

LAW AND SOCIETY: THE DISCOURSE OF RIGHTS IN AMERICA

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Course Description

"The Law" is a medium for socio-political contestations of all sorts. Legal systems often serve as virtual battlegrounds, used by people and groups with differing agendas to promote and legally institutionalize their visions and aspirations for the social order. Thus, the study of "law" goes hand-in-hand with the study of "society." The primary objectives of this course are to explore the interrelated nature of these two spheres, and to critically and comparatively assess the relationship between social and legal changes in the United States, particularly in the last 50 years. Our focus will be on the discourse of rights. We will consider the history and legacy of identity-based rights, and the various debates over the contemporary significance of difference. We will be concentrating particularly on the rights of African-Americans, women and homosexuals, and assessing how struggles over the rights of these sectors of US society have been articulated in government policies, litigation strategies and judicial decisions, as well as in the social and cultural spheres.

Requirements

3 short papers (3-4 pages each) reacting to the readings for a given week. These are not summaries of the contents of the literature but rather analytical reactions to the readings. Each reaction paper is worth 10 percent of the final grade.

Students are expected to do all the readings and participate actively in discussions. Thursday classes will be devoted to discussing the readings. Class participation is worth 20 percent of the final grade.

The end of the semester will be devoted to adversarial presentations covering hypothetical cases relevant to some dimension of identity-based rights. The class will be divided into two groups, each presenting a different case. Among each group, two students will serve as judges, and the others will serve as advocates representing either side or expert witnesses testifying for one side and subject to cross-examination by the other. The other half of the class will serve as a jury. One class session will be devoted to the presentation of the case, the next will convene as a court-in-conference where the jury will decide the verdict. Following the presentations, each student will write a short paper describing his/her contributions to the presentations. The combined value of these assignments is 25 percent of the final grade.

The final assignment is a 10 page analytical essay (as distinguished from a "research paper"). The subject matter must pertain to some aspect of identity-based rights. The essay should draw upon the semester's readings and the theoretical and substantive discussions in class as relevant to the topic chosen, and should incorporate students' personal views on the issues. This paper is worth 25 percent of the final grade.

Course Reading

Assigned Books (in whole or part) as abbreviated in syllabus [Note: all readings are on reserve]

- 1) Hunt: Alan Hunt, *Explorations in Law and Society*
- 2) Kairys: David Kairys, ed., *The Politics of Law*
- 3) CRT: Kimberle Crenshaw et al., eds., *Critical Race Theory*
- 4) Bell: Derrick Bell, *And We Are Not Saved*
- 5) Williams: Patricia Williams, *The Alchemy of Race and Rights*

- 6) Carter: Stephen Carter, *Reflections of an Affirmative Action Baby*
- 7) Guinier: Lani Guinier, *The Tyranny of the Majority*
- 8) Bumiller: Kristen Bumiller, *The Civil Rights Society*
- 9) Matsuda et al.: Mari Matsuda et al., eds., *Words that Wound*
- 10) MacKinnon: Catherine MacKinnon, *Only Words*
- 11) Weisberg: Kelly Weisberg, ed., *Feminist Legal Theory: Foundations*
- 12) Nava and Dawidoff: Michael Nava and Robert Dawidoff, *Created Equal: Why Gay Rights Matter to America*

Course Schedule

9/3 Introduction

9/5 Alan Hunt, *Explorations in Law and Society*, chaps.6,7, 10
 Mark Tushnet, "The Politics of Constitutional Law," in Kairys

9/10-12 Hunt, chaps. 12, 13

Sally Engle Merry, "Resistance and the Cultural Power of Law," *Law and Society Review* 29/1 (1995) [in reserve binder]

Kimberle Crenshaw, "A Black Feminist Critique of Anti-Discrimination Law and Politics," in Kairys

Lisa Duggan, "Queering the State," *Social Text*, no.39 (Summer 1994)[in reserve binder]

9/17-19 Alan Freeman, "Legitimizing Racial Discrimination through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine," in CRT

Neil Gotanda, "A Critique of Our Constitution Is Colorblind," in CRT

Cheryl Harris, "Whiteness as Property," in CRT

Michael Kinsley, "The Spoils of Victimhood: The Case against the Case against Affirmative Action," *New Yorker*, March 27, 1995 [in reserve binder]

9/24-26 Gary Peller, "Race Consciousness," in CRT

Mari Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations," in CRT

Kimberle Crenshaw, "Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law," in CRT

10/1-3 Derrick Bell, *And We Are Not Saved*, chaps.5, 6,7, 10

Patricia Williams, *The Alchemy of Race and Rights*, chaps.1,2,3,8,9,12

10/8-10 Stephen Carter, *Reflections of an Affirmative Action Baby*, Part II

Lani Guinier, *The Tyranny of the Majority*, chaps.1,2 and 5

10/22-24 Mari Matsuda et al, *Words that Wound*, chaps. 2,3,5

Catherine MacKinnon, *Only Words*

10/29-31 Kristin Bumiller *The Civil Rights Society*

Nadine Taub and Elizabeth Schneider, "Women's Subordination and the Role of Law," in Kairys

11/5-7 Robin West, "Jurisprudence and Gender," in Weisberg

Wendy Williams, "Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate," in Weisberg

Lucinda Finley, "Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate," in Weisberg

Martha Minow, "Feminist Reason: Getting It and Losing It," in Weisberg

Angela Harris, "Race and Essentialism in Feminist Legal Theory," in Weisberg

Patricia Cain, "Feminist Jurisprudence: Grounding the Theories," in Weisberg

11/12-14 Michael Nava and Robert Dawidoff, *Created Equal: Why Gay Rights Matter to America*
Janet Halley, "The Construction of Heterosexuality," in Michael Warner, ed., *Fear of a Queer Planet* [in
reserve binder]
Rhonda Copelon, "A Crime Not Fit To Be Named: Sex, Lies and the Constitution," in Kairys

11/19-21 No class--students will be rehearsing for their presentations

11/26 First group presentation

12/3 First group decision rendered

12/5 Second group presentation

12/10 Second group decision rendered