

Quarter: Winter 2019 [Law School Spring Semester 2019]

Course: Critical Identity Theory

Instructor: Kaaryn Gustafson, Law

Description: This course will broadly engage the study of anti-subordination legal movements that arose out of the traditions of American legal realism and Critical Legal Studies. Particular attention will be paid to germinal writings in Critical Race Theory (CRT), feminist legal theory, law and sexuality, law and socioeconomic class, and Latina/o Critical (LATCRIT) Theory. We will also examine sociolegal studies of law and identity.

syllabus included on following pages

Critical Identity Theory (Law 5755, Section 1)

Spring 2018

Wednesdays, 2:50 p.m. to 5:50 p.m.

Law 4700

Professor: Kaaryn Gustafson
Office: Law 4800-U
Phone: (949) 824-4029
Email: kgustafson@law.uci.edu
Office Hours: Tuesdays, 3:00 to 5:00 pm and by appointment.
Note: On the second week of each month, I have a committee conflict and will hold alternative office hours on Thursdays from 3:00 to 5:00 pm.
Faculty Assistant: Julianne Ohlander, johlander@law.uci.edu
(949) 824-5624, Law 4500

Course requirements:

- Each week students must submit one-page reflections on the readings. These reflections must be submitted (via TWEN) by 5 p.m. the day before class.
- Every student will be expected to take a turn facilitating class discussion.
- A final term paper is due Monday, May 7, 2017 by 5:00 pm. This is a firm deadline. In addition, students will be expected to submit paper proposals and outlines early in the semester and to present works-in-progress later in the semester.
- If you are a 2L or joint degree student and would like your paper to satisfy the Upper Level Writing Requirement, then you need to discuss this with me early in the semester.

Grading:

- 70% of the final grade will be based on the final paper.
- 20% of the final grade will be based on the weekly reflections.
- 10% of the grade will be based on class participation and presentation of a fellow student's draft paper.

Course Goals:

By the end of the semester, you should be able to:

- Identify and differentiate between various movements of critical legal thought in the United States.
- Identify major critiques and counter-critiques of liberal legalism.
- Discuss ways that law constructs identity and, conversely, how identity constructs legal understandings.
- Provide clearly written, well-organized, and well-supported analysis of a legal issue from a critical perspective.
- Provide civil and critical feedback to other students on their writing and ideas.

Course etiquette:

- You are welcome to speak from personal experience. Please listen respectfully.
- Treat class conversations with a certain degree of confidentiality. If you do discuss comments made in class outside the classroom, please attribute them anonymously.
- We will begin with the understanding that no class member's truth is the whole truth.

Some key questions in this course

- In what ways does the law define, dismiss, or privilege certain identities?
- How does law influence our understandings and experiences of identity?
- What are the potentials and limits of law to challenge subordination and remedy inequality?
- How do individuals and groups construct their identities in connection with or in opposition to the law?

Assignments**January 10: Critical Race Theory: History and Themes****Readings:**

- MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993) (What is Critical Race Theory?, pp. 3-15).
- DERRICK BELL, FACES AT THE BOTTOM OF THE WELL (Basic Books, 1992) (The Space Traders, pp. 158-194).
- Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 CAL. L. REV. 741 (1994).

For further reading:

- Gerald Torres, Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations, 25 SAN DIEGO L. REV. 1043 (1988).
- Darren Lenard Hutchinson, Critical Race Histories: In and Out, 53 AM. U. L. REV. 1187 (2004).

January 17: **Early Critical Race Theory: Questioning Authority, Objectivity, and the Efficacy of Rights**

Readings:

- Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).
- Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"* 44 STAN. L. REV. 1 (1991).
- Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

Note: Professor Gotanda will join us for class discussion.

For further reading:

- Bob Wing, [Harry Chang: A Seminal Theorist of Racial Justice](#), MONTHLY REV. (Jan. 2007).

January 24: **Challenging the Assumptions of Liberal Legalism and the Conventions of Legal Scholarship**

Readings:

- Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).
- Please take one of the Implicit Associations Tests at the link below:
 - <https://implicit.harvard.edu/implicit/demo/index.jsp>.
- Margaret E. Montoya, *Mascaras, Trenzas, Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994).
- Anthony Paul Farley, *Lacan & Voting Rights*, 13 Yale J. Law & Humanities 283 (2001).
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For further reading:

- *McCleskey v. Kemp*, 481 U.S. 279 (1987).
- Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997).
- Jerry Kang, *Implicit Bias and the Pushback from the Left*, 54 ST. LOUIS U. L.J. 1149 (2010).

January 31: Exploring the Construction of Whiteness

Readings:

- Cheryl I. Harris, Whiteness as Property, 106 HARV. L. REV. 1709 (1993).
- Ian F. Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 HARV. C.R.-C.L. L. REV. 1 (1994).
- John Tehranian, Compulsory Whiteness: Towards a Middle Eastern Legal Scholarship, 82 IND. L. J. 1 (2007).

Assignment:

- Submit a brief term paper proposal via TWEN.

For Further Reading:

- Deenesh Sohoni, Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities, 41 LAW & SOC'Y REV. 587 (2007).
- Juan F. Perea, Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. REV. 965 (1995).
- Sherally Munshi, *"You Will See My Family Became so American": Toward a Minor Comparativism*, 63 AM. J. COMP. L. 655 (2015) (available through Hein online).

February 7: Critical Race Feminism

Readings:

- Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990).
- Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 STAN. L. REV. 1241 (1991).
- Sahar F. Aziz, From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality, 9 HASTINGS RACE & POVERTY L.J. 194 (2012).

For Further Reading:

- Priscilla A. Ocen, Unshackling Intersectionality, 10 DU BOIS REV. 471 (2013).
- Robert S. Chang & Adrienne D. Davis, The Adventure(s) of Blackness in Western Culture: An Epistolary Exchange on Old and New Identity Wars, 39 U.C. DAVIS L. REV. 1189 (2005).

February 14: **Exploring the Meanings of Sexuality and Gender in Society and in Law**

Readings:

- Devon W. Carbado, Straight Out of the Closet, 15 BERKELEY WOMEN'S L.J. 76 (2000).
- Sonia Katyal, Exporting Identity, 14 YALE J.L. & FEMINISM 97 (2002).
- John M. Ohlie, Constructing the Trannie: Transgender People and the Law, 8 J. GENDER RACE & JUST. 237 (2004).
- DEAN SPADE, NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF THE LAW pp. 38-49, 73-93. (rev'd ed., Duke University Press, 2015).

For further reading:

- Angela P. Harris, From Stonewall to the Suburbs?: Toward a Political Economy of Sexuality, 14 WM. & MARY BILL OF RTS. J. 1539 (2005).
- Dean Spade, Documenting Gender, 59 HASTINGS L.J. 731 (2008).

February 21: **Empirical Research on the Construction of Race/Racial Knowledge**

- Ann Morning, Reconstructing Race in Science and Society: Biology Textbooks, 1952-2002, 114 AM. J. SOC. S106 (2008).
- Osagie K. Obasogie, Do Blind People See Race? Social, Legal, and Theoretical Considerations, 44 LAW & SOC'Y REV. 585 (2010).
- Anna Kirkland & Ben B. Hansen, How Do I Bring Diversity - Race and Class in the College Admissions Essay, 45 LAW & SOC'Y REV. 103 (2011).
- Robert W. Livingston & Nicholas A. Pearce, The Teddy Bear Effect: Does Having a Baby Face Benefit Chief Executive Officers, 20 PSYCHOL. SCI. 1229 (2009).

Assignment:

- Submit outline of term paper and working bibliography

For Further Reading:

- Laura E. Gómez, Understanding Law and Race as Mutually Constitutive: An Invitation to Explore an Emerging Field, 6 ANN. REV. LAW SOC. SCI. 487 (2010).

February 28: **Intersectionalities**

Readings:

- Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 DUKE L.J. 365 (1991).
- D. Wendy Greene, Categorically Black, White, or Wrong: 'Misperception Discrimination' and the State of Title VII Protection, 47 U. MICH. J. L. REFORM 87 (2013).
- Equal Employment Opportunity Commission v. Catastrophe Management Solutions, 2016 WL 7210059 (11th Cir. 2016).
- Peter Kwan, Intersections of Race, Ethnicity, Class, Gender & Sexual Orientation: Jeffrey Dahmer and the Cosynthesis of Categories, 48 HASTINGS L.J. 1257 (1997).
- One of the following:
 - Sharon Dolovich, Two Models of the Prison: Accidental Humanity and Hypermasculinity in the L.A. County Jail, 102 J. CRIM. L & CRIMINOLOGY 965 (2012).
 - Russell K. Robinson, Masculinity as Prison: Sexual Identity, Race, and Incarceration, 99 CALIF. L. REV. 1309 (2011).

Note: Professor Greene will join the class discussion.

For Further Reading:

- Devon W. Carbado, Colorblind Intersectionality, 38 Signs 811 (2013).
- Rachel Kahn Best et al., Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation, 45 LAW & SOC'Y REV. 991 (2011).
- Nancy Ehrenreich, Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems, 71 UMKC L. REV. 251 (2002).

March 7: **Mid-Semester Review Week: No Class**

March 14: Legal Constructions of Identity

Readings:

- Jo Carillo, Identity as Idiom: Mashpee Reconsidered, 28 *IND. L. REV.* 511 (1995).
- Adrienne Asch, Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity, 62 *OHIO ST. L.J.* 391 (2001).
- Elizabeth Loeb, Cutting It Off: Bodily Integrity, Identity Disorders, and the Sovereign Stakes of Corporeal Desire in U.S. Law, 36 *WOMEN'S STUD. Q.* 44 (2008). [available through the JSTOR database]

For Further Reading:

- Sarah Krakoff, Inextricably Political: Race, Membership, and Tribal Sovereignty, 87 *Wash. L. Rev.* 1041 (2012).
- Bethany Berger, Red: Racism and the American Indian, 56 *UCLA L. REV.* 591 (2009).

March 21: The Limits of Law's Protections

Readings:

- Mari J. Matsuda, Voices of America: Accent Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction, 100 *YALE. L.J.* 1329 (1991).
- Angela Onwuachi-Willig & Mario L. Barnes, By Any Other Name: On Being Regarded as Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White, 2005 *WIS. L. REV.* 1283 (2005).
- Anna Kirkland, Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement, 42 *LAW & SOC'Y REV.* 397 (2008).

Note: Professor Barnes will join us for the class discussion.

March 28: Law and Everyday Life

Readings:

- PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW* (1998), Chapters 1-3 (pp. 3-53).
- Kristin Bumiller, Victims in the Shadow of the Law: A Critique of the Model of Legal Protection, 12 *SIGNS* 421 (1987) (available through the library's JSTOR database).
- David M. Engel & Frank W. Munger, Rights, Remembrance, and the Reconciliation of Difference, 30 *LAW & SOC'Y REV.* 7 (1996).

For further reading:

- KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2005).

April 4: More Recent Writings on Current Issues and Movements

- ELLEN BERREY, *THE ENIGMA OF DIVERSITY: THE LANGUAGE OF RACE AND THE LIMITS OF RACIAL JUSTICE* (University of Chicago Press, 2015) (pp. 56-123; 257-277).
- Laura Nixon, *The Right to (Trans)Parent: A Reproductive Justice Approach to Reproductive Rights, Fertility, and Family-Building Issues Facing Transgender People*, 20 WM. & MARY J. WOMEN & L. 73 (2013).
- Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing*, pp. 66-73 in *color of violence: the incite!* Anthology (reprint ed., 2016), available at <https://www.cpt.org/files/Undoing%20Racism%20-%20Three%20Pillars%20-%20Smith.pdf>

April 11: Resisting Legal Constructions of Identity

Readings:

- Jerome McCristal Culp, Jr., *Seventh Aspect of Self-Hatred: Race, Latcrit, and Fighting the Status Quo*, 55 FLA. L. REV. 425 (2003).
- Devon W. Carbado and Donald Weise, *The Civil Rights Identity of Bayard Rustin*, 82 TEXAS L. REV. 1133 (2004).

In class: Excerpt from the film *BROTHER/OUTSIDER: THE LIFE OF BAYARD RUSTIN* (Bennett Singer and Nancy Kates, 2003).

For further listening: *Long Before Same-Sex Marriage, 'Adopted Son' Could Mean 'Life Partner'* (NPR StoryCorp OutLoud, June 28, 2015), <https://www.npr.org/2015/06/28/418187875/long-before-same-sex-marriage-adopted-son-could-mean-life-partner>.

April 18: **Student Paper Presentations**

May 7: Papers due to Professor Gustafson by 5:00 p.m. (via TWEN's Assignment Dropbox).

Books that may be of helpful in learning more about the literature and finding a research topic:

- DOROTHY A. BROWN, CRITICAL RACE THEORY: CASES, MATERIALS, AND PROBLEMS (2nd ed., 2007).
- KIMBERLÉ CRENSHAW, NEIL GOTANDA, GARY PELLER, & KENDALL THOMAS, EDS., CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1995).
- DAN DANIELSEN & KAREN ENGLE, EDS., AFTER IDENTITY: A READER IN LAW AND CULTURE (1995).
- RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2nd ed., 2012).
- RICHARD DELGADO & JEAN STEFANCIC, THE LATINO/A CONDITION: A CRITICAL READER (2nd ed., 2010).
- RICHARD DELGADO, ED., CRITICAL RACE THEORY: THE CUTTING EDGE (1995).
- RICHARD DELGADO & JEAN STEFANCIC, EDS., CRITICAL WHITE STUDIES: LOOKING BEHIND the Mirror (1997).
- IAN F. HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996).
- FRANCISCO VALDES, JEROME MCCRISTAL CULP, AND ANGELA P. HARRIS, EDS., CROSSROADS, DIRECTION AND A NEW CRITICAL RACE THEORY (2002).
- ADRIENNE KATHERINE WING, CRITICAL RACE FEMINISM: A READER (2nd ed., 2007).
- ADRIENNE KATHERINE WING, GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (2000).

LatCrit's web site and the ClassCrits web site include compilations of articles that have resulted from the annual meetings:

- www.latcrit.org
- <http://classcrits.wordpress.com/>