

Land Use and Racial Justice Syllabus

Vermont Law and Graduate School

Professor Jonathan Rosenbloom

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Course Time: Thursdays: 3:35-6:15pm

Office Hours: My official office hours are Monday 12:00-3:00pm. That said, I will make myself available to you as often as you need. If you email me a few dates/times that work for you, I am certain we will find a time outside of official office hours that is convenient for you to meet. Given that I do not have a campus office, meetings will be via zoom.

COURSE OVERVIEW

Welcome to the course Land Use and Racial Justice!

In this course, we will explore the law's role in creating, exacerbating, alleviating, and remedying exclusionary and discriminatory tactics through the regulation of land. We will examine ways in which land use laws have helped create structural inequalities based on race and class.

As aspiring lawyers, it is important for us to consider what "is" *and* what could or should be. For that reason, we will explore how the law can serve as a mechanism for positive change. We will see how far we can push the law to help promote a more diverse, inclusive, open, and equitable community through the regulation of land.

COURSE OBJECTIVES AND COMPETENCIES

In this course, we have three primary objectives and seven core competencies. The objectives are: 1) to demonstrate an understanding of land use through the lens of race, 2) to apply a set of broadly applicable skills helpful to evaluate land use laws and identify structural racism embedded therein, and 3) to hone research, writing, and critical analytical skills as future lawyers and advocates. Students who successfully complete this course will be able to:

1. Explain some of the ways in which the American common, statutory, and constitutional law governing land is affected by, and in turn affects, structural racism;
2. Identify some of the ways the law has shaped the construction of what race is and what it means in the context of land use;
3. Identify the social impacts associated with objective or facially-neutral land use doctrines;
4. Describe structural racism as embedded in land use laws;
5. Write a well-organized and well-researched paper advocating for change in land use

- laws.
6. Continue to grow doctrinal analysis skills, including the close reading of land use documents, and
 7. Critically analyze laws and determine whether they are addressing structural racism, exacerbating it, or something else.

Welcome again to what I hope will be an engaging and enlightening semester. Now, on to the logistics.

OUR PATH

This course presents an opportunity to learn about the role race and class have played in the development of land use laws and the physical manifestation of those laws. We will begin with some introductory pieces to lay a foundation to understand the multiple ways land is regulated in the U.S., known as “land use law.” This introduction will lead us to the core of the course, which is centered on exploring i) ways land use laws have been used to segregate and discriminate based on race and class, ii) skills helpful to critically analyze land use laws to identify segregation and discrimination, and iii) ways to remedy past and present segregation and discrimination stemming from the regulation of land. The course culminates in your researching and drafting a proposal to amend land use laws in a way that addresses social and/or racial justice.

REQUIRED TEXT

Set forth below are the **ASSIGNED READINGS AND PROBLEMS** and how we ideally will proceed through the semester. Your thorough understanding of the topics we cover in class is most important. The Assigned Readings sometime skip pages – always check this Syllabus before reading ahead.

This class has a Canvas course site that contains the basic information for the course and all of the course reading materials and assignments.

GRADING

The following makes up your final grade:

- “Assignments” described below under **GRADED ASSIGNMENTS**. On most days an assignment is due. The specific assignments are set forth on Canvas and the due dates are listed below in the chart entitled **ASSIGNED READINGS AND PROBLEMS**. Assignments are worth 45% of your grade (plus 5% for class participation).
- Final Report described below and on Canvas is worth 50% of your grade.

GRADED ASSIGNMENTS

Graded Assignments make up 50% of your final grade. Assignments are indicated by “Assignment [number]” in the ASSIGNED READINGS AND PROBLEMS chart below. To get credit for an Assignment, you must complete the full problem in a meaningful and robust way. **Assignments must be completed on Canvas.** Failure to submit an assignment before class begins on the date it is due will result in a zero for the Assignment.

Most assignments are graded accordingly:

- 0 – failed to submit or follow the assignment instructions
- 1 – partially submitted the assignment, and does not show the requisite time, research, writing, editing, and energy spent on the assignment
- 2 – submitted the full assignment, but does not show the requisite time, research, writing, editing, and energy spent on the assignment
- 2 – partially submitted the assignment in a meaningful and robust way. This means you showed the requisite time, research, writing, editing, and energy and understanding of what the assignment is addressing but you did not complete the full assignment.
- 3 – completed the full assignment in a meaningful and robust way. This means you showed the requisite time, research, writing, editing, and energy and understanding of what the assignment is addressing. To receive full credit, you must show that you spent the necessary time and effort.
- 4 – went above and beyond the assignment in terms of research, writing, and analysis.

Submit your Assignments on Canvas. Once you log onto Canvas, go into “Assignments,” select the Assignment number, and click “reply” to enter your Assignment. Some Assignments require you to comment on another student’s work. To respond to a colleague’s Assignment, click “reply” directly below their submission.

The Assignments are intended to supplement the reading and subject matter covered in class. I do not believe the best way for you to learn and for me to evaluate whether you have achieved the objectives above is to have a single “summative” assessed exam at the end of the semester. Instead, it is important for us to engage in a series of evaluations throughout the semester. This is often called “formative” assessment and is the primary purpose behind the Assignments. The benefits of formative assessment have been clearly stated by others. See, e.g., JOHN O. SONSTENG ET AL., A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY 135 (2008); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 255 (2007); MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 35, 166 (2009) (“[s]tudents’ perspectives on this issue are consistent with experts’ views: evaluating student performance on one graded event is not educationally sound.”); Heather Zuber, *A Fresh Look At Assessing Students’ Work Product: What Is Assessment, Why We Assess, And How To Do So Effectively And Efficiently*, 19 PERSP.: TEACHING LEGAL RES. & WRITING 20, 19-21 (2010) (“Summative assessments . . . serve to assign a grade or otherwise indicate a student’s level of achievement in relation to other students

rather than to provide extensive feedback about the quality of his performance. Their ‘after-the-fact character forecloses the possibility of giving meaningful feedback to the student about progress in learning.’”); Kevin H. Smith, *Program Evaluation: Defining and Measuring "Success" in Academic Support Programs*, 2003 MICH. ST. L. REV. 177, 198 (2003). **FINAL REPORT**

You will be responsible for a **Final Report**. The Report is a written article of 20 pages or more, double spaced on 8 1/2 paper, including footnotes. This will include:

- Paper Proposal and Annotated Bibliography: 10%
- Partial Paper Draft: 15%
- Final Paper: 25%

Your paper will be due at **11:59pm on May 12th**. Earlier in the semester, you will submit a Paper Proposal and Annotated Bibliography (see syllabus for date due). About 2/3 of the way through the semester, you will submit a Partial Paper Draft (see syllabus for date due).

You may write your paper on any issue that interests you, as long as it has something to do with land use and racial justice. I will be looking for papers that:

- Have a clear thesis statement that conveys a single major point (or a couple of major points) you want to convey;
- Present an Introduction to the topic;
 - Why is this important to understand?
 - What are essential historical facts, biological principles, and/or political issues we need to understand to understand the topic?
- Provide enough background information to present a context for your topic;
- Explain the principle legal foundations of your issue, e.g.
 - What instruments/laws govern your issue?
 - How are (are not) those laws interpreted/enforced?
- Clearly explain how your topic helps us to understand land use and racial or social justice;
- Are clear, concise, easy to follow, and even a pleasure to read;
- Are analytically rigorous;
- Present interesting, in-depth, original synthesis;
- Present a balanced discussion of your topic (even if you ultimately choose to advocate for a particular position);
- Consider a range of sources (e.g. legal briefs, court decisions, law review articles, other scholarly articles, popular press articles, web content, business or advocacy group position papers), depending on what is appropriate for your topic;
- Are written in a style appropriate for whatever audience you choose;
- Do not make the reader guess what you are thinking; and
- Scrupulously document all claims you make in whatever citation style is apt for your chosen audience.

I welcome papers that do any of the following:

- Explore a land use and racial or social justice law or regulation, case study, legal doctrine, and/or policy solution that intrigues you;
- Help you explore a future career choice;
- Form the basis for a law review Note (if it is for your current journal position, please see me to insure you can get credit for both) or a real-world case on which you might be working;
- Are designed to submit to another law journal or other publication. Many students don't realize that their publication opportunities are not limited to VLGS journals!;
- Are prepared for, and delivered to, a real-world client, i.e. you produce a well-researched memo that responds to that client's needs: Please chat with me if that idea intrigues you.

When you finish this paper, you will be an expert on a given topic. Please consider submitting an op-ed piece to a newspaper, or to a legal journal. Publishing such a piece would look excellent on your resume, and prospective employers are more likely to read something pithy and punchy than they are to read a journal note or term paper.

CLASS PARTICIPATION

Students will take an active role in each class. Many of the classes will be highly interactive as we explore these issues and build our projects together. You will be expected to engage actively in these opportunities for joint inquiry and exploration. Your participation will contribute to the learning of your fellow classmates. Part of your grade will be determined by your participation.

WHAT YOU CAN EXPECT FROM ME

You can expect me to plan the best course I can. That means I will select intriguing, pertinent material for you to read, contemplate, and write about. I will do my best to keep our time in class challenging, productive, interesting, and even fun. I will provide prompt, engaged feedback to your work, and I will attempt to assess your work fairly.

If you feel that I have assessed you unfairly, or if you want to discuss any aspect of the course or subject matter, you should always come and speak with me. You should expect a good listener. You should expect someone who wants your feedback, and who will respect what you have to say. Above all, you should expect to be in the classroom with someone who loves to teach.

CLASSROOM

Arrive to class early and be prepared. Class will start promptly at 3:35pm. We will spend time working through the materials and assignments in class. At first, I will call on volunteers. To ensure that all students participate in class discussion, I will also call on students at random. Your preparation and participation will make the course more comprehensible and enjoyable.

Students should come to class prepared to discuss the material. You are prepared if you can carry on an informed conversation about the assigned material and its relationship to material previously covered in the course. When I call upon a student, my goal is to enhance the individual student’s understanding of the material and to hone their analytical and advocacy skills, as well as those of the entire class. In order to meet this dual objective, students will need to be prepared. Because of the unpredictability of time spent on in-class problems, there may at times be a gap between when you initially read material and we discuss it. As is the case with lawyers in the real world, I expect you to devise a system of information retention such that we can have fruitful interactions and discussions of the material.

ATTENDANCE POLICY

Regular class attendance is required by the school’s academic rules (which can be found in the Student Handbook) and is essential to a coherent understanding of the course. Attendance will be taken each class day.

CLASSROOM ENVIRONMENT, LANGUAGE, AND BEHAVIOR EXPECTATIONS

You must do your best to show up (1) for every class, (2) on time, and (3) well prepared. My approach to teaching emphasizes participation and engagement. Students will take an active role in each class. In every class, I will be asking for your views on particular subjects. Because you are aspiring lawyers, I am mostly interested in your response as it relates to law, policy, or legal principles and theory. Your preparation and participation will make the course more comprehensible and enjoyable.

To promote an inclusive and constructive learning environment, demeaning, marginalizing, and otherwise negative language and behavior will not be tolerated in the classroom. Respect and courtesy toward the professor, classmates, and classroom guests are expected. Language and behaviors that are disruptive, abusive, or harassing may result in disciplinary action as specified by the Student Code of Conduct.

ASSIGNED READINGS AND PROBLEMS

Class	Topic and/or Objectives	Readings (all materials except <i>The Color of Law</i> should be accessible on Canvas)	Assignments

Land Use Laws Used to Create or Deny Economic and/or Social Power: Zoning			
1 1/19	Fractured and Segregated Communities and Neighborhoods Land Use as a Weapon	Christopher Silver, <i>The Racial Origins of Zoning in American Cities</i> . <i>Buchanan v. Warley</i> . <i>California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report</i> (June 2022), pages 168-71. <i>Remembering Vermont's 19th Century Black Communities</i> , Vermont Public, June 19, 2020, https://perma.cc/D2YY-3BV4 (read, listen to too if you would like, but definitely read).	Complete Assignment 1 on Canvas
2 1/26	Lack of a Constitutional Floor: Discriminatory motive requirement Exclusionary Zoning for Housing	<i>Washington v. Davis</i> . <i>Village of Arlington Heights v. Metro Housing Development Corp.</i> <i>Personnel Administrator of Massachusetts v. Feeney</i> .	Complete Assignment 2 on Canvas
3 2/2	Infrastructure	<i>Dowdell v. City of Apopka</i> . Jane Woldow, Library Director & Professor of Law will join us today to provide insight on research local land use and racial justice laws.	Complete Assignment 3 on Canvas
2/9	NO CLASS		
2/16	NO CLASS		
4 2/23	Food Security and Sovereignty and Nutrition Security Access to Green and Open Spaces	<i>Identifying and addressing the vestiges of inequity and inequality in Virginia's laws</i> , Pages 78-81. <i>Reducing Racial Bias Embedded in Land Use Codes</i> , pages 6-8 in the PDF. Lela Nargi, <i>Nutrition Security: The Next Battleground in the War on Hunger</i> , May 9, 2021. Marie Patino, Linda Poon, <i>The Inequality of American Parks</i> , CityLab, May 27, 2021. Open Space Institute, NY Outdoor Recreation Coalition, <i>Open Spaces for All</i> , pages 4-38. <i>Five Ways to Make the Outdoors More Inclusive</i> , TheAtlantic.com, https://www.theatlantic.com/sponsored/rei-	Complete Assignment 4 on Canvas (proposal)

		<p>2018/five-ways-to-make-the-outdoors-more-inclusive/3019/ (last visited Dec. 17, 2022).</p> <p>For a resource listing numerous organizations, podcasts, articles, reports, and others see Don Rakow, Laura Brown, <i>Anti-racism in the Outdoors: Resources related to inclusion, diversity, equity and access of black, indigenous and people of color in parks and greenspaces.</i></p>	
5 3/2	Environmental Justice, Hazardous, and Toxic Waste Siting	<p><i>1987 United Church of Christ Report Toxic Waste and Race</i>, pages xi-xiv (Executive Summary and Major Findings).</p> <p><i>Identifying and addressing the vestiges of inequity and inequality in Virginia’s laws</i>, Pages 4-12, 66-76.</p> <p>Lisa Whitley Coleman, <i>Cumulative Impact Ordinances Address Environmental Justice</i>, EHS Daily Advisor, June 3, 2021.</p> <p>Watch: <i>If toxic air is a monument to slavery, how do we take it down?</i>, https://forensic-architecture.org/investigation/environmental-racism-in-death-alley-louisiana.</p>	Complete Assignment 5 on Canvas
3/9	NO CLASS – SPRING BREAK!		
6 3/16	Critiquing the City		Complete Assignment 6 on Canvas. MAY BE COMPLETED BY A GROUP OF TWO.
Land Use Tools Used to Create or Deny Economic and/or Social Power: Eminent Domain, Transportation, and Process			
7 3/23	Eminent Domain, Transportation, Process	<p><i>Johnson v. M’intosh.</i></p> <p><i>Berman v. Parker.</i></p> <p><i>Hawaii Housing Authority v. Midkiff.</i></p> <p><i>Nashville I-40 Steering Committee v. Ellington.</i></p> <p><i>Ball v. James.</i></p> <p><i>California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report</i> (June 2022), pages 171-76.</p> <p>Cambria N, et al., <i>Segregation in St. Louis:</i></p>	

		<p><i>Dismantling the Divide</i> (2018), pages 26-47.</p> <p><i>What It Looks Like to Reconnect Black Communities Torn Apart by Highways</i>, July 28, 2021, https://perma.cc/J6TT-6S84.</p> <p>John Murray, <i>Colorado Transit Bill Brings Focus and Funding to Inequality</i>, May 27, 2021, https://perma.cc/4LND-2DE9.</p>	
Constructing the Anti-Racist City and Reversing Systemic Racism in Land Use: Housing			
8 3/30	Redlining	<p>Bruce Mitchell, Juan Franco, <i>HOLC "Redlining" Maps: The persistent structure of segregation and economic inequality</i>, NCRC Research, pages 1-18.</p> <p><i>California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report</i> (June 2022), pages 179-83 and 186-88.</p> <p>Jacobi Collins, <i>#Redlined: A St. Louis Story</i>, May 28, 2021, https://storymaps.arcgis.com/stories/366759e8b76c46efbf6ff9e8fff3ac0b.</p> <p>Cambria N, et al., <i>Segregation in St. Louis: Dismantling the Divide</i> (2018), pages 58-63.</p> <p>Listen to: Terry Gross' interview with Richard Rothstein, <i>A 'Forgotten History' Of How The U.S. Government Segregated America</i>.</p> <p>Skim: Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, FEDS Notes, Sept. 28, 2020.</p>	Complete Assignment 7 on Canvas (paper)
9 4/6	Peer Review		Complete Assignment 8 on Canvas
10 4/13	Public Housing & Affordable Housing Predatory Lending, Reverse Redlining, and Blockbusting Fair Housing Act	<p><i>Gautreaux v. Chicago Housing Authority</i>.</p> <p>Sierra Council, <i>Decades later, some wonder if Cabrini-Green's history is being erased</i>, The Tribe, Feb. 6, 2020.</p> <p>Kori Rumore, <i>Cabrini-Green timeline: From 'war workers' to 'Good Times,' Jane Byrne and demolition</i>, Dec. 20, 2020, https://www.chicagotribune.com/news/ct-cabrini-green-timeline-20201220-</p>	Complete Assignment 9 on Canvas

		<p>zti7msps6zerxpye72h6qxbfxy-story.html.</p> <p>HUD, <i>New Housing in High Productivity Metropolitan Areas - Encouraging Production</i> (2021), Section 3, skim Sections 1, 2, 4, and 5.</p> <p><i>Mhany Management v. County of Nassau.</i></p> <p><i>Organization for a Better Austin v. Keefe.</i></p> <p><i>California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report</i> (June 2022), pages 186-88.</p> <p>Housing Voice Podcast #7, Residential Mobility, https://www.lewis.ucla.edu/2021/08/04/07-residential-mobility-with-kristin-perkins/.</p> <p>Watch: Cabrini Green (PBS Documentary 1982), https://www.youtube.com/watch?v=wKqA7zAmnms.</p>	
Constructing the Anti-Racist City and Reversing Systemic Racism in Land Use: Public Education			
11 4/20 On Zoom	Property Tax and Education	<p><i>Rose v. Council for Better Educ.</i></p> <p><i>Edgewood Independent School Dist. v. Meno.</i></p> <p><i>Identifying and addressing the vestiges of inequity and inequality in Virginia’s laws</i>, pages 25-36.</p> <p><i>California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report</i> (June 2022), pages 210-25.</p> <p>Nic Querolo, <i>A ‘Black Tax’ Costs US Cities Millions They Can’t Afford</i>, Bloomberg News, https://perma.cc/8QME-UDEQ.</p> <p>Skim: <i>Gannon v. State</i>, 308 Kan. 372 (2018) (it is a long case, but another dispute over education funding in Kansas; we’ll only cover it if we have time).</p>	
Constructing the Anti-Racist City and Reversing Systemic Racism in Land Use: Private Land Controls			
12 4/27	Covenants Restricting Conveyances Defeasible Fees	<p><i>Shelley v. Kraemer.</i></p> <p><i>California Task Force to Study and Develop Reparation Proposals for African Americans,</i></p>	

	<p>Partition</p>	<p><i>Interim Report</i> (June 2022), pages 183-85.</p> <p><i>Mason v. Adams Cty. Recorder.</i></p> <p><i>Charlotte Park & Recreation Com. v. Barringer.</i></p> <p>California Assembly Bill No. 1466 (2021).</p> <p>Maryland House Bill 1077.</p> <p>Cambria N, et al., <i>Segregation in St. Louis: Dismantling the Divide</i> (2018), pages 64-85, 96-105.</p> <p>Lizzie Presser, <i>Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It.</i>, ProPublica, July 15, 2019.</p> <p>Listen to: <i>Racial covenants, a relic of the past, are still on the books across the country</i>, Nov. 17, 2021 https://www.npr.org/transcripts/1049052531.</p>	
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