SYLLABUS

Race, Identity, and National Security

Spring 2022 – LAW 7033

Revised 5/13/22

**Professor**: Shirin Sinnar

**Class Hours**: Mon. 4:15 – 6:15 p.m.

**Classroom**: Crown 272

**E-mail**: sinnar@law.stanford.edu

**Office Hours**: Tue. 2-4 pm (Neukom Terrace)

This course explores theoretical, historical, and legal questions at the intersection of race, identity, and national security. Political events continue to thrust the relationship between race, religion, immigration status, and national security into the limelight. How do race, gender, and other aspects of identity affect conceptions of national security and the policies adopted to address it? How do national security ideas and law affect the formation of racial identity within the United States? What is the proper role for courts in addressing national security or immigration policies? What is the role of race in inflecting new and emerging threat conceptions with respect to white nationalist violence, the return of “great power competition,” and climate change? How do conceptions of American national identity affect U.S. decisions about the U.S. role in the world? This seminar aspires to understand contemporary policy questions in light of a broader theoretical, historical, and legal context.

Course Requirements:

1. Read and reflect on all assigned course materials each week;
2. Attend class each week and participate actively in discussion;
3. Submit four response papers of 4-5 pages each or a final research paper of 18-20 pages, as further described below.

Grading Options:

This course has two grading options. You may either choose to complete four response papers, to be submitted to me via Canvas by 5 p.m. the day before the class to which you are responding, or to write a research paper for R credit according to the standard registrar’s requirements. You must alert the registrar by the Add Drop deadline if you want to enroll in the R paper section.

Option 1: Response Papers:

If you choose the response paper option, each response paper should be 4 to 5 pages long (standard fonts and margins, double-spaced). You may critique the readings for the week, reflect on how they bear on specific policy questions, relate them to earlier readings or discussion in the class, or comment on ideas in the readings that most intrigued or provoked you.

Here are some additional guidelines for response papers:

* State and develop a key argument (or two). An argument does not need to be a definitive claim, but it should focus the response paper around a central idea (or two).
* You may use the first person, but the paper should be more than a stream-of-consciousness set of reflections.
* You do not need to summarize the content of the readings or address all of them.
* Avoid conclusory statements. The bigger the claim, the more support you need. Support your argument with examples or evidence from the readings or elsewhere, thinking about how you would convince a skeptic rather than someone who already agrees with you.
* You do not need to Bluebook properly, but when you are drawing on specific material from a reading, use footnotes or in-text citations to make clear what you’re citing.
* Feel free to take issue with the ideas in the readings or the position you think that I, or some classmates, might hold.

Option 2: Research Papers:

The research paper should be between 18-20 pages. I welcome a broad range of topics for papers, so long as they relate to the themes of the class. The papers should show: (1) original thinking on a topic not already resolved in the existing literature or case law; (2) serious engagement with relevant source materials, such as case law or scholarly commentary; (3) a clear thesis; 4) developed analysis of the thesis and clear organization of the argument; and (4) clear writing and proper Blue Booking.

Here are additional requirements for those of you writing R papers:

* Meet with me at least once **during April** to discuss possible topics
* Submit a 2-3 page outline by **Fri. May 6, 2022**
* Submit the final draft according to the law school’s standard requirements. According to the Student Handbook, “Papers for students graduating at the end of the Spring Quarter will be due on the last day of classes for Spring Quarter, **May 27, 2022** at 4:00 p.m. All other Spring Quarter papers are due no later than Monday, **June 20, 2022**.”

I will not be grading you on the outline you submit or any (optional) draft you submit ahead of time, but these are useful opportunities for you to get feedback before submitting the final paper. I’d be happy to read and comment on drafts or sections of drafts submitted before June 3, 2022.

Please note that all requests for extensions for R papers must go through the Registrar’s office or the Office of Student Affairs, not me. The Student Handbook states, “Students seeking a deadline extension must submit a petition to the Law School Registrar’s Office at least two weeks prior to the paper deadline for that course. Individual faculty members do not have the authority to extend the paper deadline.”

Principles for Class Discussion

Here are some principles for class discussion from Stanford Law School’s 2018 Working Group on Diversity and Inclusion:

1. Respect the speaker, even when you do not agree with or respect the point the speaker is making.

2. Listen carefully; do not interrupt, even when you are excited to respond.

3. When you disagree, make sure that you use arguments to criticize the idea, not the person.

4. Try not to generalize about groups (even groups with which you identify) and do not ask another person to speak as a representative of a group.

5. Keep an open mind. Enter the classroom dialogue with the expectation of learning something new. Look forward to learning about—and being challenged by—ideas, questions, and points of view that are different than your own.

6. Do not monopolize the conversation; give others a chance to contribute to the discussion.

7. Bring out ideas, perspectives, or solutions that you think are not yet represented or haven’t yet been adequately discussed.

8. If you are nervous about speaking in class, remember that your perspective is valid and the class deserves to hear it.

9. If a statement is made that offends you or you think might offend others, speak up and challenge it but always show respect for the person who made it.

10. Private conversations during class are not appropriate, especially when others are speaking.

11. Be conscious of body language and nonverbal responses. They can be as disrespectful as words.

12. Participate to the fullest of your ability. Community growth depends on the inclusion of every individual voice.

Support and Accommodations

It continues to be a challenging time for many of us and our loved ones. Don’t be alone with your anxiety or suffering. Please reach out to the Office of Student Affairs if you are experiencing difficult personal circumstances or otherwise need support, student.affairs@law.stanford.edu. CAPS counselors are also available for appointments, and an on-call therapist is available 24 hours a day at (650) 723-3785.

Students who may need an academic accommodation based on the impact of a disability can initiate the request with the Office of Accessible Education (OAE). Professional staff will evaluate the request with required documentation, recommend reasonable accommodations, and prepare an Accommodation Letter for faculty. The OAE is at (650) 723-1066, https://oae.stanford.edu.

During the course, please reach out if you have suggestions about providing a supportive learning environment.

Course Readings: All readings are posted on the Modules section of the Canvas site.

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| Class | Date | Topic | Readings |
| 1 | 3/28/22 | The Origins of “National Security” | 1. Douglas Stuart, Creating the National Security State: A History of the Law That Transformed America (2008) [pp. 1-11, 19-42] 2. Mary L. Dudziak, War-Time: An Idea, Its History, Its Consequences (2012) [pp. 95-112] 3. Kim Lane Scheppele, Law in a Time of Emergency: States of Exception and the Temptations of 9/11 (2004) [Part I] 4. Sarah Cleveland, Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs (2002) [Parts I and VI] |
| 2 | 4/4/22 | The Chinese Exclusion Cases and Plenary Power in Immigration | 1. Chae Chan Ping v. United States, 130 U.S. 581 (1889) (The Chinese Exclusion Case) [edited] 2. Lucy Salyer, Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law (1995) [xiii-xix, 6-23, 43-58] 3. David A. Martin, Why Immigration’s Plenary Power Doctrine Endures, 68 Okla. L. Rev. 29 (2015) |
| 3 | 4/11/22 | Race, Security, and the Civil Rights Movement  (Guest Speaker: Lerone Martin, Director, Martin Luther King, Jr., Research and Education Institute at Stanford) | 1. Mary Dudziak, Cold War Civil Rights: Race and the Image of American Democracy (2000) [pp. 3-17, 90-114] 2. Sylvester A. Johnson, “Dreams and Shadows,” in The FBI and Religion (2017) [Ch. 10 (pp. 168-190)] 3. Jeanne Theoharis, “Extremists, Troublemakers, and National Security Threats,” in A More Beautiful and Terrible History (2018) [Ch. 8 pp. 173-186] |
| 4 | 4/18/22 | The Role of Courts in National Security | 1. Korematsu v. United States, 323 U.S. 214 (1944) 2. Eric A. Posner & Adrian Vermeule, Emergencies and Democratic Failure, 92 Va. L. Rev. 1091 (2006) [edited version] 3. Trump v. Hawaii, 585 U.S. \_\_ (2018) [Majority opinion and J. Sotomayor dissent] |
| 5 | 4/25/22 | Gender, Gender Identity, and National Security | 1. Leo R. Chavez, The Latino Threat: Constructing Immigrants, Citizens, and the Nation (2013) [pp. 38-47, 73-96] 2. Leti Volpp, Protecting the Nation from Honor Killings: The Construction of a Problem, Constitutional Commentary (2019) 3. Shaila Dewan, How Racism and Sexism Intertwine to Torment Asian American Women, N.Y. Times, Mar. 18, 2021 4. Dean Spade & Aaron Belkin, QUEER MILITARISM?! The Politics of Military Inclusion Advocacy in Authoritarian Times, GLQ: A Journal of Lesbian and Gay Studies (2021) |
| 6 | 5/2/22 | The “Preventative” Prosecution of Terrorism | 1. Robert M. Chesney, Anticipatory Prosecution in Terrorism-Related Cases, in The Changing Role of the American Prosecutor (2008) 2. Jason Fagone, The Man Who Paid For America’s Fear, S.F. Chron. (Mar. 2, 2022) 3. Eric Lichtblau, FBI Steps Up Use of Stings in ISIS Cases, N.Y. Times (June 7, 2016) 4. Jesse J. Norris, Accounting for the (Almost Complete) Failure of the Entrapment Defense in Post-9/11 US Terrorism Cases, 45 L. & Soc. Inquiry 194 (2020) [You can skip sections on Prosecutorial Misconduct and Procedural Irregularities] |
| 7 | 5/9/22 | The Domestic Terrorism Debate | 1. Are We Witnessing the Mainstreaming of White Power in America? Ezra Klein Show (Nov. 16, 2021) (Interview with historian Kathleen Belew) [Listen to podcast or read the transcript] 2. Biden Administration, National Strategy for Countering Domestic Terrorism (June 2021) 3. Shirin Sinnar, Hate Crimes, Terrorism, and the Framing of White Supremacist Violence, 110 Cal. L. Rev. \_\_ (forthcoming 2022) [Skip Part I] 4. Meryl Kornfield & Mariana Alfaro, 1 In 3 Americans Say Violence Against Government Can Be Justified, Citing Fears Of Political Schism, Pandemic, Wash. Post, Jan. 1, 2022 |
| 8 | 5/16/22 | Lawyers and Social Movements  (Guest Speaker: Ramzi Kassem, Professor of Law, CUNY, and Director of CLEAR Clinic) | 1. Megan Asaka, The Movement for Japanese American Redress, Oxford Research Encyclopedia of American History (Apr. 26, 2019) 2. Joseph Margulies & Hope Metcalf, Terrorizing Academia, 60 J. L. Ed. 433 (2011) (Parts I, III, and IV) 3. Ramzi Kassem & Diala Shamas, Rebellious Lawyering in the Security State, 23 Clinical L. Rev. 671 (2017) 4. Adam Liptak, At Supreme Court, a Case on Abuse of the No-Fly List, N.Y. Times (Feb. 24, 2020) 5. Interview with Muhammad Tanvir, Plaintiff in Tanvir v. Tanzin 6. Ramzi Kassem, After Two Decades of the War on Terror, Do Muslim Lives Matter? Wash. Post (Sept. 10, 2021)   Optional:  Aslı Bâli, Defund America’s Endless Wars, Just Security (July 29, 2020)  Muslim Abolitionist Futures, Abolishing the War on Terror: Building Communities of Care (2021) [skim] |
| 9 | 5/23/22 | Looking Ahead: The U.S. Role, “Great Power Competition,” the Climate Crisis | 1. The World That The West Built After Pearl Harbour Is Cracking, The Economist (Dec. 11, 2021) 2. Stephen Wertheim, The Price of Primacy, Foreign Affairs, March/April 2020 3. Ellen Barry, ‘In the End, You’re Treated Like a Spy,’ Says M.I.T. Scientist, N.Y. Times, Jan. 24, 2022 4. Li Zhou, The Danger of Anti-China Rhetoric, Vox, Aug. 5, 2021 5. Mark Nevitt, What You Need to Know About the New Climate Security Reports, Lawfare, Oct. 26, 2021 6. Sarah Lazare, Sorry, Biden: There Is No “National Security” Solution to the Climate Crisis, In These Times, Oct. 28, 2021 |