

**Identity, Law, and Culture**  
Professor Frank Rudy Cooper  
Suffolk University Law School  
Fall 2007

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Room 320I

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Office Hours: Mon. & Wed., 3:00-4:00p.m.,

or anytime by appointment

**Overview:**

This class asks and answers the following questions: How do people form their senses of the implications of their own and other people's identity statuses? How might those understandings influence the way the law is structured and applied?

**Course Goals:**

First, we will learn the substance of "critical" theories of identity, including (1) the historical roots of United States ("U.S.") racial prejudice (2) some foundations of critical race theory, (3) issues of race and crime, (4) the psychological mechanics of prejudice, (5) the intersectionality of race, gender, and other aspects of identity, (6) the theory of identity as "performative," (7) the case of masculinity, and (8) the application of those theories to Fourth Amendment searches and seizures, especially through the literature on racial profiling.

Second, we will think consciously about how to construct a well-written, insightful, 20-page paper through exercises in brainstorming, outlining, and drafting papers.

**How we Will Conduct Class:**

The Professor will open class by outlining the topics we will cover that day. The professor will then provide any outside background material for the given topic. When applicable, the students who have written response papers will describe the theses of the readings and their reactions to the pieces. Next, we will engage in a broad, student-driven discussion of the materials. Finally, at the end of each topic, the professor will summarize the key insights and place them within the general outline of the class.

**Expectations:**

First, be on time to class. Second, read the assignments in advance of class. Third, when you write a response paper, be ready to describe the theses of the articles and some of your reactions thereto. Fourth, when you do not write a response paper, be ready to describe the theses of the articles and some of your reactions thereto. Fifth, be attentive in class. Sixth, be respectful of your classmates' opinions.

## Evaluation:

Students will be evaluated based on the following formula: (1) Class attendance and participation = 16.5%; (2) Four 1+-page Response Papers on each readings on assigned dates plus outline = 16.5%; (3) Full Draft = 16.5%; (4) Presentation = 16.5%; (5) Final paper = 34%.

## Readings:

Class #1: History

A) African Americans

RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2d Ed.) (Juan F. Perea et al. eds., 2007), pp. 96-103; 140-46; 155-59; and 171-76 (describing construction of black inferiority through laws, force, and subtle social gestures).

B) Native Americans

*Id.* at 179-85 and 234-39 (describing the “doctrine of discovery” and comparing anti-black and anti-Indian prejudices).

C) Latinas/os

*Id.* at 285-94; 329-336; 340-51; 356-59; and 384-86 (discussing black/white paradigm as well as the consequences of the conquest of Mexico as well as comparing Puerto Rican experiences of prejudice).

D) Asian Americans

*Id.* at 397-400; 427-28; 436-40; 463-69; and 471-75 (introducing issues pertinent to Chinese- and Japanese-Americans as well as discussing the assumption of foreignness and the model minority myth)

E) “Whites”

*Id.* at 487-88; 508-13; and 516-32 (discussing how “white ethnics” became “white” and the transparency phenomenon).

Class #2: Defining Race & Racism

A) *Id.* 1-6; 24-28; 32-40; 43-47; 51-72; 76-81; 93-95 [Note 6 only] (discussing various theoretical frameworks for thinking about race and racism).

Class #3: [Follow-up on Readings ##1-2]

Class #4: Is the Present a Backlash to the Past?

A) ANTHONY AMSTERDAM & JEROME BRUNER, MINDING THE LAW (2000), pp. 246-281 (identifying the U.S.’s racial dialectic from *Plessy* to *Brown* and back again).

**Response Papers Due:**

**Elle, Nick, Gol, Raj**

Class #5: Critical Race Theory Methodology

A) Crenshaw et al., *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberle Crenshaw et al. eds., 1995), pp.

xiii-xxxii (describing development and key principles of critical race theory movement).

- B) I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 8 (2007) (advocating interpretive methodology of reading black).

**Response Papers Due: Chris, K.C., Patrick, Sarah**

Class #6: Some Critical Race Thoughts

- C) Neil Gotanda, *A Critique of "Our Constitution is Colorblind"*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, pp. 257-75 (defining different ways of thinking about race).

- D) Jerome McCristal Culp, *To the Bone: Race and White Privilege*, 83 MINN L. REV. 1637 (1999).

**Response Papers Due: Michael, Adam, Rachael, Haneen**

Class # 7: Race & Crime: Victimization

- A) RACE AND RACES, *supra*, at 1098-1150

**Response Papers Due: Jonah, Ann, Cailin, Gisell**

Class #8: Is the PATRIOT Act a Race Issue?

- A) Daniel J. Solove, *Reconstructing Electronic Surveillance Law*, 72 GEO. WASH. L. REV. 1264 (2004) (arguing for reconstruction of rules governing surveillance).

- B) 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. JUSTICE 23 (2003) (contending that past surveillance abuses against the Left and racial minorities urge extreme caution with PATRIOT act ).

**Response Papers Due: Elle, Nick, Gol, Raj**

Class #9: [Continue discussing Class #8 materials]

**Response Papers Due: Chris, K.C., Patrick, Sarah**

Class #10: The Psyche & Race

- A) Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action"*, 94 CAL. L. REV. 1063 (2005) (considering ways race subconsciously impacts interactions).

**Response Papers Due: Michael, Adam, Rachael, Haneen**

Class #11: Introduction to Intersectionality

- A) Kimberle Williams Crenshaw, *Mapping the Margins*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, pp. 357-83 (defining intersectionality theory and applying it to battered woman law and policy).

**Response Papers Due: Jonah, Ann, Cailin, Gisell**

Class #12 Variations on Intersectionality Theory

- A) Rhonda Williams, *Living at the Crossroads: Explorations in Race, Nationality, Sexuality, and Gender*, in *THE HOUSE THAT RACE BUILT* (Wahneema Lubiano ed. 1997), pp. 136-56 (describing intersection of race, gender, sex orientation, and class prejudices).
- B) Devon Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 *J. CONTEMP. LEGAL ISSUES* (2001), pp. 701-29 (contrasting intersectionality and identity performance theories).

**Response Papers Due:** **Elle, Nick, Gol, Raj**

Class #13: Covering & Gay History

- A) KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006), pp. 3-107 (identifying covering theory and tracing history of gay assimilation).

**Response Papers Due:** **Chris, K.C., Patrick, Sarah**

Class #14: Covering, Race, Gender, and Liberty

- A) *Id.* at 111-201 (tracing histories of racial and gender covering as well as introducing a liberty model of civil rights).

**Response Papers Due:** **Michael, Adam, Rachael**

Class #15: Masculinity

- A) MICHAEL S. KIMMEL, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY* 25 (2005) (“Manhood is equated with power—over women, over other men.”).
- B) Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 *HASTINGS L.J.* 1257 (1997) (constructively criticizing intersectionality theory as applied to policing).

**Response Papers Due:** **Jonah, Ann, Cailin, Gisell**

Class #16: Racial Profiling

- A) Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 *N.Y.U. L. REV.* 956 (1999) (demonstrating that the *Terry* opinion led to approval of racial profiling).

**Response Papers Due:** **Elle, Nick, Gol, Raj**

Class #17: Hypermasculinity and Policing

- Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777 (2000) (analyzing role of hypermasculinity in criminality and police misconduct), pp. 777-799.

**Response Papers Due:** **Chris, K.C., Patrick, Sarah**

Class #18: Performing for the Police

- A) Devon Carbado, *Eracing the Fourth Amendment*, 100 *MICH. L. REV.* 946 (2002) (arguing Supreme Court promotes a particular ideology through its

supposedly colorblind fourth amendment jurisprudence), pp. 964-1004, 1030-44.

**Response Papers Due: Michael, Adam, Rachael**

- Class #19: Cop Macho
- A) James W. Messerschmidt, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 174-86 (Brown & Littlefield, 1993) (discussing ways male police officers “do gender” by repudiating femininity, homosexuality, and racial minority men).
  - B) Susan Ehrlich Martin, *Police Force or Police Service?: Gender and Emotional Labor*, 561 ANNALS AM. ACAD. POLIT. SCIENCE AND SOC. SCIENCE 111 (1999) (contending police officers engage in emotional labor when interacting with suspects).
  - C) Annastasia Prokos & Irene Padavic, “*There Oughtta Be a Law Against Bitches*”: *Masculinity Lessons in Police Academy Training*, 9 GENDER, WORK & ORG. 439 (2002) (analyzing hidden misogyny of police academy training).

**Response Papers Due: Jonah, Ann, Cailin, Gisell**

- Class #20: Intersectionality and Racial Profiling
- A) Sherri Sharma, *Beyond “Driving While Black” and “Flying While Brown”*: *Using Intersectionality to Uncover the Gendered Aspects of Racial Profiling*, 12 COLUM. J. GENDER & L. 275 (2003).

Classes 21-28: Student Presentations

\*\* Outline is at 4:00p.m., Wednesday, October 31. Lateness penalties will be applied. \*\*

\*\* Draft Paper is Due at 4:00p.m., Friday, November 16th. Lateness penalties will be applied. \*\*

\*\* Final Paper is Due at 4:00p.m., Wednesday, December 5th. Lateness penalties will be applied. \*\*