

## **Politics 566: Race and the Law**

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From slavery and Native American removal to questions of citizenship to the “rights revolution” of the mid twentieth century, courts have played a particularly central role on matters of race, representation, and identity. This class examines this role with particular attention to the forms of historical and institutional development, the ways in which courts have successfully/unsuccessfully contributed to civil rights progress, and the ways in which public understandings of race have been shaped by law and legal classifications. Though not a focus, ample attention will also be paid to related questions involving sex, sexuality, class, and disability. This is primarily a reading seminar, though students will have the option of writing a research paper if they so choose.

Assignments: Students have an option of (1), completing two take home papers of roughly twelve pages in length, or (2) writing a ~25 page paper on a topic to be determined. Students are also expected to come prepared to engage the weekly readings.

Readings: There are a number of books and articles. The books are available at Labyrinth. The articles are available on blackboard or online. There will also be a series of Supreme Court cases that we will read, and should be available online through lexis or findlaw.com, etc.

### **September 22: Theories of Race and Racism**

Alexis de Tocqueville, *Democracy in America*, selections

WEB DuBois, *Black Reconstruction in America: 1860-1880* (1935), 17-31, 694-704

Gunnar Myrdal, *An American Dilemma* (1944) lxix-lxxix

Paul Sniderman and Michael Gray Hagen, *Race and Inequality: A Study in American Values* (1985), 20-22

Rogers M. Smith, “Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America,” *American Political Science Review* (1993)

Michael P. Rogin, “Liberal Society and the Indian Question,” in *Ronald Reagan The Movie* (1987), 134-41

Anthony Appiah, *Color Conscious: The Political Morality of Race* (Princeton University Press, 1996), 30-38

Paul Gilroy, *There Aint No Black in the Union Jack* (University of Chicago Press: 1984), 38-40

Claire Jean Kim, *Bitter Fruit: The Politics of Black-Korean Conflict in New York City* (2000), 8-12

**September 29: What do we mean by ‘the state’? What is American Political Development?**

Paul Pierson, “Increasing Returns, Path Dependence and the Study of Politics,” *APSR* (2000)

Stephen Skowronek, *The Politics Presidents Make* (1993), chapter 3

Anthony W. Marx, “Race-Making and the Nation-State,” *World Politics* 48 (1996).

Michael Omi and Howard Winant, *Racial Formation in the United States* (Routledge: 1994), 53-76

Michel Foucault, ‘*Society Must be Defended*’, (Picador, 2003), chapter 11

**October 6: What do we mean by ‘law’?**

Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2007), 15-89

Robert A. Dahl, “Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,” *Journal of Public Law* 6 (1957): 279-95

Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. “The Concept of Legalization,” *International Organization* 54:3 (2000), 401-419

Daniel J. Hulsebosch, *Constituting Empire* (University of North Carolina Press, 2004), chapters TBA

Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652-2000* (Cambridge University Press, 2008), TBA

Galanter, Marc. 1974. Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change" *Law & Society Review* 9:95-160 [FIX PAGES]

**October 13: Native American Removal and the Politics of Empire**

Stuart Banner, *How the Indians Lost Their Land* (Belknap Press, 2005), 1-227

Lauren Benton, Fall, 2001, 19 *Law & Hist. Rev.* 479, “‘The Laws of This Country:’ Foreigners and the Legal Construction of Sovereignty in Uruguay, 1830-1875,” *Law and History Review*

Barnor Hesse, "Racialized Modernity: An Analytics of White Mythologies," *Ethnic and Racial Studies* 30 (4) (2007), 643-663

### **October 20: Slavery and Apartheid**

Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 91-171

Eric Foner, *Free Soil, Free Labor, Free Men*, chapter 2

Paul Finkelman, "Regulating the African Slave Trade," *Civil War History* 54 (4), December 2008, 379-405

Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652-2000* (Cambridge University Press, 2008), TBA

### **October 27: The Legal Creation of Whiteness**

David Roediger, *The Wages of Whiteness* (1991), chapter 2

Matthew Frye Jacobson, *Whiteness of a Different Color*, chapter 7

Eric Love, "White is the Color of Empire: The Annexation of Hawaii in 1898," in Campbell, Guterl, and Lee, eds., *Race, Nation, and Empire in American History* (Chapel Hill: University of North Carolina Press, 2007)

Matthew Frye Jacobson, "Annexing the Other: The World's Peoples as Auxiliary Consumers and Imported Workers, 1876-1917," in Campbell, Guterl, and Lee, eds., *Race, Nation, and Empire in American History* (Chapel Hill: University of North Carolina Press, 2007)

Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106 (1993), 1707-91

### *Insular Cases*

### **November 10: The Long Civil Rights Era**

Ken I. Kersch, "The New Deal Triumph as the End of History? The Judicial Negotiation of Labor Rights and Civil Rights," in Kahn and Kersch, ed., *The Supreme Court and American Political Development* (University of Kansas Press, 2006), chapter 5

Gretchen Ritter, *the Constitution as Social Design: Gender and Civic Membership in the American Constitutional Order* (Stanford University Press, 2007), chapter 5

Paul Frymer, "Race, Labor and the Twentieth-Century American State," *Politics and Society* 32:475 (2004)

Anthony S. Chen, "'The Hitlerian Rule of Quotas': Racial Conservatism and the Politics of Fair Employment Legislation in New York State, 1941-1945," *Journal of American History* 92 (4): 1238-64.

*United States v. Carolene Products*, 304 US 144 (1938). Read only Footnote 4

Robert Cover, "The Origins of Judicial Activism in the Protection of Minorities," in *Narrative, Violence, and the Law*, edited by Martha Minow, Michael Ryan, and Austin Sarat (Michigan University Press, 1995)

### **November 17: Civil Rights Enforcement—Are Courts Anything But Hollow?**

Gerald N. Rosenberg, *The Hollow Hope* (University of Chicago Press, 1991), TBA

Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University of Chicago Press, 1998), pages 1-70

Paul Frymer, "Acting When Elected Officials Won't," *American Political Science Review* 93 (2003)

### **November 24: Understanding Title VII**

Derrick Bell, "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," in *Critical Race Theory* (1996)

Risa Goluboff, "Let Economic Equality Take Care of Itself": The NAACP, Labor Litigation, and the Making of Civil Rights in the 1940s," *UCLA Law Review* 52: 1393 (2005)

Vicki Schultz, "Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument," 103 *Harvard Law Review* 1749 (1990)

John D. Skrentny, *The Minority Rights Revolution* (Belknap Press, 2002), chapter 8

John D. Skrentny, "Policy-Making is Decision-Making," *Studies in American Political Development* 18 (2004), 70-80.

### **December 1: Voting Rights**

Lani Guinier, "The Representation of Minority Interests," in Peterson, ed., *Classifying by Race* (Princeton 1995)

Melissa Williams, *Voice, Trust, and Memory* (Princeton University Press, 1998), TBA

Will Kymlicka, "Rethinking the Liberal Tradition," in *Multicultural Citizenship* (1995)

Pamela Karlan, "Federal Courts and Electoral Politics: Exit Strategies in Constitutional Law: Lessons for Getting the Least Dangerous Branch out of the Political Thicket," *Boston University Law Review* (2002), v 82, page 667.

*Shaw v Reno*

Material forthcoming on the Obama election

### **December 8: Crime and Imprisonment**

David Garland, "Capital Punishment and American Culture," *Punishment and Society*, vol. 7, no. 4, pp. 347-376, October 2005

Naomi Murakawa, "The Origins of the Carceral Crisis: Racial Order as 'law and order' in postwar American Politics," in *Race and American Political Development*, edited by Joseph Lowndes, Julie Novkov, Dorian Warren (Routledge, 2007)

Doris Marie Provine, *Unequal Under Law: Race and the War on Drugs* (Chicago 2007), selections

Loic Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment and Society* (2000)

Marie Gottschalk, *The Prisons and the Gallows: The Politics of Mass Incarceration in America* (Cambridge University Press, 2006), selections

### **December 15: 'Like Race Arguments'**

Janet E. Halley, "Like Race Arguments," in Judith Butler, et al., eds., *What's Left of Theory? New Work on the Politics of Literary Theory* (Routledge, 2000)

Chandan Reddy, "Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice," *Fordham Law Review* 76: 2849

Gerald Rosenberg, *The Hollow Hope*, chapters 13-14

Thomas M. Keck, "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT," *Law and Society Review* 43 (1) (2009)