

Georgetown University Law Center

Systemic Racism, Colonialism, and Bankrupt Governments

Prof. Alvin Velazquez

Fall 2023

Wednesdays from 5:45pm-7:35pm

Faculty Contact Information

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Course Description:

Are bankruptcy laws racist? Does systemic racism or colonialism lead local governments in the United States to go bankrupt? Or do local governments seek bankruptcy due to fiscal distress caused by macro-economic forces and governance failures in managing those forces? Using locations such as Puerto Rico and Detroit as focal point case studies, this seminar will examine these questions using a variety of primary and secondary sources including budgetary documents, enabling statutes, excerpted law review articles, and select judicial decisions in order to answer the key questions presented in this course. This course substantially advances Georgetown University Law Center Institutional Learning Objective (ILO) 8 by getting students to think critically about municipal bankruptcy law's claim to neutrality and its differential effects on subordinated groups, including African-Americans, citizens living in the U.S. territories, and retirees.

Course Goals/Student Learning Outcomes:

1. This course will substantially advance ILO 8 by requiring students to learn how political forces shape seemingly neutral bankruptcy laws so that, in application, such rules subordinate marginalized groups in favor of the powerful as part of the institutional design.
2. Students will develop cross-disciplinary competencies such as finance, government budget planning, macroeconomics, and apply them to legal problems.

3. This course will substantially advance ILO 8 because students will learn to compare and contrast how African American residents living in a large city are subordinated versus how communities living in territories experience subordination.
4. Students will learn about how concepts such as systematic racism and colonialism—both in its legacy forms and how it exists today—and wrestle with the application of those concepts to determine whether they have explanatory value to the questions presented and otherwise serve as useful axis for which to analyze governmental finance problems, as contemplated by ILO 8.

Assessment Plan/Grading Rubric:

The research paper will count for 60% of your grade. Each student will write an original research paper in satisfaction of the writing requirement. Students may write their research paper on a topic of their own choosing that relates to one or more of the themes covered in this course, and substantially advances ILO 8. Students will work on their research papers throughout the semester and are invited to send outlines and multiple drafts to me they wish. Students are required to meet with me once in order to discuss potential topics for the paper and required to meet with me at least once more to discuss the progression of their writing during the course of the semester.

Class Participation and Short Responses will count for 40% of your grade. Class participation will be based on attendance and contributions to weekly discussions in class. We are human, so missing class or tardiness is bound to happen. Please speak with me beforehand if you will miss class or if you know you will be tardy. Excessive absences and tardiness will result in a grade reduction. Every week several students (depending on class size) will be assigned to write a short response paper (200-500 words) reacting to the assigned readings for the week and briefly putting forth questions and thoughts that the readings elicited. For those who are more introverted, I will also accept written engagement with the materials before class on the Canvas system.

Textbooks and Other Course Materials

Readings: All texts and media will be provided to the students. I will make the readings available on a weekly basis on Canvas. The weekly readings are subject to change. In addition to the weekly readings, students are expected to read the short response papers which will also be circulated prior to our weekly meetings.

Course Website

Students will be automatically enrolled in your course page on Canvas. I personally believe in using Canvas to push out announcements regarding changes to the syllabus, and encourage its use for off-line discussion. I will post this syllabus on Canvas, and prefer communication with me on that forum or via email if your matter concerns your own progress.

CLASSROOM POLICIES

Attendance: Regular and punctual attendance is required of each student. We do expect you to follow GULC's policies around attendance. The class is taught in a cumulative fashion, and we frequently refer to material covered earlier. If you miss class or a day's reading, it will be helpful to catch up as soon as possible.

Attendance Protocol and Your Health: If you feel unwell you should not come to campus. In that event you will not be penalized for your absence.

Attendance and Class Participation

Regular and punctual attendance is required of each student. If you fail to attend without communicating with me in advance, it will affect your participation grade.

Laptop Policy

You are welcome to use your laptop in class.

Course Recording Policy

All classes will be recorded and made accessible to any student who needs access due to an extenuating circumstance or needs a legally cognizable accommodation.

Syllabus Changes

While the overall structure of the syllabus will remain the same, we expect that there will be slight changes to reading assignments, guest speakers and the class schedule throughout the course of the semester. Changes will be announced no later than one week in advance on the Canvas site will be updated to reflect any changes. We appreciate your flexibility in accommodating these changes. Please feel free to reach out to me if you have any questions or need clarification.

CLASS SCHEDULE

Class 1 – Introduction and Course Overview; What is systemic racism and how does it affect the history of the places we are going to study?

Palma Joy Strand, *This is the House that Law Built: A Systems Story of Racism*, 58 San Diego L. Rev. 811 (2021).

Peter J. Hammer, *Detroit 1967 and Today: Spatial Racism and Ongoing Cycles*, 18 J.L. Soc'y 227-234 (2018).

Kimberle Krenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 Connecticut Law Review 1253, 1330-1346 (2011).

Downes v Biddell- 182 U.S. 244 (1901) (select excerpts)

Class 2- How does systemic racism affect a government's finances? Competing views.

Brooke Simone, *Municipal Reparations*, 120 Mich. L. Rev. 345-367 (2021)

Bernadette Atuahene, *Predatory Cities*, 108 Calif. L. Rev. 107, 169-181 (2020)

Roger Michalski and Stephen Rushin, *Federal (De)funding of Local Police*, 110 Geo. L.J. Online 54 (2021), 1-10.

Wally Turbeville, *The Detroit Bankruptcy* (2013), 1-12

Class 3- What does Colonialism in the United States Look Like? Is it a product of systemic racism, or something else?

Guest Lecturer: Lcda. Kimberly Sánchez-Ocasio (Associate General Counsel, SEIU, and former Law Clerk to the Hon. Juan Torruella)

United States Constitution, Art. IV

Daniel Immerwahr, *How the United States has Hidden Its Empire*, THE GUARDIAN, Feb. 15, 2019.

Note, *Developments in the Law — The U.S. Territories, The International Place of Puerto Rico*, 130 Harv. L. Rev. 1656-1665 (2017).

Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. Pa. J. of Int'l Law 283-312 (2008).

Class 4- How does Colonialism in the United States affect a Territorial Government's finances?

Diane Lourdes Dick, *"U.S. Tax Imperialism in Puerto Rico,"* 65 American University Law Review 1-16, 53-86 (2015).

Aaron Klein, *What everyone got wrong about the Jones Act, hurricane relief, and Puerto Rico*, <https://www.brookings.edu/blog/up-front/2017/10/25/what-everyone-got-wrong-about-the-jones-act-hurricane-relief-and-puerto-rico/>

Argeo T. Quiñones-Pérez and Ian J. Seda-Irizarry, *"Wealth Extraction, Governmental Servitude, and Social Disintegration in Colonial Puerto Rico,"* *New Politics* (2016).

Ismael García-Colón and Harry Franqui-Rivera, *"Puerto Rico Is NOT Greece: The Role of Debt in US Colonialism,"* FocaalBlog, August 26, 2015.

Class 5- An overview of restructuring regimes: Chapter 9 of the bankruptcy code.

Jones Day, *An Overview of Chapter 9 of the Bankruptcy Code: Municipal Debt Adjustments* (Aug. 2010).

Diane Lourdes Dick, *Bondholders vs. Retirees in Municipal Bankruptcies: The Political Economy of Chapter 9*, 92 Am. Bankr. L.J. 73 (2018).

Class 6- The 2008 Financial Crisis and its Aftermath of Broke Cities. Who is to blame: Wall St. v Unions and Pension Funds?

Tracy Gordon, *State and Local Budgets and the Great Recession*, Brookings Institution (Dec. 2012).

Richard W. Trotter, *Running on Empty, Municipal Insolvency and the Rejection of Collective Bargaining Agreements in Chapter 9 Bankruptcy*, 36 SILU. L.J. 45-52,65-72. (2011).

Pew Charitable Trust, *'Lost Decade' Casts a Post-Recession Shadow on State Finances* (2019).

Class 7- Fixing Fiscal Problems- or exacerbating systemic racism and colonialism's ills- the use of unelected emergency managers and oversight boards-

2012 Mich. Pub. Acts of 436 at §9(a).

Marc Joffe and Jesse Martinez, *Origins of the Puerto Rico Fiscal Crisis*.

Clayton Gillette, *Dictatorships for Democracy: Takeovers for Financially Distressed Cities*, 114 Col. L. Rev. 114 Colum. L. Rev. 1373 (2014).

Shawna J. Lee, et al., *Racial inequality and the implementation of emergency manager laws in economically distressed urban areas*, 70 Children and Youth Services Review 1 (2016).

Luis J. Valentín Ortiz, "Puerto Rico's Fiscal Control Board: Parallel Government Full of Lawyers and Consultants," Centro de Periodismo Investigativo, August 1, 2018.

Class 8- An overview of a colonial restructuring regimes: PROMESA

Franklin Templeton Trust v. Commonwealth of Puerto Rico, 136 S.Ct. 1938 (2016).

PROMESA Bill, H.R.4900, 114th Congress (2016), Title II and Title III.

Natasha Bannan, *Puerto Rico's Odious Debt: The Economic Crisis of Colonialism*, 19 CUNY L. Rev. 287-295 (2016).

Ann Krueger, Ranjit Teja, and Andrew Wolfe, *A Way Forward*, (2015).

Class 9- The Detroit Bankruptcy- prologue, the opening acts, organizing and resistance to systemic racism by labor and community groups.

Guest Lecturer: Michael Nicholson, former General Counsel, United Auto Workers (served as counsel to the UAW during the Detroit Chapter 9 Bankruptcy Proceedings).

Comprehensive Annual Financial Report for the City of Detroit for 2013, pages 1-13, 24-27, 34-38.

In Re City of Detroit, 504 B.R. 97 (Bankrpt. E.D. Mich. 2013).

Peter J. Hammer, Letter to Judge Rhodes: An Evaluation of the 'Expert Report' of Marth Kopacz Regarding the Feasibility of the City of Detroit Plan of Adjustment, 17 J. L. Society 19 (2014).

Class 10- The Detroit Bankruptcy under Chapter 9- the plan of adjustment and its aftermath.

In re City of Detroit, 524 B.R. 147 (Bankrpt. E.D. Mich. 2014).

Pew Charitable Trusts, *The Challenge of Meeting Detroit's Pension Promises*, pages 1-15 (Mar. 2018).

Sarah Hughes, Andrew Dick, and Anna Kopec, *Municipal Takeovers: Examining State Discretion and Local Impacts in Michigan*, 53 State and Local Government Review 223 (2021).

Class 11- Puerto Rico's PROMESA Proceedings under Title III- prologue, the opening acts, organizing, and resistance to colonialism by labor and community groups.

Guest Lecturer: Dr. Sarah Molinari, Postdoctoral Research Associate, Florida International University Extreme Events Research Center

Alvin Velazquez, *Lucha Si, Entrega No- How Retirees Upended a Plan of Adjustment*, American Bankruptcy Law Journal (forthcoming), pages 46-76.

Marisol LeBrón, "People Before Debt: Puerto Ricans Confront the Island's Debt Crisis From Below" NACLA Report on the Americas (2016).

Nevares v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 330 F. Supp. 3d 685 (D.P.R. 2018).

Class 12- The Puerto Rico Plan of Adjustment and Its Aftermath

In Re: The Financial Oversight and Management Board for Puerto Rico, et al., 637 B.R. 223 (D.P.R. 2022).

Little Sis: Public Accountability Initiative. "Debt Island: Wall Street Closes in on 40 Years of Profit at Puerto Rico's Expense." Little Sis, January 2019.

Fernando Tormos-Aponte, et al. "*Energy inequality and clientelism in the wake of disasters: From colorblind to affirmative power restoration.*" *Energy Policy*, vol. 158, Nov. 2021, 112550.

Class 13- What comes next? COVID-19, Empty Cities, and lessons to learn about who bears the brunt of systemic racism's continuation.

Mary Williams Walsh and Karl Russell. "\$129 Billion Puerto Rico Bankruptcy Plan Could Be Model for States.", *N.Y. Times* (Sept. 27, 2019).

Mark Davison, et al, *From Big to Small Cities: A Qualitative Analysis of the Causes and Outcomes of Post-Recession Municipal Bankruptcies*, 19 *City and Community* 132 (2020).

Anshu Siripurapu and Jonathan Masters, *How COVID-19 Is Harming State and City Budgets*, Council on Foreign Relations (2021).

Adam Levitin, *Bankrupt Politics and the Politics of Bankruptcy*, 97 *Cornell L. Rev.* 1399, 1433 - 1458 (2012).