

RACE AND AMERICAN LAW

Spring 2013

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Classes meet on Mondays, 6:25 to 9:05 p.m. in Boalt 111.

Office hours are on Wednesdays from 3:45 to 6:00 p.m. in Simon 494.

Overview

The entwined relationship between race and American law reaches back to the earliest colonial settlements in North America, which codified the transformation of unfree labor into race-based slavery and used law to excuse the seizure of Native American land. It also threatens to extend deep into the future. Today, the Supreme Court stands on the cusp of a new round of colorblind edicts that will make it all but impossible for democratic majorities or for private entities to use race-conscious means to address inequality, thereby ensuring the persistence of racial hierarchies. In addition to surveying this enormous field, Race and American Law has three goals: to promote a basic literacy in canonical race law cases; to emphasize how race has evolved since the civil rights era; and to study today's dominant racial rhetoric.

Course materials

Readings include cases and law review articles as well as other material that will be posted to the course website. Students should come to class with hard copies in hand, or in any event able to cite to relevant pages within the material. To facilitate class conversation, and to avoid taking on extra work, students should not read the reformatted versions of the articles and cases available on Lexis or Westlaw.

Debates and Visual Texts

As indicated below, some class conversations will be structured around informal debates, and some around visual texts. On debate days, students should come to class prepared to argue both sides of the prompt. The goal is to explore the public rhetoric of race, not to dissect doctrinal arguments. To encourage a different sort of engagement with race, other classes will involve teams of students working collaboratively to come up with visual texts to share with the rest of the group. These images should illustrate course topics, for instance slavery or race and gender.

Grading

There will be 9-hour take-home final exam. Students may schedule the take-home exam at their convenience during the exam period. Class participation (including the debates and image preparation) may serve as a grade tiebreaker.

Laptops

Laptops may be used in class, but only for the purposes of accessing the readings or taking notes. Please be conscientious about this.

- Week 1, Jan. 7. Introduction to the Course; Race
 Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994), pages 1-39
- Week 2, Jan. 14. Slavery
 State v. John Mann, 13 N.C. 167 (1830)
 Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)
 Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1 (1987)
- Week 3, Jan. 21. No class. MLK Day
- Week 4, Jan. 28. Race and Gender
 Karen A. Getman, *Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System*, 7 HARV. WOMEN'S L.J. 115 (1984)
 Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989)
- IMAGES*
- Week 5, Feb. 4. Native American Removal
 Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1823)
 President Andrew Jackson, *Indian Removal* (Dec. 8, 1829)
 Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)
 Courts of Indian Offenses (1883), reprinted in FRANCIS PAUL PRUCHA, DOCUMENTS OF UNITED STATES INDIAN POLICY (1975)
 Rules for Indian Courts (1892), reprinted in PRUCHA
 ROBERT F. HEIZER & ALAN J. ALMQUIST, THE OTHER CALIFORNIANS: PREJUDICE AND DISCRIMINATION UNDER SPAIN, MEXICO, AND THE UNITED STATES TO 1920, 39-58 (1971)
- IMAGES*
- Week 6, Feb. 11. Jim Crow
 Reconstruction Amendments
 South Carolina Black Code, December 21, 1865
 Plessy v. Ferguson, 163 U.S. 537 (1896)
 IDA B. WELLS-BARNETT, SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES (1892)
- IMAGES*
- Week 7, Feb. 18. No class. President's Day

Week 8, Feb. 25. The Meaning of *Brown*
Brown v. Board of Education, 347 U.S. 483 (1954)
Brown v. Board of Education, 349 U.S. 294 (1955) (*Brown II*)
William Rehnquist, *A Random Thought on the Segregation Cases*
Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S.
701 (2007) (excerpt)
The Southern Manifesto
Hernandez v. Texas, 347 U.S. 475 (1954)
Loving v. Virginia, 388 U.S. 1 (1967)

Week 9, March 4. Intent, Affirmative Action, and Malice
Washington v. Davis, 426 U.S. 229 (1976)
United Jewish Organizations v. Carey, 430 U.S. 144 (1977)
Regents of the University of California v. Bakke, 438 U.S. 912 (1978) (Part I)
Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256 (1979)
McCleskey v. Kemp, 481 U.S. 279 (1987)

DEBATE: The Constitution should prohibit only purposeful discrimination.

Week 10, March 11. Colorblindness
Fullilove v. Klutznick, 448 U.S. 448 (1980)
Richmond v. Croson, 488 U.S. 469 (1989)
Adarand v. Peña, 515 U.S. 200 (1995)
Antonin Scalia, *The Disease as Cure*, 1979 WASH. U. L.Q. 147 (1979)

DEBATE: Government affirmative action is invidious racial discrimination.

Week 11, March 18. Diversity
Regents of the University of California v. Bakke, 438 U.S. 912 (1978) (Part II)
Grutter v. Bollinger, 123 S.Ct. 2325 (2003)
Gratz v. Bollinger, 123 S.Ct. 2417 (2003)
Goodwin Liu, *The Myth and Math of Affirmative Action*, WASHINGTON POST, April 14,
2002
Derrick Bell, *Diversity's Distractions*, 103 COLUM. L. REV. 1622 (2003)

DEBATE: The notion of “diversity” provides a helpful tool in the struggle for racial equality.

March 25. No class. Spring break

Week 12, April 1. The Future of Colorblindness
Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007)
Ricci v. DeStefano, 129 S.Ct. 2658 (2009)

Week 13, April 8. Immigration and National Security
Chae Chan Ping v. U.S. (Chinese Exclusion Case), 130 U.S. 581 (1889)
Fong Yue Ting v. U.S., 149 U.S. 698 (1893)
Neil Gotanda, "Other Non-Whites" in *American Legal History*, 85 COLUM. L. REV. 1186 (1985)
Korematsu v. United States, 323 U.S. 214 (1944)
Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009)
Muneer Ahmad, *Homeland Insecurities: Racial Violence the Day after September 11*, 72 SOCIAL TEXT 101 (2002)
Deepa Kumar, *Framing Islam: The Resurgence of Orientalism During the Bush II Era*, 34 JOURNAL OF COMMUNICATION ENQUIRY 254 (2010)

DEBATE: National security requires effective control of our borders, including if necessary through aggressive measures and racial profiling.

Week 14, April 15. "Illegal Aliens"
Plyler v. Doe, 457 U.S. 202 (1982)
Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POLICY, March/April 2004
Jennifer Gordon, *Workers Without Borders*, NEW YORK TIMES, March 10, 2009
Cristina Rodríguez, *Latinos and Immigrants*, 11 HARV. LAT. L. REV. 247 (2008)
Arizona v. US, J. Scalia, Bench Statement

IMAGES

Week 15, April 22. **Monday make-up class.** Race, Class, & Culture
San Antonio Independent School District v. Rodriguez 411 U.S. 1 (1973)
Hernandez v. New York, 500 U.S. 352 (1991)
U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975)
U.S. v. Montero-Camargo, 208 F.3d 1122 (9th Cir. 2000)
Garcia v. Gloor, 618 F.2d 264 (5th cir. 1980)
Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365

IMAGES

Week 15, April 23. **Monday make-up class.** TBD