Liman Public Interest Workshop

RACIAL JUSTICE AND IMMIGRANTS’ RIGHTS: DEBATES AND DIALOGUES

Spring 2013 Syllabus
Mondays, 6:10-8 pm, room 124

Hope Metcalf, Director, Liman Public Interest Program
Nina Rabin, Senior Liman Fellow in Residence
Sia Sanneh, Senior Liman Fellow in Residence

Student Conveners: Emma Kaufman, Matthew Lee, Aaron Littman, Charanya Krishnaswami

All readings available at http://www.law.yale.edu/intellectuallife/workshopsyllabus.htm

The Workshop explores the tensions and commonalities between the contemporary movements for racial justice and immigrants’ rights in the United States. In the contexts of challenges centered on law enforcement, young people, families, and the workplace, we will consider the complex relationships between racial minorities and immigrants, the similarities and differences in the legal doctrines and advocacy strategies that racial justice and immigrants’ rights movements have employed, the extent to which the movements are intertwined, and the possibilities and challenges posed by collaboration. Through readings, case studies, and occasional guests, we will ground our discussions in present day realities, while also drawing on the rich history of both movements to consider what lessons might be learned when they are considered in tandem. H. Metcalf, N. Rabin, and S. Sanneh. 2 units, credit/fail.

Requirements and Readings:

This Workshop is a two-unit, ungraded course. We meet weekly; preparation and attendance at these discussions is required for credit. If you need to miss a class, please be in touch with the professors in advance of the meeting. Students missing more than two sessions without permission will not receive credit.

Readings will be available on the Liman Public Interest Program’s website: http://www.law.yale.edu/intellectuallife/workshopsyllabus.htm. In addition, at least six times during the semester, students must post on “Inside Yale” a one-page reflection on readings --
due NO LATER than 9 a.m. on the Monday mornings of the workshop. The purpose of writing is to encourage you to begin the conversations before class as you think about the relationship among readings. All participants are expected to read the postings each week. Further, failing to turn in the six reading reflections on time will result in not receiving credit. Below is an outline of the sessions that, as always, may change.

January 28 (class one) Civil Rights and Immigrants’ Rights: A First Look

The first session will begin to parse some of the central questions of the workshop. How have race and citizenship been linked in the history of both slavery and immigration in the United States, and how do those relationships surface in contemporary discussions about racial justice and immigration? What are the claims made about the parallels—in values, strategies, and goals—between the immigrants’ rights movement and the civil rights movement? What claims are made about tensions between the two? Are the modern challenges facing racial minorities and immigrants in this country more similar than different, or vice versa?

Conveners: Hope Metcalf, Nina Rabin, and Sia Sanneh

Readings:

Randal C. Archibold, *Immigrants Take to U.S. Streets in Show of Strength*, N.Y. TIMES, May 2, 2006 at A1


Martin Luther King, Jr., Letter from a Birmingham Jail (excerpt), full version available at [http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html)


*United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)
February 4  (class two) Citizenship, Race, and Law

This class will examine the concept of “citizenship,” particularly as it relates to the history of race in the United States. We begin by tracing early definitions of “citizen” in the contexts of the history of African Americans and Chinese immigration in the United States. What are the common threads between Dred Scott and Chae Chan Ping? What differences do you notice? Consider Bosniak’s claim that “citizenship” connotes simultaneous and conflicting norms of equality and exclusion; what impact might that binary have for advocacy strategies among the racial justice and immigrants’ rights communities? How does Harris explain the law’s role in constructing race? Upon reading Lopez, what are your reflections on how the law defines “belonging,” both by race and status?

Conveners: Hope Metcalf & Sia Sanneh

Readings:

Race and Citizenship as Constructed Terms

Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1707, 1715-16, 1737-45 (1993)


Early Case Law

Amends. XIII, XIV, U.S. Const.

Chae Chan Ping v. United States, 130 U.S. 581 (1889)

Ozawa v. United States, 260 U.S. 178 (1922)

Case Study: Race and Juries in the South

February 11 – Class cancelled due to storm
February 18 (class three) Discrimination on Account of Race and Status

In this class, we will examine the harm of discrimination on account of race, and the harm of discrimination on account of immigration status. The below readings address discrimination in many different contexts: access to state resources, policing, the workplace, and the death penalty. As you read the cases, we encourage you to focus on the legal framework applied by the court, rather than focusing on the particulars of the context at issue. We selected these cases and commentaries because they set forth the current legal landscape for addressing discrimination in a variety of contexts beyond the specifics of the cases provided. As you read, consider whether the current legal doctrine accurately captures the differences and similarities in the actual harm at issue. Given the state of anti-discrimination law, do advocates for racial justice and advocates for immigrant justice have shared or different strategies for success?

Conveners: Nina Rabin & Sia Sanneh

Readings:

The Lived Experiences of Discrimination and Privilege

Please watch a thirteen minute clip of an actual experience of a stop-and-frisk by the NYPD: http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video

Jose Antonio Vargas, My Life as an Undocumented Immigrant, NEW YORK TIMES MAGAZINE, June 22, 2011

Peggy McIntosh, White Privilege: Unpacking the Invisible Knapsack, PEACE AND FREEDOM MAGAZINE 10-12, July/August 1989, Women’s International League for Peace and Freedom

Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993)

Discrimination on the Basis of Alienage

Graham v. Richardson, 403 U.S. 365 (1971)


Discrimination on the Basis of Race

Advocacy Strategies
Campbell Robertson, Bias Law Used to Move a Man Off Death Row, N.Y. TIMES, Apr. 20, 2012

February 25 (class four)  Policing and Profiling
In this class, we will continue our discussion of discriminatory uses of states’ policing power. Through three case studies – stop-and-frisk and counterterrorism policing in New York and immigration policing in Arizona – we hope to address the following questions: What harms, legally cognizable or otherwise, arise when state authorities target policing efforts (surveillance and apprehension) towards specific communities? How are “borders” drawn around communities or individuals for the purposes of focusing enforcement and/or surveillance? Is the objection to profiling the very concept of developing a “profile,” or does it depend on the factors used? What factors seem relevant and/or legitimate, and what factors do not, and what explains the difference? Next, consider how such enforcement activity might be challenged. What claims—legal or non-legal—can be leveled against profiling by the police? If one were to file a lawsuit, what are the salient features of profiling that make it susceptible to challenge? (Please brainstorm prior to class.) In your view, what are the strengths and weaknesses of the litigation and non-litigation advocacy strategies discussed in the readings? What are the commonalities among and differences between profiling of citizens and immigrants? To what extent should the advocacy responses be the same?

Conveners: Aaron Littman, Hope Metcalf & Sia Sanneh

Readings:
Race, Decisionmaking, and Enforcement


**Stop and Frisk Policing**


**Counterterrorism Policing**


Mitchell D. Silber & Arvin Bhatt, N.Y. City Police Dep’t, Intelligence Div., Radicalization in the West: The Homegrown Threat 5-13 (2007)


*Optional Reading: Faiza Patel, Brennan Ctr. for Justice, Rethinking Radicalization 1-7, 29-31 (2011)

**Immigration Policing**
March 4 (class five)        Race and Immigration Status in the Workplace

In this class, we will consider the relationship between U.S. citizen racial minorities and immigrants in the workplace. Do citizen and immigrant workers experience working conditions in the low-wage workplace differently? Do immigrant workers present a threat or an opportunity for progress to racial minorities in low-wage jobs? Does your answer rely on economics, cultural perceptions, or some other factors? How do the readings shape your view of the best direction for future immigration policy as it relates to the workplace?

Conveners: Nina Rabin

Guest: Ady Barkan


David Bacon, Black and Brown Together, AMERICAN PROSPECT (2008)

March 11 (class six)       The War on Drugs

Ever since a band of rumrunners and tobacco farmers won a war waged in part to protect the interests of tea smugglers, American attitudes toward drugs have played a key role in defining American identity. In this class, we will consider the ways in which the prohibition of drugs has been used in efforts to exclude particular communities from American society. As you read, compare the unseemly origins of drug prohibition to the war on drugs today. Does the contemporary war on drugs preserve past discrimination, extend that discrimination in new ways, or simply reflect the fact that the social structures imposed by that past discrimination
are now a deep-seated feature of American life? In what ways is the war on drugs used to shape the boundaries of modern American society? How do the consequences of the war on drugs differ for new immigrants and citizens whose communities have endured racist oppression for hundreds of years? Does the fact that those two groups are both victims of the war on drugs—and of drugs themselves—imply that they are natural allies in efforts to reform our nation’s drug policy? Or does the fact that existing drug policy marginalizes many different communities obscure the difficulty of crafting a new drug policy that is better for all them?

Conveners: Matthew Lee, Hope Metcalf & Sia Sanneh

Readings:

Racism, Xenophobia, and the History of Drug Prohibition


The War on Drugs and the Boundaries of Modern American Society

United States v. Clary, 34 F.3d 709 (8th Cir. 1994).

Michelle Alexander, The War on Drugs and the New Jim Crow, 17 RACE, POVERTY & ENV’T. 75 (Spring 2010).


DEFENDING IMMigrants PARTNERSHIP, IMMIGRATION CONSEQUENCES OF DRUG OFFENSES (2012).

The War on Drugs and International Borders


**March 25 (class seven)  Criminalization, Status, Race, and Poverty**

In this class, we will build on our discussion of drug crime to think further about the various ways that our legal system criminalizes status – poverty, membership in a racial group, and immigration status. With regard to poverty, what sorts of behaviors are criminalized in the readings, and what justifications have been or might be advanced for doing so? How tightly are these policies tied to race and gender? How would the presence or absence of such connections affect your perspective on the legitimacy of such policies?

How does criminalization operate in the context of immigration? Consider the Arpaio case; what claims are made by the plaintiffs as to the function of criminal law and enforcement in that context?

To what extent is the criminalization of poverty related to the “illegalization” of undocumented immigrants? Are they part and parcel of the same societal impulses? What are the differences in etiology? To what extent are these policies enacted by legislation? Alternately, are they created by institutions of enforcement, and if so, how and why? Do they suggest different responses?

What are the distinctive advocacy challenges faced by lawyers and organizers working to counter such policies? What sorts of legal claims can be raised, and which of the harms discussed is, or might be, legally cognizable? What forms of non-litigation could be fruitful?

**Conveners: Aaron Littman, Hope Metcalf & Nina Rabin**
Readings:

CRIMINALIZATION OF THE POOR


*Sanchez v. County of San Diego*, 464 F.3d 916 (9th Cir. 2006)

THEORIES OF CRIMINALIZATION AND “ILLEGALIZATION”

Loïc Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, 2010 DAEDALUS 74 (SUMMER 2010)


CHALLENGING STATUS CRIMES

HOMELESSNESS


NAT’L CTR. ON HOMELESSNESS & POVERTY & NAT’L COAL. FOR THE HOMELESS, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009); NB: chart is optional.

CRIMINAL DEBT


Amended Complaint at 1-11, Thomas v. City of Gulfport, No. 1:05-CV-349-LG-RHW (S.D. Miss. filed on Aug. 9, 2005)


IMMIGRATION STATUS


April 1 (class eight)  

Access to Counsel

We will use this theoretical framework to examine two case studies. The first will consider the nexus between racial justice and criminal defense. How did civil rights lawyers come to focus on the inadequacies and inequities of the criminal justice system? Focus on arguments and observations made by Sanneh, Bright, Butler, Stevenson, and Alexander for defying the system versus attempting to make gradual change within it. Do any of these strategies strike you as particularly salient?

Next, we will consider lawyers in the immigrants’ rights movement. To what extent can lawyers in the immigrants’ rights movement borrow lessons from the criminal defense/racial justice movement? Are there drawbacks to this analogy? Focus on parallels drawn by Eagly and in Roblero-Solis as well as distinctions drawn by Coutin.

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Convenors: Nina Rabin, Sia Sanneh, Charanya Krishnaswami

Readings:

The Theoretical Framework


The Nexus Between Racial Justice and Criminal Defense
Carol Steiker, Furman v. Georgia: Not an End, But a Beginning, from DEATH PENALTY STORIES (2009)

Stephen Bright & Sia Sanneh, Fifty Years of Defiance and Resistance to Gideon v. Wainwright, 122 YALE L.J. (forthcoming 2013)


Michelle Alexander, *Go to Trial—Crash the Justice System*, N.Y. TIMES, Mar. 10, 2012

**Lessons for Immigrants’ Rights Lawyering**


United States v. Roblero-Solis, 588 F.3d 692 (9th Cir. 2009)

**April 4-5, 2013 Sixteenth Annual Liman Colloquium --**

**Navigating Boundaries: Immigration and Criminal Justice**

**April 8 (class nine) Families and Detention**

This week’s readings examine how imprisonment, detention, and deportation affect families. As you read, consider how shifts in the enforcement of crime and border control have altered family dynamics. Can we understand mass incarceration and the criminalization of immigration as problems of family law? Under current laws, how do incarceration and detention factor into child custody determinations? Are there cases in which a parent’s incarceration or detention is a valid consideration in determining a child’s long-term custody? How do race and gender factor into the determination that a person is “unfit” to parent? These questions shape contemporary debates about parental rights. What happens when these debates over parental rights are reframed as debates over children’s rights? Is this a compelling framework? What are its limitations? What role should children play in the movements for prison and immigration reform?
Convenors: Hope Metcalf, Nina Rabin, and Emma Kaufman

Readings:

Effects of Imprisonment and Detention on Families


Parental Rights, Gender Dynamics, and Migration Patterns


Representation and Reform


Suggested Video:
ABC News report on the story of Encarnación Bail Romero:

**April 15 (class ten)  ** Natural Disasters

Like race and nationality, “natural” disasters are often assumed to be inherent and inevitable features of the world. And like race and nationality, natural disasters are shaped and produced by political choices. The suffering that natural disasters disproportionately inflict on marginalized communities is, in part, an acute manifestation of the systemic discrimination that has marginalized those communities in the first place. By exposing the full force of long-simmering discrimination, however, natural disasters can also facilitate efforts to recognize and resist that same discrimination. This week, we consider the extent to which natural and environmental disasters may reify or extend the obstacles facing the civil rights and immigrants’ rights movements, as well as the extent to which they may provide those movements with opportunities for mobilization and empowerment—including, perhaps, an opportunity to align themselves with environmentalist movements.

Conveners: Matthew Lee, Nina Rabin, and Sia Sanneh

**Readings:**

**Historical and Legal Context**


**Migration, Citizenship, and Race**


**Environmentalism and Civil Rights Movements**


**April 22 (class eleven) The Role of the Media**

This week’s readings examine the role that the media plays in American dialogues on racial justice and immigrants’ rights. We begin with a debate about the New York Times’ treatment of immigration, which raises a number of questions about implicit liberal bias. Are you convinced by Kammer’s argument? Who is audience for the New York Times? What are the stakes of framing migrants as a monolithic, vulnerable class? What are the alternatives? These questions ground a broader set of concerns about the representation of race in America. What is whiteness? Why is it not more clearly defined? How does race surface in popular culture? Are short documentaries an effective advocacy tool for recasting debates about race? What are the goals of documentary filmmaking, and how to they relate to the goals of social movement lawyering? How do we, as lawyers, create or resist “romantic mythologies” about race?

Conveners: Hope Metcalf, Sia Sanneh, and Emma Kaufman

**Readings:**

**Representing Immigration**


**Race, Media & Popular Culture**


**Film & Advocacy**

Please watch the short film “Alienation” from the Yale Visual Law Project:
http://yalevisuallawproject.org/film/alienation/

And revisit the film we watched earlier this semester on NYPD Stop-and-Frisk practices:

**April 29 (class twelve)  The Role of Lawyers II**

This week we will continue to reflect on the role of lawyers in advocating for social and legal change in the racial justice and immigrants’ rights movements. Please return to the readings from April 1, on the Role of Lawyers, and take some time to re-read the materials. Then read the brief hypotheticals assigned for this week, and please consider the following questions: What are the harms identified and to whom? What various forms of assistance could a lawyer provide? What does the client want you to do and does this line up with the organization’s goals and mandate? Do the issues presented implicate primarily the criminal or immigration system or both? What other systems are at play? What are some approaches to the problems described? Do any aspects of the fact patterns expose a tension between direct legal services and broader reform?

**Hypotheticals**