

UNIVERSITY OF THE PACIFIC
McGEORGE SCHOOL OF LAW

CRITICAL RACE THEORY

PROFESSOR LANDSBERG
FALL 2005

ASSIGNMENTS

The text is Dorothy A. Brown, *Critical Race Theory*. Some additional material will be distributed as needed. My phone number is 739-7169; e-mail address is blandsberg@pacific.edu. Office hours are T, Th 2-4 and W 10:45-11:45.

The course will be conducted as a seminar. Students will be expected to write five reflection pieces, each 1-2 pages in length, critiques of at least two reflection pieces of classmates, and one short [10-15 page] paper, as described below. Grades will be based on these writings, classroom participation, participation on a TWEN site, and attendance. TWEN is a web-based communication system which you may access either through your own computer or through computers in the library. All students are required to enroll in TWEN. Weekly assignments will be posted to the TWEN site.

Each class [except the first] will include a period of discussion of reflection pieces submitted prior to the class. A reflection piece must focus on one of the issues raised by the week's readings and provide your own analysis of that issue. Different students will be responsible on different weeks, based on student sign-ups during our first class. The piece is due to be sent to TWEN by 5:00 pm the day before the class. Late reflection pieces will not be accepted and will be treated as non-completion of the assignment. However, you may make up one missed reflection piece by writing one for one of the last four classes of the semester, based on the reading for that class. On any two weeks of your choice, you must write and post, prior to class, a critique of a reflection piece that has been posted by a classmate. Reflection pieces and critiques should be posted under your examination number, not your name.

You should sign up for a time and topic for your paper. Each paper should apply materials from the text and from our classes to discuss one of the topics listed below. Up to three students may review any one topic, but must do so independently of one another. The papers are to serve as a basis for classroom discussion. They must summarize the material [theses, factual development, argument development, conclusion], explain the relationship between the ideas in the material and the question presented, critique the ideas, and conclude with your own analysis and evaluation. You may supplement the text with

additional reading if you wish, but the paper you submit must be your own and must give appropriate credit to other sources. You are to meet with me by September 12 to select the question you wish to discuss, and to establish a time-table for submitting a draft of the paper, a final version, and for your presentation to the class.

Paper topics are as follows:

Write a review of one of the books or articles listed below. The review must summarize the book or article [theses, factual development, argument development, conclusion], explain the relationship between the ideas it articulates and those in the materials we are studying, and conclude with your own analysis and evaluation of the ideas discussed in the book.

- i. IS SEPARATE UNEQUAL? BLACK COLLEGES AND THE CHALLENGE TO DESEGREGATION, by Albert L. Samuels (Univ. Press of Kansas 2004).
- ii. INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA by Eric K. Yamamoto. New York: New York University Press, 1999. 330 pp. Cloth \$29.95. ISBN 0-8147-9674-5.
- iii. THE COLOR OF THE LAW: RACE, VIOLENCE, AND JUSTICE IN THE POST-WORLD WAR II SOUTH by Gail Williams O'Brien. Chapel Hill: University of North Carolina Press, 1999. 334 pp. Cloth \$45.00. ISBN 0-8078-2475-5. Paper \$18.95. ISBN 0-8078-4802-6.
- iv. COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY by Mary L. Dudziak. Princeton: Princeton University Press, 2000. 330 pp. Cloth \$29.95. ISBN 0-691-01661-5.
- v. WHISPERED CONSOLATIONS: LAW AND NARRATIVE IN AFRICAN AMERICAN LIFE by Jon-Christian Suggs. Ann Arbor: University of Michigan Press, 2000. 401 pp. Cloth \$67.50. ISBN: 0-472-10651-1.
- vi. INTERNATIONAL POLITICS AND CIVIL RIGHTS POLICIES IN THE UNITED STATES, 1941-1960 by Azza Salama Layton. Cambridge University Press, 2000. 217 pp. Cloth \$49.95. ISBN: 0-521-66002-5. Paper \$17.95. ISBN: 0-521-66976-6.
- vii. James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*. New York: Oxford University Press. 2001. pp. xxx, 285. \$27.50.

- viii. Bagenstos, Samuel R., "The Structural Turn and the Limits of Antidiscrimination Law" . California Law Review, Vol. 94, 2006.
<http://ssrn.com/abstract=701265>
- ix. Ian Ayres, et al., *To Insure Prejudice: Racial Disparities in Taxicab Tipping*, 114 Yale L. J. 1613 (2005).
- x. Tristin K. Green, *Work Culture and Discrimination*, 93 Calif. L.Rev. 623 (2005).
- xi. Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004).
- xii. Robert C. Post, *Prejudicial Appearances: The Logic of American Antidiscrimination Law* (2001).
- xiii. Ian Ayres, *Pervasive Prejudice? Unconventional Evidence of Race and Gender Discrimination* (2002).
- xiv. Jerry Kang, *Trojan Horses of Race*, 118 Harv. L.Rev. 1489 (2005).
- xv. Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 Columbia L.Rev. 1436 (2005).
- xvi. Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 Stan. L.Rev. 367 (2004).
- xvii. Charles J. Ogletree, Jr., *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education* (2004).
- xviii. Jody David Armour, *NEGROPHOBIA AND REASONABLE RACISM: THE HIDDEN COSTS OF BEING BLACK IN AMERICA* (1997).

Class assignments

- Aug. 16 Read Brown, Chapter 1. Be prepared to discuss the questions posed by Professor Brown.
- Aug. 23 Brown, review Chapter 1; read 40-53. Reflection piece: apply Lawrence's cultural meaning test to the *Mungin* case.
- Aug. 30 Brown, read 54-78 and Russell Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 Fordham L.Rev. 2081 (2005), which you can download by going to link at <http://ssrn.com/abstract=779525>. Reflection piece: Should lawyers "bleach out" their racial identities or adopt an "integration-and-learning" model, or is there some other model you would suggest? How would your analysis have affected Mungin's behavior and the behavior of the partners at Katten Muchin?
- Sept. 6 Brown, read 79-97 and pp. 1-13 of Brian K. Landsberg, Perry County, Alabama and the Ill-Fated Federal Voting Referee Provision of the Civil Rights Act of 1960: Prelude to the Voting Rights Act, which you can find on this TWEN site. Reflection piece: How important is racial and ethnic diversity in achieving a neutral system of justice? What are the barriers to achieving diversity?
- Sept. 13 Brown, 98-130. Reflection piece: Should Torts classes discuss the role of race, sex, and class in the *O'Brien*, *Madrigal*, and *Wassell* cases? Do the opinions in those cases pay appropriate attention to the role of race, sex and class?
- Sept. 20 Brown, 138-165. Reflection piece: Please read Sandra Fleishman, *Minorities Often Pay More for Mortgages*, Wash. Post, Sept. 14, 2005 [copy available from faculty secretaries or on-line] or Edmund L. Andrews, *Blacks Hit Hardest by Costlier Mortgages*, New York Times, Sept. 14, 2005. Should mortgage lenders be forbidden to charge sub-prime rates to borrowers who can qualify for prime rates? Is this a racial issue?
- Sept. 27 Brown, 312-336. Reflection piece: Please rewrite the opinion in *Hansberry v. Lee* from a Critical Race Theory Perspective.
- Oct. 4 No class.
- Oct. 11 Brown, 178-198. Reflection piece: You have a choice: Either (1)rewrite the opinion in *Hansberry v. Lee*

taking into account the people involved, as reflected in *Raisin in the Sun*, or (2) discuss whether the possibility of racial discrimination in the exercise of prosecutorial discretion is sufficiently strong to warrant remedial measures, and whether Professor Davis' racial impact study recommendation is feasible or whether you have some alternative solution to propose.

- Oct. 18 **Brown, 199-234. Reflection piece:** Professor Randall Kennedy has suggested that the law should prohibit police officers (except in absolutely extraordinary circumstances) from using race as a proxy for increased risk of criminality. Is his proposal justified in light of the materials you have read? Would it be effective?
- Oct. 25 **Brown, 235-261. Reflection piece:** answer question 3 on p. 261. **Presentations:** Heather Celia [Is Separate Unequal?]; Ryan Garchie [Brown v. Board of Education: A Civil Rights Milestone and its Troubled Legacy]; Janelle Ruley [Silent Covenants].
- Nov. 1 **Brown, 261-278. Reflection piece:** The United States Sentencing Commission in 2002 recommended to Congress [http://www.ussc.gov/r_congress/02crack/2002crackrpt.pdf] that changes in U.S. sentencing guidelines be made. It described the changes as resulting in "sentencing ranges (based solely on drug quantity) for crack cocaine offenses approximately two to four times as long as powder cocaine offenses involving equivalent drug quantities, depending on the precise quantity involved." **Assess the recommendation from the perspective of critical race theory. Presentations:** Dina Cataldo [Negrophobia and Reasonable Racism]; Jason Eliaser [White by Law]; Helen Fong [Work Culture and Discrimination].
- Nov. 8 **Brown, 279-297. Reflection piece:** Singer argues: "Property in the United States is associated with a racial caste system"[294]. What does he mean, and is he correct? Please explain. **Presentations:** Kathryn Hardy and Sherri Vargas [To Insure Prejudice]; Mayumi Okamoto [Pervasive Prejudice]; Hyung Bae [Cold War Civil Rights].
- Nov. 15 **Brown, 297-311. Reflection piece:** Reginald Leamon Robinson, THE SACRED WAY OF TIBETAN CRT KUNG FU: CAN RACE CRITS TEACH THE SHADOW'S MYSTICAL INSIGHT AND HELP LAW STUDENTS "KNOW" WHITE STRUCTURAL OPPRESSION IN THE HEART OF THE FIRST-YEAR CURRICULUM? A CRITICAL

REJOINDER TO DOROTHY A. BROWN, 10 Mich. J. Race & L. 355 (2005) argues that Brown placed the *Shack* case in her book to demonstrate:

Yet, in the interest of whites, especially so that they can continue to exploit migrant workers, courts will destroy, or greatly modify, common law doctrine, thus requiring that "property rights serve human values."

Please discuss *Shack* in terms of Critical Race Theory; include a discussion of the evolution of the law from *Burke v. Kleiman* to *State v. Shack*. Presentations: Delara Ghafari and Alan Lee [A Systemic Analysis of Affirmative Action in American Law Schools]; Steven Tsuyuki [Elites, Social Movements, and the Law].