

RACE AND AMERICAN LAW
COURSE SYLLABUS (January 5 2022)

COURSE DESCRIPTION

An examination of race in American law using overlapping framings of **Identity** and **Race** applying **Critical Methodologies**. The first class begins with our own personal narratives. We will each present and then discuss our narratives using personal, racial and jurisprudential identities. The second class, will focus upon American race, centered around the Black-White racial paradigm using different Critical Legal Methodologies. The third class will examine the construction of racial categories, using Asian Americans as a case study. The last class will examine the multiple understandings of Critical Race theory, examining politics, religion, performance, and consumption through the multiple versions of Critical Race Theory. A research paper is required, due March 21, the day after Spring Break.

We have a small seminar, meeting intensively over four days. Since we will address identity in detail, please come prepared to discuss yourself. As described above, each class will be divided up into one session each morning and afternoon, for a total of eight sessions. Within each session, there is discussion of the personal and social along with critical analysis.

BEFORE FIRST CLASS:

PERSONAL NARRATIVES AND REFLECTIONS DUE SATURDAY January 8 - 7:00 PM. Write and submit by email (ngotanda@earthlink.net) a personal identity narrative (max 500 words) and a reflection (max 200 words) of how the narrative is or is not "racial". The narrative and analysis is due by 7:00 pm SATURDAY January 11. These narratives will be copied and posted on TWEN on Sunday for everyone to read before class. They will be shared and discussed in the first class.

The narrative may be on any identity of your choice – racial, ethnic, cultural, politics, education, legal, athletic, music, literature, hobby, or social media. The short analysis is a reflection on your identity and "racialization."

Here is a sample short narrative and reflection:

NARRATIVE: My name is Neil Gotanda. I am a Japanese American Buddhist, raised in the 1950s in Stockton in California's Central Valley. I am now Professor Emeritus at Western State after 27 years of law teaching. My main teaching subject was constitutional law and my research and writing areas were American race and law and Asian Americans and the law.

REFLECTION: I choose "Japanese American" rather than Asian American or "non-White" among possible comparative racial categorizations. I add "Buddhist," a religion category, to the traditional racial and ethnic descriptions. I am an "ethnic Buddhist" rather than a "convert Buddhist" on the racialized terrain of American religion. I would like to continue to teach and write on law, race and Asian Americans in my retirement.

READINGS:

Required text is Critical Race Theory: The Key Writings that Formed the Movement, ed. Crenshaw, Gotanda, Peller, and Thomas, The New Press 1995.

For the first class read:

The Foreword and Introduction to Critical Race Theory: Key Writings
Keith Aoki, Critical Legal Studies, Asian Americans in U.S. Law and Culture, Neil Gotanda and Me; 4 Asian Law Journal 19-39 (1997). Available on TWEN.

Neil Gotanda, New Directions in Asian American Jurisprudence, 17 Asian American Law Journal 5 (2010) pp. 11-14 [On Identity]. Available on TWEN.

There will be additional materials posted on TWEN.

5. CLASS SESSIONS – All distance-learning on ZOOM

We will meet over four days, January 10, 11 (no class Wednesday) and January 13, 14. Each class day will be in two sessions: 10:00 am-12:00 noon and 1:00 pm- 2:45pm. We will also take a short break during each session – around 11:00 am and 1:50 pm.

Office hours will be after each class session at 2:15pm-4:00pm and then by appointment.

6. COURSE REQUIREMENTS AND ASSESSMENTS

(5% pass-fail) Completion of First Narrative Essay and Reflection

(5% pass-fail) Completion of Second Reflection Paper and tentative paper topic with explanation

(5% pass-fail) Attendance, Completion of Reading Assignments and Class Participation

(15% graded) First draft of research paper

(70% graded) Research paper

7. Paper Requirements

This paper will satisfy the Western State Upper Level Writing Requirement. The quality and length of the paper will determine whether the paper meets the ULWR. Please begin consideration of a possible paper topic as soon as possible. The Second Assignment due Wednesday evening January 12, will include a reflection paper and a tentative paper topic with an explanation of the topic. The first draft of the paper (graded) will be due February 22, the day after the Presidents day Weekend. The final version of the paper will be due Monday, March 21, after Spring Break.

January 12 - Paper Topic Due

January 31 Detailed Outline and Bibliography Due

February 22 – First Draft Due

March 21 - Final Version Due

Some Possible Paper Topics:

Race in Popular Culture. That could include Music, Cinema, Literature, etc

Race in Sports. That could include any level of sports participation

Race in a legal topic: Race in Tax Law; Race in Contracts, Race in Torts

Race and personal life: family, church, hobbies.

Ethnic related topics: particular national cultures, national literatures, nationalism

Race and sexuality

Gender related racial questions

These are only suggestions; you have wide discretion to develop a paper topic.

Class I (Monday Jan 10) – Identity in Law: Personal, Racial, Jurisprudential

Class I: 10:00 – 12:00 noon Introduction and Narratives

A. Class Introduction

1. Course Requirements; TWEN; Assessment-Grading; Course Paper
2. Class Format – Readings, Lecture-Discussion; Group Discussions

B. Discuss Identity Narratives

1. Presentations of Individual Narrative and Reflection

Discussion Guidelines

1. Mutual Personal Respect
2. What is your identity subject position? (Where are you for your identity?)
4. Name some of your multiple personal identities? (Intersectionality)
5. Describe your personal versus social identities? (looking inward and outward)

C. Learning Objectives for Class I

1. Use of Narrative in Legal Analysis
1. Critique of “identity” – personal and social

-----BREAK-----

Class II – Critical Tools to Analyze Identity

A. Critical Analytic Techniques

1. Theorizing Social Identity

- a. Collective Identity – Social identities mutually constructed from “inside”
- b. Ascriptive Identity – Imposed Social Identities from “outside”
- c. Identification Projects – Individual and Collective Projects to Construct Identity

2. Multiple Identities: Intersectionality

3. Constitutional Legal Identities:

- a. Fourteenth Amendment: Race, Gender, Sexuality, Religion

B. Revisit our narratives using Critical Tools:

1. Personal Identity and Social Identity
2. Collective Identity; Ascriptive Identity and Identification Projects
3. Multiple Identities

C. Learning Objectives for Class II

1. Use Identity as Analytic Category
2. First Critical Analytic Technique: Collective, Ascriptive, Identification Projects
3. Second Critical Analytic Technique: Multiple Identities; Legal Constitutional Identities
4. Third Critical Analytic Technique: Personal Identity versus Social Identity

Readings for Class I and II

1. The Foreword and Introduction to Critical Race Theory: Key Writings
2. Keith Aoki, Critical Legal Studies, Asian Americans in U.S. Law and Culture, Neil Gotanda and Me. 4 Asian Law Journal 19–39 (1997) Available on TWEN
3. Neil Gotanda, New Directions in Asian American Jurisprudence, 17 Asian American Law Journal 5 (2010) pp. 11-14 [On Identity]. Available on TWEN.

Class III (Tuesday Jan 11) – What is Race?

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A. Racing Ourselves

1. Tell a personal narrative of “racing”: to you or by you
2. Lucy Salyer: “Race is not an objective biological fact but rather social and political constructions which establish hierarchies of power”
 - a. Biological Fact
 - b. Social and Political Construction
 - c. Hierarchies of Power
3. Examine Biological Fact, Social Construction and Power in your narratives
4. What are multiple identities? Multiple racial identities?
5. Comparative Racialization: What’s the difference in your personal racial narratives?

B. Race as verb – racing (personal) and racialization (social history)

1. Revisit “racing” as personal history
2. Racing as social history

Class IV – What is Race?

A. Theories of Race

1. Discuss Janz, Banton and Goldberg “definitions” of race

B. Comparative Racialization

1. Gotanda meaning of Racial Usages
2. Comparative Racialization
 - a. Gotanda Three-Factor Test: Racial Category; Color Race; Subordination
 - b. Gotanda “Four Theories of Race” as Quantitative Metrics for Racialization
 - d. Formal Race; Status Race; Historical Race; Culture Race

B. Learning Objectives

1. How to use racial “definitions” and racial usages
2. How to distinguish racial category and racial subordination
3. Distinguish multiple identities and multiple subordinations
4. Understanding the idea of comparative racialization instead of singular race
5. Learning a methodology for comparative racialization

Readings for Class III and IV

1. *What is Race?* Bruce Janz, Michael Banton and David Theo Goldberg (On TWEN)
2. Neil Gotanda on Multiple Meanings of Race in Constitutional Law from A Critique of “Our Constitution is Color-Blind” in *Critical Race Theory*, pp. 257-275
3. Neil Gotanda, on Comparative Racialization in *New Directions in Asian American Jurisprudence*, 17 *Asian American Law Journal* 5 (2010) pp. 47-53. Available on TWEN.

NO CLASS Wednesday January 12

ASSIGNMENTS DUE 7:00 PM WEDNESDAY EVENING JANUARY 12

1. Short Reflection Paper – (submit by email) . This is a short reflection on the class, maximum 500 words.
 2. Tentative Paper Topic: Title with one-paragraph description for in class discussion. These will be copied for discussion.
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Class V (Thursday January 13) – Constructing Race: Racialization, Performing and Consuming Race

A. Review Paper Topics

B. Constructing Race – Racialization As Social Process

1. Race as Reification
 - a. The Racial Category
 - b. Koosh Ball Sociology
2. Racial Genealogies
3. Comparative Racial Genealogies

C. The Black Racial Category

1. The Black-White Paradigm – the Black Racial Category
2. Genealogy of Black Racial Category
3. Race versus Ethnicity: Black Ethnicity; White Ethnicity
4. Black-White Paradigm as central to examination of race in the U.S.
5. Anti-Blackness

Class VI – Constructing Race: Other Racializations

A. Is It Racial? Measuring Racialization

1. The Black-White Paradigm as Qualitative Model

B. Constructing Race: Asian American Racial Category

1. Constructing the Asian American Racial Category – Racialization
2. People v. Hall – Racialization within the Black-White Paradigm
3. Chinese Exclusion – Racialization outside the Black-White Paradigm
4. Genealogy of Asian American Racial Category
5. Racialization – Power and multiple modes of subordination
6. Surrogates, Complements and Alternatives to “Asian American”
 - a. National/Ethnic
 - b. Diaspora
 - c. Language and accent
 - d. Sexuality – Female
 - e. Sexuality – Male
7. Racializing the Familiar
 - a. Religion – Buddhism; Hindu; Islam; Shinto
 - b. Culture – food, music, literature

C. Other Racializations

1. Latina/o/x
2. Middle Eastern North African West Asian

D. Other Modes of Subordination

1. Racial Performance – Content, Actor, Audience, Tropes
2. Racial Consumption – Race as Commodification and Consumption

Readings for Class VI

People v. Hall (Available on TWEN)

Gotanda , Beyond Anti-Discrimination, Racial Pleasures (Available on TWEN)

TBA

Readings for Class VII

Class VII (Friday Jan 14) – CRITICAL RACE THEORIES – TRADITIONAL AND ANTI-BLACKNESS

A Traditional Critical Race Theory through Four Theorizations

1. **Interest Convergence**

Derrick Bell, Brown v. Board of Education and the Interest Convergence Dilemma, in Critical Race Theory, pp. 20-29

2. **Unconscious Racism**

Charles Lawrence, The Id, the Ego and Equal Protection, in Critical Race Theory, pp. 235-257

3. **Colorblind**

Neil Gotanda, A Critique of Our Constitution is “Color-Blind” in Critical Race Theory pp. 257-275

4. **Intersectionality**

Kimberle Crenshaw, Mapping the Margins in Critical Race Theory, pp. 357-383

Class VIII – Anti-Blackness CRT

A. Anti-Blackness

1. #TruthBeTold Campaign

African American Policy Forum. at www.aapf.org/truthbetold

2. Interactive Map at #TruthBeTold

B. Anti-Blackness CRT

1. TBA

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify

and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker’s ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author’s ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients’ needs and goals, including a sensitivity to clients’ background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

Race and American Law

This Course in Race and American Law will include limited Doctrinal Knowledge in Constitutional law and Advocacy of Legal Argument. As indicated by the “Learning Objectives for each class session, students will achieve important levels of competency in cultural competency, legal analysis of situations involving possible racial conflict, communication, client sensitivity and legal ethics. The final research paper will provide students with competency in legal research and written communication.