

## Race, Crime, and Citizenship in American Law

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21H.319  
Spring 2021  
MW 11-12:30

This seminar is an introduction to the law of race in the United States with an emphasis on the history of American criminal justice and the rise of what is known as “mass incarceration.” We begin with a discussion of the legacies of slavery and racism in the United States. The class then turns (in Part Two) to the development of the criminal justice system and its role in the governance of historically disadvantaged minorities and the poor. Part Three consists of an extended discussion of the law and politics of policing and the prospects for its reform. In the final part of the course, we consider the role of prosecutors and prisons in contemporary America. Class exercises and assignments invite students to experiment with some of the basic categories and techniques of historical, legal, and political argument.

### **Office hours:**

Office hours are by appointment. A sign-up sheet and Zoom link are available on the course Canvas site. Please remember to email me after signing up for a slot with the date and time you have selected. I encourage all students to drop in at least two to three times during the course of the semester.

### **Required materials:**

All readings and other resources are posted on the course Canvas site. Students should have the relevant readings for each class session before them in hard copy or on their screens.

### **Attendance Policy:**

By registering for this class, you are making a commitment to attend the duration of class twice a week, to “arrive” on time, and to come prepared to discuss the readings each time. If you must miss a class, please contact me in advance. The vast majority (if not the entirety) of our sessions will involve synchronous interaction. If you are located in a time zone that makes connecting at 9am EST difficult, please contact me at or before the start of class so that we can discuss the feasibility of your taking this seminar.

There is a possibility, weather and Covid-19 conditions permitting, that we will shift to in-person learning in an outdoor space on the MIT campus beginning in April. If you have concerns about the prospect of such a transition to outdoor, in-person learning, please feel free to share with me in the early days of the course.

### **Digital distraction:**

We will be learning in virtual mode this semester, which, by definition, involves the potential for all kinds of digital distractions. You will learn more during this course if you avoid the use of computers and other electronic/digital devices during class sessions for purposes unrelated to the subject matter of this course. That includes reading email, surfing the web, texting others, watching Youtube videos, etc. Try to make the following a habit for all class sessions: have open on your screen only your Zoom window, the course Canvas site, and one other window displaying course reading(s) for that day.

### **Zoom policies:**

Zoom will have become familiar to all of us by now, perhaps to the extent of experiencing the affliction known as Zoomitis – an aversion to the overuse of video conferencing technology. To alleviate the symptoms of Zoomitis, we will take regular five-minute breaks at the halfway point of each class session: use these to stretch your legs, grab a cup of tea, etc. Most of us will have background noises going on in our respective spaces: in the interests of keeping these private, please keep your Zoom mic on “mute” when you are not speaking. Some students may feel the need to turn off their video screen during class. I understand the need to be off screen at times, but – unless the circumstances at your location dictate otherwise – please try to keep these occasions to the minimum, so that we can preserve the sense of a collective discussion involving give and take among all the members of the class.

At a few points over the course of the semester, we may engage in exercises, or watch mini-recorded lectures or films, that do not involve synchronous discussion on Zoom: I hope these too will serve to counter Zoomitis.

Finally, a note about computers and wifi connections: we will all be relying on these to make this course work. If yours are not reliable, please seek out the aid of a laptop, iPad, and/or hotspot from MIT IS&T [via this link](#). Some students find that an erratic connection can be improved by turning off your video, but to the extent possible, do what you can to improve the overall quality of your wifi connection before resorting to this (sometimes necessary) strategy. That said, there will be times when wifi will fail us despite our best efforts; when this happens, shrug it off, drop me a note in the chat to let me know you have to drop off for technical reasons, and try again the next time. We will do the best we can with the resources we have at hand in dealing with the effects of this wretched pandemic. Sometimes, the virtual learning experience can and will seem very clunky indeed.

### **Evaluation and support:**

A letter grading system with extra flexibility will be in effect during the Spring 2021 semester (details can be found [here](#)). Within these parameters, grades will be determined as follows:

1. Participation. Participation means contributing to class discussions in a way that indicates you have done the readings and thought about them. If you do this for most, though not necessarily all, of our meetings, you will earn a grade somewhere in the “A” range for this part of the course. [20%]
2. An in-class quiz in two stages (Mar. 10 and Mar. 29) on the readings for sessions 1-11. [20%]
3. A 9-10 page, double-spaced memorandum to your hometown mayor (or, if you are not from a town/city in the United State, to the mayor of Cambridge, MA) on police reform, due on Canvas by Thur., Apr. 29 at 5pm. (prompt/format to be posted to Canvas two weeks prior to deadline). (25%)
4. An 11-12 page judicial opinion rewriting the *McKleskey v. Kemp* opinion in favor of McKleskey and focusing on how the lower courts should handle similarly situated cases. (due on Canvas by May 19; prompt/format to be posted to Canvas two weeks prior to deadline). [35%]

If, at some point during the semester, you find yourself dealing with a personal or medical issue that is impacting your ability to attend class, complete work, or take an exam, you should contact a dean in Student Support Services (S3). S3 is here to help you. The deans will verify your situation, provide you with support, and help you work with your professor or instructor to determine next steps. In most circumstances, you will not be excused from coursework without verification from a dean. Please visit the [S3 website](#) for contact information and more ways that they can provide support.

### **Communication:**

Course emails will be sent as announcements through Canvas, which requires students to make sure they have set their Canvas notifications for Announcements to “notify me right away.” This option should be part of the default setup of your Canvas notifications. First, on the lefthand side of Canvas, click the Account link, then click the Notifications link. This will bring you to your notifications setting, where you can ensure “Announcements” is checked off as “notify me right away.” Further instructions on managing your notification settings can be found [here](#).

### **Help with Writing and Other Communication Skills:**

Please consider me your first line of defense when it comes to help with any of the communication skills you will need to exercise in this course. I would also like you to be aware of MIT’s Writing and Communication Center (WCC), which offers free one-on-one professional advice from communication experts with advanced degrees and publishing experience. The WCC can help you further develop your oral communication skills and learn about all types of academic and professional writing. You can learn more about the WCC consultations [here](#) and register with the online scheduler to make appointments [here](#). WCC hours are offered on Monday-Friday, 9:00 a.m.-6:00 p.m., and fill up fast.

## Schedule of Meetings and Readings:

### Part One: Slavery and Racism

1. Feb. 17: Introduction to the course; some constitutional and legal background
  - a. Syllabus.
  - b. Selected provisions of the U.S. Constitution.
2. Feb. 22: Policing and Protest in the Era of Covid-19
  - a. Michelle Alexander, “America, This is Your Chance,” *The New York Times*, June 8, 2020.
  - b. Keeanga Yahmatta-Taylor, “How Do We Change America?” *The New Yorker*, June 8, 2020, <https://www.newyorker.com/news/our-columnists/how-do-we-change-america>.
  - c. John Eligon, “Racial Double Standard of Capitol Police Draws Outcry,” *New York Times*, Jan. 7, 2021.
3. Feb. 24: Legacies of Slavery
  - a. “The 1619 Project” (special issue of *The New York Times Magazine* dated August 18, 2019), article by Nikole Hannah-Jones.
  - b. Sean Wilentz, “A Matter of Facts,” *The Atlantic*, Jan. 22, 2020, at <https://www.theatlantic.com/ideas/archive/2020/01/1619-project-new-york-times-wilentz/605152/>.
4. Mar. 1: Defining Race and Racism
  - a. Michael Omi and Howard Winant, *Racial Formation in the United States*, 3<sup>rd</sup> ed. (New York: Routledge, 2015), 105-136.
5. Mar. 3: Caste
  - a. Isabelle Wilkerson, “America’s Enduring Caste System,” *The New York Times Magazine*, July 1, 2020.
  - b. Michelle Alexander, “Jim Crow Still Exists in America,” *NPR* (Jan. 16, 2012), <http://n.pr/2ks4FLg>.
6. Mar. 9: Systemic/Structural Racism (Monday schedule for Tuesday)
  - a. Tricia Rose, “How Structural Racism Works,” Brown University Provost Lecture Series, Dec. 14, 2015, at <https://www.youtube.com/watch?v=KT1vsOJctMk>.
  - b. Harvey Mansfield, “The ‘Systemic Racism’ Dodge,” *Wall Street Journal*, Sept. 18, 2020.

## Part Two: The Path to Mass Incarceration

7. Mar. 10: The Birth of the Prison System
  - a. David J. Rothman, "Perfecting the Prison System: United States, 1789-1865," in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. Norval Morris and David J. Rothman (New York: Oxford University Press, 1998), 100-116.
  - b. **Part one of in-class quiz today (on readings for sessions 1-6).**
8. Mar. 15: Local Democracy
  - a. William Stuntz, "Unequal Justice," *Harvard Law Review* (June 2008), pp. 1970-1997.
9. Mar. 17: The Rise of Inequality
  - a. Stuntz, "Unequal Justice," pp. 1997-2040.
10. Mar. 24: Race, Welfare, and Policing
  - a. Ta-Nehisi Coates, "The Black Family in the Age of Mass Incarceration," *The Atlantic* (Oct. 2015), <http://theatltn.tc/2muSVLE>.
11. Mar. 29: The War on Drugs
  - a. James Forman, *Locking Up Our Own: Crime and Punishment in Black America* (Farrar, Straus, & Giroux, 2017), ch. 5 (pp. 151-184).
  - b. **Part two of in-class quiz today (on readings for sessions 7-11).**

## Part Three: Policing

12. Mar. 31: Police Reform (I)
  - a. Robert M. Fogelson, *Big-City Police* (Cambridge, MA: Harvard University Press, 1977), 1-12, 219-242.
13. Apr. 5: Police Reform (II)
  - a. Barry Friedman, "Disaggregating the Police Function," Chicago Justice Podcast, July 1, 2020, at <https://www.youtube.com/watch?v=vksEJR9EPQ8>.

14. Apr. 7: Police Reform (III)
  - a. Boston Police Reform Task Force: Recommendations to the Mayor, Oct. 13, 2020, at <https://www.boston.gov/sites/default/files/file/2020/10/BPD-reform-task-force-english.pdf>.
  - b. Report of the Newton (MA) Police Reform Task Force (Feb. 2021), at <https://www.newtonma.gov/government/mayor-fuller/newton-police-reform-task-force>.
  
15. Apr. 12: Police Reform (IV)
  - a. “Reimagining Public Safety,” MIT Webcast, Feb. 4, 2021, at <http://web.mit.edu/webcast/bgsa/s21/>.
  - b. Milton Valencia and Gal Tziperman Lotan, “Boston is set to consider wide scale police reforms. But many of them have been pitched before,” *Boston Globe*, Sept. 21, 2020.
  - c. Jim Jordan, “Boston police reform panel asked the wrong question,” *Commonwealth*, Oct. 24, 2020, at <https://commonwealthmagazine.org/the-upload/boston-police-reform-panel-asked-the-wrong-question/>.
  
16. Apr. 14: Technology in Policing
  - a. *Maryland v. King*, 133 S. Ct. 1958 (2013), [https://www.supremecourt.gov/opinions/12pdf/12-207\\_d18e.pdf](https://www.supremecourt.gov/opinions/12pdf/12-207_d18e.pdf).
  - b. Sidney Perkowitz, “The Bias in the Machine: Facial Recognition Technology and Racial Disparities,” MIT Case Studies in Social and Ethical Responsibilities of Computing (February 2021), at <https://doi.org/10.21428/2c646de5.62272586>.
  
17. Apr. 21: The Use of Force
  - a. Provisions of the 2021 MA Police Reform Bill related to the use of force.
  - b. Principles of Law: Use of Force (from the American Law Institute Principles of Law, Policing), Policing Project website, at <https://www.policingproject.org/ali-use-of-force>.
  - c. John Hilliard, “Newton police shooting prompts calls for crisis intervention, mental health resources,” *Boston Globe*, Jan. 14, 2021.
  - d. Patricia Mazzei, Adam Goldman, Johnny Diaz, and Christina Morales, “2 F.B.I. Agents Killed in Shooting in Florida,” *New York Times*, Feb. 2, 2021.
  - e. Alan Neuhauser, “NYPD Officers to Get Training on Speaking Up Against Bad Policing,” *Wall Street Journal*, Jan. 28, 2021.

18. Apr. 26: Policing the Border
  - a. Mae Ngai, “The Lost Immigration Debate,” *Boston Review*, Sept. 6, 2006, <http://bit.ly/2dRWhAc>.
  - b. David Alan Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” *New Criminal Law Review* 15, no. 2 (2012): 157-189.

**9-10 PAGE DOUBLE-SPACED MEMORANDUM TO YOUR HOMETOWN MAYOR (OR THE MAYOR OF CAMBRIDGE, MA) ON POLICE REFORM DUE ON CANVAS BY THUR., APR. 29 AT 5PM.**

Part Four: Prosecution and Prisons

19. Apr. 28: Enforcing Immigration Law
  - a. David Alan Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” *New Criminal Law Review* 15, no. 2 (2012): 189-223.
20. May 3: Pretrial Proceedings
  - a. Julia Dressel and Hany Farid, “The Dangers of Risk Prediction in the Criminal Justice System,” MIT Case Studies in Social and Ethical Responsibilities of Computing (February 2021) at <https://doi.org/10.21428/2c646de5.f5896f9f>.
  - b. Jed Rakoff, “Why Innocent People Plead Guilty,” *The New York Review of Books* (Nov. 20, 2014).
21. May 5: Trial (the Central Park Five)
  - a. Film: “The Central Park Five” (to be viewed before class today).
  - b. Benjamin Weiser, “5 Exonerated in Central Park Jogger Case Agree to Settle Suit for \$40 Million,” *New York Times* (June 19, 2014).
22. May 10: Appeals (*McKleskey*)
  - a. *McKleskey v. Kemp*, 481 U.S. 279 (1987).
  - b. Informal in-class debate today on *McKleskey*.
23. May 12: Prisons
  - a. Rachel Kushner, “Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind,” *The New York Times Magazine*, April 17, 2019.
  - b. Clyde Haberman, “For Private Prisons, Detaining Immigrants is Big Business,” *New York Times Retro Report* (video and article), Oct. 1, 2018.

24. May 17: Reentry
  - a. Reuben Jonathan Miller, "Prisoner Reentry in an Era of Smart Decarceration," in *Smart Decarceration: Achieving Criminal Justice Transformation in the 21st Century*, ed. Matthew Epperson and Carrie Pettus-Davis (New York: Oxford University Press, 2017), 101-114.
  - b. Erica Goode, "Internet Lets a Criminal Past Catch Up Quicker," *N.Y. Times* (Apr. 28, 2011).
  
25. May 19: Taking stock of what we have learned
  - a. Note: we will spend 10-15 minutes at the start of class filling out the online subject evaluations.

***11-12 PAGE JUDICIAL OPINION REWRITING THE MCKLESKEY V. KEMP OPINION IN FAVOR OF MCKLESKEY AND FOCUSING ON HOW THE LOWER COURTS SHOULD HANDLE SIMILARLY SITUATED CASES DUE ON CANVAS BY START OF CLASS TODAY.***