

AAS 335/AMS 321/ GOV 355M: ASIAN AMERICAN JURISPRUDENCE

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

Office Hours: Online TH 4 pm – 6 pm

BEL 220 Upon Request

arnold.jin@austin.utexas.edu

Unique Numbers: 32520, 31544, 38649

Semester: Spring 2021

Flags: Cultural Diversity

Class Times: T/TH 12:30-2:00 pm

via Zoom

COVID-19. Given the existing circumstances surrounding COVID-19, this class will be run online synchronously at the above listed times (as scheduled in the Registrar) on Zoom. Please read below for the attendance policy and feel free to contact me with any questions or concerns if you anticipate missing any classes or assignments due to COVID-related issues.

“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 US 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.

Course Requirements/Grading: This will be a very demanding, time-consuming, reading and thinking intensive class. Attendance is required as well as thoughtful participation in class discussion. You are considered present when your video is turned on. While I am sensitive to technical issues, my expectation is that for the most part you will be available, especially when called upon. 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 *one* (1) pass a semester if they are unprepared that day. Anyone who passes more than once 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. 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.).

Attendance/Participation:	10%
Weekly reading quizzes:	15%
In-class midterm exam:	25%
Final Exam:	50%

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. Given the online nature of this course, however, having a computer or mobile device will be necessary at times.

Please be AWARE of the University Standard for Academic Integrity.

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.

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 three required textbooks, and all other course readings shall be available either on **Canvas or through the UT Library Catalog.**

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

Hart, H.L.A., *The Concept of Law*.

Jerry Kang, Eric Yamamoto, Margaret Chon, Carol Izumi, and Frank Wu, *Race, Rights, and Reparation: Law of the Japanese American Internment* 2d ed.

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

COURSE SCHEDULE

Tuesday, January 19

Introduction and Logistics

People v. Hall, 4 Cal. 399 (1854)

United States Constitution, Amend. XIV and XV

Thursday, January 21

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 26

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 28

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*.

Tuesday, February 2

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 (*available* through UT Lib./Hathitrust), Read Ch. 1

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

Thursday, February 4

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).

Calabresi, Guido, "Some Thoughts on Risk Distribution and the Law of Torts," YALE LAW JOURNAL (1961), available through UT Library/heinonline

Steven Shavell, *Foundations of Economic Analysis of Law*.

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

Tuesday, February 9

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), Yamamoto, pp. 35-44

Thursday, February 11

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 16

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 18

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 23

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 25

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, March 2

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, March 4
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 9
Midterm Review

Thursday, March 11
Midterm Exam

March 15 – 20 ***SPRING BREAK*******

Tuesday, March 23
Midterm Debriefing

Thursday, March 25
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 30
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*, available at <https://catalog.hathitrust.org/Record/002439494>?

Thursday, April 1
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).

Tuesday, April 6
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*, available at Hathitrust/UT Library, Ch. 1
Executive Order 9066

Thursday, April 8

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

Hirabayashi v. United States, 320 U.S. 81 (1943). Yamamoto, pp 99-114

Yatsui v. United States, 320 U.S. 115 (1943). Yamamoto, pp. 114-24

Korematsu v. United States, 323 U.S. 214 (1944) pp. 124-150

Tuesday, April 13

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 15

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 20

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 22

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 27**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 29**Race and the Law in Contemporary America**

Kang, Jerry, "Cyber-race," 113 Harv. L. Rev. 1130 (2000), Yamamoto, pp. 45-49

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.

Tuesday, May 4**Asian American Jurisprudence: What's Next?**

Wu, Frank, "The Arrival of Asian Americans: An Agenda for Legal Scholarship," 10 ASIAN L.J. 1 (2003).

Review:

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, May 6**Final Exam Review**

FINAL EXAM

Location/Time: TBD