

Instructions: This is a take-home exam. It is due at the beginning of class on Thursday, November 7, 2013. No late papers will be accepted. Everyone must answer the two questions in Section A, and you must answer one additional question from Section B. You must label your responses clearly to indicate to us which question you are answering. Your exam should be word-processed, with a twelve point font, 1.5 line spacing. You can earn the maximum number of points on the exam by utilizing and commenting on the materials from the course. You may use additional sources BUT additional sources are not required, AND you cannot use additional sources to the exclusion of the assigned course materials. Failure to cite the assigned course materials in your response will result in a failing grade. Each response should be no less than three, nor more than five, pages (a total of 9-15 pages for the entire exam). Citations should be parenthetical, e.g., (Irons, 131). Unless you cite outside materials, there is no need for a reference page.

SECTION A – Everyone must answer BOTH of the following questions:

1. We have discussed two of the many contending perspectives of how to remember the history of the Americas. Schlesinger writes: "It may be too bad that dead white Europeans have played so large a role in shaping our culture. But that's the way it is. One cannot erase history." Conversely, Michel Rolph-Trouillot says that history is comprised of both historical narratives and silences, and that historical silences "enter the process of historical production at four crucial moments: the moment of fact creation...; the moment of fact assembly...; the moment of fact retrieval...; and the moment of retrospective significance....that silencing also is due to uneven power in the production [of history]." Sketch out Schlesinger's argument about how race and gender issues should be reflected in the teaching of U.S. history. How would Trouillot respond? Finally, utilizing the course materials, outline your own position in this debate, and how you would recommend that history should be taught in U.S. schools.
2. We have examined a number of Supreme Court cases that analyzed the possible remedies for historical and ongoing racial disparities in education. In two cases, the Court was asked to rule on the constitutionality of the use of race to consider plans to ensure greater racial diversity in education: *Bakke v. Regents of the University of California* and *Parents Involved in Community Schools v. Seattle School District*. In both cases, the Court's decision rested, in large part, on the Court's interpretation of the Equal Protection clause of the 14th Amendment. In *Bakke*, Justice Blackmun wrote in favor of allowing race to be considered in admissions programs: "in order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial superiority." In *Seattle*, Justice Roberts, in striking down the use of race in Seattle schools, wrote: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Reflecting on your understanding of the case law in this area, which position do you find more constitutionally defensible? Explain. Discuss how two justices, on the same court, discussing the same provision of the U.S. Constitution, can come to such different conclusions.

SECTION B – You must answer ONE question from this section:

1. Discuss how the development of “the Doctrine of Christian Discovery,” might be considered to be a semiotic device in U.S. Federal Indian law – in other words, is the Doctrine in *Johnson v. McIntosh* a social construction of reality in the development of “law.” In light of your understanding of the application of *Johnson* in the Western Shoshone case in the film *American Outrage*, imagine that the Western Shoshones brought a direct challenge to *Johnson* in the U.S. Supreme Court today. If you were a justice on the Court, would you vote to uphold or to overrule *Johnson*? Explain the implications of your decision, one way or the other.
2. In 2013, 50% of African-American students in Chicago attended schools that have a 100% African-American student population. The total African-American student population in Chicago is 22%, meaning that 78% of the students in the school system are non-Black. If you were a judge in a federal court in which African-American students and parents sue the Chicago school system, on the grounds that the fundamental ruling in *Brown v. Board of Education* is being violated, and that the Black students are receiving a separate and unequal education, how would you rule? Discuss your reasoning in light of the case law that we have discussed in this class. In reviewing the U.S. Constitution and the Supreme Court cases in this field, do you agree or disagree with the proposition that public education in a democratic society should be considered to be a fundamental U.S. constitutional right?
3. In Equal Protection analysis, claims of gender discrimination are subjected to a different level of scrutiny than any other forms of discrimination. Explain the difference, and discuss whether you believe those differences are justifiable. Also discuss the ways, if any, that gender roles were constructed in law in the early colonial period, in early U.S. history, and in subsequent Supreme Court law that might explain the different constitutional treatment of gender today. If you were a justice on the Court, what level of analysis would you give in gender discrimination cases? Explain your reasoning, based on the course materials.