

LATINXS AND THE LAW IN THE U.S.

University of Pennsylvania

This is a former draft which will be revised

Summer Semester
LALS 528/940 Online
Tuesday 6-8 online meeting
Office Hours: by appointment

Professor: Cathy Bartch, Ph.D.
Email: bartch@upenn.edu
Phone: 215-898-9919, 267-475-2467
Office: McNeil 411

Course Description

Based in concepts and principles of Constitutional law and critical race theory, this course explores the interpretation and impact of seminal court cases in U.S. history as applied to Latinxs in the United States and abroad. With a particular focus on the 20th century, students will examine how court decisions have affected civil rights, immigration policies, welfare, political incorporation, education, and other important issues affecting Latinxs. Students will also explore additional themes including the status and treatment of Latinxs in the criminal justice system, representation of Latinxs in the judiciary and how Supreme Court decisions have affected U.S. foreign policy with Latin America.

READINGS: All readings will either be uploaded or linked on Canvas.

Recommended readings:

- Rossum & Tarr, American Constitutional Law, Vol. I and II (9th ed or later) (This text has a good description of various cases and Constitutional concepts)
- Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West.
- Delgado, Richard and Jean Stefancic. 2017. *Critical Race Theory: An Introduction* (3rd Edition). NYU Press.
- Morín, José Luis. 2009. *Latino/a Rights and Justice in the United States: Perspectives and Approaches*, Second Edition. Durham, North Carolina: Carolina Academic Press.
- Hamilton et al., The Federalist Papers
- The U.S. Constitution*
- See internet materials of interest to this course below

Course Objectives: At the end of this course, you should:

- Be familiar with the terminology, concepts, theories, and basic issues in American Constitutional Development as it pertains to *Latinxs and the Law*
- Develop a deeper understanding of the history, politics, policies, and various court cases relating to and impacting Latinxs rights and justice in the U.S.
- Better understand the constitutional issues as well as historical and current day issues influencing each case
- Be able to engage in critical analysis and develop solid arguments in well-written and researched essays.
- Enjoy learning about various themes and issues relevant to Latinxs and the Law in the United States, as well as the Constitution, the Supreme Court and law in general

Course Requirements:

In order to do well in this course, students have to fulfill all the following requirements:

- *Participation in lectures (25%)*

It is important for students to carefully and critically read the assigned works *prior* to lectures. This is a seminar, and thus students must be ready and willing to thoughtfully contribute to discussion and respectfully listen and respond to classmates' comments. Students should critically analyze the readings, including the theoretical and empirical approaches taken by authors.

Each week I encourage you to take summaries and notes on the readings for class coming prepared to discuss each in-depth. I will not lecture, but rather I will guide dialogue and debate.

However, since this is a small class, each week you will be responsible for starting the discussion of one particular article of your choice (We will decide the articles the week prior.) Please prepare a short review of the article containing the following information: (Background of the author; overview of the reading and argument; possible discussion questions; and your analysis.) This does not have to be long (ie ½ page to page (maximum 1/5-2 pages).

These summaries should be uploaded to canvas by 4:00 PM on the Tuesday we have class.

Since this is an online class, we will have three hours of class time a week. Some of that time will be in the synchronous portion of class, and the other times will be asynchronous where you may be writing on the discussion board on canvas or watching a video. You will often be asked to write a 500-word response to a question, and this will be equivalent of 1 hour of class time.

This is a graduate course, so participation is expected. However, just in case, here is a general rubric that I use: The participation grade will be in accordance with the following rubric: A = Regularly participates with thoughtful contributions to class discussion demonstrating a good reading of the material; B = Regularly or sometimes participates demonstrating a satisfactory reading of the material; C = Sometimes or seldom participates demonstrating a satisfactory or less-than-satisfactory reading of the material; D = Seldom participates and misses a number of classes without excused absences.

- *Three papers (25% each)*

Each student will write 3 (8-10) page review papers that critically analyze readings from a particular week, or across weeks, delving into the discussion and developing an argument in addressing the theme. You can decide on the topics, but some ideas include addressing specific course themes such as the price of human rights trials or the feasibility of reparations, or you could examine specific methodological approaches (quantifying human rights trials versus qualitative studies), or a particular scholar's approach to a topic. The papers should be succinct, clear, with a well-defined argument. They should be analytical asking why you find one approach stronger than another, for instance. Thus, the papers should not just recapitulate an argument, but rather they should demonstrate a thoughtful, careful, and critical examination of the readings.

The three papers will be due on the Friday following class:

- Paper one is due Week of 6/10 (Due 6/14)
- Paper two is due Week of 7/2 (Due 7/5)
- Paper three is due Week of 7/29 (Due 8/2)

*In lieu of three papers, you may write two papers with one being a longer 20+ page research paper on a topic of interest to you. If you decide to do this, please send an overview including outline and preliminary bibliography to me by 6/26. We will schedule a time to discuss your topic.

Your course grade will be determined by a combination of exams, homework assignments and classroom participation.

Summary of Grades

Participation 25%

Three Papers 75%

Total- 100%

The course will be graded according to the following scale:

A	>=94	B+	87-89	C+	77-79	D+	67-69	F
A-	90-92	B	83-86	C	73-76	D	63-66	59 &
		B-	80-82	C-	70-72	D-	60-62	below

INTERNET MATERIALS THAT MAY BE OF INTEREST:

<http://www.oyez.org> Chicago-Kent brings a multimedia archive project about the Supreme Court. We will be using this a lot in class.

www.supremecourtus.gov – official website of the Supreme Court; general information plus schedule of oral arguments, opinions in cases, and legal briefs in cases

<http://www.gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf> - annotated copy of the U.S. Constitution; summarizes how various provisions have been interpreted by the Supreme Court

<http://www.scotusblog.com/> - expert commentary on recent and forthcoming Supreme Court cases

<http://lp.findlaw.com/> - Find Law for legal professionals

<http://law.upenn.libguides.com/az.php> Penn Law Databases--This website provides links to various databases that may be of use to you. Some are available to the entire Penn community.

<http://guides.ll.georgetown.edu/c.php?g=261289&p=2339383> Guide to citing Supreme Court and other cases.

[U S. Constitution](#)

OTHER POLICIES:

Code of Academic Integrity: In fulfilling all the course requirements, the students must adhere to the principles and spirit of the Code of Academic Integrity, which is abridged at:

<http://provost.upenn.edu/policies/pennbook/2013/02/13/code-of-academic-integrity>. Also, at <http://gethelp.library.upenn.edu/PORT/documentation/avoidingplagiarism.html> you will find tips for avoiding plagiarism. If it is suspected that a violation to the Code of Academic Integrity might have taken place, the assignment will be graded with an “F” and the case will be referred to the [Office of Student Conduct](#) for adjudication.

Students with Disabilities: Students must register with Student Disabilities Services (SDS) for disability verification and for determination of reasonable academic accommodation

TENTATIVE COURSE SCHEDULE: Students should complete all assignments prior to class on the dates listed below. Readings and other materials should be brought to class electronically or in printed format, as they will be referred to constantly. (All are Tuesdays, unless otherwise noted.)

Week 1: 5/28 - Introduction

Week 2: 6/4- Constitutional Frameworks and Critical Race Theory

(*For this week, please choose one of the starred readings to summarize and present to class.)

READ:

Chapters 1 and 2 of Rossum & Tarr, American Constitutional Law, Vol. I (9th ed)
Pg. 1-46

Smith, Rogers M. 1993. "Beyond Toqueville, Myrdal, and Hartz: The Multiple Traditions in America" *The American Political Science Review*. Vol.87, No. 3, pg. 549-566.

*Delgado, Richard and Jean Stefanie. *Critical Race Theory: An Introduction (Ch. 1 & 2)*. (The two chapters can be summarized separately.)

*Freeman, Alan David. 1978. "Legitimizing Racial Discrimination through Anti-Discrimination law" in Crenshaw, et al 1995. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press. Pg. 29-45.

*Bender, Steven and Francisco Valdes. 2012. "Afterword: At or Beyond Fifteen—Mapping Latcrit Theory, Community, and Praxis." *Berkeley La Raza Law Journal*. Pg. 302-344.

*Mocombe, Paul. 2017. "Against Critical Race Theory." *Ethnic Studies Review*.

Watch first half of this video (30 min) by Dr. Kimberlé Crenshaw
<https://www.youtube.com/watch?v=KNKbGFoYClQ>

DISCUSS on Canvas Discussion Board

After reading the introductory chapter by Rossum and Tarr, what theoretical perspective do you think should guide interpretations of the Constitution? Is one more powerful than others, or should scholars, practitioners, and students of the law apply a combination of perspectives? Which perspective do you not find useful?

Respond to Rogers Smith's article. Do you agree with his multiple traditions perspective of US political development? Why or why not?

Post your summary on the article about Critical Race Theory by Tuesday, June 4th (by 4pm).

Recommended:

Saenz, Rogelio and Cristina Morales. 2015. *Latinos in the United States*. Malden, MA: Polity Press. Introduction, pg. 1-23

Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. Introduction, pg. 1-5

Morín, José Luis. 2009. *Latino/a Rights and Justice in the United States: Perspectives and Approaches*, Second Edition. Durham, North Carolina: Carolina Academic Press., pg. 3-17

Week 3: 6/11 -- History of US Conquest (a look at Mexico) & Overview of Latino/as and Law in U.S. & DACA

Mexico (Choose one of the starred readings.)

*Delgado, Richard. (2009) The Law of the Noose: A History of Latino Lynching. *Harvard Civil Rights-Civil Liberties Law Review.*, pg. 297-312.

*Carrigan, William and Clive Webb. 2013. *Forgotten Dead: Mob Violence Against Mexicans in the United States 1848-1928*.

*Griswold de Castillo, Richard. 1987. The United States Judicial System and the Treaty of Guadalupe. In *Southwest Hispanic Research Institute*

*Benavides, David and Ryan Golten. 2008. "Righting the Record: a response to the GAO's 2004 report *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grants in New Mexico*."

*"Chapter 2: the Origins of Latino/a Presence in the United States: An Encounter with the History of the U.S.- Latin American Relations" Morín, José Luis. 2009. *Latino/a Rights and Justice in the United States: Perspectives and Approaches*, Second Edition. Durham, North Carolina: Carolina Academic Press., pg. 19-48

DACA

Thompson, Karl. 2014. [The Department of Homeland's Security to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal to Others.](#)

Please read other articles about DACA of your choice (you can look at the Power Point as well) as well as read the case [United States v. Texas \(2016\)](#)

DISCUSS and on Canvas Discussion Board (tbd)
Why was Botiller v. Dominguez (1889) significant?
Is DACA Constitutional?

Week 4: 6/19 – Puerto Rico

*Smth, Rogers. 2017. “The Unresolved Constitutional Issues of Puerto Rican Citizenship.” *Centro Journal* . Spring 2017, Vol. 29, Issue 1, 56-75

*Venator-Santiago, Charles. 2017. “Mapping the Contours of the History of the Extension of the U.S. Citizenship to Puerto Rico, 1898 to Present.” *Centro Journal* . Spring 2017, Vol. 29, Issue 1, pg. 28-55

*Caban, Pedro. 2017. “Puerto Ricans as Contingent Citizens: Shifting Mandated Identities and Imperial Disjunctures.” *Centro Journal* . Spring 2017, Vol. 29, Issue 1, p. 238-283

*Weare, Neil. 2017. “Citizenship in U.S. Territories: Constitutional Right or Congressional Privilege?” *Central Journal Centro Journal*. Spring 2017, Vol. 29, Issue 1

Read over *Tuaua v. United States*, http://www.equalrightsnow.org/case_overview.

Anderson, John Lee. 2017. “The Dream of Puerto Rican Independence, and the Story of Hiberto Marin.” *The New Yorker*. <https://www.newyorker.com/news/news-desk/the-dream-of-puerto-rican-independence-and-the-story-of-heriberto-marin>

Miller, Jenna. 2018. “Puerto Rico’s Push for Food Independence Intertwined with Statehood Debate.” <https://www.npr.org/sections/thesalt/2018/06/04/613350827/puerto-ricos-push-for-food-independence-intertwined-with-statehood-debate>

[Interview with Judge Juan Torruella](#) 2016. *El Nuevo Dia*.

Discussion Questions:

In your opinion, should Puerto Rico maintain its current status, become a state, or seek independence?

Do you agree with arguments that *Insular Cases* should be a source of guidance for *Tuaua v. United States*?

CASES to read :

Botiller v. Dominguez (1889)

[*Downes v. Bidwell* \(1901\)](#)

[*Balzac v. Puerto Rico* \(1922\)](#)

Week 5: Cuba, Cuban Americans, and Legal Status of Latinx population

READ:

*“Cubans and Cuban Americans” in Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. (excerpts) (30 pages)

Bustamante, Michael (2016) “Is the Cuban Adjustment Act in Trouble?”

Bustamante, Michael (2016) “Cuba After Obama” <https://nacla.org/news/2016/03/29/cuba-after-obama>

“Legal Status of Latinos” in Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. (excerpts pg. 108-140)

“Discrimination and Latino/as in the United States” in Morín, José Luis. 2009. *Latino/a Rights and Justice in the United States: Perspectives and Approaches*, Second Edition. Durham, North Carolina: Carolina Academic Press., pg. 49-56

<https://www.uscis.gov/greencard/caa>

<https://cu.usembassy.gov/fact-sheet-changes-parole-expedite-removal-policies-affecting-cuban-nationals/>

DISCUSSION:

If you arrived from Cuba today and successfully entered on land (dry foot), what would happen? What if you managed to live successfully clandestine for a few years? Do you have a stronger legal case than others to receive legal documents in the U.S.?

Week 6: - Discrimination/Equal Protection Clause/School Desegregation/School Funding

READ:

**Hernandez v. Texas (1954)* (Identify some of the core arguments)

**Katzenbach v. Morgan (1966)* (Also see *Shelby County v. Holder (2013)* and *Husted V. A. Philip Randolph Institute (2018)*.)

*Madrid, Mike. 2016. “The Lemon Grove Desegregation Case: A Matter of Neglected History.” In *Latino Civil Rights in Education: La Lucha Sigue*. (ed. Colón-Muniz, Alnaida And Magaly Lavadenz). New York: Routledge. Pg. 47-57.

*Robbie, Sandra. 2016. “The Meaning of Méndez” In *Latino Civil Rights in Education: La Lucha Sigue*. (ed. Colón-Muniz, Alnaida and Magaly Lavadenz). New York: Routledge. Pg. 49-64.

Reardon, et al. 2011. “*Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools.*” (75 pages)

**San Antonio Independent School District v. Rodriguez (1972)* (Identify some of the core arguments.)

Lunenberg, Fred. 2012. “The Legal Framework for Public Education.” (9 pages)

Samuels, Alana. 2016. “Good School, Rich School; Bad School, Poor School.” *The Atlantic*. August 25, 2016. <https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333/>

Schneider, Jack. 2018. "What the School-Funding Debate Ignores. Money Matters, but Educational Inequality Goes Much Deeper." January 22, 2018.
<https://www.theatlantic.com/education/archive/2018/01/what-school-funding-debates-ignore/551126/>

Week 7: Undocumented Students; English Only and Bilingual Education; Higher Education and Affirmative Action and Admissions

READ:

Delgado, Richard. Chapter on Undocumented Students (approx.. 30 pages)

**Plyler v. Doe (1982) (Identify some of the core arguments.)*

Watch second half of Kimberlé Crenshaw's video

**Fischer v. University of Texas (2016) (Identify some of the core arguments.)*

Delgado, Richard. 2008. Chapter on English-Only Laws

Liu, Amy H. and Anand Edward Sokhey. 2014. "When and why do U.S. States make English their Official Language?" https://www.washingtonpost.com/news/monkey-cage/wp/2014/06/18/when-and-why-do-u-s-states-make-english-their-official-language/?utm_term=.32e4c11703e3

Week 8: – Immigration and Judicial Elections

Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. (Excerpts on Immigration- 30+ pages)

Saenz, Rogelio and Cristina Morales. 2015, "Historical and Contemporary Latino Immigration" (25 pages)

Pozen, David E. 2008. "The Irony of Judicial Elections" *Columbia Law Review*. Vol. 108, No.2

Bonneau, Christopher. 2018. "The Case for Partisan Judicial Elections: State Judicial Election Series." (8 pages)

DISCUSSION:

What is the role of judiciary in immigration law?

Explain the Chevron deference.

Do you think judicial elections help or hinder fairness as well as diversity of representation in the judicial branch?

Week 9:– Immigration continued, Criminal Justice

Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. (Excerpts)

García Hernández, César Cuauhtémoc. 2017. *Crimmigration Law*. American Bar Association. Chapters 1 and 2.

Morín, José Luis. 2009. *Latino/a Rights and Justice in the United States*. Durham, North Carolina: Carolina Academic Press. Ch. 4

Sáenz, Rogelio and Maria Cristina Morales. 2015. *Latinos in the United States: Diversity and Change*. Cambridge, UK: Polity Press. Ch. 11 Crime and Victimization.

Soltero, Carlos. 2006. *Miranda v. Arizona* and the Rights of the Criminally Accused. In *Latinos and American Law*. Austin: University of Texas Press.

Salinas, Lupe. 2015. *U.S. Latinos and Criminal Injustice*. Michigan State University. (Chapter on Racial Profiling)

Other readings/cases TBD

Week 10: -- Employment Discrimination, etc. and Supreme Court, Foreign Law, and Latin America

Delgado, Richard; Juan F. Pena and Jean Stefancic. 2008. *Latinos and the Law: Cases and Materials*. St. Paul, MN: Thomson/West. (Excerpts on employment discrimination (30 pages))

Roberts, Christopher. 2014. *Foreign Law? Congress v. The Supreme Court*, LFB Scholarly Publishing.

Curtis, Bradley. 2006. Enforcing the Avena Decision in U.S. Courts. *Harvard Journal of Law and Public Policy*, Vol. 30

Student Presentations (for those doing research paper)

Student recommended readings

DISCUSSION:

To what extent should the U.S. adhere to international law?

Cases to READ:

Medellín v. Texas (2008)

Reading 11: Students' choice and other cases/topics pertaining to Latinx and the Law.