

Critical Race Theory

Fall 2008

Prof. Emily Houh

Course Information

Office Hours & Contact Information

Class time & place: Tuesdays, 9-11:45am, Room 306

Office hours: Wednesdays, 10am-noon and/or by appointment

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Course Description

In the mid-1980s, a new scholarly movement developed in legal academe, Critical Race Theory (“CRT”). Early advocates of CRT—including Derrick Bell, Mari Matsuda, Charles Lawrence, Richard Delgado, Kimberlé Crenshaw, and Patricia Williams—challenged both the substance and style of conventional legal scholarship. Substantively, race critics rejected formal equality, individual rights, and color-blind approaches to solving legal problems. Stylistically, critical race scholars often employed new methodologies for legal scholarship, including storytelling and post-modern and post-structural analysis. The goal of this three-credit seminar is to examine the genesis of CRT and, in light of its theoretical commitments, to explore CRT’s possibilities and limitations. Such an exploration will require us to think carefully not only about race and racism, but also about sexism, classism, and heterosexism. Thus, some of the readings will be drawn from Critical Legal Studies, Feminist Jurisprudence, and Queer or Sex Criticism. Hopefully, the seminar will provide an opportunity for us to challenge—critically and collegially—our most basic assumptions about race, law, and racial justice.

Shortened Class Schedule

Please note that class sessions for this seminar are scheduled to end on **Tuesday, November 4, 2008**, as I am due to deliver a baby at the end of that week. In an attempt to cover as much material as possible before class sessions end, I have assigned quite a heavy load of weekly reading. Additionally, you should note that all of my individual meetings with you about your papers (see below) will have to occur before November 4, so you will want to start thinking about a paper topic as early as possible. On the up side, because class sessions will end on November 4, you will have the remaining weeks of the semester to work on your papers. After November 4, I will be available on a limited basis via email and phone (and perhaps even occasionally in my office) to discuss your papers with you. We will discuss further details of the above in class.

Format

The method of instruction will consist of theoretical extrapolation, class discussion of the reading/topic for each class, and case-oriented inquiry. You and a partner will be required, once during the semester, to facilitate discussion for one hour and 45 minutes. You can pair with whomever you’d like and will sign up for a topic/session during the second class session on September 2. Finally, I will work, quite intensively, with you individually on your research papers (see below).

Requirements

Grade: The grade in this seminar will be based on:

- (1) a **25-30-page** (*excluding* foot- or endnotes) **research paper** on a topic of your choosing (**65%**), tentatively due on **Friday, December 5, 2008**;
- (2) your submission of a **reflection paper** for each class session (excluding the session that you will facilitate) (**15%**);
- (3) your **facilitation**, with a partner, of a portion (1 hour and 45 minutes) of a class session during the semester (**10%**); and
- (4) your meaningful **participation** in class discussions (**10%**).

I will discuss in further detail each of these requirements during our first class meeting.

Required Texts

- RACE LAW STORIES (Rachel F. Moran & Devon W. Carbado eds., 2008). Publisher: Foundation Press. ISBN: 978-1-59941-001-2.
Please note that I will be assigning only portions of RACE LAW STORIES in this seminar. The readings in this text, however, may be useful in some of your other courses as supplemental reading (especially in classes where race is not explicitly discussed, but is certainly part of the subtext of the material).
- The remainder (and bulk) of the assigned readings are **law review articles** (see separate syllabus). In an effort to preserve administrative resources and unless otherwise instructed, you are required to download the readings from Westlaw, Lexis, or HeinOnline on your own. Please remember to bring copies of those articles to class with you on the days they are assigned for discussion. I will provide in advance copies of any of the assigned readings not available online. Additionally, if printing off these readings puts you over your printing “quota,” let me know.

Reading List

For your convenience, I have put together a CRT reading list, which appears below. It is **not** a comprehensive CRT reading list. Rather, it is a compilation of all of the articles I have assigned for this course since I began teaching it here at UC, plus some articles that I really like and others that I want to read. Most of our readings for the semester will come from the articles listed below, though you will be assigned only a small portion of them. I provide this list primarily to give you an idea of the breadth of topics included in the field of CRT. Additionally, your perusal of the list may help you in thinking about your paper topic.

Articles, Essays, Comments, and Reviews

Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259 (2004).

Muneer I. Ahmad, *Interpreting Communities: Lawyering across Language Difference*, 54 UCLA L. REV. 999 (2007).

Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539.

Regina Austin, *Step on a Crack, Break Your Mother's Back: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing*, 14 YALE J. L. & FEMINISM 273 (2002).

Mario L. Barnes, *But Some of [Them] Are Brave: Identity Performance, the Military, and the Dangers of an Integration Success Story*, 14 DUKE J. GENDER L. & POL'Y 693 (2007).

Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

Derrick A. Bell, Jr., *Racial Realism*, 24 CONN. L. REV. 363 (1992).

Christopher A. Bracey, *The Cul de Sac of Race Preference Discourse*, 79 S. CAL. L. REV. 1231 (2006).

Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995).

Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004).

Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L. J. 365.

John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992).

John O. Calmore, *Racialized Space and the Culture of Segregation: Hewing a Stone of Hope from a Mountain of Despair*, 143 U. PA. L. REV. 1233 (1995).

Devon Carbado, *Straight Out of the Closet*, 15 BERKELEY WOMEN'S L.J. 76 (2000).

Devon Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. REV. 1467 (2000).

Devon Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000).

Devon Carbado & Mitu Gulati, *Conversations at Work*, 79 OR. L. REV. 103 (2000).

Devon Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701 (2001).

Devon Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645 (2004).

Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177 (1997).

Sumi K. Cho, *Redeeming Whiteness in the Shadow of Internment: Earl Warren, Brown, and a Theory of Racial Redemption*, 40 B.C. L. REV. 73 (1998).

Sumi K. Cho, *From Massive Resistance, to Passive Resistance, to Righteous Resistance: Understanding the Culture Wars from Brown to Grutter*, 7 U. PA. J. CONST. L. 809 (2005).

Sumi K. Cho, "Unwise," "Untimely," and "Extreme": *Redefining Collegial Culture in the Workplace and Revaluating the Role of Social Change*, 39 U.C. DAVIS L. REV. 805 (2006).

Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985 (1990).

Frank Rudy Cooper, *Cultural Context Matters: Terry's Seesaw Effect*, 56 OKLA. L. REV. 833 (2003).

Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006).

Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986).

Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-discrimination Law*, 101 HARV. L. REV. 1331 (1988).

Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

- Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.
- Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L. J. 39.
- Jerome McCristal Culp, Jr., *The Michael Jackson Pill: Equality, Race, and Culture*, 92 MICH. L. REV. 2613 (1994).
- Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637 (1999).
- Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. REV. 435 (1987).
- Richard Delgado, *The Imperial Scholar: Reflections On a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).
- Anthony Paul Farley, *Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).
- Anthony Paul Farley, *Lacan & Voting Rights*, 13 YALE J.L. & HUMAN. 283 (2001).
- Barbara J. Flagg, “*Was Blind, But Now I see*”: *White Race Consciousness and the Requirement of Discriminatory Intent*,” 91 MICH. L. REV. 953 (1993).
- Alan David Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Decisions*, 62 MINN. L. REV. 1049 (1978).
- Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STAN. L. REV. 1 (1991).
- Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000).
- Linda Greene, *Race in the Twenty-First Century: Equality through Law?*, 64 TUL. L. REV. 1515 (1990).
- Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor’s New Clothes*, in KEY WRITINGS 205-34.
- Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).
- Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CAL. L. REV. 1923 (2000).
- Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).
- Cheryl I. Harris, *Equal Treatment and the Reproduction of Inequality*, 69 FORDHAM L. REV. 1753 (2001).

Emily M.S. Houh, *Critical Interventions: Toward an Expansive Equality Approach to the Doctrine of Good Faith in Contract Law*, 88 CORNELL L. REV. 1025 (2003).

Emily M.S. Houh, *Critical Race Realism: Re-claiming the Antidiscrimination Principle through the Doctrine of Good Faith in Contract Law*, 66 U. PITT. L. REV. 455 (2005).

Emily M.S. Houh, *Toward Praxis*, 39 U.C. DAVIS L. REV. 905 (2006).

Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997).

Kevin R. Johnson & George A. Martinez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000).

Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005).

Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUCATION 591 (1982).

Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705.

Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

Charles R. Lawrence, III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L. J. 431.

Charles R. Lawrence, III, *Two View of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001).

R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803 (2004).

Goodwin Liu, *The Causation Fallacy: Bakke and the Basic Arithmetic of Selective Admissions*, 100 MICH. L. REV. 1045 (2002).

Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330 (2006).

Goodwin Liu, *Seattle and Louisville*, 95 CAL. L. REV. 277 (2007).

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).

- Ian F. Haney Lopez, *A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985 (2007).
- Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).
- Mari J. Matsuda, *Planet Asian America*, 8 ASIAN L.J. 169 (2001).
- Margaret E. Montoya, *Mascaras, Trenzas, Y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L. J. 185 (1994).
- Margaret E. Montoya, *Law and Language(s): Image, Integration and Innovation*, 7 LA RAZA L.J. 147 (1994).
- Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas*, 26 N.M. L. REV. 1 (1996).
- Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647 (2005).
- Angela Onwuachi-Willig & Mario 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.
- Nancy K. Ota, *Flying Buttresses*, 49 DEPAUL L. REV. 693 (2000).
- Gary Peller, *Race-Consciousness*, 1990 DUKE L. J. 758.
- Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).
- Dorothy E. Roberts, *The Priority Paradigm: Private Choices and the Limits of Equality*, 57 U. PITT. L. REV. 363 (1996).
- Dorothy E. Roberts, *Who May Give Birth to Citizens—Reproduction, Eugenics and Immigration*, 1 RUTGERS RACE & L. REV. 129 (1998).
- Daria Roithmayr, *Locked in Inequality: The Persistence of Discrimination*, 9 MICH. J. RACE & L. 31 (2003).
- Daria Roithmayr, *Locked In Segregation*, 12 VA. J. SOC. POL'Y & L. 197 (2004).
- Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261 (1997).
- Natsu Taylor Saito, *Asserting Plenary Power over the "Other": Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 20 YALE L. & POL'Y REV. 427 (2002).

- Natsu Taylor Saito, *For “Our” Security: Who is an “American” and What is Protected by Enhanced Law Enforcement and Intelligence Powers?*, 2 SEATTLE J. FOR SOC. JUST. 23 (2003).
- Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998).
- Julie A. Su, *Progressive Critique of the Current Socio-Legal Landscape: Corporations and Economic Justice*, 4 SEATTLE J. SOC. JUST. 237 (2005).
- Gerald Torres & Kathryn Milun, *Translating “Yonnonidio” by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L. J. 625.
- Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL’Y 245 (2005).
- Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & (and) Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995).
- Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & (and) Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996).
- Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of Sexual Orientation*, 48 HASTINGS L.J. 1293 (1997).
- Leti Volpp, *Feminism versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001).
- Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).
- Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429 (1998).
- Patricia J. Williams, *Metro Broadcasting, Inc. v. FCC: Regrouping in Singular Times*, 104 HARV. L. REV. 525 (1990).
- Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).
- Verna L. Williams, *Reform or Retrenchment - Single-Sex Education and the Construction of Race and Gender*, 2004 WIS. L. REV. 15.
- Verna L. Williams, *Reading, Writing, and Reparations: Systemic Reform of Public Schools as a Matter of Justice*, 11 MICH. J. RACE & L. 419 (2006).
- Verna L. Williams, *Private Choices, Public Consequences: Public Education Reform and Feminist Legal Theory*, 12 WM. & MARY J. WOMEN & L. 563 (2006).
- Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477 (1998).

Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of Don't Ask, Don't Tell*, 108 YALE L.J. 485 (1998).

Kenji Yoshino, *Covering*, 111 YALE L.J. 769 (2002).

BOOKS and REPORTS

DERRICK A. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

DERRICK A. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

BROWN UNIVERSITY STEERING COMMITTEE ON SLAVERY AND JUSTICE: REPORT (2006) – can be found at: http://www.brown.edu/Research/Slavery_Justice/report/.

IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (Mari J. Matsuda, Charles R. Lawrence III, and Richard Delgado eds. 1993).

PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* (1995).

CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003).

ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (1999).

RACE, RIGHTS, AND REPARATIONS: LAW AND THE JAPANESE AMERICAN INTERNMENT (Eric K. Yamamoto et al. eds., 2001).

KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2007).