

Representing Social Movements
Professor Janet Halley
Fall 1999

Course Materials

Please purchase the following:

Harvard Sitkoff, The Struggle for Black Equality, 1954-1980 (Hill & Wang, 1993) (available at the Law Coop).

Austin Sarat and Stuart Scheingold, Cause Lawyering: Political Commitments and Professional Responsibilities (NY: Oxford U.P. 1998) (available at the Law Coop).

First Packet of Photocopy Materials (containing the first set of readings, listed under I. below) (available at the Distribution Center)

Second Packet of Photocopy Materials (containing everything else listed on this syllabus except the Meares and Kahane debate, listed under IV.B. below; also available at the Distribution Center)

I am not yet sure how to distribute the Meares and Kahane debate (IV.B); availability TBA.

Spike Lee's film Malcolm X is "required viewing." Showing times TBA. If you can't attend one of the arranged showing times, a few copies of the videotape will be on reserve at the Law Library.

Readings

Week One

I. What is Representation?

"Representation," Oxford English Dictionary, 2d ed. (Clarendon Press, 1989)

T.V.F. Brogan, "Representation and Mimesis," in Alex Preminger and T.V.F. Brogan, eds., The New Princeton Encyclopedia of Poetry and Poetics (Princeton 1993), pp.1037-44

Hanna Finichel Pitkin, "The Concept of Representation" (University of California 1967), Appendix on Etymology, pp. 241-52, 293-96.

II. A (Paradigm?) Legalistic Social Movement

Week Two

- A. Harvard Sitkoff, The Struggle for Black Equality, 1954-1980 (Hill & Wang, 1993).

Week Three

- B. Conflicts and Change within the Movement

Martin Luther King, "Dr. Martin Luther King to Eight Fellow Clergymen," in Letters of a Nation: A Collection of Extraordinary American Letters, ed. Andrew Carroll (NY: Kodansha International, 1997), pp. 208-26.

Malcolm X, "Message to the Grass Roots," and "The Ballot or the Bullet," in Malcolm X Speaks: Selected Speeches and Statements 3-17 and 23-44 (ed. George Breitman) (Grove Press 1965).

Spike Lee, Malcolm X

Scott A. Sandage, "A Marble House Divided: The Lincoln Memorial, the Civil Rights Movement, and the Politics of Memory, 1939-1963," 801 J. of American History 135 (June 1993).

Week Four

- C. Retrospective Critiques of Civil Rights Legalism

Derrick A. Bell, Jr., "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," 85 Yale L.J. 470 (1976).

Michael W. McCann, "Reform Litigation on Trial," review of Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change?, 18 Law and Social Inquiry 715 (1993).

Gerald N. Rosenberg, "Hollow Hopes and Other Aspirations: A Reply to Feely and McCann," 18 Law and Social Inquiry 767 (1993).

III. Some Basic Conceptual Problems

Week Five

A. Rights and Rights Claiming

Patricia Williams, The Alchemy of Race and Rights (Harvard 1991), Chapter 8, "The Pain of Word Bondage (a tale with two stories)," pp. 146-65, 249-252.

Catherine MacKinnon, Towards a Feminist Theory of the State (Harvard 1989), Chapter 13, "Toward Feminist Jurisprudence," pp. 235, 237-49, 319-20.

Wendy Brown, States of Injury: Power and Freedom in Late Modernity (Princeton 1995), Chapter 5, "Rights and Losses," 96-134.

Week Six

B. Rights and Redistribution

Nancy S. Fraser, Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition (Routledge 1997), Chapter 1, "From Redistribution to Recognition? Dilemmas of Justice in a Postsocialist Age," pp. 11-39.

Mark Kelman and Gillian Lester, Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities (Harvard 1997), Chapter 8, "Ideology and Entitlement," pp. 195-226, 293-307.

Week Seven

C. Group-to-Group Imitation

1. Two New Social Movements

Douglas C. Baynton, Forbidden Signs (Chicago 1996), pp. 1-14, 149-69, 213-15.

Oliver Sacks, Seeing Voices (California 1989), Chapter 3.

Sharon N. Barnartt, "Action and Consensus: Mobilization in the Deaf President Now Protest and Its Aftermath," 17 Research in Social Movements, Conflicts and Change 115 (1994).

Edward Dolnick, "Deafness as Culture," 2723 The Atlantic 37 (1993).

Natan Lerner, "Intergroup Tensions in Israel: Are Legal Solutions Effective?", 15 Israel Yearbook of Human Rights 88 (1985).

Cheryl Chase, "Hermaphrodites w/ Attitude: Mapping the Emergence of Intersex Political Activism," 4:2 GLQ 189-211 (1998).

Week Eight

2. "Hijacking the Freedom Train"

Janet E. Halley, "Gay Rights and Identity Imitation: Issues in the Ethics of Representation," in David Kairys, ed., *The Politics of Law*, 3rd ed. (Temple Univ. Press, 1998).

Week Nine

D. Speaking for Others

Linda Alcoff, "The Problem of Speaking For Others," 20 Cultural Critique 5 (1991-92).

Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in Marxism and the Interpretation of Culture, ed. Nelson and Grossberg (Univ. of Illinois Press, 1988), pp. 271-313.

Lucie E. White, "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G," in Feminist Legal Theory: Readings in Law and Gender, ed. Katharine T. Bartlett and Rosanne Kennedy (Boulder, CO:Westview Press, 1991), pp. 404-428.

William H. Simon, "Lawyer Advice and Client Autonomy: Mrs. Jones's Case," 50 Maryland Law Review 213 (1991).

IV. Problems for Lawyers

Week Ten

A. Legal and Personal Ethics in Identity-Contested Representation

David B. Wilkins, "Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?", 63 Geo. Wash. L.Rev. 1030 (1995).

Week Eleven

B. Models of Practice

Selections from Austin Sarat and Stuart Scheingold, Cause Lawyering: Political Commitments and Professional Responsibilities (NY: Oxford U.P. 1998) (specific readings TBA).

Week Twelve

C. Collective Action Problems, Intragroup and Intergroup Governmentality, and Lawyers at Decision Points

1. Shaping Groups and Communities by Setting the Terms of their Representation

Shauna I. Marshall, "Class Actions as Instruments of Change: Reflections on Davis v. City and County of San Francisco," 29 U.S.F. L. Rev. 911 (1995).

Tracey L. Meares and Dan M. Kahan, "When Rights are Wrong" and selected responses, 24 Boston Review 4 (April/May 1999).

Week Thirteen

2. Fundamental Disagreement in Related Movements: The Same Sex Marriage Debate

William N. Eskridge, Jr., The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment, Chapter 1, "Civilizing Gays, Civilizing Straights," pp. 1-13 and Chapter 3, "The Debate Within the Lesbian and Gay Community," pp. 50-85; and notes, 219-20, 230-239

Michael Warner, "Normal and Normaller: Beyond Gay Marriage," 52 GLQ 119-171 (1999).

William B. Rubenstein, "Divided We Litigate: Addressing Disputes

Among Group Members and Lawyers in Civil Rights Campaigns,” 106 Yale L.J. 1623 (1997).

Course Requirements

I will expect you to do the readings, to attend the seminar and to be engaged in the discussions (including panel presentations). Absences are discouraged. To minimize the damage they cause, I ask you to let me know about planned absences ahead of time and to confirm unplanned ones by voicemail or email. Missing more than 2 meetings of the seminar, or chronic late arrivals/early departures, will have an impact on your final grade.

Aside from participating in the face-to-face work of the seminar, there is a single requirement: a research paper that develops in some way the questions we will be pursuing. The paper should be about 30 pages, but not longer than 35 pages (double space, normal margins, 12-point type.) I will be happy to consult with you about your paper topic. If you wish me to assist you in that way, please remember that I will be leaving Cambridge on December 13; **be sure to initiate our discussions before the end of classes.**

The final grade will reflect: Participation 30%, Paper 70%.

Office Hours, You Reaching Me, Me Reaching You

Until the construction on Areeda is completed, my office is #404 Engineering Sciences Lab. My office hours will usually be Thursday evenings from 7-9, but they will often vary so please note announcements about this in class or check with my assistant (496-1761).

To contact me otherwise: phone 496-8849; email jhalley@law.harvard.edu.

Soon after the semester begins I will ask ITS to set up a listserv for the seminar. Please check your email periodically for announcements relating to the course. (I don't intend the listserv as a discussion group; I would prefer that it remain a means for us to communicate quickly about procedural matters that may come up from time to time.)

Martin Luther King, "Dr. Martin Luther King to Eight Fellow Clergymen," in Letters of a Nation: A Collection of Extraordinary American Letters, ed. Andrew Carroll (NY: Kodansha International, 1997), pp. 208-26.

Malcolm X, "Message to the Grass Roots," and "The Ballot or the Bullet," in Malcolm X Speaks: Selected Speeches and Statements 3-17 and 23-44 (ed. George Breitman) (Grove Press 1965).

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Lucie E. White, “Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G,” in Feminist Legal Theory: Readings in Law and Gender, ed. Katharine T. Bartlett and Rosanne Kennedy (Boulder, CO: Westview Press, 1991), pp. 404-428.

William H. Simon, “Lawyer Advice and Client Autonomy: Mrs. Jones’s Case,” 50 Maryland Law Review 213 (1991).

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Shauna I. Marshall, “Class Actions as Instruments of Change: Reflections on Davis v. City and County of San Francisco,” 29 U.S.F. L. Rev. 911 (1995).

William N. Eskridge, Jr., The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment, Chapter 1, “Civilizing Gays, Civilizing Straights,” pp. 1-13 and Chapter 3, “The Debate Within the Lesbian and Gay Community,” pp. 50-85; and notes, 219-20, 230-239

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