

COURSE SYLLABUS

Law in the Asian American Community

Asian American and Asian Diaspora Studies 141

University of California, Berkeley

Fall Semester 2015

Course Description:

In this class, we seek to facilitate the following: (1) An investigation of the profound role of law and legal institutions in shaping and defining the Asian American community, as well as other communities (racial minority and majority); (2) An inquiry regarding the question of the definition and meaning of race in U.S. society (e.g., whether race is biological, cultural, environmental, based on white supremacy, or a social construct that is constantly being transformed); (3) Encourage independent critical examination vis-à-vis the connection between law, race and racism, both in the historical context and in contemporary society; (4) An examination of the connection between law, race and racism in different analytical frameworks, including through discussion of four major schools of thought on law and race (i.e., neoconservative, liberal, critical legal studies, and critical race theory); (5) Come to a knowledge and understanding of relevant law (as previously applied to Asian Americans, and other racial groups), and then be able to critically apply that relevant law to various hypothetical scenarios involving Asian Americans.

This course is a collaborative effort in which each of us has an interest and a stake in working hard to learn the truths of our collective history; to share the truths of our individual experiences and lives; and, to determine if we desire a more just society, and if so, how to create our own paths and contributions to this endeavor.

Instructor:	Tom Fleming	(hapa_one@berkeley.edu)
	Office:	522 Barrows Hall
Lecture:	Monday, 6-9 p.m., 140 Barrows	
Office Hours:	Monday, 5-6 p.m., FSM Cafe, and By Appointment	
Required Book:	Race, Rights and Reparation (2 nd Ed.), Yamamoto, et al., (available at Eastwind Books of Berkeley, 2066 University Ave.)	
Required Reader:	AAS 141 Reader (available at University Copy Services, 2425 Channing Way)	

WEEKLY SCHEDULE

8/31 CLASS INTRODUCTION

- Introduction to each other and course topics
- Small Group Midterm Presentation Sign-Ups

9/7 NO CLASS

9/14 DIFFERENT CONCEPTS OF RACE AND LAW

- Bill of Rights and the Amendments to the U.S. Constitution
- Marshall, "Constitution 'Defective from the Start'"
- Handout: The three standards of review for Equal Protection claims
- Ancheta, "Race, Rights, and the Asian American Experience" (pay special attention to the *three legal standards of review*)
- Yamamoto, et al., Reading re Four Schools of Thought on Race and Law
- Delgado, "Critical Race Theory: An Introduction 'Hallmark Critical Race Theory Themes'"
- Omi and Winant, Racial Formation
- Chang, "Why We Need a Critical Asian American Legal Studies," Disoriented
- **Book:** Yamamoto, et al., Race, Rights and Reparation, Chapter 1

Small group presentation

9/21 AN EARLY HISTORY OF ASIAN AMERICANS AND THE LAW: EXCLUSION AND DISCRIMINATION MANDATED BY LAW

- Anti-Asian Legislation: A Chronological Account
- People v. Hall (1854, Cal. Supreme Ct.)
- **Book:** Yamamoto, et al., Race, Rights and Reparation, Chapter 2, including Chae Chan Ping, Fong Yue Ting v. United States, Ozawa v. United States, United States v. Thind, United States v. Wong Kim Ark, Yick Wo v. Hopkins, Terrace v. Thompson

Small group presentation

Prepare IRAC briefs for cases above

9/28 IMPRISONED BECAUSE OF RACE: THE INTERNMENT CASES

- **Book:** Yamamoto, et al., Race, Rights and Reparation, Chapter 3 and Chapter 4, including Hirabayashi v. United States, Yasui v. United States, Korematsu v. United States, Ex Parte Endo v. United States

Small group presentation

Prepare IRAC briefs for cases above

10/5 REDRESS AND REPARATIONS FOR RACIAL INJUSTICE

- **Book:** Yamamoto, et al., Race, Rights and Reparation, Chapter 5, 6 and 7, including Korematsu v. United States (II), Hirabayashi v. United States (II)

Small group presentation

Prepare IRAC briefs for cases above

10/12 SELECTED ISSUES AFFECTING OTHER RACES

- Zinn, "A People's History of the United States: 1492-Present"
- "The Civil War: Abraham Lincoln to Horace Greeley"
- Contemporary Racism, Joe R. Feagin & Melvin P. Sikes, "Living With Racism Race and Races"
- Armstrong, "Race and Property Values in Entrenched Segregation"

- The Jim Crow Era, Plessy v. Ferguson
- McCleskey v. Kemp (1987, U.S. Supreme Ct.)
- Eberhardt, “Looking Deathworthy”
- Cherokee Nation v. Georgia (1831, U.S. Supreme Ct.)
- Worcester v. Georgia (1832, U.S. Supreme Ct.)
- Lone Wolf v. Hitchcock (1903, U.S. Supreme Ct.)
- People ex rel. Joan R. Gallo v. Acuna (1997, Cal. Supreme Ct.)
- How the Legal System Contributed to the Definition of Whiteness: In re Ah Yup, In re Najour, Ex parte Shahid

Small group presentation

Prepare IRAC briefs for cases above

10/19 MIDTERM (IN-CLASS)

10/26 NO CLASS

11/2 SOUTHEAST AND SOUTH ASIAN AMERICANS; ACCENT DISCRIMINATION

- Taing, “Lost in the Shuffle: The Failure of the Pan-Asian Coalition to Advance the Interests of Southeast Asian Americans”
- Ong Hing, “Deporting Cambodian Refugees: Justice Denied?”, Yamamoto, et al.
- Bijlani, “Neither Here nor There: Creating a Legally and Politically Distinct South Asian Racial Identity”
- Volpp, “The Citizen and the Terrorist”
- Kang, “Thinking through Internment: 12/7 and 9/11”
- Ahmad, “A Rage Shared By Law: Post-Sept 11 Racial Violence as Crimes of Passion”
- Fragante v. City and County of Honolulu (1987, 9th Cir. U.S. Court of Appeals)
- Matsuda, “Voices of America: Accent Discrimination, Law, and a Jurisprudence for the Last Reconstruction”

Small group presentation

Prepare IRAC brief for case above

11/9 RACIAL PROFILING, CIVIL LIBERTIES AND NATIONAL SECURITY

- Wen Ho Lee, “My Country Versus Me”
- Perlroth, “Accused of Spying for China, Until She Wasn’t”
- Various articles on the Wen Ho Lee case
- Gotanda, “Racial Profiling and the Case of Wen Ho Lee”
- Duvvuru, “‘Your Name is Common’: Racial Profiling in the US”
- Choi v. Gaston (2000, Ninth Ct.)
- Johnson, “Racial Profiling After September 11: The Department of Justice 2003 Guidelines”
- Farag v. U.S. (2008, E.D. New York)
- NDAA §1021
- Buttar, ConstitutionalCampaign.org, “Hedges v. Obama: The Supreme Court digs its head deeper into the sand”
- Ashcroft v. Iqbal (2009, U.S. Supreme Ct.)
- Madrigal, “How Much Racial Profiling Happens in Ferguson?”
- **Book:** Yamamoto et al., Race, Rights and Reparation, Chapter 8

Small group presentation

Prepare IRAC briefs for cases above

11/16 RACIAL HATE CRIMES/HATE SPEECH

- R.A.V. v. City of St. Paul (1992, U.S. Supreme Ct.)
- NY Times, “The Supreme Court: Rights Advocates Uncertain about Ruling’s Impact”
- *AsianWeek*, “Remembering Vincent Chin”
- *OC Weekly*, “When Gunner Jay Lindberg Killed Thien Minh Ly, Was It Actually a Hate Crime?”
- Matsuda, “Public Response to Racist Speech: Considering the Victim’s Story”
- Delgado, “Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling”

Small group presentation & Prepare IRAC brief for case above

11/23 ASIAN AMERICAN CRIMINAL DEFENDANTS AND THE CULTURAL DEFENSE

- People v. Wu (1991, Cal Ct of Appeals, unpublished decision)
- *California Lawyer*, “When Cultures Collide”
- *Los Angeles Times*, “The Fathers”
- Converse, “Cultural Issues in Defense: How Culture Can Affect Culpability, Sentence and Client Communication”
- Volpp, “(Mis)Identifying Culture: Asian Women and the Cultural Defense”
- Li, “The Nature of the Offense: An Ignored Factor in Determining the Application of the Cultural Defense”

Small group presentation

Prepare IRAC brief for case above

11/30 AFFIRMATIVE ACTION & RESPONSES TO RACISM

- Brunner and Rowen, “Timeline of Affirmative Action Milestones”
- Proposition 209
- Gratz v. Bollinger (2003, U.S. Supreme Ct.)
- Grutter v. Bollinger (2003, U.S. Supreme Ct.)
- Chuang, *Asian American Law Journal*, “Fungible Pawns in the Affirmative Action Debate: Asian Americans as the Model Minority, Proxies for White Resentment, and Threat of Encroachment”
- Joint Policy Report on Asian Americans, Pacific Islanders and Higher Education Diversity, “Asian Americans and Pacific Islanders in California: How Higher Education Diversity Benefits our Communities” (2014)
- Chang, *Disoriented*, “Reverse Racism!”
- Delgado, “Ten Arguments Against Affirmative Action—How Valid?”
- Perea et al., Race and Races; Powell, “The Tensions Between Integration and School Reform”; *Grutter v. Bollinger*--Notes and Questions
- Schuetz v. BAMN (2014, U.S. Supreme Ct.)
- Perea et al., Race and Races, Chapter 14

Small group presentation

Prepare IRAC briefs for cases above

12/7 FINAL EXAM REVIEW, 6-9 PM

12/18 FINAL EXAM, 3-6 PM

COURSE REQUIREMENTS AND GRADING

1. Class participation*	10%
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*To receive any credit for class participation, you must:

- (a) not miss more than 2 substantive classes,
- (b) attend at least 2 office hours,
- (c) prepare all IRAC case briefs and assignments, and
- (d) actively engage and participate in class.

2. Midterm Exam: In-class Essays	20%
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3. Midterm Exam: Two Small Group Presentations	30%
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4. Final exam: In-class Essays	40%
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Also, please note that laptops, touch-pads and cell phones must be off at all times during lecture. Sending and receiving text or email messages, or surfing the internet, while in class does not facilitate an optimal learning environment for fellow students and can constitute rude behavior. You may be asked to leave the classroom and your grade may be negatively impacted for failure to comply with this rule.

Videos:

- Of Civil Wrongs and Rights: The Fred Korematsu Story
- Sentenced Home
- Wen Ho Lee video
- Abandoned: The Betrayal of America's Immigrants
- 1996 Immigration Act video
- Days of Waiting
- PBS Documentary – Becoming American: The Chinese Experience
- Labor Women
- Blood, Sweat and Lace
- Agent Yellow: Not a Chinaman's Chance
- Who Killed Vincent Chin
- Letters to Thien
- Death of a Shaman
- A Dream in Doubt: Sikhs after 9/11
- Race: The Power of an Illusion
- Hidden Internment: The Art Shibayama Story (Japanese Latino Americans)
- Nisei Soldier (VHS only)
- 9066 to 9/11

We are looking forward to getting to know you and working with you. Good luck in the class!

GUIDELINES AND GRADING CRITERIA FOR SMALL GROUP PRESENTATIONS

- 1) Group presentation format. Your group should complete your readings, and any other necessary research, as soon as possible. Your group should then meet and collectively decide the most effective format to present, and facilitate class discussion of, the subject matter. You should include discussion of your subject matter's main points, the intersection of race and law related to your subject matter, refer to the four analytical schools of thought on race and law, and provoke critical thought and questions about your subject matter. Your presentation should be designed to hold the rapt attention and involvement of the class for the duration of the presentation. As part of your presentation, you should also include a format such as a criminal jury trial, a formal debate, a talk or game show, a skit, a panel discussion, short videos, etc., or combinations of these. Each presentation should include a PowerPoint presentation as well as any other video or media that is helpful.
- 2) Critical thoughts and questions beyond the readings. As mentioned above, you must demonstrate and facilitate discussion that provokes critical thought and questions about your subject matter. And, you should prepare and present with the assumption that the class has completed all the assigned readings. Although you should refer to the readings, it is unhelpful and a waste of time to simply summarize class readings. Hence, you may not simply summarize readings. REPEAT: You may not simply summarize readings.
- 3) Relevance to class students. Each group must also explore and examine if and how the subject matter might be relevant to people today and to students currently in the class.
- 4) Time. Each group's total presentation time should be 55-60 minutes; it may not exceed 60 minutes. Each individual group member *must* have a speaking role, and speak for a cumulative total of *at least* 5 minutes (if not more). Additionally, each group member should have roughly the same amount of speaking time.
- 5) Half of the presentation time should consist of audience participation. Each group must facilitate audience participation for roughly half of the time of the presentation. This is often the most significant failure of small groups. You should figure out the best way to allow audience members to express their views and plan accordingly. Audience participation may consist of a jury hearing and deciding a verdict in a trial case; participation in a game or talk show, debate, or panel discussion; an audience deliberating an issue and making some type of vote on the issue; or, whatever your group deems appropriate and best for your group and its format.
- 6) Present both sides of major issues. Each group should strive for discussion of opposing points of view on the main issues in your subject matter. Whether this is done by group members and/or facilitated through audience members is up to the group.
- 7) The show must go on. If a member of your group does not show up or do what he or she is supposed to do, the other members of the group are still responsible for making the presentation. This should be noted and discussed in your self-evaluations, and may affect individual grades and/or the group grade.
- 8) Your group should meet and prepare a presentation outline one week before the presentation. It is mandatory that your group submit a detailed outline of your presentation to the assistant by *one week before the presentation*. You must also meet with the instructor during office hours one week before your presentation. This meeting does not count toward one of the two office hours needed for class participation.

9) Self-evaluations must be submitted within 24 hours. Within *twenty-four hours* after your presentation, you must email the following self-evaluations the assistant: (A) an evaluation and grade of your own individual work, and a rationale for your individual grade; (B) evaluations and grades of the work of every other individual member of your group, and a rationale for each such grades; and, (C) evaluations and grades of the collective work of your group, and a rationale for your group grades.

10) Grading. In determining your grade, we will examine whether your group met the above criteria, and take into account your self-evaluations.

The IRAC Outline of a Case

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| 1. FACTS: | Summarize the relevant facts of the case, i.e., the parties, their relationship, the events leading to the dispute. |
| 2. ISSUE (question): | What is/are the legal question(s) to be answered? |
| 3. RULE: | List the rules (laws and case rules), which are to be applied to the analysis of the case. |
| 4. ANALYSIS (reasoning): | The reasoning of the court's decision, which may include the arguments of the parties. |
| 5. CONCLUSION (answer to question): | The answer to the legal question above, and the rule that this case will stand for in the future. |