

AAS 325N/AMS 321T/ GOV 357V: ASIAN AMERICAN JURISPRUDENCE

Instructor: Arnold Jin, J.D., LL.M.

Office Hours: TH 2 pm–4 pm

BEL 220H via Zoom upon request

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Unique Numbers: 31590, 37465, 30850

Semester: Spring 2024

Flags: Cultural Diversity

Ethics

Class Times: T/TH 11:00-12:30 pm

RPL 1.102

“It can hardly be supposed that any Legislature would attempt this by excluding domestic Negroes and Indians, who not infrequently have correct notions of their obligations to society and turning loose upon the community the more degraded tribes of the same species, who have nothing in common with us, in language, country or laws.” Chief Justice Murray, *People v. Hall*, 4 Cal. 399 (1854).

“There is a race so different from our own that we do not permit those belonging to it to become citizens of the U.S. Persons belong to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race.” Justice Harlan, *dissenting, Plessy v. Ferguson*, 163 U.S. 537 (1896).

Course Description:

Throughout the history of the United States, the law and legal system have shaped nearly every facet of Asian American life. The law can be used to exclude, to empower, and sometimes even to define the very meaning and definition of one’s community and identity. Apart from the law itself, the court system, as the main forum for the discussion and resolution of legal disputes has also had tremendous power to influence the lives and experiences of Asian Americans. Whether it is immigration, national security, or the pursuit of happiness, the law had and will continue to have a profound impact on the lives of Asian Americans everywhere,

This course will provide a comprehensive introduction to the study of Asian Americans and the law. Students will examine the historical development of U.S. law and its relationship to Asian Americans as well as the development of Asian American jurisprudence as an independent field of legal scholarship. In addition, the course will provide students with the tools to think critically about Asian Americans and the law by introducing students to principles of legal reasoning and analysis and the major schools of legal thought. Topics will include immigration, civil rights, affirmative action, and access to justice. Students will learn about the common law system, legal positivism, legal realism, economic analysis of law, and critical race theory.

We will approach this course like a law school course. The majority of the readings consist of primary source court opinions, and class time will focus on deepening student understanding of the course material through the *Socratic* method of question and answer. Grading will be based on participation, five reading quizzes, a midterm, and a final. Participation will be measured by quality, not quantity; what matters is not whether a student can give a “right” or “wrong” answer, but whether student responses demonstrate a familiarity with the reading and a genuine effort to think critically about the subject matter. This course carries the Cultural Diversity and Ethics flags. Ethics courses are designed to equip you with skills that are necessary for making ethical

decisions in your adult and professional life. You should therefore expect a substantial portion of your grade to come from assignments involving ethical issues and the process of applying ethical reasoning to real-life situations.

Course Requirements/Grading: This will be an extremely demanding, time-consuming, reading and thinking intensive class. Attendance is required as well as thoughtful participation in class discussion. I will largely employ the *Socratic* method in class discussions, which means I don't take volunteers but will identify a few different students each class who shall be responsible for helping lead the discussion. Each student shall be given *two* (2) passes a semester if they are unprepared that day. Anyone who passes more than twice shall drop a letter grade for participation. Tardiness of less than 20 minutes will count as 1/3 of an absence; tardiness of 20 minutes or more will count as an absence for that day. Additionally, arriving to class late or leaving early will adversely affect your participation grade unless you have spoken to me in advance. Please be respectful and courteous of each other's opinion—although we will disagree from time to time with each other—please maintain a respectful environment in all forums (Zoom, Canvas, etc.). Finally, please communicate regularly with your course instructor so that we can work together towards your academic success especially with respect to attendance or participation concerns that may arise.

Attendance/Participation:	20%
Weekly reading quizzes:	15%
In-class midterm exam:	30%
Final Exam:	35%

Plus and minus grades will be used in the class. A = 93-100; A- = 90-92.9; B+ = 88-89.9; B = 83-87.9; B- = 80-82.9; C+ = 78-79.9; C = 73-77.9; C- = 70-72.9; D = 65-69.9. Below 65 = F.

Electronic devices. I generally expect smartphones and mobile electronic devices to be turned off and out of sight during in-person class. Use of a laptop computer is permitted so long as you are only using it for class-related matters. If I catch students not using their laptops accordingly, you will be marked off on your participation and you may lose the ability to use your computer in class.

Please be **AWARE** of the University Standard for Academic Integrity.

Deadlines. Please be aware that all assignment deadlines are strictly due at the date and time indicated. Any late submissions will be penalized unless you've discussed with me in advance. Always communicate any concerns or issues in meeting any deadlines as soon as possible.

Disabilities. Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities by contacting the office at 512.471.6259 (voice), 512.410.6644 (video), or ssd@austin.utexas.edu (email). Students may also visit <http://ddce.utexas.edu/disability/>. If the office certifies your needs, I will work with you to make appropriate arrangements.

COVID-19. Given that we are still in the midst of the pandemic, please keep me informed if you anticipate missing class(es) or any assignments for COVID-related or other reasons. As well, please be flexible in the event we may need to move certain classes to Zoom, but I will always try to give as much notice as possible.

Sharing of Course Materials is Prohibited: No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am well aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

Class Recordings: Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.

Texts:

There will be two required textbooks, and all other course readings shall be available on *Canvas*.

Levi, Edward H., *An Introduction to Legal Reasoning*.
Hart, H.L.A., *The Concept of Law*.

*****I reserve the right to make any changes to the schedule as I see fit*****

COURSE SCHEDULE

Tuesday, January 16

Introduction and Logistics

People v. Hall, 4 Cal. 399 (1854)
United States Constitution, Amend. XIV and XV

Thursday, January 18

A Brief History of Asian Americans and the Law

Jerry Kang, Eric Yamamoto, Margaret Chon, Carol Izumi, and Frank Wu, *Race, Rights, and Reparation: Law of the Japanese American Internment*. Intro to pp. 23
Ozawa v. United States, 260 U.S. 178 (1922).
United States v. Thind, 261 U.S. 204 (1923).

Tuesday, January 23
What is Asian American Jurisprudence

First Reading Quiz

Chang, Robert, "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space," 81 CALIF. L. REV. 1241 (1993).

Gotanda, Neil, "Critical Legal Studies, Critical Race Theory and Asian American Studies," 21 AMERASIA JOURNAL 127 (1995).

Thursday, January 24
Thinking Like a Lawyer: A Crash Course in Legal Reasoning and Analysis, Part I: How to Read a Court Opinion

Levi, Edward H., *An Introduction to Legal Reasoning*.

Loving v. Virginia, 388 U.S. 1 (1967) (introductory exercise in how to case brief, please attempt to case brief on your own).

Tuesday, January 30
Thinking Like a Lawyer: A Crash Course in Legal Reasoning and Analysis, Part II: Introduction to Jurisprudential Theories

Hart, H.L.A., *The Concept of Law*, Ch. 1-3, pp. 1-49

Dworkin, Ronald, *Law's Empire*, Read Ch. 1: *What is Law?*

Kahan, Dan, "Law, Chicken Sexing, Torture Memo, and Situation Sense," 2006 Yale Law School Commencement Address.

Thursday, February 1
Thinking Like a Lawyer: A Crash Course in Legal Reasoning and Analysis, Part III: Introduction to Jurisprudential Theories, cont.

Coase, Ronald, "The Problem of Social Cost," 3 JOURNAL OF LAW AND ECONOMICS 1 (1960).
Please read introduction and skim the rest.

Calabresi, Guido, "Some Thoughts on Risk Distribution and the Law of Torts," YALE LAW JOURNAL (1961) *Please read introduction and skim the rest.*

Delgado, Richard and Jean Stefancie, *Critical Race Theory: An Introduction*.

Tuesday, February 6
Unwelcoming Shores: Immigration and Citizenship, Part I: Exclusion

Second Reading Quiz

Chy Lung v. Freeman, 92 U.S. 275 (1875).

Chae Chan Ping v. United States, 130 U.S. 581 (1889).

Fong Yue Ting v. United States, 149 U.S. 698 (1893).

Thursday, February 8

Unwelcoming Shores: Immigration and Citizenship, Part II: Plenary Power and Race

Kwong Hai Chew v. Colding, 344 U.S. 590 (1953).

Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953).

Review:

Ozawa v. United States, 260 U.S. 178 (1922).

United States v. Thind, 261 U.S. 204 (1923).

Tuesday, February 13

Unwelcoming Shores: Immigration and Citizenship, Part III: Gender and Family

U.S. v. Gue Lim, 176 U.S. 459 (1900).

Low Wah Suey v. Backus, 225 U.S. 460 (1912).

Fiallo v. Bell, 430 U.S. 787 (1977).

Thursday, February 15

Unwelcoming Shores: Immigration and Citizenship, Part IV: Immigration Law—Last Bastion of Racism?

Chin, Gabriel, “Segregation’s Last Stronghold.”

Haney Lopez, Ian F., “The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice,” 29 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES L.R. 10-39 (1994).

Tuesday, February 20

Second Class People? Part I: Race and Rights

Third Reading Quiz

Yick Wo v. Hopkins, 118 U.S. 356 (1886).

Plessy v. Ferguson, 163 U.S. 537 (1896).

United States v. Carolene Products Co., 304 U.S. 144, fn. 4 (1938).

Thursday, February 22

Second Class People? Part II: Property

United States Constitution, Amend XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Aoki, Keith, "No Right to Own? The Early Twentieth Century 'Alien Land Laws' As A Prelude to Internment," 40 B.C. L. REV. 37 (1998).

Terrace v. Thompson, 263 U.S. 197 (1923).

Harris, Cheryl, "Whiteness as Property," 106 HARV. L. REV. 1709 (1993).

Tuesday, February 27

Second Class People? Part III: Employment

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976).

Griggs v. Duke Power, 401 U.S. 424 (1971).

Washington v. Davis, 426 U.S. 229 (1976).

United Steelworkers of America v. Weber, 443 U.S. 193 (1979).

Thursday, February 29

Second Class People? Part IV: Opportunity

Fullilove v. Klutznick, 448 U.S. 448 (1980).

Addarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).

Tuesday, March 5

Midterm Review

Thursday, March 7

Midterm Exam

March 11 – 15 ***SPRING BREAK*******

Tuesday, March 19

Midterm Debriefing

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Thursday, March 21

Second Class People? Part V: The Right to Learn

Lum v. Rice, 275 U.S. 78 (1927).

Brown v. Board of Education, 347 U.S. 483 (1954).

Lau v. Nichols, 414 U.S. 563 (1974).

Tuesday, March 26

Second Class People? Part VI: Affirmative Action and Higher Education

University of California Board of Regents v. Bakke, 438 U.S. 265 (1978).

Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

D'Souza, Dinesh, "More Equal Than Others: Admissions Policy at Berkeley," Chapter 2, *Illiberal Education*.

Thursday, March 28

Second Class People? Part VII: Affirmative Action and Higher Education, cont.

Kang, Jerry, "Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action," 31 HARV. C.R. C.L. L. REV. 1 (1996).

Gratz. v. Bollinger, 539 U.S. 244 (2003).

Fisher II, *Fisher v. University of Texas*, 579 U.S. ___, 126 S. Ct. 2198; 195 L. Ed. 2d 511 (2016).
Students for Fair Admissions, Inc. v. Presidents and Fellows of Harvard College, Supreme Court decision.

Tuesday, April 2

Citizens Without Rights: The Japanese American Internment, Part I: Historical Background

Fourth Reading Quiz

Jerry Kang, Eric Yamamoto, Margaret Chon, Carol Izumi, and Frank Wu, *Race, Rights, and Reparation: Law of the Japanese American Internment*. pp. 91-98

Dower, John, *War Without Mercy: Race and Power in the Pacific War*, Ch. 1: Patterns of a Race War.

Executive Order 9066

Thursday, April 4

Citizens Without Rights: The Japanese American Internment, Part II: Discrimination Upheld

Hirabayashi v. United States, 320 U.S. 81 (1943).

Yatsui v. United States, 320 U.S. 115 (1943).

Korematsu v. United States, 323 U.S. 214 (1944).

Tuesday, April 9

Citizens Without Rights: The Japanese American Internment, Part III: Towards Justice

Ex parte Endo, 323 U.S. 283 (1944).

Jerry Kang, Eric Yamamoto, Margaret Chon, Carol Izumi, and Frank Wu, *Race, Rights, and Reparation: Law of the Japanese American Internment*. pp. 219-235

Daniels, Roger, *Prisoners Without Trial: Japanese Americans in World War II*

Kang, Jerry, "The Coram Nobis Litigation," *Denying Prejudice*

Thursday, April 11

Access to Justice: Language, Culture, and Law, Part I

Iao v. Gonzales, 400 F.3d 530 (7th Cir, 2005).

Hernandez v. New York, 500 U.S. 352 (1991).
Alexander v. Sandoval, 532 U.S. 275 (2001).

Tuesday, April 16

Access to Justice: Language, Culture, and Law, Part II

Fifth Reading Quiz

Coleman, Doriane Lambelet, "Individualizing Justice Through Multiculturalism: The Liberals' Dilemma," 96 COLUM. L. REV. 1093 (1996).

Volpp, Leti, "Talking Culture': Gender, Race, Nation, And the Politics of Multiculturalism," 96 COLUM. L. REV. 1573 (1996).

Thursday, April 18

Race and Speech

Bradenburg v. Ohio, 395 U.S. 444 (1969).

R.A.V. v. City of St. Paul, 505 U.S. 377 (1991).

Matsuda, Mari, *Words That Wound*.

Tuesday, April 23

Model Minority and Interracial Conflict

Matsuda, Mari, "We Will Not Be Used," 1 ASIAN AM. PAC. ISLANDS L.J. 79 (1993).

Gabriel Chin, Sumi Cho, Jerry Kang, & Frank Wu, *Beyond Self-Interest* (1996).

Cho, Sumi, "Korean Americans vs. African Americans: Conflict and Construction," *Reading Rodney King, Reading Urban Uprising* (1993).

Thursday, April 25

Race and the Law in Contemporary America

Kang, Jerry, "Cyber-race," 113 Harv. L. Rev. 1130 (2000).

Banks, Ralph Richard, Richard Thompson Ford, "How Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality," 58 EMORY L. J. (2009).

Implicit Association Test: <https://implicit.harvard.edu/implicit/takeatest.html>

Visit the site and try one more of the demonstration tests, but make sure to do the Asian American test. You do not have to share your results with anyone.

Friday, April 26

Final Exam Review Session, RLP 1.102 (Time: TBD)

FINAL EXAM

Location/Time: Friday, May 3, 2024, 1 pm – 3 pm (RLP 1.102)