

RACE AND CRIMINAL JUSTICE
Professor Kim Forde-Mazrui

Course Information

1. Contact: Professor Forde-Mazrui.

2. Course Description: This course examines the role of race in the criminal justice system, and the role of law in both causing and countering racial injustice in that system. The course will proceed through each major stage of the criminal justice process — policing, prosecution, adjudication, and punishment — identifying important racial issues that arise at each stage and exploring how the law creates and responds to those issues. Classes will center on candid and critical discussion about the issues raised by the assigned material.

3. Reading Material: The reading material is primarily chapter seven (Policing) and chapter eight (Criminal Trial and Punishment) of the casebook, *RACIAL JUSTICE AND LAW: CASES AND MATERIALS* (FOUNDATION PRESS, 2016), BY RALPH RICHARD BANKS, KIM FORDE-MAZRUI, GUY-URIEL E. CHARLES AND CRISTINA M. RODRÍGUEZ.

4. Attendance, Preparedness and Participation: Class participation is critical to the success of this course. You are expected to attend all classes, read the assignments carefully, submit discussion questions (see no. 5 below), and participate actively in class. I will consider your diligence regarding these responsibilities in grading.

5. Student Discussion Questions: Each of you should submit a discussion question to every [number TBD depending on enrollment] reading assignment. You should frame a question that raises one or more issues in the reading assignment that you would like the class to discuss. The question should be one that you find difficult or intriguing for any reason, such as because you are confused about the issue, because you find conflicting arguments on the issue plausible, or because you are frustrated that you do not find a law or judicial opinion persuasive. Explain in a few sentences why you find the question difficult or interesting. I may ask you to explain your question or lead a discussion about it during class. I will assign each of you to a Group number so you know which assignment you should submit a discussion question for (each assignment on the syllabus will include a Group number). Your reaction is due by 4 p.m. on the day before the class that will discuss the assignment. Submit your discussion question by posting a reply to the “discussion” of that day’s assignment that I will create on Canvas. Once you submit, you will be able to read all other reactions. Everyone should read every class’s discussion questions before class regardless of whether you had a question due for that class. If you just want to read discussion questions without posting one, just provide a minimal reply to the discussion that will allow you to read the other discussion questions, such as “Hi.” Check in on the discussion again later if not everyone has submitted a discussion question at the time you try to read everyone’s questions.

6. Work-in-Progress (WIP) Presentations: You will circulate a draft of your work-in-progress (WIP) paper and give a prepared presentation thereon during the last few weeks of the semester. Although I will solicit preferred dates, everyone must be prepared to give their WIP presentation by April [TBD]. Every student,

regardless of Group number or whether you are presenting a WIP on the same day, must submit comments or questions on all WIPs. For additional WIP submission instructions, see “Paper Development Stages” below after the syllabus and seating chart.

7. Laptops, etc. Prohibited: Use of laptops and other electronic devices is not permitted during class, except when you are presenting on your own work-in-progress in the final weeks of the semester.

8. Class Recordings Conditional: Every class will be recorded, which will be made available on the Canvas course page soon after class. The class is intended to be a safe and brave place to discuss sensitive topics candidly. By taking this class, you agree, on your honor, not to share the recordings with, nor quote them to, anyone not enrolled in the class.

9. Final Paper: The primary basis of your grade will be your 7000 to 8000 word (including footnotes) final paper, due on the final day of exams. See “Paper Development Stages” below after the syllabus and seating chart. I will give further details in class.

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Syllabus of Reading Assignments

Assignment 1, (Intro to Race and Criminal Justice): First, read pp. 503-05 in the “Racial Justice and Law Chapters 7-8” file on Canvas (Intro to Criminal Justice) and read the “Hernandez handout” on Canvas (*Hernandez*), which is pp.105-11 of the casebook in case you have the book or read from it in the library. Second, come to the first class prepared to answer the following three questions to the class: (1) What is your race and what does that mean?; (2) What is your experience with or view of the criminal justice system and how might your experience or view relate to your race?; and (3) Why are you interested in studying race and criminal justice? No discussion question is due for this class.

Assignment 2, (Bias): Attend the MLK commemoration lecture by Stanford Psychologist, Jennifer Eberhardt, entitled, “Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do.” The event is from 5:15 p.m. to 6:45 p.m. in Caplin Pavilion, with a reception to follow. It will also involve the presentation by Dean Risa Goluboff of this year’s Gregory H. Swanson Award for courage, perseverance and a commitment to justice. If you are unable to attend, you should watch the video/listen to the audio of the event when it becomes available and e-mail me a statement that you have done so and indicating something you learned from the talk. Class will likely not meet on Thursday, March 19, and the Eberhardt event will constitute an advance make-up class. There is no reading or discussion question due for this class.

Assignment 3, (Intro to Policing): Pp. 505-31 (Vagueness doctrine, *Morales*). No discussion question is due for this class.

Assignment 4, (Vagueness and Morales cont.): Dan M. Kahan & Tracey L. Meares, *Foreword: The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998) (posted on Canvas and distributed in class).

Assignment 5, (Group 1) (Policing cont., Fourth Amendment): Pp. 531-51 (*Brignoni-Ponce*). First discussion question due. I will inform you of your Group number.

Assignment 6, (Group 2) (Policing, Fourth Amendment cont., Equal Protection): Pp. 551-75 (*Whren, Lora*).

Assignment 7, (Group 3) (Policing cont., Race-Based Suspect Descriptions): Pp. 576-88 (*Brown*).

Assignment 8, (Group 1) (Policing cont.): Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479 (2016) (posted on Canvas and distributed in class).

Assignment 9, (Group 2), (Intro to Trial and Punishment, Prosecutorial Charging): Pp. 589-606 (*Armstrong*).

Assignment 10, (Group 3), (Fair Cross Section): Pp. 606-16 (Do not re-read *Hernandez* that the book refers you to on p.608, but do read the additional Notes & Questions beginning on p.608, *Castaneda*).

Assignment 11, (Group 1), (Voir Dire): Pp. 616-27 (*Turner*).

Assignment 12, (**All class members prepare the following assignment, no discussion questions are due.**),

(Voir Dire cont.): Cynthia Lee, *A New Approach to Voir Dire on Racial Bias*, 5 U.C. IRVINE L. REV. 843 (2015) (posted on Canvas and distributed in class). Everyone should come to class ready to (1) identify a case or case description in the readings we have completed for the course; (2) choose whether you are a prosecutor or defense counsel; (3) articulate at least three voir dire questions that you would pose to some or all jurors to determine whether they have racial bias unfavorable to your case, and (4) explain your choice of questions.

Assignment 13, (Group 2), (Peremptory Challenges): Pp. 627-47 (*Batson*).

Assignment 14, (Group 3), (Death Penalty): Pp. 647- 74 (*McCleskey*).

Assignment 15, (Group 1), (Death Penalty cont.): Carol S. Steiker & Jordan M. Steiker, *The American Death Penalty and the (In)Visibility of Race*, 82 U. CHI. L. REV. 243 (2015) (Will be posted on Canvas and distributed in class).

Assignment 16, (Group 2), (Sentencing Equality): Richard A. Bierschbach & Stephanos Bibas, *What's Wrong with Sentencing Equality?*, 102 VA. L. REV. 1447 (2016). (Will be posted on Canvas and distributed in class).

Assignment 17, (Group 3), (Crack-Powder Disparity in Sentencing): Pp. 674-90 (*Clary*).

Assignment 18, (Group 1) (Race-Based Jury Nullification): Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995). (Posted on Canvas and distributed to class by e-mail).

Assignment 19, (Group 2) (Prisons). *Johnson v. California*, 543 U.S. 499 (2005); Dale Noll, *Building a New Identity: Race, Gangs, and Violence in California Prisons*, 66 U. MIAMI L. REV. 847 (2012). (Posted on Canvas and distributed to class by e-mail).

Assignment 20, (Group 3) (School Discipline): Russell J. Skiba, Suzanne E. Eckes & Kevin Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071 (2010) (posted on Canvas and distributed to class by e-mail); Johnathan Perkins, "Justice in America Has Never Been Colorblind: U.Va.'s Honor System is No Different," <https://report.honor.virginia.edu/implicit-bias-spotlighting-and-dimming>.

Assignment 21, (Group 1 and first half of Group 3) (Restorative Justice). First, watch Circle Films documentary on Restorative Justice at this link <https://vimeo.com/403371602>, using password virginialaw. (The link should remain valid through Monday but if anyone can try it sooner to confirm it works, please let us know either way). Then, read Erik Luna, *In Support of Restorative Justice*, in CRIMINAL LAW CONVERSATIONS 585 (PAUL H. ROBINSON, STEPHEN P. GARVEY & KIMBERLY KESSLER FERZAN EDS., 2009) (posted on Canvas and will be distributed to class by e-mail).

Assignment 22, (Group 2 and second half of Group 3) (Immigration Enforcement). *Padilla v. Kentucky*, 559 U.S. 356 (2010), *Maldonado v. Holder*, 763 F.3d 155 (2d Cir. 2014). (Posted on Canvas and will be distributed to class by e-mail).

Assignment 23, (All students should submit a question for each presenter (it can be the same question for each presenter) to me by e-mail by Sunday, April 12, 8 p.m.). A Conversation with Assistant Commonwealth Attorney, Shannon Pollock Neal (UVA Law '14) and Bronx Defenders Staff Attorney, Jeremy Bennie (UVA Law '18).

Assignment 24, WIP Presentations. See "Paper Development Stages" below after syllabus and seating chart for schedule for posting WIP and for submitting questions/comments about each WIP.

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Paper Development Stages

Paper Topic

Paper topic (no more than 1 page)

- (1) Issue, purpose or focus.
- (2) Tentative thesis, claim or proposal.
- (3) Anticipated difficult questions.
- (4) Rank your preferred dates for presenting work-in-progress to class.

Works-in-Progress (WIP)

WIP presentations (5+ pages). I will assign students to present on particular dates, taking account of expressed date preferences. Until I assign dates, however, everyone should assume that they may have to present by April 21.

WIPs should address:

- (1) Specific problem, issue or focus.
- (2) Tentative thesis/claim and conclusions.
- (3) Summary of paper's organization and argument - what will parts of paper address and probably conclude (your organization may be contained in your paper's introduction).
- (4) General description of kinds of sources you have consulted or anticipate consulting (*e.g.*, cases, statutes, journal articles, books, empirical studies, news stories, etc.).
- (5) Difficult questions and how you plan to address them.

All students, regardless of Group number or whether you are presenting a WIP on the same day, should submit at least two comments/questions regarding each WIP. Bring your own questions to class for your use during the presenters' Q&A. Submit your questions/comments by posting a reply on Canvas to each "discussion" created by each WIP presenter. You should read other students' questions/comments to the WIP presenters to see what interested your classmates. Feel free, but truly not obligated, to post any reactions to other students' WIP comments.

WIP Presentation Sessions

For all presentations on any date, the time for each WIP presentation and Q&A is 16 minutes. Present about your paper at the podium for 7-9 minutes (not longer) and then take questions for the remaining 7-9 minutes. Your presentation should not point-by-point respond to questions your classmates posted to Canvas ahead of time. Rather, use the presentation to succinctly make your pitch, a mini-TED talk if you will. Feel free, but not required, to use PowerPoint or other enhanced presentation, but let me know ahead of time if you will need help setting it up.

For the students in the audience during a WIP presentation, ask questions that were either in what you posted to the Canvas discussion about the paper before class or any other question that occurs to you. Do not assume that just because you communicated a question ahead of time that you should not ask it in class. The class time is your chance to get your question answered and to inform others of your question and the

presenter's answer. That the presenter will have had time to think about it will help the answer be more informative.

The order of presentations listed on the syllabus is the default order of presentations during class. If anyone wants to swap with each other on the order of presentations during a class, that's fine. If you really need to change the date of your presentation, please swap dates with a classmate as soon as possible and let me know. If you need help, let me know.

Required Paper Deadline

Submit your well-researched, well-written, 7000-8000 words (including footnotes), final paper (with your name and paper title, no BGN) via EXPO (on-line submission system accessible via LawWeb). Please also e-mail your final paper immediately after submitting it on Expo to me at kfm@law.virginia.edu. Submitting a hard-copy of your paper is not required. **Format should be Word (not .pdf), double-spaced, 12-point Times New Roman font, 1-inch margins, footnotes should be 10-point, single-spaced.** Number each page at the bottom and do not use headers. The word limit should be honored both as a minimum and as a maximum, inclusive of footnotes. Deviations will be penalized to the extent of violation, especially papers that exceed the word limit. (Papers that fall short of the word limit typically suffer anyway by not discussing issues in depth. Papers that exceed the word limit may have an unfair advantage of allowing greater analysis and thus I especially want to discourage exceeding the word limit.) Name your final-paper file beginning with your last name, then first name in parentheses, then the words Final Paper, and then key words related to your final paper's title. E.g., "Forde-Mazrui (Kim), Final Paper, Does Racial Diversity Promote Cultural Diversity?"

General Guidelines

A good paper should grapple thoroughly and insightfully with the complexities and contradictions of an issue and attempt to resolve it (or explain why it cannot be resolved).

Narrow focus (*e.g.*, not whether educational system is racist, but whether and in what way does or should race play a role in designing school assignment policies). Narrow focus enables you to delve deeply into complexities and to more thoroughly research available cases and/or other sources.

Be patient, fair, specific and clear.

Use sources properly and give appropriate credit. See both handouts on plagiarism on the Canvas course page: (1) Understanding Citations, Plagiarism, and Paraphrasing: A University of Virginia Honor Committee Supplement, <https://honor.virginia.edu/plagiarism-supplement>; and (2) Eugene Volokh, Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers and Getting on Law Review 209-13 (2005).

For citations in your final draft, provide a parenthetical explanation of the relevance of the source after the citation (unless you are quoting or paraphrasing the source). You need not provide a parenthetical explanation if the citation is supporting a quotation, either in the footnote or the above-line text, or if the citation says something very close to your statement that it supports. That is, I want to assume that a statement by you supported by a citation without a parenthetical is a paraphrase of whatever the cited source is saying, or is quoting the source which would of course be indicated by your use of quotation marks. If you cite a source for indirect or illustrative support of your statement, explain briefly in a parenthetical what the source says so I understand why you are citing it. If you are unsure, err on the side of providing a parenthetical explanation of the relevance of the source. Reasonable compliance is all I ask.

Consider audience you wish to persuade, *e.g.*, legislature, court, agency, school board, legal academy,

business community, organization, etc.

Sincere and fair exposition of opposing views (Give your opponents their best shot).

Acknowledge and address problems with or objections to your claim(s)/argument/proposed resolution/conclusions, including unsolvable problems.