

**ETHN 152: Law and Civil Rights**  
**Spring Quarter, 2014**  
**M., W., F., 4:00-4:50pm, CSB 005**

**Instructor:** José I. Fusté, Ph.D.

**Office Hours:** Wed. & Fri., 1:30-2:30pm at Perk's Coffee (inside the Price Center Bookstore), or by appointment

**Email:** jfuste@ucsd.edu



This course examines the ways in which the law has historically structured hierarchies of political, economic, and social power in the United States. Beginning with an in-depth discussion of the nature and definition of civil rights, we will analyze the roles and limits of the U.S. state in guaranteeing and unevenly distributing rights to its citizens in key legal documents such as the Declaration of Independence and Bill of Rights. Through the close analysis of specific legal cases covering a wide-range of issues including slavery, settler colonialism, U.S. expansionism and imperialism, Jim Crow segregation and post-1954 judicial desegregation, affirmative action, immigration restriction, racial profiling and racially disparate criminal sentencing, and the curtailment of civil rights after September 11, we will discuss the ways in which the law has institutionalized differently racialized and gendered legal subjects. In so doing, we will reflect upon whether and to what extent the U.S. state has fallen short of protecting the rights to “life, liberty, and the pursuit of happiness” for all, both in the historical context and in the contemporary context of “color-blind constitutionalism.”

**Required Readings**

All readings for this class will be available for download via our course's blackboard website which can be accessed at <http://ted.ucsd.edu>.

**\*\*\*NOTE:** *Readings and assignments are subject to change. This syllabus is not a contract, so make sure you stay up to date on any possible changes to the readings or the schedules. If I do make changes, I will mention it in class and I will send you an email notifying you of these changes.*

### **Projects, Assessment, and Grade Distribution**

Participation and attendance	10% e/a = 20%
2pp. Reading Responses (5)	5% e/a = 25%
Take Home Midterm	25%
8-10 pp. Final Paper	30%

### **Attendance and Participation**

I expect you to attend all class meetings and participate actively. I will take points off for every absence (I only make exceptions if you bring me a valid medical or written excuse). I will also take points off if you don't participate in class and show me that you're keeping up to date with the reading and the discussion. If you are a shy person and do not feel as comfortable as others speaking in class, please try to make up for this by stopping by my office hours for a chat, which also counts toward participation or by emailing me your questions or observations about the readings or lectures.

### **2pp. Reading Responses (5 of them)**

You will have to complete five 2pp. long "reading responses" over the course of the quarter. These will consist of reflections relating the readings of that week to the topics covered in class and in the rest of the syllabus. These will be graded on a 5 point system: a 5 being an A, a 4 being a B, a 3 being a C, a 2 being a D and an 1 being an F. The due dates for these are as follows:

Reading Response #1	due Friday, April 18 (session 3c)
Reading Response #2	due Friday, April 25 (session 4c)
Reading Response #3	due Friday, May 16 (session 7c)
Reading Response #4	due Friday, May 23 (session 8c)
Reading Response #5	due Friday, May 30 (session 9c)

### **Midterm**

You will receive a take home midterm consisting of various essay questions based on the readings and topics covered in the first half of the quarter. I will give you more details about what it will look like two weeks before it's due.

**The Midterm will be due in Turnitin.com  
(via the TED Blackboard) on Sunday, May 4<sup>th</sup> at 11:59pm**

## 8-10pp. Final Paper

Instead of a final exam, you will have to submit a final paper by **June 12, 6:00pm (our designated final exam time)**. **As with previous assignments, you will upload a copy of your final paper to Turnitin.com via the TED Blackboard.** I will give you various prompts for this, or you can choose to write about your own original topic, as long as you clear it with me at least two weeks before the paper is due.

## Late Work Policy

All papers will be uploaded to Turnitin.com via our course's blackboard website (i.e., ted.ucsd.edu). Late submission of assignments will be accepted only in verifiable emergencies, and only by arrangement with me prior to 2:00 p.m. on the due date. Assignments turned in late without prior approval **will be graded down 7 points** for each 24-hour period past the due date **(no exceptions)**.

## Academic Dishonesty

Scholastic dishonesty is any act by a student that misrepresents the student's own academic work or that compromises the academic work of another. Examples include cheating on assignments or exams, unauthorized collaboration on assignments or exams, sabotaging another student's work and plagiarizing. Plagiarism is presenting someone else's work as your own, intentionally or not, by failing to put quotation marks around passages taken from a text or failing to properly cite quoted material. Any act of academic dishonesty may result in one's failing the course.

## My Email Policy

Please email me with questions and/or concerns about the course. I will respond within the next 24 hours. If you have an important personal question such as inquiring about a grade or class discussion, please visit me during office hours or schedule an appointment with me.

## A Note About Reading Volume

Research indicates that the average U.S. college student reads about 20 pages per hour. As you will notice below, I've assigned about 80-100 pages of reading per week (i.e., 4-5 hours of reading per week). Please make sure that you stay on top of the readings.

### Majoring or Minor in Ethnic Studies at UC San Diego

Many students take an Ethnic Studies course because the topic is of great interest or because of a need to fulfill a social science, non-contiguous, or other college requirement. Often students have taken three or four classes out of "interest" yet have no information about the major or minor and don't realize how close they are to a major, a minor, or even a double major. An Ethnic Studies major is excellent preparation for a career in law, public policy, government and politics, journalism, education, public health, social work, international relations, and many other careers. If you would like information about the Ethnic Studies major or minor at UCSD, please contact Daisy Rodríguez, our Ethnic Studies Undergraduate Advisor, at 858-534-3277 or [d1rodriguez@ucsd.edu](mailto:d1rodriguez@ucsd.edu).



## Weekly Schedule

\*\*\*Remember, all these readings will be posted as PDF files on our blackboard homepage\*\*\*

### **I. Introduction to the Critical Study of Race and the Law**

#### **Session 1A, Monday, Mar. 31 (11pp. of reading, approx. .5hr)**

Harris, Angela P. "Critical Race Theory." *The Selected Works of Angela P. Harris* (11pp.)

#### **Session 1B, Wednesday, Apr. 2 (40pp. of reading, or approx. 2 hours):**

Delgado, Richard, and Jean Stefancic (2012). "Chapter 2: Hallmark Critical Race Theory Themes." In *Critical Race Theory: An Introduction*. 19-42 (23pp.), "Chapter 4: Looking Inward." In *Critical Race Theory: An Introduction*. 57-74 (17 pp.)

#### **Session 1C, Friday, Apr. 4 (65pp. of reading, or approx. 3 hours):**

Delgado; Stefancic (2012). "Chapter 5: Power and the Shape of Knowledge." In *Critical Race Theory: An Introduction*. 75-98 (23pp.), "Chapter 6: Critiques and Responses to Criticism." In *Critical Race Theory: An Introduction*. 99-112 (13pp.), "Chapter 7: Critical Race Theory Today." In *Critical Race Theory: An Introduction*. 113-42 (29pp.)

### **II. Intersectionality and the Law**

#### **Session 2A, Monday, Apr. 7 (58 pp. of reading, or approx. 3 hours):**

Crenshaw, Kimberle (1991). "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review* 43, no. 6: 1241-99 (58 pp).

### **III. The Legal Underpinnings of a White Privileging Society**

#### **Session 2B, Wednesday, Apr. 9 (16pp. of reading, or approx. 1 hour):**

Harris, Cheryl I (1996). "Whiteness as Property." In *Critical Race Theory: The Key Writings That Formed the Movement*, edited by Kimberlé Crenshaw. 276-92 (16pp.)

#### **Session 2C, Friday, Apr. 11 (23pp. of reading, or approx. 1 hour):**

George Lipsitz (2006), "Law and Order: Civil Rights Laws and White Privilege," in *The Possessive Investment in Whiteness*. 24-47 (23pp.)

#### **Legal Primary Sources (optional reading that you can use in your papers):**

- Declaration of Independence
- U.S. Constitution and Original Bill of Rights

#### **IV. Life, Liberty and the Pursuit of Happiness (Property): Slavery and Citizenship**

##### **Session 3A, Monday, Apr. 14 (38pp. of reading, or approx. 2 hours):**

Pinder, Sherrow O. (2012). "Introduction" and "Chapter 1: The Emergence of Whiteness in the United States" In *Whiteness and Racialized Groups in the United States: The Politics of Remembering*. ix-xx, and 1-22 (32pp.)

##### **Session 3B, Wednesday, Apr. 16 (60pp. of reading, or approx. 3 hours):**

Bell, Derrick. "Chapter 2: American Racism and the Use of History." In *Race, Racism, and American Law*. 21-80, 2000. 21-80 (59pp.)

##### **Session 3C, Friday, Apr. 18**

**WATCH: "Slavery by Another Name" (PBS TV Movie, 2012, 90 mins) – I will provide a link that will allow you to stream the movie from your computer**

##### **Legal Primary Sources (optional reading that you can use in your papers):**

- Dred Scott v. Sanford (1857)
- 13-15<sup>th</sup> Amendments

#### **V. Institutionalizing the Settler Colony: Obliteration and Exclusion**

##### **Session 4A, Monday, Apr. 21 (18pp. of reading, or approx. 1 hour):**

Derrick Bell (2000). "Chapter 3: American Racism and the Use of History (excerpt)," in *Race, Racism, and American Law*. 81-99 (18pp.)

##### **Session 4B, Wednesday, Apr. 23 (37pp. of reading, or approx. 2 hour):**

Williams, Robert A. (2005). "Chapter 3: 'The Savage as the Wolf': The Founders' Language of Indian Savagery." and "Chapter 4: Indian Rights and the Marshall Court." In *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*. 33-70 (37pp.)

##### **Legal Primary Sources (optional reading that you can use in your papers):**

- Johnson v. McIntosh (1823)
- Cherokee Nation v. Georgia (1831)
- Worcester v. Georgia (1832)

#### **VI. Turning Colonial Territories into Empire: the Making of Imperial Legal Subjects**

##### **Session 4C, Friday, Apr. 25 (34pp. of reading, or approx. 2 hours):**

Luna, Guadalupe T. (1998). "On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott V. Sandford." *U. of Miami Law Review* 53: 691-716 (25pp.).

Burnett, Christina Duffy (2009). "Empire and the Transformation of Citizenship." In *Colonial Crucible: Empire in the Making of the Modern American State*, edited by Alfred W. McCoy and Francisco Antonio Scarano. 332-41 (9pp).

**Legal Primary Sources (optional reading that you can use in your papers):**

- Gonzalez v. Williams (1904)
- Balzac v. Porto Rico (1922)

**VII. The Making and Attempted Dismantling of Jim Crow America**

**Session 5A, Monday, Apr. 28 (52pp. of reading, or approx. 2.5 hours):**

Klarman, Michael J. (2004). "Chapter 1: The Plessy Era." In *From Jim Crow to Civil Rights : The Supreme Court and the Struggle for Racial Equality*. 8-60 (52pp.)

**Session 5B, Wednesday, Apr. 30 (53 pp. of reading, or approx. 2.5 hours):**

Klarman, Michael J. (2004). "Chapter 6: School Desegregation." In *From Jim Crow to Civil Rights : The Supreme Court and the Struggle for Racial Equality*. 290-343 (53pp.)

**Session 5C, Friday, May 2**

**WATCH: "Episode 8: Two Societies" (60 mins) , and "Episode 13: The Keys to the Kingdom (60 mins) of "Eyes on the Prize" (PBS TV Series, 1990)-- I will provide a link that will allow you to stream both episodes from your computer**

**Legal Primary Sources (optional reading that you can use in your papers):**

- Plessy v. Ferguson (1896)
- Brown v. Board of Education (1954)

**VIII. Antidiscrimination Doctrine, Affirmative Action, and "Color Blind" Constitutionalism**

**Session 6A, Monday, May 5 (18pp. of reading, or approx. 1 hours):**

Gotanda, Neil (1995). "A Critique of "Our Constitution Is Color-Blind" ". In *Critical Race Theory: The Key Writings That Formed the Movement*, edited by Kimberlé Crenshaw. 257-75 (18pp.)

**Session 6B, Wednesday, May 7 (16pp. of reading, or approx. 1 hour):**

Freeman, David Alan (1995). "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine." In *Critical Race Theory: The Key Writings That Formed the Movement*, edited by Kimberlé Crenshaw. 29-45 (16pp.)

**Session 6C, Friday, May 9 (23 pp. of reading, or approx. 1 hour):**

Crenshaw, K. (1995). "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law." In *Critical Race Theory: The Key Writings That Formed the Movement*, edited by Kimberlé Crenshaw. 103-26 (23pp.)

**Legal Primary Sources (optional reading that you can use in your papers):**

- Title VII of the Civil Rights Act of 1964

- Regents of the University of California v Bakke (1978)
- Grutter v Bollinger (2003)
- Gratz v Bollinger (2003)

## **IX. Race and the Criminal Justice System**

### **Session 7A, Monday, May 12**

**WATCH: "The House I Live In" (2012, 108 mins) – I will provide a link that will allow you to stream the movie from your computer**

### **Session 7B, Wednesday, May 14 (41pp. of reading, or approx. 2 hours):**

Alexander, Michelle (2011). "The New Jim Crow." *Ohio St. J. Crim. L.* 9: 7-26 (19pp.)  
 Johnson, Kevin R (2003). "The Case for African American and Latina/O Cooperation in Challenging Race Profiling in Law Enforcement." *Fla. L. Rev.* 55: 341-63 (22pp.)

### **Session 7C, Friday, May 16 (24 pp. of reading, or approx. 1 hour):**

Roberts, Dorothy E. (2007). "Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework." *Colum. Hum. Rts. L. Rev.* 39: 261-85 (24pp.)

## **X. Immigration Control**

### **Session 8A, Monday, May 19 (14pp. of reading, or approx. 1 hour):**

Romero, Mary (2008). "Crossing the Immigration and Race Border: A Critical Race Theory Approach to Immigration Studies." *Contemporary Justice Review* 11, no. 1: 23-37 (14pp)

### **Session 8B, Wednesday, May 21 (26pp. of reading, or approx. 1.5 hours):**

Garcia, Ruben J. (2003). "Across the Borders: Immigrant Status and Identity in Law and Latcrit Theory." *Fla. L. Rev* 55 (1995): 511-37 (26pp.)

### **Session 8C, Friday, May 23 (30pp. of reading, or approx. 1.5 hours):**

Garcia, Ruben J. (1995). "Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law." *Chicano-Latino Law Review* 17 (1995): 118-48 (30pp.)

## **XI. The War on Terror**

### **Session 9A, Monday, May 26 - Memorial Day Holiday - No Class (16pp. of reading, or approx. 1 hour):**

Jamal, Amaney A (2008). "Civil Liberties and the Otherization of Arab and Muslim Americans." In *Race and Arab Americans before and after 9/11 : From Invisible Citizens to Visible Subjects*, edited by Amaney A. Jamal and Nadine Christine Naber. 114-30 (16pp.)

### **Session 9B, Wednesday, May 28 (51 pp. of reading, or approx. 3 hours):**

Cole, David (2001). "Enemy Aliens." *Stan. L. Rev.* 54: 953-1004 (51pp.)

**Session 9C, Friday, May 30 (27p. of reading, or approx. 1.5 hours):**

Kaplan, Amy (2005). "Where Is Guantanamo?" *American Quarterly* 57, no. 3: 831-58 (27pp.)

**Legal Primary Sources (optional reading that you can use in your papers):**

- Rasul v. Rumsfeld (2004)
- Hamdi v. Rumsfeld (2004)
- Rasul v. Bush (2004)
- Rumsfeld v. Padilla (2004)
- Hamdam v. Rumsfeld (2006)

**XII. Impossibility of Inclusion? Racial Realism v. Liberal Idealism**

**Session 10A, Monday, Jun. 2 (31 pp. of reading, or approx. 1.5 hours):**

Brooks, Roy L (2009). "Chapter 5: Critical Race Theory." In *Racial Justice in the Age of Obama*. 89-108 (19pp.)

Bell, Derrick A. (1995). "Racial Realism." In *Critical Race Theory: The Key Writings That Formed the Movement*, edited by Kimberlé Crenshaw. 302-14 (12pp.)

**Session 10B, Wednesday, Jun. 4 (29pp. of reading, or approx. 1.5 hours):**

Delgado, Richard (1988). "Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?". *The Yale Law Journal* 97, no. 5: 923-47 (24pp.)

Delgado, Richard (1991). "Derrick Bell's Racial Realism: A Comment on White Optimism and Black Despair." *Conn. L. Rev.* 24: 527-32 (5pp.)

**Session 10C, Friday, Jun. 6: Conclusion and Review (no reading, time to catch up!!!)**