

UNIVERSITY OF CALIFORNIA, SAN DIEGO

DEPARTMENT OF ETHNIC STUDIES

WINTER 2006

ETHNIC STUDIES 152 - LAW & CIVIL RIGHTS: THE RULE OF LAW IN U.S. HISTORY & SOCIAL CONFIGURATION

Prof. Mark Harris

Lectures: Tuesday & Thursday: 12:30 – 1:50 p.m.

Office Hours: Tues (3:30 – 4:30 p.m.) & Thurs (4:30 – 6:30 p.m.) or by appointment

Ext.: – **E-mail:**

Office. Location:

COURSE DESCRIPTION

Law as legal order is committed to being general and autonomous as well as public and positive. Autonomy has a substantive, an institutional, a methodological, and an occupational aspect. Law is autonomous in a substantive sense when the rules formulated and enforced by government cannot be persuasively analyzed as a mere re-statement of an identifiable set of nonlegal beliefs or norms, be they economic, political, or religious. (...). Law is institutionally autonomous to the extent that its rules are applied by specialized institutions whose main task is adjudication. (...). Law is autonomous at the methodological level when the ways in which these specialized institutions justify their acts differ from the kinds of justification used in other disciplines or practices. This means that legal reasoning has a method or style to differentiate it from scientific explanations and from moral, political, and economic discourse. Lastly, the legal order is characterized by occupational autonomy. A special group, the legal profession, defined by its activities, prerogatives, and training, manipulates the rule, staffs the legal institutions, and engages in the practice of legal argument. Substantive, institutional, methodological, and occupational autonomy are interdependent. Moreover, taken together, they give a special significance to the ideal of generality in lawmaking and of uniformity in the application of law. (...). [A] legal order differs from politics and administration precisely because of its attachment to the aims of generality in legislation and of uniformity in adjudication. The laws are expected to address broadly defined categories of individuals and acts and to be applied without personal or class favoritism. (...). For it is the generality of law that establishes the formal equality of the citizens and thereby shields them from the arbitrary tutelage of government. Administration must be separated from legislation to ensure generality; adjudication must be distinguished from administration to safeguard uniformity. These two contrasts represent the core of the rule of law ideal. Through them, the legal system is supposed to become the balance wheel of social organization.

- Roberto M Unger, Law in Modern Society

In this course, we will examine the ways in which the law has operated in the very structuring of the U.S. society. We will begin with a discussion of the nature and definition of civil rights throughout different societies and nations. We then move to an analysis of the legal documents – the Declaration of Independence and the Constitution – that have defined the roles and limits of the U.S. state as well as the rights of its citizens. From there we will examine various legal decisions – under the guidance of Derrick Bell’s groundbreaking analysis of race and law in the United States – to indicate the centrality of the law in this country historical trajectory and present social configuration. As we discuss the various instances in which the law has been called upon to define the political/social conditions of various inhabitants of the United States, we will focus primarily upon how the universal principles said to underscore the rule of law have effected the very social configuration of this country as they determined the differential social positions occupied by racially defined collectivities. Whilst primarily concerned with the social configuration of the US, this course will also draw from a global context to consider how the ‘rule of law’ has been deployed in other nations in relation to the rights of linguistic, cultural, racial and ethnic minorities. In conclusion we will reflect upon whether the contemporary situation within the United States of America could be said to have fallen short of the aspirations embodied in this country’s founding documents; the protection of a person’s rights to “life, liberty, and the pursuit of happiness”.

REQUIRE READINGS*

Derrick Bell, Race, Racism, and American Law

Crenshaw, K et al., Critical Race Theory: The Key Writings that Founded the Movement

COURSE EVALUATION

Attendance & Course Participation	20
Midterm	30
Final	50

TENTATIVE SCHEDULE

Introduction

Week One - The Nature of Rights, Law, History, and the U.S. Social Formation

Crenshaw et al, Introduction

The Role of the “Law” in the Creation of the US Nation

Week Two “Life, liberty and the Pursuit of Happiness”

Readings: Declaration of Independence & U.S. Constitution and Amendments

Week Three - Trimming Freedom: Slavery & Citizenship

Reading: Bell, Chapter Two – *Dred Scott v. Sanford*

Week Four - The Frontier of the Nation-State I: Whither Natives

Readings: Bell, Chapter Three – *Worcester v. Georgia*; *Cherokee Nation v. Georgia*

Week Five – The Frontier of the Nation-State II: Managing the “Other” within

Readings: Chinese Exclusion Cases (*Chae Chan Ping v. U.S.* & *Fong Yue Ting v. U.S.*) and a Japanese Internment Case (*Korematsu v. United States*)

Week Six - Legal blindness: The Birth of the Social

Readings: Bell, Chapter Four– *Plessy v. Ferguson*

Week Seven – Color Blindness: The (Re)Making of the U.S. American

Readings: Bell, Chapter Five & Six – *Brown v. Board of Education*

Questions for the New Millenium

Week Eight – After Katrina – Race and Place

Readings: Bell, Chapter Eight

Week Nine - History and Memory (Affirmative Action, Bilingual Education, Reparations for Historical injustice)

Readings: Bell, Chapter Five

Week Ten – Life and Death (Death Penalty, Racial Profiling, Welfare Reform)

Readings: Bell, Chapter Nine