

DEPAUL UNIVERSITY COLLEGE OF LAW
Economic Justice, Identity & Markets Syllabus (W 9:15-11:45am)
Professor Cho (Spring 2008)

Office: 716 Lewis
Hours: W 11:45am-2:15 pm; & by appt.

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I. COURSE DESCRIPTION & OBJECTIVE (3 CREDITS):

Students will explore how the law and the marketplace create and preserve economic inequality according to race, gender, sexual orientation, and other identity categories while maintaining a stance of “neutrality.” The class will critically analyze the inter-relatedness of law, markets, and identity using frameworks from classic market theory, law and economics, critical race theory, feminist legal theory, “queer theory,” and critical legal studies. The course objective is to provide critical analytic skills to students to develop contemporary critiques of classic market and legal structures for the purpose of aiding subordinated communities in the pursuit of economic justice. By so doing, students should be able to negotiate more effectively, the societal tension between “efficiency” and “equality” in the law and in the marketplace. The course and casebook are designed to provide materials for students and teachers do not have formal training of economics, but who are interested in cross-cutting issues of discrimination and unequal wealth that results from the history of cumulative and synergistic discrimination.

II. FORMAT:

The method of instruction will consist primarily of an opening lecture and/or discussant or expert presentation, case-oriented inquiry, theoretical extrapolation, and class discussion of the topic/theme for the session.

III. REQUIREMENTS:

A. *Attendance and Participation.* This class is designed as more of a graduate seminar, where students assume active roles in the teaching and learning process. Thus, the quality of each discussion is critical to the educational process. Accordingly, you will be evaluated on your contributions to the joint learning venture. You are expected to be a prepared, active, and thoughtful participant in shaping the class discussion and will be graded accordingly. (15 pts.)

B. *Lead Discussant:* In weeks 2-5, you will sign up to be lead discussant for one session. For this role, you will read the full-length version of at least one article or source cited in the assigned materials. *At least 48 hours prior to your assigned session*, you will post to Blackboard under the appropriate Discussion Board folder, your 2-3 page (500-750 word) MS Word (WordPerfect not supported at DePaul!) document including the following: 1) the main ideas in the assigned reading segment; 2) the main ideas in the supplemental material you’ve selected; and 3) your description of how the supplemental material assisted your understanding of the session’s required reading. (10 pts.)

C. *Expert Presenters:* In weeks 6-13, you will in pairs or small groups, sign up to serve as the “experts” for a given session. You will be responsible for providing a written “thought piece” engaging the cases and materials you have read for your session. In your thought piece, you may discuss the assigned readings as they relate to course concepts, mainstream legal thought, critical legal theories, law and economics, and/or historical or current events. Your thought piece should

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be between 3-5 pages (750-1250 words). Your MS Word Document should be posted on Blackboard in the appropriate subject matter folder under Discussion Leaders *at least 48 hours prior to the beginning of class on the scheduled day*. Be prepared to discuss and answer questions on the assigned reading, and to ask 3-6 questions on that session's topic and assigned readings. (15 pts. total)

C. *Midterm*. There will be short paper midterm testing your understanding of classic market theory, law and economics, and internal as well as external critiques of classic market theory and economic analysis. (25 pts.)

D. *Final*: The take-home final exam will be comprehensive with an emphasis on the post-midterm materials. The prompt will be distributed on the last day of class, April 23rd, and be due 2 weeks later no later than 4pm on Wednesday, May 6th. (35 pts.)

IV. REQUIRED TEXTS:

Emma Coleman Jordan & Angela Harris, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* (Foundation Press, 2005). Xeroxed materials may be distributed in class.

V. TENTATIVE WEEKLY SCHEDULE (SUBJECT TO CHANGE):

Week 1: Race, Markets & Neutrality in Two Disciplines

- A. Challenging the Assumption of "Neutrality"
 - 1. Critical Race Theorists on the Neutrality of the Marketplace
 - 2. A Law and Economics Challenge to CRT's Neutrality in Narrativity
 - 3. Social Science Challenges to Neutrality
- B. Racial Determinants of Legal and Market Culture
 - 1. Popular Legal Culture and the "Microaggressions" of Post-Modern Racism
 - 2. Economics and Law: Two Cultures in Tension
 - 3. Judging Race and the Doctrine of Discriminatory Intent

Week 2: States, Markets, and the Problem of Governance

- A. Law and Political Economy
 - 1. Structural Liberalism and its Critiques
 - a. The Family and the Market
 - b. Contract Law, the Free Market, and State Intervention
 - 2. Structural Liberalism and Constitutional Law
 - a. *DeShaney v. Winnebago County Dept. of Social Services*
 - b. Redefining State Action
 - 3. Structural Liberalism in "Private Law"
- B. Restructuring Structural Liberalism
 - 4. International Human Rights
 - 5. The South African Constitution
 - 6. Critique of the Liberal Paradigm
 - 7. Economic Bill of Rights

8. A Republican Theory of Minimal Entitlements

Week 3: Classic Market Theory and Law & Economics

- A. Adam Smith, Libertarianism, and Economic Analysis
 - 1. Free Enterprise Pricing Systems
 - 2. “Created Equal”
 - 3. The Uses of History in Law and Economics
- B. The Economic Approach to Law
 - 1. Law and Economics in Judicial Reasoning
 - a. *U.S. v. Carroll Towing Co.*
 - b. *Chicago Board of Realtors v. City of Chicago*
 - c. *Indiana Harbor Belt R.R. Co. v. American Cyanamid Co.*
 - 2. The Problem of Incompatible Property Uses
 - a. *Boomer v. Atlantic Cement Co.*
 - b. *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*
 - 3. The Problem of Redistribution
 - 4. The Politics of Public Choice

Week 4: Beyond Classic Market Theory: Internal Critiques

- A. Beyond Price Theory
 - 1. Consumer Sovereignty: Unifying Antitrust and Consumer Protection Law
 - 2. Keynesian Economics and Critique of Foundational Principles of Welfare Economics
 - 3. The Failure of “Market Failure”
 - 4. The Political Economy of Information
- B. Beyond the “Rational Actor” and Traditional Macroeconomics
 - 1. Social Norms and Social Roles
 - 2. Removing the Assumption of Rationality
 - 3. Libertarian Paternalism is Not an Oxymoron
 - 4. Sustainability, Distribution, and “Ecological Economics”
- C. “New Chicago School” Approaches

Week 5: Beyond Classic Market Theory: External Critiques

- A. Overview
- B. Normative Critiques
 - 1. Beyond Rational Choice
 - 2. Beyond Wealth Maximization
 - 3. Beyond Cost-Benefit Analysis
 - 4. Beyond Market Theory

Week 6: Wealth and Inequality

- A. “Class”
 - 1. Definitions
 - 2. The Constitution: Wealth and Class
 - 3. Class and Inequality—Historical Perspectives

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- B. Wealth, Class and Economic Mobility—The Intergenerational Effects
 - 1. The Sticky Ladder
 - 2. Hidden Cost of Being African American
 - 3. The Failures of Integration
 - 4. Income vs. Wealth Inequality

Week 7: Life in a Class Society

- A. Poverty and the Relations of (Re)Production
 - 1. The Working Poor: Invisibility in America
 - 2. Nanny Diaries II: Immigrant Women's Labor in the Social Reproduction of the American Family
 - 3. *The Overworked American: The Unexpected Decline of Leisure*
 - 4. The Law and Economics of Critical Race Theory
- B. Class and Consumption
 - 1. *The Overspent American: Why We Want What We Don't Need*
 - 2. Advertising and the Apocalypse
 - 3. Uneasy Ryder: Jury Finds Winona Guilty in Shoplift Case

Week 8: Defining Family

- A. Nuclear Family vs. Extended Family
 - 1. *Moore v. City of East Cleveland, Ohio*
 - 2. Unmarried Heterosexual Couples
 - a. *Marvin v. Marvin*
- B. Same-Sex Couples
 - 1. *Whorton v. Dillingham*
 - 2. Domestic Partner Ordinances
 - 3. Sex Between Consenting Adults
 - a. *Lawrence v. Texas*
 - 4. Same Sex Marriage and Family
 - a. *Goodridge v. Department of Health*

Week 9: Culture and Identity

- A. Economics
 - 1. The *Mashpee Indian* case
 - 2. Whiteness as Property
- B. Racial Discrimination: Competing Theories and Empirical Evidence
 - 1. Rational Choice Theory of Racial Discrimination
 - 2. Sociological Theory of Racial Discrimination in the Marketplace
 - 3. The Empirical Study of Racial Discrimination

Week 10: The Market Value of Culture

- A. Penalizing Difference
 - 1. Accents
 - a. *Fragante v. City and County of Honolulu*
 - 2. English-Only Rules

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- a. *Garcia v. Spun Steak Co.*
- b. *Yniguez v. Arizonans for Official English*
- 3. Race, Gender, and “Professionalism”
 - a. *Rogers v. American Airlines*
- 4. Market Value of Sexual Difference
 - a. The Sexual Continuum: Transsexual Prisoners
 - b. Employment Discrimination, Civil Rights, and the Constitution
- B. Appropriating Difference
 - 1. Cultural Property and Indigenous Folklore
 - 2. Popular Culture, Popular Imagery
 - 3. The Market for Counterculture
 - a. Black But Not Beautiful: Stereotypes and Hip-Hop
 - b. *Parks v. LaFace Records*
 - c. Digital Sampling and Copyright Implications
 - d. *Merchant v. Levy*
 - e. The Marketing of Malcolm X

Week 11: Cash and Carry

- A. The Underground Economy
 - 1. Cashing in on Domestic Help
 - 2. Gangs as Business Enterprise
 - 3. Prostitution Beyond the Choice/Coercion Framework
- B. Class Exercise

Week 12: Economic Borders to Community

- A. The Basics: Citizenship and Congressional Power to Exclude, Detain, or Deport
 - 1. Patriotism & Cosmopolitanism
 - 2. *Fiallo v. Bell*
 - 3. *Zadvydas v. Davis*
- B. National Borders: Economics and Immigration Policy Debates
 - 1. Border Crossing and Border Patrols
 - 2. Class Borders
 - a. *Brown v. Artery Organization*
 - b. Neo-Segregation: “Gated Communities” from Prisons to Master-Planned Developments

Week 13: Corrective Struggles

- A. Community Remedies
 - 1. Affirmative Action
 - a. *City of Richmond v. J.A. Croson Co.*
 - b. *Metro Broadcasting, Inc. v. FCC*
 - c. *Grutter v. Bollinger*
 - 2. Reparations
 - 3. Building Community Wealth
 - a. *Perdue v. Crocker National Bank*

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B. Outside the Box

1. Rethinking the Family as an Economic Institution
 - a. *In Re Marriage of Sullivan*
 - b. The Maternal Wall as Barrier to Gender Equality
2. Redress in the Global Political Economy
 - a. Humanitarian Intellectual Property?
 - b. Shareholder Movements
 - c. Civil Resistance and the “Diversity of Tactics” in the Anti-Globalization Movement: Problems of Violence, Silence, and Solidarity

Week 14: Review, Wrap Up, Conclusion

VI. TENTATIVE READING ASSIGNMENTS:

NOTE: The schedule is subject to change on a weekly basis. Read both A and B for each class.

Week 1 (1/16): Race, Markets & Neutrality in Two Disciplines

- A. Challenging the Assumption of “Neutrality” (pp. 1-43)
- B. Racial Determinants of Legal and Market Culture (pp. 44-72)

Week 2 (1/23): States, Markets, and the Problem of Governance

- A. Law and Political Economy (pp. 73-110)
- B. Restructuring Structural Liberalism (pp. 110-42)

Week 3 (1/30): Classic Market Theory and Law & Economics

- A. Adam Smith, Libertarianism, and Economic Analysis (pp. 143-73)
- B. The Economic Approach to Law (173-209; 216-225)

Week 4 (2/6): Beyond Classic Market Theory: Internal Critiques

- A. Beyond Price Theory (pp. 233-69)
- B. Beyond the “Rational Actor” and Traditional Macroeconomics (pp. 269-304; 321-22)

Week 5 (2/13): Beyond Classic Market Theory: External Critiques

- A. Overview (pp. 323-70)
- B. Normative Critiques Cont’d. (pp. 370-419)

Week 6 (2/20): Wealth and Inequality

- A. “Class” (pp. 420-60)
- B. Wealth, Class and Economic Mobility—The Intergenerational Effects (pp. 460-501)

Week 7 (2/27): Life in a Class Society

- A. Poverty and the Relations of (Re)Production (pp. 502-543)
- B. Class and Consumption (pp. 543-59; 572-601)

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Week 8 (3/5): Defining Family

- A. Nuclear Family vs. Extended Family (pp. 602-31)
- B. Same-Sex Couples (pp. 631-65)

Week 9 (3/12): Culture and Identity

- A. Economics (pp. 666-714)
- B. Racial Discrimination: Competing Theories and Empirical Evidence (pp. 715-744)

Week 10 (3/19): Culture and Identity, cont'd. & The Market Value of Culture

- A. Racial Discrimination, cont'd. (pp. 744-98)
- B. Penalizing Difference (pp. 799-829; 848-59; 859-70)

Week 11 (4/2): Market Value of Culture, Cont'd. & Cash & Carry

- A. Appropriating Difference (pp. 873-917)
- B. The Underground Economy (pp. 918-43)

Week 12 (4/9): Economic Borders to Community

- A. The Basics: Citizenship, Congressional Power & Nat'l. Borders (pp. 944-84)
- B. Class Borders (pp. 984-1012)

Week 13 (4/16): Corrective Struggles

- A. Community Remedies (pp. 1013-1053)
- B. Affirmative Action, cont'd. (pp. 1053-1104)

Week 14 (4/23): Corrective Struggles & Conclusion

- A. Building Community Wealth & Reparations (pp. 1104-44; 1167-74)
- B. Outside the Box (pp. 1144-67; 1174-1202)