

Date: September 1, 2021

COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK

ABOLITION: A SOCIAL JUSTICE PRACTICUM

OMAVI SHUKUR AND BERNARD E. HARCOURT

Fall 2021

3 CREDITS

L 8419 / CPLS 3980

Tuesday 4:20 – 6:20 pm

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Course times: Tuesdays 4:20 – 6:20 pm

Course location: Case Lounge

COURSE DESCRIPTION

This course will engage, both in theory and in practice, the ambition of racial justice and abolition democracy. It will study the history of race relations in this country. It will seek to chart the road to abolition of the punitive paradigm in the United States. It will investigate what it might mean to imagine abolition in the context of policing, of the prison, and also of punishment more broadly. And it will do so not only through readings and seminar-style discussion, but with hands on practice in legal cases involving capital punishment, police violence, and protest rights, as well as public policy interventions.

The United States incarcerates more of its own than any other country in the world and than any other civilization in history. With over 2,600 inmates on death row, 2.2 million people behind bars, another 5 million people on probation or parole, and over 70 million people in the FBI’s criminal record database, this country now operates a criminal justice system of unparalleled punitiveness. The burden of this system has fallen predominantly on people of color. In striking

ways, this country's criminal legal process and reliance on mass incarceration represents a continuation of chattel slavery. As Bryan Stevenson notes, "Slavery didn't end in 1865. It just evolved."

This course will explore how the country can move from a punitive paradigm to a new paradigm that favors instead education and well-being. It will investigate: (1) how to chart a social justice path toward prison abolition; (2) how to reimagine the criminal legal process so that it is no longer based on a punitive paradigm; and (3) what it would mean to imagine abolition more broadly.

This course will be limited to 12 students, including 3 undergraduate students. Students will work on law projects together on mixed teams of law and undergraduate students. Research projects will be in the areas of capital punishment, criminal defense and advocacy, and appellate litigation. Projects will include, for instance:

- the Law For Black Lives movement lawyering squad
- the Andrew Smith case against the NYPD
- the Line 3 protester defense cases.

This practicum will be co-taught by Omavi Shukur and Bernard E. Harcourt.

Omavi Shukur is a Practitioner-in-Residence at the Initiative for a Just Society at the Columbia Center for Contemporary Critical Thought. In this capacity, Omavi researches the legal dimensions of efforts to create a more just, equitable and empowering society. He also litigates civil rights and criminal cases that implicate a myriad of pressing social justice issues, most notably the harms caused by the criminal legal system. Earlier in his career, he served as a public defender in New Orleans. He later returned to Little Rock, Arkansas and founded Seeds of Liberation, a nonprofit organization that engaged with marginalized communities in a collective effort to help eradicate the unique harms faced by formerly incarcerated people in Arkansas. Prior to joining the IJS, Omavi was Assistant Counsel at the NAACP Legal Defense Fund.

Bernard E. Harcourt is Professor of Law and Political Science at Columbia University and the Executive Director of the Center for Contemporary Critical Thought at Columbia University. He has represented individuals sentenced to death and to life imprisonment without parole in Alabama for thirty years.

The course will meet for a two-hour working seminar every week. Working in teams, law and undergraduate students will partner with Shukur and Harcourt on projects regarding abolition of the death penalty; finding alternatives to incarceration; and abolishing qualified immunity. In addition to seminar time each week, each team will meet with either Shukur or Harcourt once a week for an hour to discuss project progress. Students can be expected to work intensely on projects for at least three hours for every hour in seminar.

Please note that we will periodically invite experts in the field to join us as guests in the seminar. It is our hope that you will engage with them regarding the material we cover in readings

and the fieldwork you are conducting outside of class. The readings are subject to change, please look out for announcements in class and on CourseWorks.

For the undergraduates, this course is intended to build on [core competencies](#) for graduation, including: civic individual responsibility; written communication; community engagement and inclusion; creativity and innovation; critical thinking; global awareness; knowledge; research; and teamwork and collaboration. This course will offer an eye-opening and mind-flexing experience for undergraduates and law students that will directly engage issues of race, class, inequality, law, history, philosophy, and justice. Plus, students will be introduced to leading social justice advocates.

COURSE PREREQUISITES

Law students and undergraduates who wish to take the course should send a statement of interest describing their background and reason for wanting to take the course and CV to Fonda Shen at fws2107@columbia.edu.

COURSE REQUIREMENTS

Students will be required to read the assigned materials, attend the weekly seminar, and participate in seminar discussion.

Students will be required to work on projects. Those will be graded first on the basis of a proposal submitted on week four; and then on the basis of the completed research project submitted at the end of the course. Ongoing feedback and discussion with the instructors will provide ongoing guidance for successful research.

Students will be required to submit a final written product that may be the product of their project work. The work product is expected to be 4,000-5,000 words.

During the semester, the students will be asked to submit in consultation with the instructors a document detailing their research topic and describing what they will be working on during the semester; and at the end of the semester, submit the final draft of their research or policy paper. The final grade for the course will be determined in the following manner:

- Seminar Attendance and Participation (20%)
- Project Description (20%)
- Final Project Work (60%)

STATEMENT REGARDING ACADEMIC INTEGRITY

Each student in this course is expected to abide by the Columbia University Code of Academic Integrity. Any work submitted by a student in this course for academic credit must be the

student's own work. The complete Faculty Statement on Academic Integrity can be found at: <https://www.college.columbia.edu/academics/integrity-statement> and the Columbia University Undergraduate Guide to Academic Integrity can be found here: <https://www.college.columbia.edu/academics/academicintegrity>

Any violation of the Academic Code of Integrity will be forwarded to the Office of Judicial Affairs and Community Standards and will result in a failing grade for the course.

TAKING AND CREATING SPACE

Be mindful of any privileged identities you may hold and help to create an environment for everyone to contribute, speak up when you have something to share, but also create a space for others to share. This can mean letting others speak even if you do not get to share your view and being aware of the impact you are having on others' ability to contribute.

DISABILITY STATEMENT

Columbia Law School is committed to the full inclusion of students with disabilities in the life of the University. In accordance with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the Americans with Disabilities Act Amendments Act (ADAAA), CLS provides accommodations and supports to students with documented disabilities on an individual, case-by-case basis. To request disability accommodations for this course, students must first be registered with Disability Services (DS).

Detailed information is available online (<https://health.columbia.edu/content/disability-services>) regarding the registration process, drop-in hours schedule, documentation requirements and important deadlines. Please allow for at least three weeks to complete the DS registration process. If you have already registered with DS, please contact the CLS DS liaison: Jennifer Braden, Assistant Director of Counseling and Student Support, jbraden@law.columbia.edu.

BASIC NEEDS AND SECURITY

Any student who faces challenges securing their food or housing and believes this may affect their performance in this course is encouraged to contact Omavi Shukur or Bernard Harcourt if you are comfortable doing so and we, along with the Dean of Students, will assist you in accessing resources.

SYLLABUS

Week #1: September 14, 2021 – Introduction to Abolition

Readings:

W.E.B. DuBois, *Black Reconstruction in America* (New York: Free Press, 1991 [1935]), 121-126

Angela Davis, *Abolition Democracy* (New York: Seven Stories Press, 2005), 63-72, 91-93, 125.

Mariame Kaba, “Transforming Punishment: What Is Accountability without Punishment?” from *We Do This ‘Til We Free Us* (Chicago: Haymarket Press, 2021).

Dorothy Roberts, “Abolition Constitutionalism,” *Harvard Law Review* 133(1) (2019), 1-11 and 105-22, available at https://harvardlawreview.org/wp-content/uploads/2019/11/1-122_Online.pdf.

Week #2: September 21, 2021 – Occupation

Readings:

Nick Estes, “Indian Killers: Crime Punishment, and Empire,” *The Red Nation*, Jan. 11, 2017, available at <https://therednation.org/indian-killers-crime-punishment-and-empire/>.

Audra Simpson, “The ruse of consent and the anatomy of ‘refusal’: cases from indigenous North America and Australia,” *Postcolonial Studies*, 20(1):18-33 (2017).

Patrick Wolfe “Settler colonialism and the elimination of the native,” *Journal of Genocide Research* 8(4):387-409 (2006).

Additional Bibliographic References:

The Red Nation, *The Red Deal*, available at

http://therednation.org/wp-content/uploads/2020/04/Red-Deal_Part-I_End-The-Occupation-1.pdf

Week #3: September 28, 2021 – Capture

Readings:

Stephanie Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* (Cambridge: Harvard University Press, 2007), 20-32.

Saidiya Hartman, “Venus in Two Acts,” *Small Axe*, No. 26, 12(2):1-14 (June 2008).

The Antelope, 23 U.S. 66 (1825) (holding that kidnapped indigenous Africans had to be sent to Spain, even though the slave trade is unlawful in the US).

City of Chicago v. Morales, 527 U.S. 41 (1999) (striking down gang loitering ordinance as unconstitutionally vague)(excerpts).

Chicagoans for an End to the Gang Database v. City of Chicago, 18-CV-4242 (N.D. Ill.), Notice of Dismissal (Sept. 2, 2020), available at <https://www.macarthurjustice.org/wp-content/uploads/2018/06/Notice-of-Dismissal.pdf>.

John Bowden, “Immigration agents planning raids next week targeting teenage gang members,” *The Hill*, July 21, 2017, <https://thehill.com/homenews/administration/343259-immigration-agents-planning-raids-next-week-targeting-teenage-gang>.

Additional Bibliographic References:

MacArthur Justice Center, “Community-Driven Federal Class Action Lawsuit & Report Targets Chicago Police’s Inaccurate, Racially Discriminatory Gang Database,” June 19, 2018, available at <https://www.macarthurjustice.org/community-driven-federal-class-action-lawsuit-report-targets-chicago-polices-inaccurate-racially-discriminatory-gang-database/>.

Week #4: October 5, 2021 – Resistance

Readings:

The Amistad, 40 U.S. 518, 587–98 (1841)

Manisha Sinha, *The Slave’s Cause: A History of Abolition*(New Haven: Yale University Press, 2016), 1-5.

Jane H. Pease and William H. Pease, “Confrontation and Abolition in the 1850s,” *The Journal of American History*, vol. 58, no. 4, 1972, pp. 923–937. JSTOR, www.jstor.org/stable/1917851.

Elizabeth Hinton, *America on Fire* (New York: Liveright, 2021) (excerpts).

LRPD Releases Video of Bradley Blackshire Officer-Involved Shooting, THV11, https://www.youtube.com/watch?v=ATSFjd_8iMM (Mar. 7, 2019) ** trigger warning **

Nick Estes, *Our History Is the Future: Standing Rock Versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*(New York: Verso, 2019).

*** Submit Project Description Essay in class on Week 4 ***

Note: Essay should be 1,000 words long and contain two main sections: a first section summarizing the project you are working on, followed by a second section describing in more detail how you are going to realize the project. We will give directions early in the semester. This assignment will be returned to you with comments, as well as feedback on your seminar participation.

Week #5: October 12, 2021 – Control

Readings:

W.E.B. DuBois, “Looking Forward,” in *Black Reconstruction* (excerpt).

Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1995) (excerpts).

Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010), Introduction, 1-14.

Saidiya Hartman, “The Belly of the World: A Note on Black Women’s Labors,” *Souls* 18(1):166-173 (2016), DOI: [10.1080/10999949.2016.1162596](https://doi.org/10.1080/10999949.2016.1162596).

Smith v. City of New York, 1:21-cv-03096 (E.D.N.Y.), ECF 1, Complaint, 9-21.

Additional Bibliographic References:

Dorothy Roberts, “Reproduction in Bondage”, “Making Reproduction a Crime”, and “The Welfare Debate,” in *Killing the Black Body* (New York: Penguin Random House, 1998).

Saidya Hartmann, “The Burdened Individuality of Freedom,” in *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997).

Simone Browne, *Dark Matters: On the Surveillance of Blackness* (Durham: Duke University Press, 2015), (excerpts).

Addie C. Rolnick, *Confinement, Assimilation & Discipline: Native Girls and Government Intervention*, ___ Columb. J. Race & L. (forthcoming 2021).

Alex Vitale, “The Police Are Not Here to Protect You,” *The End of Policing* (New York: Verso, 2017).

Struggle for Power: The Ongoing Persecution of Black Movement by the U.S. Government The Movement for Blacks Lives & The Creating Law Enforcement Accountability and Responsibility Clinic, <https://m4bl.org/wp-content/uploads/2021/08/Struggle-For-Power-The-Ongoing-Persecution-of-Black-Movement-by-the-U.S.-Government.pdf>.

Week #6: October 19, 2021 – Rendering Defenseless

Readings:

Goodell, William. *The American Slave Code in Theory and Practice Shown By Its Statutes, Judicial Decisions, and Illustrative Facts*; 3rd ed. New York: American and Foreign Anti-Slavery Society, 1853, 272-285 (link to online [here](#)).

State v. Mann, 13 N.C. 263 (1829) (The “master” is not liable to an indictment for a battery committed upon “his slave”)

Jamison v. McClendon, 476 F. Supp. 3d 386, 402–09 (S.D. Miss. 2020) (detailing spurious basis for the affirmative defense of qualified immunity)

Frazier v. Kelley, 460 F. Supp. 3d 799, 810-27, 830–34 (E.D. Ark. 2020) (denying preliminary injunction in prison COVID case)

Additional Bibliographic References:

Nestle USA, Inc. v. Doe, 141 S. Ct. 1931 (2021) (holding that domestic corporation can’t be sued for foreign slave labor)

Mullenix v. Luna, 577 U.S. 7 (2015) (reversing denial of qualified immunity because existing precedent did not place the conclusion that the shooting officer acted unreasonably “beyond debate.”)

Dred Scott v. Sandford, 60 U.S. 393, 15 L. Ed. 691 (1857), superseded (1868)

Joanna C. Schwartz, How Qualified Immunity Fails, 127 Yale L.J. 2 (2017)

William Baude, Is Qualified Immunity Unlawful?, 106 Cal. L. Rev. 45 (2018)

Week #7: October 26, 2021 – Terror

Readings:

W.E.B. DuBois, “Back Towards Slavery” from *Black Reconstruction* (excerpts).

Calvin L. Warren, “Outlawing,” in *Ontological Terror: Blackness, Nihilism, and Emancipation* (Durham: Duke University Press, 2018), (excerpts).

Steve Martinot and Jared Sexton, “The Avant-Garde of White Supremacy,” *Social Identities*, 9:2 (2003), 169-181.

LRPD Releases Video of Bradley Blackshire Officer-Involved Shooting, THV11, https://www.youtube.com/watch?v=ATSEfjd_8iMM (Mar. 7, 2019) ** trigger warning **

1951 We Charge Genocide Report, available at

<https://depts.washington.edu/moves/images/cp/1.%20We%20Charge%20Genocide%201-28.pdf>.

2014 We Charge Genocide Report, available at <http://report.wechargegenocide.org/>.

Additional Bibliographic References:

AS Baer, “The Men Who Lived Underground: The Chicago Police Torture Cases and the Problem of Measuring Police Violence, 1970-2016,” *Journal of Urban History* 44(2): 262-277 (2018).

Week #8: November 3, 2021 – Expansion/Imperialism

[NB: This is on a Wednesday, an administrative Tuesday]

Readings:

Frantz Fanon, *Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004) (excerpts).

Angela Davis, *Abolition Democracy* (New York: Seven Stories Press, 2005), 79-82, 107-110, 118-122.

Bernard E. Harcourt, *The Counterrevolution: How Our Government Went to War Against Its Own Citizens* (New York: Basic Books, 2018), 1-21.

Stuart Schrader, *Badges Without Borders* (Berkeley: University of California Press, 2019), 1-21.

Week #9: November 9, 2021 – Displacement/Exclusion

Readings:

Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (New York: Monthly Review Press, 1997), 231-42, 247-51, 276-77

Harsha Walia, *Border and Rule* (Chicago: Haymarket Books, 2021).

Ingrid V. Eagly, The Movement to Decriminalize Border Crossing, 61 B.C. L. Rev. 1967 (2020).

Week #10: November 16, 2021 – Field Trip (Location TBD)

Readings:

W.E.B. DuBois, “Back Towards Slavery,” in *Black Reconstruction*, 718-729 (on Dunning School).

“The 1619 Project,” *New York Times Magazine*,

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

“We Respond to the Historians Who Critiqued the 1619 Project,” *New York Times*, December 20, 2019,

<https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>.

1619 Project and controversy & letter from liberal historians (including Gordon Woods)

Michel Foucault, "Truth and Juridical Forms," in *Essential Writings: Power*, ed. James D. Faubion, tran. Robert Hurley et al., 1-89 (New York: New Press, 2000), 31-32.

[for excerpt of Foucault, start on page 31 "In European societies.." and end right before the section header III].

Jean M. O'Brien, "Replacing: Historical Practices Argue That None-Indians Have Supplanted Indians," in *Firsting and Lasting: Writing Indians Out of Existence in New England*(Minneapolis: University of Minnesota Press, 2010).

Ramos v. Louisiana, 140 S. Ct. 1390, 1426-27 (2020) (Alito in dissent chiding the majority for mentioning the racist origins of the non-unanimous jury rules)

Week #11: November 23, 2021 – Destruction

Readings:

Julius Alexander McGee and Patrick Trent Greiner, "Racial Justice is Climate Justice: Racial Capitalism and the Fossil Economy," *The Hampton Institute*, May 6, 2020, <https://www.hamptonthink.org/read/racial-justice-is-climate-justice-racial-capitalism-and-the-fossil-economy>.

Equal Justice Initiative, "Investigation Reveals Environmental Dangers in America's Toxic Prisons," June 16, 2017, <https://eji.org/news/investigation-reveals-environmental-dangers-in-toxic-prisons/>.

Ama Francis, Colum. L. Sch. Sabin Ctr. for Climate Change L., *Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study*, September 2019, <https://perma.cc/ZF6K-MB88>.

Week #12: November 30, 2021 – Imagining a Just Society (Part I -- Criminal Legal Process)

Readings:

Mariame Kaba, "The Sentencing of Larry Nassar Was Not 'Transformative Justice.' Here's Why," in *We Do This 'Til We Free Us*.

Maya Schenwar and Victoria Law, "Beyond Alternatives," in *Prisons by Another Name* (New York: The New Press, 2021).

Angela Davis, *Are Prisons Obsolete* (New York: Seven Stories Press, 2003), 107-115.

Angela Davis, *Abolition Democracy* (New York: Seven Stories Press, 2005), 73-81, 85-90, 105-110.

One Million Experiments: Vol. One: Mental Health First Anti Police-Terror Project, March 2021, <https://view.publitas.com/interrupting-criminalization-byekyy37zyrk/one-million-experiments-mental-health-first/page/1>.

Week #13: December 7, 2021 – Conclusion: Imagining a Just Society (Part II -- Beyond)

Readings:

R.D.G. Kelley, “Keepin’ It (Sur)Real: Dreams of the Marvelous” in *Freedom Dreams: The Black Radical Imagination* (New York: Penguin Random House, 2003).

Eduard Glissant, *Poetics of Relation*, trans. Betsy Wing (Ann Arbor: Univ. of Mich. Press, 2010), 133-57, 189-94.

Eve Tuck and K. Wayne Lang, “Decolonization Is Not a Metaphor,” *Decolonization: Indigeneity, Education & Society*, vol. 1, no. 1 (2012): 1-4, 28-36,
<https://jps.library.utoronto.ca/index.php/des/article/view/18630>.

Nik Heynen and Megan Ybarra, “On Abolition Ecologies and Making “Freedom as a Place’,” *Antipode* 53: 25-30 (2021), <https://doi-org.ezproxy.cul.columbia.edu/10.1111/anti.12666>.

Mark Rifkin, “Indigenizing Agamben: Rethinking Sovereignty in Light of the ‘Peculiar’ Status of Native Peoples,” *Cultural Critique*, no. 73 (2009): 88–124, www.jstor.org/stable/25619838.

***** Final Submissions of Project Work due on December 11 at 5:00 PM *****