

# LEGAL STUDIES LS 173AC. MAKING EMPIRE: LAW AND THE COLONIZATION OF AMERICA

Legal Studies Program - University of California Berkeley

## SYLLABUS<sup>1</sup>

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### 1. Course Basics

#### (a) Times and Places

Lecture Class: Tues. and Thurs. 9:30-10.59 am, in 170 Social Sciences Building

Discussion Section 101: Tues. 12:00-12.59 pm, in 255 Dwinelle

Discussion Section 102: Thurs. 01.00-1.59 pm, in 083 Dwinelle

Please Note

If for any reason we are required to resume remote instruction, join through the bCourses Zoom tab on the LS 173AC bCourses page (Top of Left hand menu immediately below the Home tab)

#### (b) Design and Goals

"Making Empire" introduces students to the origins, development, and expansion of European settlement on the North American mainland (the land area that now comprises the United States) and to the crucial role played by law in facilitating the expansion process. We concentrate on the commercial, ideological, and racial impulses that drove European colonizing; on the voluntary and forced migrations that sustained it; and on the political and legal "technologies" that gave it definition, explanation, and institutional capacity. We pay attention throughout to the definition of territory, to processes of civic inclusion and exclusion, and to the relationship between economic activity, racial ideology, and the language of manifest imperial destiny.

We will begin with Spanish (sixteenth century) and English (seventeenth century) colonizing expeditions, the colonial settlements they founded, and the legal debates that developed in the wake of the creation of transatlantic colonies and the wars with indigenous American peoples that accompanied European settlement. We will move on to consider the eighteenth century movement of European populations westward from the English colonies of the Atlantic seaboard as far as the Appalachian mountains (a major barrier to land travel) the simultaneous penetration of the Mississippi Valley (the western side of the mountains) by France, and the eventual creation of the American Republic in the wake of the short-lived British North American empire that resulted from British victory over France in the "Seven Years War" (also known as the "French and Indian War") 1756-1763. We will consider the role of the American Republic in the expansion of slavery in the Mississippi Valley during the first half of the nineteenth century, the fomenting of war with newly-independent Mexico over the American Republic's

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<sup>1</sup> Complete Course Guide available on bCourses.

“manifest destiny” to expand to the Pacific, and the legal consequences of American slavery and American empire, culminating in the American Civil War. We will conclude by considering the nature of the United States in the decades after the Civil War - decades of conflict over the end of slavery, over the domination of indigenous American peoples, over Asian immigration, and over U.S. desires for an overseas empire. All of these pressures culminated in a string of early twentieth century legal debates over what became known as The Insular Cases, which will form the chronological conclusion to the course.

Throughout we will discuss themes of sovereignty, civic identity, race, and state formation. We will discuss how law provided both the language and the technical capacity to transform territory into property, people into slaves, and indigenous peoples into “others” who existed “outside” the civic order of the American Republic. We will examine that civic order for its racial and ethnic structure, and its assumptions about gender and social class, and we will discuss how law expressed that structure and its key assumptions. We will also discuss the relationship between economic desire (commerce, commodification, and capitalism), the institutional and labor forms in which desire became manifest, and the legal means by which those forms were made concrete. Finally, we will consider the coincidence of “the end of the frontier,” the heightened controversy over immigration, and the furious debate over the relationship between the U.S. Constitution and “American Empire” that erupted at the turn of the twentieth century.

The course offers you the opportunity to become well acquainted with leading narrative histories of the developments under discussion, and with primary sources (documents and case reports) that illustrate important aspects of those developments. Throughout, the course syllabus includes discussion prompts/questions to help you organize your reactions to what you read, and to guide your writing. The course includes multiple opportunities for you to offer your written opinions of/responses to the readings. During the semester, you will write 3 short critical commentaries on the assigned reading (4 pages/1500 words in length). You will also write a final paper that asks you to choose a document from among those we have read and write an account of it and of its importance. More information about these papers can be found under the tab labeled "Assignments: Schedule and Information" in the "Course Basics" module.

Overall, the class is organized to advance the following learning goals:

- (1) Critical engagement with and close reading of leading histories of the origins, development, and expansion of European settlement on the North American mainland, and of the role played by law in facilitating the expansion process.
- (2) Critical engagement with and close reading of primary sources (documents) related to the origins, development, and expansion of European settlement on the North American mainland, and of the role played by law in facilitating the expansion process.
- (3) Critical awareness of the diversity of American cultures, and of the historical significance of discourses of race and ethnicity to the legal interactions of indigenous with migrant (settler) populations.
- (4) Training in how to evaluate rival attempts to understand law and legal change in terms of other societal dynamics and structures.
- (5) Improvement of writing and analytical skills, through regular writing assignments.

### **(c) Reading: Books (with URL-Links), Documents, Articles, and Relevant Information**

This course asks you to read widely in both secondary sources (books and occasional articles) and primary sources (documents and case reports). Your goal in reading should be to acquire a general familiarity with what each author is offering you in matters of description and argument. You do not have to master every detail or every nuance of everything that is assigned. Should you find the reading burden difficult to carry the course instructors are ready to help, so feel free to raise the matter with the instructors.

Note that the reading is geared closely to the course writing assignments. As you will see (look under the "Assignments" tab) over the course of the semester you will write critical commentaries on three of the four assigned books. You will also write a final paper of your own choice that examines one of the primary sources (documents or case reports) which we will discuss during the semester.

(a) Books: The following four books are required for the course. Details of the readings required from each book are provided in the syllabus entries for each class.

All four books have been ordered for purchase. They are all also available through Oskicat in electronic editions, and on course reserves. Each of the titles below is linked to the electronic editions for ease of access.

[Aziz Rana, \*The Two Faces of American Freedom\* \(Harvard University Press, 2010\)Links to an external site.](#)

[Walter Johnson, \*River of Dark Dreams: Slavery and Empire in the Cotton Kingdom\* \(Harvard University Press, 2013\)Links to an external site.](#)

[Laura E. Gómez, \*Manifest Destinies: The Making of the Mexican American Race\* \(New York University Press, 2007; 2nd Edition 2018\)Links to an external site.](#)

[Kunal Parker, \*Making Foreigners: Immigration and Citizenship Law in America, 1600-2000\* \(Cambridge University Press, 2015\)Links to an external site.](#)

To access these library-licensed materials from off campus, you will need to use EZProxy or VPN full tunnel to authenticate yourself. Information on off-campus access is available at <https://www.lib.berkeley.edu/using-the-libraries/connect-off-campus>[Links to an external site.](#)

(b) Documents: In addition to extracts from the required books our class readings include multiple original documents or sources. These have all been posted on this course site, and are available through links embedded in the syllabus entries for each class.

(c) Articles: Occasional supplementary articles and book extracts are also required reading. These too have all been posted on this course site, and are available through links embedded in the syllabus entries for each class.

### **(d) Requirements and Expectations**

Success in this course requires that you fulfill the following basic requirements: (a) timely completion and careful preparation of the assigned reading; (b) regular attendance and active participation in lecture class and GSI section meetings; (c) timely completion of all written assignments.

Please note carefully the following basic requirement: in order to pass the course you must complete and turn in each of the four papers.

Both lecture class and discussion section meetings will proceed on the basis that you have completed and prepared the assigned reading. When appropriate (see the modules for a detailed week-by-week guide) you should arrive in class prepared to respond to the class discussion prompt.

### **Attendance Policy.**

Attendance and participation in weekly discussion section and lecture class meetings is required. Discussion sections will often cover assigned course materials not discussed in lecture class meetings. Unexcused absences will not be tolerated. If you are unable to attend a particular class you must notify your GSI that you will be absent and supply the reason for your absence. Attendance will be taken by circulation of a sign-up sheet at the beginning of each lecture class and section meeting. Attendance and Participation is worth 10% of your final grade.

### **Lecture Class Audio-Visual Availability:**

The Course Capture (Webcast) program is the campus service, run by ETS, for audio recording (with computer screen capture) and publishing classroom activity. Recordings of every lecture class session (Tuesday and Thursday, 9.30-10.59 am, 170 Social Sciences Building) are available to students in this course via CalCentral and bCourses. If you have any difficulty locating the course capture recording, you can find help at: [https://berkeley.service-now.com/kb\\_view.do?sysparm\\_article=KB0010426](https://berkeley.service-now.com/kb_view.do?sysparm_article=KB0010426) (Links to an external site.).

### **Laptop Policy**

Laptops, tablets and similar devices are not permitted at lecture class meetings or at discussion sections, except for those students with DSP accommodations. Our objective is a classroom environment without distractions that facilitates active listening and participation. The audio recordings of lectures will enable you to clarify anything missed in class.

### **Plagiarism policy.**

Plagiarism is the unacknowledged representation of the words or ideas of another person as one's own. Plagiarism includes copying material from books, or journals or other textual sources, including on-line sources. Plagiarism also includes the representation as one's own work of materials purchased or obtained from others (such as papers found or obtained on-line). To avoid the problem of plagiarism, any material taken word-for-word from another source must be placed in quotation marks and footnoted, or cited within the text. You can use ideas and information from other authors without directly quoting from them, but you must acknowledge them in your citations. Be aware that the ease with which we can all download, cut, and paste electronic documents makes "accidental" plagiarism a major problem. To avoid accidental plagiarism you must be very careful to keep track of materials you have downloaded. You must carefully and consistently cite any ideas or quotations that are taken from other authors, whether from paper or electronic texts. You must use a consistent, clear and recognizable citation system in your written work. We use Turnitin as a check on all submitted assignments. Plagiarism in any form – whether deliberate or accidental – will not be tolerated. At minimum plagiarism will result in a failing grade for the assignment in question.

## **(e) Assignments: Schedule, Description, Guidance, and Grading**

### **Assignments**

This course is a “continuous assessment” course, which means it has no Midterm or Final examination. In addition to attendance and participation in weekly lecture classes and section meetings, you will be required to complete three short paper assignments (1500 words/4 pages in length). You will also complete a longer final paper (2500 words/7 pages in length).

### **Assignments: Schedule and Information**

The written assignments you are required to complete are as follows:

(i) three 1,500 word critical commentaries on any three of the four required books (class participants will choose for themselves which three books to write about, and in what order). Each critical commentary is worth 20% of the final course grade.

For guidance on writing a critical commentary see below. Please note that your assessment should be of the book in its entirety, not just of the sections scheduled for class discussion.

The three critical commentaries are due on the following dates:

First Critical Commentary: due 17 September 2021 by 11.59 pm

Second Critical Commentary: due 15 October 2021 at 11.59 pm

Third Critical Commentary: due 12 November 2021 at 11.59 pm

(ii) a final 2,500 word paper: participants will select any one of the original documents that we will read over the course of the semester together and write a 2,500 word paper based on the document. This will require you to undertake some research of your own. What is your document about? What is its significance? What other materials does it lead you to discover? What stories can you tell about it? For more guidance on the final paper see below. This final paper is worth 30% of the final course grade.

Your final paper is due: 10 December 2021 at 11.59 pm.

All of your assignments should be submitted through the class bCourses portal. NB Please use .doc or .docx format only. PDF format will not be accepted.

### **Grading**

Your final grade will be determined according to the following proportions:

Short Paper assignments - 20% each

Final Paper - 30%

Section and Lecture Class Attendance and Participation - 10%

Your written papers will be assessed on the clarity of your writing (using proper grammar, punctuation, spelling, legibility and organization); on the accuracy and comprehensiveness of your narrative description of the material under examination; and on the creativity of your analysis of the material

(demonstrating in your own words or with your own examples that you understand the material and can think critically about it).

### **Initial Guidance on your Paper Assignments**

(i) Critical Commentaries: When writing a critical commentary on a book, you must assume that the reader of your commentary has not read the book and will decide whether or not to read the book on the basis of your commentary. Your commentary should have four main components: first, you must introduce the book to the reader by telling the reader what the book is about and summarizing the author's main arguments; second, you must describe the book in enough detail to convey the story the author tells, what the author wants the reader to understand, what the author's conclusions are, and how the author goes about convincing the reader that the story being told is both powerful and "right"; third, you must criticize the book – tell the reader what in your view the book's weaknesses are, whether the book's facts and/or arguments are convincing, and whether the book's conclusions are justified; and last you must offer your own broad conclusion in which you summarize your overall opinion of the book and tell the reader whether, overall, you think it is a good book or not, and why. Please note that your assessment should be of the book in its entirety, not just of the sections scheduled for class discussion.

(ii) Final Paper: Your task in the final paper is to choose an original document from among those we have discussed in class, and undertake research on the document you have chosen. This means to assemble information on the document that allows you to write about its provenance (where it comes from, how it came to be), about why it is historically significant (what it tells us itself, what others have written about it), about what it meant at the time it was produced (what its authors hoped or intended to achieve, how others at the time may have understood it), and about what you think it means (whether "historical perspective" or "context" changes how we, now, think about this document).

### **Section and Lecture Class Attendance and Participation**

Attendance and participation in weekly discussion section and lecture class meetings is required. Discussion sections will often cover assigned course materials not discussed in lecture class meetings. Unexcused absences will not be tolerated. If you are unable to attend a particular class you must notify your GSI that you will be absent and supply the reason for your absence. Attendance will be taken by circulation of a sign-up sheet at the beginning of each lecture class and section meeting. Participation means being ready to respond to discussion opportunities in both lecture classes and sections, and taking part in section exercises.

#### **(f) Instructor and Office Hours**

Instructor: Christopher Tomlins [ctomlins@law.berkeley.edu](mailto:ctomlins@law.berkeley.edu)

Office Tel: (510) 642 9049; Mobile Tel: (847) 691 9344

Office Hours: Thursdays 12-2 pm; or, contact me by email or text so that we can arrange an alternative in-person or Zoom meeting. I try hard to be available on just a few hours' notice.

Office Location: Room 302, 2240 Piedmont Ave. 2240 Piedmont is the home base of the Legal Studies Program. It is a house on Piedmont Avenue 50 yards north of the intersection of Piedmont and Bancroft, opposite the steps up to Memorial Stadium.

## 2. Syllabus: Topics, Readings, Prompts, Assignment Due Date Reminders

### 08/26: Class Introduction - The Frontier and the Border

At the initial class meeting - Thursday August 26 - I shall introduce your GSI, review all administrative matters and course requirements, and offer an overview of course content and goals.

Please prepare for the class by reading the following:

(a) The material posted on this site under "Course Basics."

(b) Aziz Rana *Two Faces of American Freedom*, Introduction (pp. 1-19); Walter Johnson, *River of Dark Dreams*, Introduction (pp. 1-17); Laura Gómez, *Manifest Destinies*, Introduction (pp. 1-14); Kunal Parker, *Making Foreigners*, Introduction (pp. 1-21)

[For this week only material from the assigned books is posted online. For all subsequent readings from the assigned books you will need a copy of the book by purchase, library loan, or library course reserves electronic edition access. For links to electronic course reserves, look on the course home page ~> course basics ~> reading.]

#### **Study/Discussion Prompt:**

You will all have ideas about how we should think of the history of North America. What are those ideas? Given the ideals Americans profess (liberty, equality, the expansion of human freedom) Does it make sense to you to think of America as a site of empire and colonization? Never? Only until the American Revolution? Today?

(In this course you will quickly discover that there are very few "right" or "wrong" answers to the questions we consider. This means that your opinions always count! Opinions that are informed by advance preparation and careful consideration generally are more likely to convince or influence others than opinions formed hastily on the spot, but no one should feel that their opinions do not count. So in thinking about how you would answer this question you should feel free to offer reasons that seem obvious or even random. In all our discussions we will want to try to consider all possible explanations for a phenomenon before deciding which explanations are more likely than others.)

Class Lecture Script

Class Slides

### 08/31: European "Discovery"

Please prepare for the class by reading the following:

Frederick Jackson Turner, "The Significance of the Frontier in American History," American Historical Association Special Meeting, World's Columbian Exposition (Chicago, 1893).

#### **Study/Discussion Prompt:**

Frederick Jackson Turner's assessment of the frontier's significance in American history was the first of its kind. His presentation revolutionized American intellectual and historical thinking about the relationship between "space" and "culture" in historical time. Turner states (p. 199): "The existence of an area of free land, its continuous recession, and the advance of American settlement westward, explains American development." What are the implications of this claim?

Class Lecture Script

Class Slides

### **09/02: Spanish Colonizing - La Leyenda Negra**

Please prepare for the next two classes by reading the following:

Francisco De Vitoria, "The First Relectio of the Reverend Father, Brother Franciscus de Vitoria, On the Indians Lately Discovered."

Francisco de Vitoria, "The Second Relectio of the Reverend Father, Brother Franciscus de Vitoria, On the Indians, or on the Law of War Made by the Spaniards on the Barbarians."

[Concentrate on the first of the two readings]

#### **Study/Discussion Prompt:**

What are Vitoria's views on Spanish colonization of the Americas? Does he approve or disapprove of Spanish actions? How does he view the indigenous peoples of the lands the Spanish had "discovered"? What is his conception of "just war"? What does "just war" mean to you?

Lecture Script

Lecture Slides

### **09/07: The Law of Spanish Colonizing**

Please prepare for this class by completing your reading of the following:

Francisco De Vitoria, "The First Relectio of the Reverend Father, Brother Franciscus de Vitoria, On the Indians Lately Discovered."

Francisco de Vitoria, "The Second Relectio of the Reverend Father, Brother Franciscus de Vitoria, On the Indians, or on the Law of War Made by the Spaniards on the Barbarians."

#### **Study/Discussion Prompt (same as 08/30):**

What are Vitoria's views on Spanish colonizing? Does he approve or disapprove of Spanish actions? How does he view the indigenous peoples of the lands the Spanish had "discovered"? What is his conception of "just war"? What does "just war" mean to you?

Lecture Script

Lecture Slides



### **09/09: The English Atlantic**

Please prepare for this class by reading the following:

Rana, *Two Faces of American Freedom*, pp. 20-45.

Parker, *Making Foreigners*, 22-49.

*Calvin's Case* (1608) 77 English Reports 377.

#### **Study/Discussion Prompt:**

What were the chief characteristics of English colonizing? What relationship developed between the English "center" and the colonial "periphery" during the seventeenth century? Does Calvin's Case "predict" the law of English colonizing?

Lecture Script

Lecture Slides

### **09/09: Assignment Reminder - First Critical Commentary is due in one week, 09/17**

### **09/14: The Law of English Colonizing**

Please prepare for this class by reading the following:

Sir George Peckham, *A True Reporte, of the Late Discoveries, and Possession, Taken in the Right of the Crowne of Englande, of the New-Found Landes ...* (1583)

#### **Study/Discussion Prompt:**

Do English colonizing activities differ from those of the Spanish? What did the English seek in North America? What role did law play in the creation of English colonies?

Lecture Script

Lecture Slides

### **09/16: The English Seaboard Colonies: Westward Movement in the Eighteenth Century**

Please prepare for this class by reading the following:

Rana, *Two Faces of American Freedom*, pp. 45-98.

John Locke, *Second Treatise of Government*, Chapter 5 "Of Property"

#### **Study/Discussion Prompt:**

What does Aziz Rana tell us about the conditions of "settler supremacy" (p. 23) and the threats to that supremacy? What parallels do you see between settler supremacy and John Locke's ideas about property?

Lecture Script

Lecture Slides

### **09/21: The Creation of the American Republic**

Please prepare for this class by reading the following:

Parker, *Making Foreigners*, pp. 50-80.

#### **Study/Discussion Prompt:**

What is the difference between "subjects" and "citizens" in the new American Republic?

Lecture Script

Lecture Slides

### **09/23: The Mississippi Valley**

Please prepare for this class by reading the following:

Johnson, *River of Dark Dreams*, pp. 18-45.

#### **Study/Discussion Prompt:**

Johnson writes of the Mississippi Valley as a place of "Jeffersonian Visions and Nightmares."  
What are the visions? What are the nightmares?

Lecture Script

Lecture Slides

### **09/28: The Law of the Land**

Please prepare for this class by reading the following:

Rana, *Two Faces of American Freedom*, 99-148.

*Johnson & Graham's Lessee v. M'Intosh* 21 U.S. 543 (1823)

#### **Study/Discussion Prompt:**

According to the U.S. Supreme Court in Johnson, "Conquest gives a title which the Courts of the conqueror cannot deny" (p. 15). What do you understand the Court to mean by this?

Lecture Script

Lecture Slides

### **09/30: "The Empire of the White Man's Will"**

Please prepare for this class by reading the following:

Johnson, *River of Dark Dreams*, pp. 46-72, 151-243.

*State v. Mann* 13 N.C. 263 (1829)

#### **Study/Discussion Prompt:**

What are the material, physical and psychological dimensions of "the empire of the white man's will"? What does *State v. Mann* tell us about its legal dimensions? How does Judge Thomas Ruffin represent the white man's will in law?

Lecture Script

Lecture Slides

### **10/05: Manifest Destiny**

Please prepare for this class by reading the following:

Kunal Parker, *Making Foreigners*, 81-115.

Laura Gomez, *Manifest Destinies*, pp. 15-48.

Treaty of Guadalupe Hidalgo (2 February 1848)

#### **Study/Discussion Prompt:**

What does "manifest destiny" mean? What is to be the civic destiny of "Mexicans now established in territories previously belonging to Mexico" according to the Treaty of Guadalupe Hidalgo, Articles VIII and IX? What is the significance of Article X?

Lecture Script

Lecture Slides

### **10/07: Slavery and Empire**

Please prepare for this class by reading the following:

Johnson, *River of Dark Dreams*, pp. 280-420.

#### **Study/Discussion Prompt:**

Like Laura Gomez, Walter Johnson writes about "Manifest Destiny." What is "Manifest Destiny" according to the imperial ambitions of the Antebellum slaveholding South? Johnson's account is ultimately one of material limitations to destiny. What are those limits?

Lecture Script

Lecture Slides

### **10/07: Assignment Reminder - Second Critical Commentary is due in one week, 10/15**

### **10/12: Dred Scott**

Please prepare for this class by reading the following:

Rana, *Two Faces of American Freedom*, pp. 148-75.

*Dred Scott v. Sandford* 60 U.S. 393 (1857), transcript pp. 9-35.

and one of the following:

Frederick Douglass, "The Address of Southern Delegates in Congress to their Constituents" (9 February 1849);

or

Frederick Douglass, "The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?" (26 March 1860)

**Study/Discussion Prompt:**

What history of American destiny does Chief Justice Roger Taney offer us in Dred Scott? What counter-history can we find in the words of Frederick Douglass?

Lecture Script

Lecture Slides

**10/14: Racial Reconstruction**

Please prepare for this class by reading the following:

*United States v. Stanley* (also known as Civil Rights Cases) 109 US 3 (1883)

**Study/Discussion Prompt:**

After a civil war fought to end slavery, how should we explain the Civil Rights Cases?

Lecture Script

Lecture Slides

**10/19: "The Other White Race"**

Please prepare for this class by reading the following:

Laura Gomez, *Manifest Destinies*, pp. 49-170

*United States v. Sandoval* 167 U.S. 278 (1897)

**Study/Discussion Prompt:**

Who are "the other white race"? Does Gomez really believe they are another white race? What does U.S. v. Sandoval (1897) tell us about their legal standing?

Lecture Script

Lecture Slides

**10/21: "Breaking Up the Tribal Mass"**

Please prepare for this class by reading the following:

Sarah Cleveland, "Powers Inherent in Sovereignty," pp. 25-81.

*Elk v. Wilkins* 112 U.S. 94 (1884)

**Study/Discussion Prompt:**

Who or what is "the tribal mass"? What is their civic destiny, as suggested by *Elk v. Wilkins*?

Lecture Script

Lecture Slides

**10/26: Bury My Heart at Wounded Knee**

Please prepare for this class by reading the following:

Benjamin Madley, "Reexamining the American Genocide Debate: Meaning, Historiography, and New Methods," *American Historical Review* 120, 1 (February 2015), pp. 98-139.

**Study/Discussion Prompt:**

What does Benjamin Madley have to tell us about the fate of the "tribal mass" we encountered in our previous class?

Lecture Script

Lecture Slides

**10/28: Pacific Empire**

Please prepare for this class by reading the following:

Parker, *Making Foreigners*, pp. 116-47

Walt Whitman, "Facing West from California's Shores" (1860)

**Study/Discussion Prompt:**

What can we learn from Kunal Parker that might explain the growth of antagonism to Asian immigration on the Pacific coast?

Somewhat independently, what meaning do you ascribe to Walt Whitman's poem? Is Whitman an imperialist? (Aziz Rana offers some reflections on this matter.)

Lecture Script

Lecture Slides

**11/02: Asian Exclusion, Asian Expulsion**

Please prepare for this class by reading the following:

Sarah Cleveland, "Powers Inherent in Sovereignty," pp. 81-163

*Fong Yue Ting v. United States* 149 U.S. 698 (1893)

**Study/Discussion Prompt:**

How would you characterize the civic status of Asian immigrants and residents in the United States of the 1880s?

Lecture Script

Lecture Slides

#### **11/04: New Masses**

Please prepare for this class by reading the following:

Kunal Parker, *Making Foreigners*, pp. 149-84.

##### **Study/Discussion Prompt:**

In the development of the U.S.'s legal regime of immigration and citizenship regime, was the experience of Asian migrants exceptional, or was it typical of all migrants? How do you react to Parker's argument that associates migrants from beyond the country's borders with those inhabitants within its borders but considered "lesser members of the polity" (p. 171)?

Lecture Script

Lecture Slides

#### **11/04: Assignment Reminder - Third Critical Commentary is due in one week, 11/12**

#### **11/09: Populism and Incorporation**

Please prepare for this class by reading the following:

Aziz Rana, *The Two Faces of American Freedom*, pp. 148-235.

*The Omaha Platform of the National People's Party* (4 July 1892)

Thomas E. Watson, "The Negro Question in the South," *The Arena*, VI (October 1892)

##### **Study/Discussion Prompt:**

Should we think about populism positively or negatively? What is the relationship between populism and immigration, populism and race, populism and imperial expansion, populism and law? Looking at these relationships at the end of the nineteenth century, do they seem very different from the relationships between populism and race, law, and "America First" in our own time?

Lecture Script

Lecture Slides

#### **11/11: No Lecture Class (Veterans' Day)**

#### **11/16: Jim Crow**

Please prepare for this class by reading the following:

*Plessy v. Ferguson*, 163 U.S. 537 (1896)

**Study/Discussion Prompt:**

A month ago we read the *Civil Rights Cases* (1883). Here, at the high tide of American populism, we encounter *Plessy v. Ferguson* (1896). Was *Plessy* inevitable? Who stood against its endorsement of Jim Crow? Where do *Plessy* and racial segregation fit in the post-Civil War account of territorial expansion, Pacific empire, Asian immigration, and civic identity?

Lecture Script

Lecture Slides

**11/18: Progressivism**

Please prepare for this class by reading the following:

Aziz Rana, *The Two Faces of American Freedom*, pp. 236-325.

Kunal Parker, *Making Foreigners*, pp. 185-230.

**Study/Discussion Prompt:**

Rana asks "What constitutional structures should govern a post-settler society and what account of freedom could justify these structures and ground a new ethical basis for citizenship?" (236). What is his answer? Is the U.S. clearly a "post-settler" society at the end of the nineteenth century? (Remember Frederick Jackson Turner, where we began.) What do he and Parker tell us about what happens to nineteenth century settler democracy in the twentieth century? What has happened to it (so far) in the twenty-first century?

Lecture Script

Lecture Slides

**11/23: Powers Inherent in Sovereignty**

Please prepare for this class by reading the following:

Sarah Cleveland, "Powers Inherent in Sovereignty," pp. 163-277.

**Study/Discussion Prompt:**

What does it mean to encounter arguments for "powers inherent in sovereignty" in a republic defined and bound by a constitution? Where are these powers located? Given that we have seen their existence repeatedly affirmed in dealing with Native Americans and with Immigrants, why do they become such a focus for controversy at the very beginning of the twentieth century in the *Insular Cases*?

Lecture Script

Lecture Slides

**11/25: No Lecture Class (Thanksgiving)**

### **11/30: The Insular Cases**

Please prepare for this class by reading the following:

*Downes v. Bidwell*, 182 U.S. 244 (1901)

#### **Study/Discussion Prompt:**

What are the two factions on the Supreme Court fighting about in *Downes*? Why is the argument so heated? Why is the majority so fractured?

Lecture Script

Lecture Slides

### **12/02: The American Balance Sheet (December 1904)**

Please prepare for this class by reading the following:

Theodore Roosevelt, *Fourth Annual Message to Congress*, December 1904 (Abridged Version)

Aziz Rana, "Colonialism and Constitutional Memory"

#### **Study/Discussion Prompt:**

How would you characterize President Theodore Roosevelt in light of his Fourth Annual Message to Congress? Is he a Progressive? Is he an imperialist? What appears to be his view of the position of the United States both vis-a-vis its people and their institutions, and in regard to the rest of the world? Had he been a Supreme Court justice in 1901, which side of *Downes v. Bidwell* would he have favored?

Lecture Script

Lecture Slides

### **12/02: Assignment Reminder - Final Paper is due 12/10**



