copyright and fair use requirements. **You are individually and solely responsible for violations of copyright and fair use laws. The university will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws.** Violations of copyright laws could subject you to federal and state civil penalties

and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

Disability Resource Center (DRC)— Disability Resource Center (DRC)—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the instructor during office hours so that you may work together to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course. Any information you provide is private and will be treated as such. To maintain the confidentiality of your request, please do not approach the instructor in front of others to discuss your accommodation needs.

Religious Holidays Policy— Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting modular courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

Transparency in Learning and Teaching—The University encourages application of the transparency method of constructing assignments for student success. Please see these two links for further information:

<https://www.unlv.edu/provost/teachingandlearning>

<https://www.unlv.edu/provost/transparency>

Incomplete Grades—The grade of I—Incomplete—can be granted when a student has satisfactorily completed three-fourths of course work for that semester/session but for reason(s) beyond the student’s control, and acceptable to the instructor, cannot complete the last part of the course, and the instructor believes that the student can finish the course without repeating it. The incomplete work must be made up before the end of the following regular semester for undergraduate courses. Graduate students receiving “I” grades in 500-, 600-, or 700-level courses have up to one calendar year to complete the work, at the discretion of the instructor. If course requirements are not completed within the time indicated, a grade of F will be recorded and the GPA will be adjusted accordingly. Students who are fulfilling an Incomplete do not register for the course but make individual arrangements with the instructor who assigned the I grade.

Tutoring and Coaching—The Academic Success Center (ASC) provides tutoring, academic success coaching and other academic assistance for all UNLV undergraduate students. For information regarding tutoring subjects, tutoring times, and other ASC programs and services,

visit <http://www.unlv.edu/asc> or call 702-895-3177. The ASC building is located across from the Student Services Complex (SSC). Academic success coaching is located on the second floor of the SSC (ASC Coaching Spot). Drop-in tutoring is located on the second floor of the Lied Library and College of Engineering TEB second floor.

UNLV Writing Center—One-on-one or small group assistance with writing is available free of charge to UNLV students at the Writing Center, located in CDC-3-301. Although walk-in consultations are sometimes available, students with appointments will receive priority assistance. Appointments may be made in person or by calling 702-895-3908. The student's Rebel ID Card, a copy of the assignment (if possible), and two copies of any writing to be reviewed are requested for the consultation. More information can be found at: <http://writingcenter.unlv.edu/>.

Rebelmail—By policy, faculty and staff should e-mail students' Rebelmail accounts only. Rebelmail is UNLV's official e-mail system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students' e-mail prefixes are listed on class rosters. The suffix is always @unlv.nevada.edu. **Emailing within WebCampus is acceptable.**

Final Examinations—The University requires that final exams given at the end of a course occur at the time and on the day specified in the final exam schedule. See the schedule at: <http://www.unlv.edu/registrar/calendars>.

Library statement:

Students may consult with a librarian on research needs. For this class, the Subject Librarian is (https://www.library.unlv.edu/contact/librarians_by_subject). UNLV Libraries provides resources to support students' access to information. Discovery, access, and use of information are vital skills for academic work and for successful post-college life. Access library resources and ask questions at <https://www.library.unlv.edu/>.

CLASS SCHEDULE AND ASSIGNMENTS

INTRODUCTION

Week 1 The Problem of Minority Rights (August 29th – August 31st)

M. The Tyranny of the Majority
Reading: Volk, *Moral Minorities*, 1-218.

W. What are Civil Rights?
Reading: *The Civil Rights Cases*, 109 U.S. 3 (1883).

Week 2 What is Jim Crow? (September 5th – September 7th)

M. **Labor Day** (No Class)

- W. A Plausible Interpretation?
Reading: *Plessy v. Ferguson*, 163 U.S. 537 (1896) and Klarman, *From Jim Crow to Civil Rights*, 1-60.

Week 3

The Problem of Race (September 12th – September 14th)

- M. Writing Crime in Race
Reading: Muhammad, *The Condemnation of Blackness*, 1-278.
- W. Criminal Justice during Jim Crow
Reading: Klarman, *From Jim Crow to Civil Rights*, 117-135, and 152-158, 171-196, 225-232, 267-289.

Week 4 Before *Brown* (September 19th – September 21st)

- M. Lawyering during Jim Crow
 Read: Mack, *Representing the Race*, 1-269.

- W. History and Memory
 Reading: Jacquelyn Down Hall, “The Long Civil Rights Movement and the Political Uses of the Past,” *The Journal of American History* (March 2005): 1233-1263.

PART I: *BROWN* AND SOCIAL CHANGE

Week 5 Contexts and Texts (September 26th – September 28th)

- M. Back Story
 Reading: Klarman, *From Jim Crow to Civil Rights*, 290-343.

- W. *Brown* and the Early Reviews
 Brown v. Board of Education, 347 U.S. 483 (1954); *Brown v. Board of Education*, 349 U.S. 294 (1955); Herbert Wechsler, “Toward Neutral Principles of Constitutional Law,” 73 *Harvard Law Review* (1959): 1-35, and Charles Black, “The Lawfulness of the Segregation Decisions,” 69 *Yale Law Journal* (1960): 421-430.

Week 6 Law and Social Change (October 3rd – October 5th)

- M. Did *Brown* Matter?
 Reading: <http://www.press.uchicago.edu/books/rosenberg/index.html>

- W. The Backlash Thesis
 Reading: Klarman, *From Jim Crow to Civil Rights*, 344-468.

Week 7 The Significance of the Sit-In Movement (October 10th – October 12th)

- M. Beyond Courts?
 Reading: Christopher W. Schmidt, “Divided by Law: The Sit-Ins and the Role of the Courts in the Civil Rights Movement,” 33 *Law and History Review* (2015): 93-149.

- W. Making History
 Film: [The Loving Story](#)

- Week 8 The Roberts Court, *Brown*, and Race (October 17th – October 19th)
- M. The End of Race?
Reading: *Parents Involved in Community Schools v. Seattle*, 551 U.S. 701 (2007).
- W. Reflections on the Presidential Debate

- Week 9 Review and Midterm (October 24th – October 26th)
- M. The End of Equal Protection?
Reading: *Schuette v. Bahm*, 572 U.S. ___ (2014).
- W. Review
First Analytical Essay is due at 5pm on Friday.

Part II: BEYOND BROWN

- Week 10 From Race to Diversity (October 31st – November 2nd)
- M. The Problem of Economic Inclusion
Reading: Nancy MacLean, *Freedom is Not Enough*, 1-261 and 333-347.
- W. Affirmative Action
Reading: *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

- Week 11 *Brown* in Education (November 7th – November 9th)
- M. Unintended Consequences
Reading: Minow, *In Brown's Wake*, 1-189.
- W. School Choice in Nevada
Reading: <http://scholars.law.unlv.edu/nvscs/950/>

Week 12 The War on Crime (November 14th – November 16th)

M. The Origins of Mass Incarceration

Reading: Hinton, *From the War on Poverty to the War on Crime*, 1-342.

W. The Fire This Time

Reading: http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
and Justice Sotomayor's dissent in *Utah v. Strieff*, 579 U.S. ____ (2016)

Week 13 America's Mandela (November 21st – 23rd)

M. Lawyering during the Age of Mass Incarceration

Reading: Reading: Stevenson, *Just Mercy*, 3-314.

W. Review.

Week 14 Looking Forward (November 28th)

M. Student Presentations

Revised and Resubmitted Analytical Essays are due no later than 5pm on December 16, 2016.
Writing Requirement Papers are due no later than 5pm on December 16, 2016.