



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
2019 Volume II: Teaching about Race and Racism Across the Disciplines

On Teaching Race in the Classroom: A Foundational Thematic Approach to Race & Law in the US History Curriculum

Curriculum Unit 19.02.05
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Introduction

The purpose of this unit is to analyze the different ways that race and law have operated over the course of American history. The unit is designed to be implemented in a United States History course, but can also be used in a Civics classroom as a way of understanding the function of the law. The unit comprises of three main case studies 1) Racial Formation of Legal Code in Colonial America with the specific focus on the aims and goals of the Naturalization Law of 1790 2) The Prerequisite Cases of the 1920s and finally, 3) Anti-Miscegenation Cases and Racial Categories at the time of the Eugenics Movement in the 1930s and 40s. The purpose of weaving these different historical time periods together is to help students reshape the ways in which they look at the law and more importantly understand how race and law have worked together to shape the world in which we live. The different case studies can be introduced individually or used in a thematic manner.

The curriculum unit operates on the analysis of four essential questions that should be posed to students 1) How has race worked to construct law? And vice versa 2) Can the law truly be neutral? 3) What is the function of the law in our society? 4) How were the scientific and cultural understandings of race cemented and legitimized through the instrument of legal code?

The curriculum unit is divided into two parts 1) Strategies for teaching race in the United States History curriculum in meaningful ways and introducing new strategies to be utilized that can be applied outside of the focus area of the lesson and 2) The application of these strategies into tangible lessons based on the former case studies mentioned. For effective and optimal use of the curriculum, educators must analyze the strategies in which they use in the classroom, without such, the unit lacks in purpose and real reshaping of the discourse and direction in the classroom.

Throughout this unit, I will be focusing on how to teach race and law throughout United States history as a means of analyzing how race and ideas race can form on a systematic basis over time. However, the underlying goals of this unit will be to provide strategies and vocabulary to approach race in the classroom. I want to be transparent and vulnerable in stating that this curriculum will not magically cure racism or provide the perfect lesson plans to completely cure race relations within your classroom, let alone the nation. No

lesson plan can. It is important for all of us to recognize that the implementation of any effective strategies surrounding teaching race in the classroom will require all parties involved to deconstruct and relearn and reshape the ways in which we view race in America and a deeper global context. It will require consistent analysis and unpack their own colonial scripts in which we all have been provided as a means to understanding the world around us.

How Do We Teach Race?

In order to establish and implement new strategies of how to study and teach race in US History, we must first address the common ways in which race and law are addressed or not addressed in the classroom and recognize that in order to begin deconstructing the classroom, these practices must be challenged.

Colorblindness to History - The purpose of this seminar was to address and dismantle the notion and practices of colorblindness in the classroom. Often times, especially in the history curriculum, history teachers tend to take the approach that in order to accurately view history, we must view it through a “neutral” and “objective” lens. We, as a society, have adopted race as an individual prejudice rather than a structural presence in which we all operate. As a result, we guide ourselves throughout history by taking a neutral approach and in doing so, fail to effectively critique and understand the very structures that have formed to marginalize different groups. We see the law as being a colorblind party, in which neutral decisions are made, when in reality, the law can work like any other force in society, shapeable, malleable and influenced by human behaviors and ideas.

This attitude often taking form in statements such as “if we stop discussing race, racism will go away” or “we must live in the present and view everyone and everything equally.” We look to entities such as the law to put these unrealistic notions into tangible form. We use our lack of context of these forms to strive towards and idealize, while not seeing their full functions in our societies. To not see color, is to intentionally not see the full picture. In order to fully confront this attitude, and be historically honest we must admit and recognize that race has been and continue to be an ever-present force within our society. However, this will require us, as educators to fully address our true intentions of why we choose to implement a colorblind approach. Without doing so, it will cause us to take the stance of being the neutral, force in the classroom. To dismantle colorblindness, we must recognize that the students and ourselves are all inheritors of history and reckon with our complicity in the history of racism in the United States and that all aspects, including the law, have been stained with its residue.

Victors, Villains, and Victims- We tend to see history through a binary lens and more like a movie focusing on individual characters who perform particular roles to comfort and appease the interpreter of the history. I divide these groups into three groups.

- a. There are villains who commit horrible atrocities throughout history. These take the form of hate groups such as the KKK or the slaveholding founding fathers or the infamous ultimate historical villain historical Hitler. These characters serve the purpose of giving the interpreter of history the ability to disavow the actions of the villain and in doing so, remove and disassociate ourselves from the atrocities and render ourselves not complicit in the real consequences of colonization and white supremacy. This, however, also allows us to view these villains as individual culprits and in doing so, fails to identify how systems

and structures formed. This allows us to feel that if we condemn these people, racism can in itself be phased out. The law interacts with the villains in very explicit terms, with no nuance. This is best illustrated in the laws that enabled slaveholding. Once the 13th Amendment was introduced however, slavery ceased to exist or operate in the United States.

- b. The Victors act in the opposite role, allowing us to use their accomplishments to reassert ourselves as not only separate from the villains but as the saviors. However, these characters are often not members of the marginalized groups themselves, such as figures like Nat Turner or Malcolm X, but rather we see them through the lens of white allyship. We see these roles performed in the cases of abolitionists throughout the enslavement era, white allies during the Civil Rights Movement or Abraham Lincoln. We allow ourselves to cling onto these well-intentioned characters, resulting in the denied agency of marginalized groups and the ability to detach from the real-life consequences of white supremacy. The victors are able to challenge the laws and change them, and by doing so erase the consequences of the laws.
- c. The final group of Victims acts as the beneficiaries of the victors. The saved. These are in the characters we see as in slaves, or immigrants in the modern-day. By seeing these groups as the beneficiaries of the victors, rather than as agents in their own liberation, we deny the humanity of being able to act for themselves. These characters are those who are impacted by the law in them being beneficiaries of the law changes.

By setting up our classroom and dividing individuals' historical figures into these groups, we, the educators allow ourselves and the students to take sides and take unrealistic positions in the classroom, resulting in a lack of real critique or acknowledgment of the systems at hand. Each of the precedents interact the law, however, they are seen as revolving around rather than working collaboratively alongside of the law.

Individual Triumphs rather than Collective Activism- Part of the Victors, Villains and Victims strategies in the classroom stems from a tendency to focus on individual achievements of historical figures rather than viewing them as apart of long political systems and structures. This can be seen in the use of Martin Luther King and Rosa Parks, although both of these figures were picking up a mantle of a fight that had begun long before the sixties. By studying the law, we are able to see how the structure of racism evolved and those who were benefited from and challenged it inhabited those systems. This unit will not focus on individuals but rather focuses on how the racial legal system emerges in the context of the United States and global history.

The Race and Law are fixed- Another notion that is consistently invoked in the classroom is the fixed nature of the law and race. We see these structures as being immovable and fixed rather than having legs. Changing through time, shapeable. This unit will show just how alterable the law can be.

Power Blindness- In her thought-provoking piece, *Power Intersectionality*, Barbara Tomlinson argues that the practice of colorblindness allows its user to also invoke power blindness. If one is blind to color, one is blind to power (Tomilson, 2012). It is important that we as educators and our students understand not only the law has worked to construct race, but also recognize how the law has worked to distribute real, tangible and continuous power, and deprive others. The Whites-only signs were not only for decoration but to tell a certain tribe that, no matter their station in life, some parts of the world, indeed the best part of the world was carved out for them (Coates, 2017). By understanding the ways in which power has been bestowed to certain portions of our society through the law, we can also begin to see the purposes of law in a more nuanced way. And more importantly, as Milton Reynolds argues, when students are able to understand the inequality and injustice that produce such outcomes, they can channel their civic energy toward confronting and reforming these institutions, ideas and ideologically driven practices.”

The Law Has Consequences, and they are not always explicit- Similar to Power blindness in terms of who is the recipient of the power that power allots, when we refuse to see color, we fail to see the real consequences that laws have had on our society. When we relegate the explicit nature of the law to the historical past, we fail to acknowledge or analyze its contemporary consequences. This unit will challenge that by promoting students to make real, relevant connections to our modern-day system, with the purpose of allowing them to see the world they live in as movable and view themselves as agents of change.

All of the strategies listed above will be addressed in the following lessons in some shape or form. However, before attempting we must first reflect on why we institute these moves. Comprehending motivations for investment in colorblindness is essential to the development and ultimate adoption of alternate practices. In order for this unit to be implemented, we must, as educators embrace and challenge our own notions surrounding race before teaching it to the students. Each of the strategies discussed in the previous paragraphs has some use for both us and our students. We cling to the strategies as a way to sedate ourselves from the real consequences and soothe our discomfort. We are not the mediators between our students and the bloodstains of a trauma-filled past, but rather, we are walking in the journey with them.

Historical Thinking Skills

Despite the contrary, by allowing our students to become immersed in critical thinking regarding race throughout history, we are allowing them to be challenged to use higher-order thinking skills and developing a deeper relationship with the content rather than using a bystander approach. To use this curriculum, students will need to use contextualization and causation, as well as make historical and contemporary connections to the content. Rather than encouraging students to use these skills, the unit requires it.

Teaching Racial Science

The Age of Classification

A significant portion of this unit will require a foundational understanding of the scientific discourse surrounding race during the founding of the country and throughout. In order to understand the Laws of Naturalization of 1790, it is important to analyze the context in which they were written. Despite common belief, that racism and race were created and perpetuated only by poor people, the institution and constructions of the race were largely produced, perpetuated and validated by the academic elite. One of the most infamous academics who are responsible for coining some of our common knowledge and terminology surrounding race is Johann Blumenbach, an eighteenth-century naturalist and anthropologist. Throughout his life, during the age of classification and collection, Blumenbach collected and classified skulls as a way of understanding hierarchies. He, along with many other scientists and anthropologists, engaged in centuries-long expeditions of trying to understand and sort the world that they lived in using science. Blumenbach collected and categorized sixty skulls during his time, with the hopes of tracing human origins.

Surveying the whole range of physical characteristics, but chiefly the skull, he separated humans into four

different categories. He adopted several different new terminologies to identify these new species. He established five new groups 1) Caucasian, the most superior group because he believed the people surrounding that region were the most beautiful people in the world and had the most evidence to show that human life originated there 2) the Mongolian 3) Ethiopian 4) Malayan, whom he believed morphed into change into what we know as the African 5) the American. For each of these “categories”, Blumenbach felt he could classify their space in the human hierarchy, utilizing the science and religious beliefs of the day. Blumenbach believed darkness was a sign of change from the original. All of mankind had fallen from perfection, but the darker you were the further you had fallen. Despite the modern-day evidence and protestations from Blumenbach himself, his work and classification would be a stone, laying the foundation for racial classifications and the acts of terror laid in their names.

It is important to start here in the classroom when discussing race because often time students are under the impression that race in itself is a biological fact rather than an ideological phenomenon. By beginning to see race as a constructed idea rather than a fixed attribute, they can lay the foundation of being able to understand race from a nuanced view and see as a more movable and adaptable force, and a concept that needed to be crystallized over a period of time.

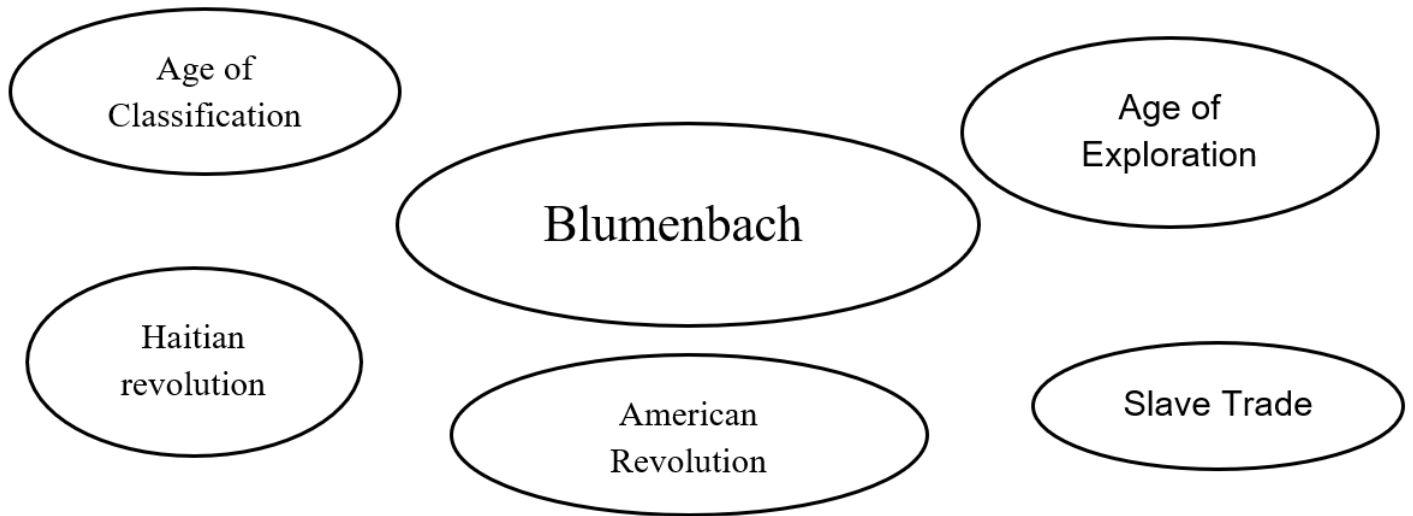
Lone Man Teaching

As easy it may seem to frame the conversation using Blumenbach as an anchor, or as a villain, it is very important to note to students how his work was co-opted by many other academics at the time and contextualize the timing of his work in the Age of Scientific Classification, when Europeans were working to find new ways to predict and understand human evolution and human traits. By isolating Blumenbach on his own, we cause to the students to identify him and his work as the evil of history, without real analysis of the current of racist science and colonial creations of that time period which resulted in a centuries-long expedition of parceling who would have access to civil rights, the right to life and most importantly who has access to humanity.

Challenging this way of teaching in the classroom can be completed in a variety of different ways. The following two charts serve as sample activities for students in analyzing Blumenbach’s work.

Racial Classification Region Physical Characteristics Hierarchy Reasoning
Caucasian
Malay

The first strategy to utilize charts to have students keep track and identify the different ways in which Blumenbach classified humans and his reasoning for doing so. After reading an article,¹ detailing the findings of Blumenbach, students will chart and organize his ideas in a chart. By doing this, students are able to identify the different forms of evidence that Blumenbach used in his reasoning by categorizing the different groups that Blumenbach created. Doing this gives students a chance to create a visual board in which they can use to make connections later on the lesson. The chart also provides a space for discourse on the findings and whether or not these findings would match up with our modern-day descriptions. Asking students to discuss their findings and observations from the chart will allow them to make relevant modern and historical connections.



Another important technique, and way to fight against the use of the lone man teaching is to utilize contextualization charts to have students deeply analyze material and unpack the social, political and economic context in which they arose. This helps students get away from thinking just of Blumenbach as an isolated figure but placing him in context with the Age of Classification and situating this time in the conversations around African docility and agency were being discussed in lights of historical events such as the Haitian Revolution, slave insurrections on the slave trade and the ideas of the American Revolution and Enlightenment.

For each of the circle students should answer the following questions: 1) What was this event? 2) How does this event or topic relate to Blumenbach? 3) How might these historical events been influenced by the teachings of Blumenbach? The purpose of the students putting these topics in conversation with Blumenbach is to have students understand how ideas are shaped and influenced by others. It will also help to further add context to how the law could have been influenced by the global and domestic issues surrounding the nation at the time.

A culminating activity for this lesson could be providing supplementary secondary source analysis to put further place Blumenbach in conversation with historical events. A good piece to send students home to write a reflection on would be "Slavery and Citizenship in the Age of the Atlantic Revolutions by Malick W. Ghachem. In this article, Ghachem places the scientific ideas on race, humanity and ability to self-govern in conversation with the discussion surrounding black citizenship in the wake of the French Revolution. He provides provoking questions on how our cultural understandings of race can have legal consequences in terms of determining who can gain access to citizenship. The article does an excellent job in illustrating the variety of different ideologies that occupied national discourses in Europe and America and does a great job a getting students geared for the next lesson in the unit which will focus on how these ideologies translated into American legal code.

Case Study #1-The Naturalization Law of 1790

The first lesson or case study should begin with students brainstorming, why is citizenship important. This case study will focus on citizenship law while also building upon the ideas surrounding racial science mentioned in the previous section. The purpose of this case study is to help students reshape the way in which they look at the law. As mentioned in the previous sections, students oftentimes see the law as being fixed or movable and oftentimes overlook the real consequences that the law can have on society outside of an individual bonds.

It is important to remember that when America first gained its independence in July of 1776, they begin crafting what they believed to be a physical manifestation of Enlightenment ideas from which they considered themselves to be the inheritors. However, those discussions had long been taking place and becoming legitimized in legal code prior to the crafting of the Declaration of Independence. There had long been a discussion on who should be entitled to citizenship and fear of contaminating what was considered to be, but more importantly who would rights and who would not.²

These colonial ideals on race can best be illustrated from the journals of one of the founding fathers, Benjamin Franklin. Franklin, as most of the founding fathers, leave us in their writings their grand imaginations for the country in which they wished to craft and the people they wished to enjoy the benefits of their work. In the 1750s, at a time of great change and adjustment in what was then the thirteen colonies, Franklin grew fearful that the colonies were becoming diluted and overrun by outsiders. Those who he considered being outsiders were those of European descent. Below is an excerpt from one of his most lauded pieces, Observations Concerning the Increase of Mankind:

[Which leads me to add one Remark: That the Number of purely white People in the World is proportionally very small. All Africa is black or tawny. Asia is chiefly tawny. America (exclusive of the new Comers) wholly so. And in Europe, the Spaniards, Italians, French, Russians, and Swedes, are generally of what we call a swarthy Complexion; as are the Germans also, the Saxons only excepted, who with the English, make the principal Body of White People on the Face of the Earth. I could wish their Numbers were increased. And while we are, as I may call it, Scouring our Planet, by clearing America of Woods, and so making this Side of our Globe reflect a brighter Light to the Eyes of Inhabitants in Mars or Venus, why should we in the Sight of Superior Beings, darken its People? why increase the Sons of Africa, by Planting them in America, where we have so fair an Opportunity, by excluding all Blacks and Tawneys, of increasing the lovely White and Red? But perhaps I am partial to the complexion of my Country, for such Kind of Partiality is natural to Mankind.] (Observations Concerning the Increase of Mankind:, 1755)

It is important to recognize this quote in context. Similar to today, and throughout many time periods throughout the United States History, Benjamin Franklin saw himself at the center of demographic changes. For some, his words are used as evidence for describing the migration shift and patterns of the time, but for those who study race and the formations of race, his descriptions of those migrants cannot be ignored or cast aside

Using this source as a teaser for the main activity or do now for analysis and providing the students with the

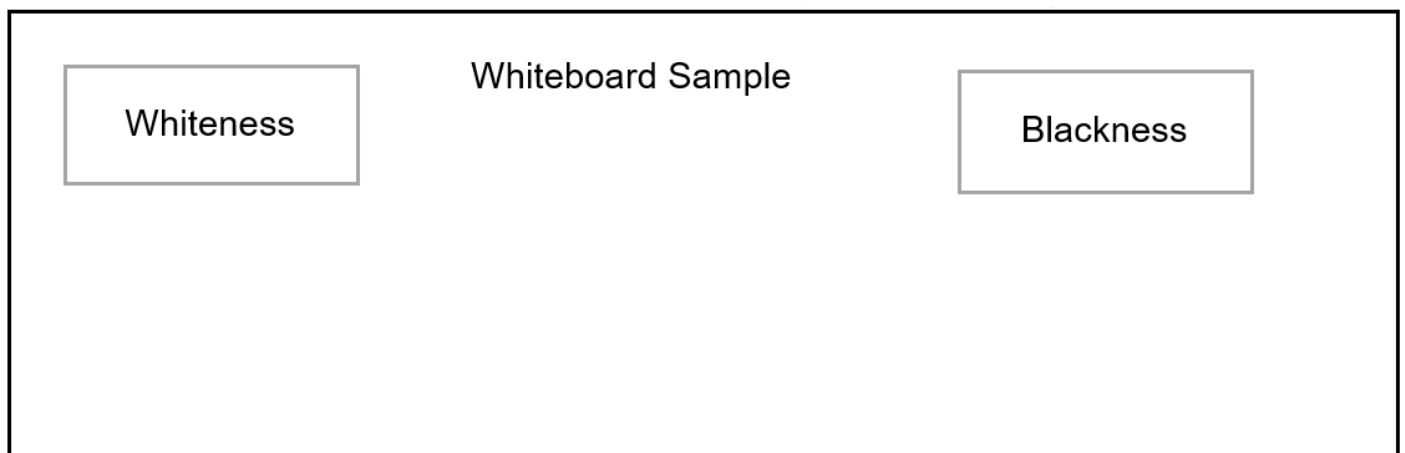
opportunity to make connections to the previous day with questions. Some sample questions that students can be asked to answer might be 1) What are some connections that we can make from our articles yesterday on Blumenbach? 2) Who does Benjamin Franklin consider to be truly white? 3) How does Benjamin Franklin view other races? With all of the prep on contextualize race in the colonial time period, students are given the chance to see Franklin and his ideas on race, not on its own, but in conversation with others.

Another way of source that can be introduced during this time might be splitting the class in half, with one portion of the class providing analysis on Franklin's work, while the other half of the class can analyze the following source from Thomas Jefferson on race.

The first difference [between whites and blacks] which strikes us is that of color... The the difference is fixed in nature and is as real as if its seat and cause were better known to us. And is this difference of no importance? Is it on to the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or fewer suffusions of color in the one, preferable to that eternal monotony, which reigns in the countenances, that immoveable veil of black which covers all the emotions of the other race? Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favor of the whites, declared by their preference of them, as uniformly as is the preference of the orangutan for the black women over those of his own species. The circumstance of superior beauty, is thought worthy attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man? (Notes on the State of Virginia , 1787)

After, the students can choose a partner from the other group and sit down and discuss the questions, promoting more student to student interaction. Following the analysis of the founding fathers, students can begin to engage in more inquiry and use their historical thinking skills to examine examples of racial legal code leading up to the Naturalization Laws of 1790. A core secondary text for this portion of the lesson plan will be Richard Coates, who analyzes racial formational in the early colonial time period.

For the main activity, students will organize differently and analyze different examples of laws from the early colonial period.



Students can receive a worksheet with the following laws, or for more movement in classrooms, students can be given cutouts to paste on the board. The purpose of giving students these sources will be so that they are able to examine examples of different laws and more importantly, inquire deeper about the function. The

questions for students should be simple but require deep analysis. 1) What does this law state? 2) Who does this law benefit? Who does it disadvantage? 3) What are the consequences?

1) In the case of a person visibly appearing to be a Negro, the presumption is that he is a slave; but in the case of a person visibly appearing to be a white man or an Indian, the presumption is that he is free.

2) In the case of a person visibly appearing to be a Negro, the presumption is that he is a slave; but in the case of a person visibly appearing to be a white man or an Indian, the presumption is that he is free.

3) The sources of the right to freedom are 1. The white race in the maternal line; 2. The race, in the same line, of American Indians, for the period during which they could not lawfully be reduced to bondage; 3. Emancipation; 4. Descent in the maternal line from individuals so entitled. Emancipation may be,

4) The baptism of slaves doth not exempt them from bondage, and all children shall be bond or free according to the condition of their mothers and the particular directions of this act.

After brainstorming, students can then analyze the Naturalization Laws of 1790 in the same format while emphasizing the term white. Students can either discuss individually/small groups or as an entire class.

That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for a term of two years, maybe admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon; and thereupon such person shall be considered as a citizen of the United States.

The students can use the following questions to discuss and dig deeper into the laws of 1790. 1) How do the Naturalization laws compare to our laws today? 2) Using your answers from your do now on citizenship, how did this law contribute to racial formation? 3) Why is this law so important? 4) How is the law being used as an instrument to determine our ideas on race?

By having students take the time to actually think about the function of the Naturalization Laws of 1790 in a historical and global context, we are allowing them to reshape the ways in which they look at the law.

An exit ticket or a follow-up activity may be for students to read a news article on the controversy surrounding the fourteenth amendment along with a modified excerpt from Richard Coates³ piece to use as an anchor for article or journal reflection.

Case Study #2- What is White? The 1920's Pre-Requisite Cases

What Is White?

Building upon the last unit, it is important for students to understand how the legal is shaped and changed by the circumstances of historical time periods. Most Americans in 2019 would agree that we are in the midst of a

huge demographic shift. According to the US census, the highest racial minority eligible to vote in the 2020 election will be Hispanics. However, this would hardly be the first time that demographic changes would affect the political and legal landscape of the US government. At the turn of the 20th century, and in the midst of an economic boom in the United States, an influx of immigrants entered the country in search of a better life. From 1880 to 1920, population growth was concentrated in cities—the urban fraction expanded from a little more than one-quarter of the national population to more than one half (Lopez, 1996). This time period, in a history classroom usually concentrated on terms such as urbanization and the development of the American industry. However, this time was also significantly challenging in how Americans viewed the race.

In his work, *White By Law* by Ian Haney Lopez, the time period from 1880 to 1920 is seen is an entirely new lens. As seen in our previous lesson, just a generation ago, being a “white person” as a condition for acquiring citizenship. This is challenged during the aftermath of the Civil War when African Americans are granted rights based on birthright citizenship with the 14th amendment. But how did these laws apply to those not born in the country?

From 1907, when the federal government began collecting data on naturalization, until 1920, over one million people gained citizenship under the racially restrictive naturalization laws. Armenians, Japanese, Sikh Indians, Polish, and Slavs were each vying for a chance to be considered white under the current US immigration law system. However, in the same way, that the immigrants themselves were not sure if they would be considered white, the Supreme Court was unsure as well. Who was white? What is white?

Although now largely forgotten, the prerequisite cases were at the center of racial debates in the United States for the fifty years following the Civil War, when immigration and nativism were both running high (Lopez, 1996). The court played a significant role in framing these debates and placing validity on how Americans would be identified.

The two case studies in which students will focusing in on will be the *Thind* and *Ozawa* cases. Both cases were brought to the Supreme Court and both verdicts produced very contradictory ideas on how to define race. To begin this portion of the lesson, I would begin taking pictures of both Takao Ozawa and Thind and questioning the class whether or not they would consider these men to be white. After discussion, explain that at the turn of the 1920s, both of these men could be considered under the justifications of the Supreme Court, but both of these men were denied citizenship.

The lesson should begin with students taking a look at the categories for the race at the turn of the 20th century. Using the *Census What Census Calls Us: A Historical Timeline*, by the Pew Research Center, students will be able to trace the different terms used to identify from the founding of the country. They will be able to gauge how terms were added, reshaped and removed. Students will be able to identify antiquated terms such as quadroon, mulattoo, and octaroon while noticing the additions of different ethnicities such as Hindi, Armenian and Chinese. The strategy I would use for this is to encourage students to use deep analytical skills to establish a deeper understanding of the data. The strategy was adapted from *Data Wise*.⁴

First, students should make observations without making any statements/questions.

Example: I observe the change of black to the negro in the decade 1930?”

Second, students should ask questions without anyone providing an immediate answer.

Example: I question the definition of octaroon.

Third, students should wonder what information they would need to better contextualize.

Example: I would need to understand the immigration data on African Americans during 1910.

After students complete this assignment, students can read an excerpt from *White By Law* which can be found easily accessible online. The introduction offers an overview of the time period in which the students are analyzing while also offering us guiding questions that can help provide students a foundation for how they look at the two individual case studies. Lopez's guiding questions can be applied to the classroom to help our students to not only critically analyze racial formation but how does the law work on behalf of crafting our social notions about the law.

Essential Questions for Students to Ponder

-How did the courts define who was White?

-What reasons did they offer, and what do those rationales tell us about the nature of Whiteness?

-What do the cases reveal about the legal construction of race, about the ways in which the operation of law creates and maintains the social knowledge of racial difference?

-Do these cases also afford insights into a White racial identity as it exists today?

-What, finally, is White?

Takao Ozawa was a Japanese-American who had lived in America for more than twenty years at the time of his court. However, he like many others had not been born in America. As stated previously in this unit, up until this time period, a pre-requisite for immigration citizenship according to the naturalization laws of 1920, required the applicant to be white. However, with an influx of different ethnicities and cultural groups in and out of Europe, the lines defining race had been blurred. Ozawa utilized his background as a way to advocate for his citizenship. He had married an American woman, attended American universities and spoke English regularly in his home. Ozawa was making an appeal that he culturally fit the modern ideas of what we would consider being white, in addition to the fact that he was visibly white.

He writes to the courts:

My honesty and industriousness are well known among my Japanese and American friends. In name, Benedict Arnold was an American, but at heart, he was a traitor. In name, I am not an American, but at heart, I am a true American. In the typical Japanese city of Kyoto, those not exposed to the heat of summer are particularly white-skinned. They are whiter than the average Italian, Spaniard or Portuguese."

However, the Supreme court disagreed and argued that skin color could not serve as a fundamental reason for one being considered white.

They argue in their decision:

Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs

greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter-hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation.”

Here the Supreme Court is laying out in explicit terms to the ambiguity surrounding racial identification. They then decided that the way in which they would determine whiteness would be to trace back to the works of Blumenbach and other anthropologists and scientists who estimated that the origins of whiteness lie within the particular area, including India.

This would prove to be an issue when another applicant, Thind, applied for citizenship using the rationale from the Ozawa case. Bghat Thind, similar to Ozawa, had not been born in the United States. He had immigrated to America and applied for citizenship under the premise that he, being a Sikh man, had been full-blooded Aryan. Utilizing racist, nativist science and reasoning, Thind chooses to challenge the system but utilizing its very own logic. However, his case was still ultimately denied, once again shifting the definition of whiteness in the courts.

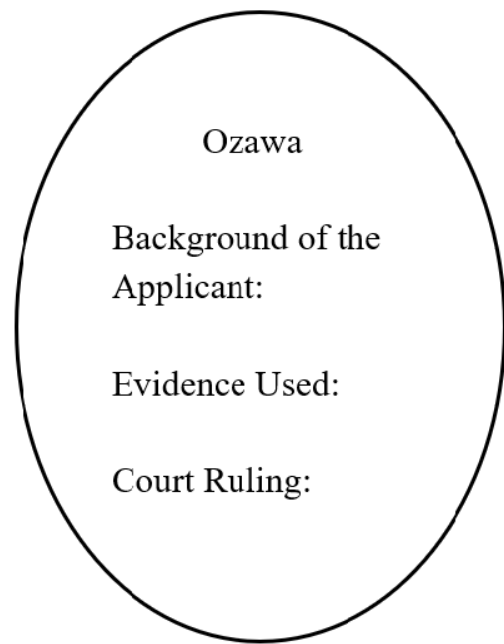
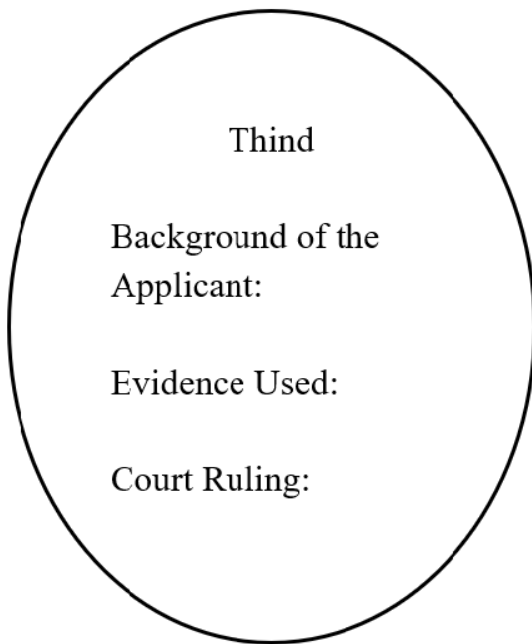
They argued:

What we now hold is that the words ‘free white persons’ are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word ‘Caucasian’ only as the word is popularly understood.

In essence, Thind did not represent what society viewed as whiteness. He was not white, culturally or on face value. But then what was white? How do we understand whiteness? The pre-requisites cases are an important place of study because it unearths to complexities and ambiguities surrounding race, while also highlighting the real-life consequences that these categories hold in our society.

To dig into these court studies, students should be separated into two separate groups and use the jigsaw method to analyze and report back to their peers. One group can be assigned to study the Ozawa case, and the other focusing on Thind, with both groups honing in on the commonalities in the case. The questions that can be used to guide student discussion.

The questions that can be used to guide student discussion can be 1) What evidence do the applicants use to gain citizenship? 2) Why were they denied? What was the ultimate court ruling? 3) How does this court case define whiteness?



An exit ticket for this activity will be for students to return to the original questions that Lopez originally posed and answer one of the questions in an analytical paragraph. This way students are able to summarize what they learned and connecting to the content that they reviewed in class.

An extension/supplemental activity for students might be to watch the PBS special⁵ on race which discusses the context surrounding the Thind and Ozawa cases and complete another contextualization chart or write a reflection.⁶

Anti-Miscegenation Laws

In the same ways in which courts and legal codes were defining and attaching meaning to whiteness, they were also defining blackness as well. As demonstrated in the pre-requisite cases, contrary to popular belief, racial lines had never been clearly drawn. From the founding of the country, there have always been conversations on identity and how to deal with demographic changes in the country.

One contributing factor to that conversation was the Eugenic movement in the United States. The term “eugenics” refers to a scientifically based, ideological movement dedicated to the reification of the race (Reynolds, 2019). The movement was widespread across the country and given validity by some of America’s academic institutions including Yale. Similar to the Age of Classification, and in the context of persistent nationalism, academics were trying to mold what they believed to be the perfect society. Accordingly, anyone exhibiting traits deemed to be “dysgenic” or “unfit” was considered to be a threat to the nation, something to protect against (Reynolds, 2019).

These fears and anxieties parlayed into the legal constructions on race by serving as a mechanism to aid in the purification of societies. Anti-Miscegenation Laws or the movement against interracial marriage utilized

the instrument of the law to control who would reproduce and with who. Out of the fifty states, only nine had never had anti-miscegenation laws, and sixteen states were forced to overturn their laws in *Loving v. Virginia*.

Often times miscegenation is focused through the villains, victims and victors triangle. We focus our attention on the individual plight of Mildred and Richard Loving. We focus on their love story and place all opposition to their individual love as the villains. However, as evident from the preceding topics, these laws do not emerge in a vacuum. The purpose of the unit placing the *Loving v. Virginia* case in context with the larger Eugenics movement.

To begin the lesson, students should be provided a worksheet⁷ distinguishes the different variances of blackness according to anti-miscegenation laws. They can ask questions and make connections to the terminology from the Pre-Requisite Cases lesson. Depending on class size, another cool way introducing this would be making it an entry activity in which students can pick a sheet of paper that only details a definition from the worksheet such as octaroon, quadroon or mulattoo. On the whiteboard, the states that had anti-miscegenation cases during the 1930s and 1940s, along with their definitions of blackness. Students can then complete a sheet to determine their race status in each state. After coming together, students can then discuss their results and visually see how varying definitions of the race could be.

After this, students will build upon their knowledge of the law and Blumenbach, as well as be introduced to the Eugenics movement. A way in which to begin this unit is to have students read primary sources from the Eugenics movement.⁸ *The Burden of the Feebleminded* is a great source because it is a quick look into how the evidence used in eugenics research and how it was used to understand different medical cases. Another primary source that can be used as a primary source that students can be introduced is an article and recording of Margaret Sanger, the founder of Planned Parenthood. Sanger was known eugenics and has continuously gained notoriety as a problematic figure in history on her opening up on abortion clinics in black neighborhoods to forcibly sterilizing black women. Students can use primary source analysis worksheet to dissect deeper into the purposes of this movement and make connections from previous units.

As a primary source shout out, students can read and analyze the 1963 Article Relating to Anti-Miscegenation Laws.⁹ The article is from a North Carolina discussing the controversy surrounding the fights against anti-miscegenation laws. The article has interesting subheadings such as Other States Rule, the rule of law and who is negro? The source is a great look at political and legal discourse at the time. After students can complete a similar context chart we used with Blumenbach to contextualize the *Loving v. Virginia* case.

Another extension or specific case to look out other than the *Loving v. Virginia* case might be to have students read an article on Filipino resistance ¹⁰ to Anti-Miscegenation in Washington State. This will take a step out of the binary lens of Black and White and similar to the Pre-Requisite cases, look how other minority groups were impacted by miscegenation legislation. An article that would help enlighten this struggle would be “When Hilario Met Sally: The Fight Against Anti-Miscegenation Laws” by Alex Fabros, an American military professor who details the fight for Asian Americans living in the United States under anti-miscegenation laws. This will help to reclaim the *victim voices* and place them once again at the center of the fight against the tool of the law.

Suggested Culminating Activities

Some of the best advice that I received during my first year of teaching was from my instructional manager. When I told her I wanted to teach about race in the classroom, she looked at me and stated, make sure that you give them something to do with the history. It is not simply enough for us to discuss race in the classroom. We must analyze, challenge, ask questions about race in the classroom so that we are able to really understand its meaning in our society. For me, this unit enables students to use historical-critical thinking skills to promote a deeper understanding of how race operates in our societies. A culminating activity I would have students complete for this unit would be to research an area or a particular law that they find interesting and apply the same strategies of deep contextualization that we used throughout the unit.

What is the Purpose of the Law? Why this Unit?

As stated previously, it is a commonly used technique that is often used to soothe or comfort those who are interacting with difficult history is to discard and cast the hard history away into the past. We cannot do that with this history. It is easy to see the pre-requisite cases as products of a troubled time, and evil villains who didn't want to allow citizenship to newly arrived immigrants. However, by digging deeper and reshaping our ideas, we can see arguments for and against our modern-day immigration system. Sure, Connections can be made to our legal ideas on issues. We cannot be blind to law. And perhaps most importantly, we cannot be blind to the power that the law holds and continues to maintain in our society.

Endnotes

¹ Bhopal, Raj. "The beautiful skull and Blumenbach's errors: the birth of the scientific concept of race." *BMJ* (Clinical research ed.) vol. 335,7633 (2007): 1308-9. doi:10.1136/bmj.39413.463958.80 (This is a very good article to modify and use in the classroom)

² <https://warwick.ac.uk/fac/arts/cas/staff/lockley/smithpacquette.pdf>

³ Coates, Rodney D. "Law and the Cultural Production of Race and Racialized Systems of Oppression: Early American Court Cases." *American Behavioral Scientist*, vol. 47, no. 3, Nov. 2003, pp. 329-351, doi:10.1177/0002764203256190.

⁴ Boudett, Kathryn Parker., Elizabeth A. City, and Richard J. Murnane. *Data Wise: A Step-by-step Guide to Using Assessment Results to Improve Teaching and Learning*. Cambridge, Mass.: Harvard Education Press, 2005.

⁵ <http://chnm.gmu.edu/courses/ncc375/rp/rp2.html> (Here you can find a Signiant amount of resources of Thind and Ozawa and their cases)

⁶ https://www.pbs.org/race/000_About/002_04-about-03.htm (this is a short documentary that you can use to have the kids further understand the cases)

⁷ <https://sharetn.gov.tnsosfiles.com/tsla/exhibits/blackhistory/pdfs/Miscegenation%20laws.pdf> (I found this site to be incredibly useful in terms of content that can be easily dispersed in the classroom)

⁸ <https://dp.la/primary-source-sets/eugenics-movement-in-the-united-states> (This website offers a plethora of primary source documents and recordings to use in the classroom for the Eugenics movement)

⁹ <https://sharetn.gov.tnsosfiles.com/tsla/exhibits/blackhistory/pdfs/Miscegenation%20laws.pdf> (link to the 1963 Article)

¹⁰ https://depts.washington.edu/depress/filipino_anti_miscegenation.shtml (link to more information)

Appendix- Addressing Standards

CCSS.ELA-LITERACY.CCRA.R.1 Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.

- CCSS.ELA-LITERACY.W.5.2 Write informative/explanatory texts to examine a topic and convey ideas and information clearly.
- CCSS.ELA-LITERACY.W.5.8 Recall relevant information from experiences or gather relevant information from print and digital sources; summarize or paraphrase information in notes and finished work, and provide a list of sources.
- CCSS.ELA-LITERACY.W.5.9 Draw evidence from literary or informational texts to support analysis, reflection, and research.
- INQ 9–12.10 Construct arguments using precise and knowledgeable claims, with evidence from multiple sources, while acknowledging counterclaims and evidentiary weaknesses.
- INQ 9–12.11 Construct explanations using sound reasoning, correct sequence (linear or non-linear), examples, and details with significant and pertinent information and data, while acknowledging the strengths and weaknesses of the explanation given its purpose (e.g., cause and effect, chronological, procedural, technical)
- HIST 9–12.4 Analyze complex and interacting factors that influenced the perspectives of people during different historical eras.
- HIST 9–12.5 Analyze how historical contexts shaped and continue to shape people’s perspectives.
- HIST 9–12.6 Analyze the ways in which the perspectives of those writing history shaped the history that they produced.

- HIST 9-12.7 Explain how the perspectives of people in the present shape interpretations of the past.
- HIST 9-12.8 Analyze how current interpretations of the past are limited by the extent to which available historical sources represent perspectives of people at the time.

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