

Dr. Victor Jew

History 221/Legal Studies 450 Seminar 6
Asian American Legal and Constitutional History

University of Wisconsin-Madison
Winter/Spring 2004

Syllabus and Reading Schedule

Class Meets on a Monday-Wednesday-Friday schedule from 2:25 to 3:15 p.m. in Room 1131 HUMANITIES BUILDING.

Pertinent Professor Information: My office is in 4118 Mosse Humanities Building. My office phone number is 265-6033 and my UW email address is vjew@wisc.edu. My office hours this term are on Mondays and Wednesdays, from 11:00 to 12:00 p.m. **AND BY APPOINTMENT.** Please call, email, or see me to make an appointment if you wish. (Email is the best way to reach me.)

DESCRIPTION: This one semester lecture course surveys a topic that promises to provide a new perspective on traditional U.S. legal and constitutional history. Asian American legal and constitutional history tells the story of how the law and constitutionalism had a rich and constitutive relationship with the development of Asian American communities in the United States. This relationship was a two-way process whereby law shaped the boundaries of civic and social life for many Asian American communities in the United States, and in turn, Asian-derived legal actors, many of whom challenged various kinds of racial discrimination, contributed to important doctrinal and institutional developments in American law and constitutionalism. Legal developments that emerged from this two-way process include the interpretation of the 14th amendment, the honing of the administrative state, the clarification of citizenship, and the constitutional buttressing of immigration policymaking. Moreover, this two-way history also emerged from and intersected with larger social contradictions that had long perplexed the law and U.S. Constitutionalism: race-ing, gendering, subject making, and the contestations over national identity. Our course this term will examine this largely unexamined historical relationship and we will explore its many dimensions: the legal and the constitutional as well as the social, political and cultural.

GRADING: Grading will be based on a set of short assignments and written projects. These will be explained in detail throughout the course of the semester.

- 10 percent: Short assignments (related to readings)
- 15 percent: Case search for supplemental cases.
- 20 percent: Congressional debates search on Exclusion

The Larger Projects

12 percent: Group Effort and its Write Up
48 percent: Individual Paper

The purpose of these assignments is to 1) help you improve your reading and writing skills; 2) allow you to explore a topic that especially interests you; 3) introduce you to historical research; and 4) enable you to take advantage of the rich historical resources in the State Historical Society of Wisconsin, the University of Wisconsin Law School Library's historical holdings, and the Memorial Library.

1) The Short Assignments will be "feedback and analysis" exercises that will ask you to identify the thesis of an assigned reading, or analyze a document in the Odo collection, or brief a case in the collection. 1 to 2 pages each.

2) The Case Search will be a chance to find supplemental or alternative cases to further understand a theme presented in the course.

3) The Congressional debates search will give you a chance to recover another kind of document: the Congressional Globe and Congressional Record accounts of debates over Exclusion.

The Larger Projects will entail a two-step combination of a group effort and individual papers that will emerge from the group projects. I will supply a list of possible themes for group projects. Students will form groups of 5 (or so) and they will find resources in the State Historical Society of Wisconsin and/or the UW Law School Library to address the group theme. Groups will write a 5 page report or "write up" that will discuss what they found and how they have conceptualized ways to think about the theme.

The Group Efforts can be a warm-up or trial-run for the individual papers. From working on the group theme, students can develop a particular line of inquiry to pursue as their individual paper. Because the individual paper will be based on original research in the PRIMARY SOURCES, students might gain a leg-up on their individual work after having thought and searched for materials during the collective group efforts.

Individual papers will be 16 pages (upper limit at 25.)

NOTE:

A resource that is especially good for this course is a recent acquisition by the State Historical Society of Wisconsin. At the beginning of the term I asked the Historical Society to purchase a microfilm set of selected records of the United States Immigration Service. Despite the severe budgetary situation, they bought about 30 microfilm rolls of this collection. This is an amazing opportunity. These rolls are microfilmed

reproductions of internal memoranda, letters, legal opinions, attorney's memoranda, and case files that are currently in Washington, D.C. In other words, you don't have to travel to the U.S. National Archives' downtown depository in D.C.; you can research those papers in the State Historical Society building here on campus.

NOTE: You MUST take do ALL the assignments (and fulfill all their requirements) to pass the course. Failure to do so results in a F as your final grade. You are STRONGLY advised to attend the lectures. All of the assignments require a mastery and "thinking through" of BOTH the lectures and the readings. You cannot do well by skipping the lectures.

READINGS:

REQUIRED:

Franklin Odo, ed. THE COLUMBIA DOCUMENTARY HISTORY OF THE ASIAN AMERICAN EXPERIENCE (Listed below as either Odo or Columbia)

Peter Irons, A PEOPLE'S HISTORY OF THE SUPREME COURT (Listed below as Irons)

Najia Aarim-Heriot, CHINESE IMMIGRANTS, AFRICAN AMERICANS, AND RACIAL ANXIETY IN THE UNITED STATES, 1848-82 (Listed below as Aarim-Heriot)

Erika Lee, AT AMERICA'S GATES. CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882-1943 (Listed below as Lee)

Nayan Shah, CONTAGIOUS DIVIDES. EPIDEMICS AND RACE IN SAN FRANCISCO'S CHINATOWN (Listed below as Shah)

Wayne Booth, et al., THE CRAFT OF RESEARCH (Listed as Booth)

RECOMMENDED not required:

Mae Ngai, IMPOSSIBLE SUBJECTS; ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA

Richard Bense, THE POLITICAL ECONOMY OF AMERICAN INDUSTRIALIZATION, 1877-1900

SCHEDULE and READING ASSIGNMENTS

(NOTE: Subject to Change.)

UNIT I

Earlier Beginnings and a Grid of Positions
1784 to 1850

January 21 to January 30

Unit I introduces students to Asian American history and proposes a way to see how the law (both colonial and early national) created available categories by which to legally place and socially organize immigrants, non citizens, and "Others." This unit will discuss the legal-cultural lens by which national identity came to privilege "republican" habits and tendencies, an ideological development that would have consequences for publicly discussing and understanding Asians in the 19th century United States.

READ: Irons, Introduction and Chapter 1. (You can skim the chapters on early Constitutional development to get the "lay of the land" of the formation of the U.S. Constitution and the federal judiciary. These would be Chapters 2 to 7.)

READ: Odo, "Introduction", Part I Introductory Essay (pp. 9-12); READ Document 1, "Naturalization Act, March 26, 1790."

UNIT II

The Harsh Turn

1850's to the 1870's

February 2 to February 20

This unit will trace the growing political hostility to Chinese Californians during the 1850's to the 1870's. We will especially examine the ways this political impulse revealed itself in legal forums and through legal forms.

READ: Irons, Chapters 11, 13, 14

READ: Odo, Document 4,

READ: Aarim-Heriot, Introduction and Chapters 1, 2, 3

UNIT III

Reconstruction Opportunity: Made and Lost

1865 to 1879

February 24 to March 12

This unit will examine the "new America" that was promised through Reconstruction and the Congressional victories that held forth some of that promise to Chinese in 1870's America. We will also see how Reconstruction was a "half finished revolution" and how its retreat paved the way for legislative actions that would turn increasingly hostile to Chinese in the United States. We will also examine the legal challenges that Chinese mounted during the immediate post Civil War years and how these refined understandings of the 14th Amendment.

READ: Irons, Chapter 16 and 17

READ: Odo, Document 8, Document 13, Document 23

READ: Aarim-Heriot, Chapters 5, 8 and 9

UNIT IV
 Exclusion Era: Making Laws Harsh as Tigers
 The 1880's
 March 22 to April 9

This unit will survey the origins of the Exclusion regime (1882-1943) and the constitutional doctrinal consequences of challenging its early forms.

READ: Aarim-Heriot, Chapters 10 and 11
 READ: Lee, Introduction, Chapters 1 to 3
 READ: Odo, Documents 26, 27, 28 and 29

UNIT V
 Exclusion's Ramifying Logic: Implementing the Laws
 and the Maturing of the Regime
 1880's to the 1930's
 April 12 to April 23

Unit V will survey the "maturing" of the Exclusion system from 1893 to 1943. Exclusion's reach would undergo the following changes: it would increasingly reach outward to include more Asian groups such as Japanese and South Asians; it would increasingly become more routine and regular; and it would increasingly encounter challenge, resistance, scrutiny and criticism.

READ: Lee, Chapters 3-6
 READ: Shah, Introduction, Chapters 1-3, 7-9
 READ: Odo, Document 70, 66

UNIT VI
 Cracks in the System, Eventual Reforms
 and yet, the Civil Liberties Disaster
 1930's to the 1940's
 April 26 to May 7

We will finish the term by looking at the changes within Exclusion on the eve of its repeal and we will study the mixed legacy of the Second World War. On the one hand, reform; on the other, the civil liberties disaster of the Japanese American incarceration of 1942-1946.

READ: Lee, Chapter 7 and Epilogue

READ: Odo, Documents 84, 88, 89, 90, 91, 94, 95, 96