

# HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

TO: Colleagues who requested a copy of the syllabus  
FROM: David Hoffman  
DATE: January 29, 2017  
RE: “Diversity and Dispute Resolution” course

---

Thanks for your interest in the syllabus.

This two-credit course was offered in the Winter Term (January 2017), and it met daily for eleven consecutive days, from 10 a.m. to 12:30 p.m. Then I showed videos (totally optional) during a brown-bag lunch from 1 to 2 p.m., in which there was some brief discussion after each video. The course description can be found here:

<http://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=70837>

Enrollment was capped at 24 students, so that we could incorporate role plays and other forms of experiential learning, and there was a substantial wait list even though this was the first time this course was offered.

As you will see from the syllabus, there was no final exam, but each student was required to write a brief essay (300 – 500 words) for each day’s class, based on the readings for that day. I found that the students were much more engaged in each day’s discussion because of the work that they had done the night before.

One of the hardest tasks in putting together this syllabus was selecting from a very broad range of material. I am hoping to teach this course again next year, and so I welcome your input regarding written material, videos, exercises, etc. that would improve the course. Thanks!!



**HARVARD LAW SCHOOL**

**DIVERSITY AND DISPUTE RESOLUTION**

**Winter 2017**

David A. Hoffman, Lecturer on Law

Teaching Assistant: Rabiya Akande

Faculty Assistant: Caryn May

**SYLLABUS**

**Readings for the Course**

Handouts (from the Copy Center and on Canvas)

**Day 1 (1/3) – Difficult Conversations: How to Discuss What Matters Most**

- Introductions
- Overview of the course
- Ground rules for the course
- Some questions to consider:
  - As professionals involved in conflict resolution, what types of diversity issues predictably arise?
  - How can we become more sensitive to, and competent to manage, conflicts involving such issues?
  - To what extent, and by what means, do our differences create differentials of power?
  - How would define “cultural competence”?
  - In what way is narrative a useful tool in building bridges?
  - In what way(s) have you experienced conflicts implicating identity issues in your own life or in conflicts that you have observed?
- Guest speaker: Audrey Lee, Esq., who will lead us in a discussion and exercises to enhance our ability to participate in, and manage, difficult conversations involving diversity issues

**Reading Assignment:**

- *Difficult Conversations: How to Discuss What Matters Most* by Doug Stone, Bruce Patton, and Sheila Heen (excerpt)
- “Cultural and Diversity Issues in Mediation” by David Hoffman and Katherine Triantafillou

No written submission is due for this class, but please be prepared to discuss the readings.

**Day 2 (1/4) – The Danger of the Single Story**

- Some questions to consider:
  - What *are* the dangers of the “single story”?
  - In what ways do conflicts accentuate the tendency to see each other through the lens of a single story?

- How does the intersectionality of race, class, gender, sexuality and other factors 'complexify' the experience of power or powerlessness that we have when we are involved in conflicts?
- What differences among people do matter and/or should matter in the setting of conflict?
- How can we acknowledge those differences in ways that avoid objectification and stigma?
- For dispute resolvers, and indeed all of us, is impartiality impossible and, if so, what are the implications?
- What does Minow mean by a "relational focus" on difference?
- To what extent are differences intrinsic or socially constructed?
- Reviewing our personal biographies
- If there is time, we will also discuss the manner and extent to which religion has been a shaping influence in our lives, or not.

Reading / Viewing Assignment:

- Chimamanda Ngozi Adichie, TED talk on "The Danger of the Single Story" (<https://www.youtube.com/watch?v=D9lhs241zeg>)
- "Different Beginnings: Making *All* the Difference," by Martha Minow
- "A Conceptual Framework for Understanding Race, Class, Gender, and Sexuality," by Lynn Weber
- "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," by Kimberle Crenshaw (pp. 139-52, 166-67)

Written submission [Due by 8 a.m. 1/4]: Please write a brief essay about *you*, featuring one or more of the following: an area of interest or activity about which you were passionate; a person in your life who greatly influenced you; an experience or an aspect of your background or heritage that shaped the person you became; or any other aspect of your life up to this point that seems salient to you (300-500 words), including only information that you would be comfortable sharing in a small group discussion in class. (Although we will discuss this week's readings in class, it is not necessary to reference them in connection with your bio.)

### **Day 3 (1/5) – Identity and Values**

- Some questions to consider:
  - How can conflicts be resolved when identity and values are at stake?
  - What strategies are suggested by the experiences with the Boston abortion talks and the student strike at Columbia?
  - How does the identity of the mediator/facilitator impact conflict management?
  - Are there some disputes that require a mediator with a particular identity or background? If so, what kind, and why?
  - What types of values-based or identity-based conflicts have you been involved in? What emotions were evoked by that experience? What insights emerged for you from those experiences?
- Role-play simulation and fish bowl demonstration

Reading Assignment:

- “How to Negotiate When Values Are at Stake,” by Larry Susskind
- “The Abortion Talks,” by Susan Podziba
- “Talking with the Enemy,” Boston Globe
- “Mediation as Parallel Seminars: Lessons from the Student Takeover of Columbia University’s Hamilton Hall,” by Carol Liebman

Written submission [Due by 9 p.m. 1/4]: Please draft the facts for a role play in which there is a dispute involving identity and/or values, and describe what you might do if you were hired by the parties to the dispute to help them resolve it. What light do today’s readings shed on your choices? (300-500 words).

**Day 4 (1/6) – Implicit Bias**

- Some questions to consider:
  - What is “implicit bias” as distinguished from “explicit bias”?
  - How valid are “tests” of implicit bias?
  - Are there better ways to identify our unconscious biases?
  - What types of implicit bias, if any, are useful?
- ABA Video for Judges: <http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/implicit-bias.html>

Reading Assignment:

- “Implicit Bias: A Primer for Courts,” by Jerry Kang
- “The Implicit Association Test at Age 7: A Methodological and Conceptual Review,” by Mahzarin Banaji, et al.
- “A Practical Guide to Implicit Association Tests and Related Tasks,” by Sarah Teige-Mocigemba, et al.

Written submission [Due by 9 p.m. 1/5]: Please visit [www.ProjectImplicit.org](http://www.ProjectImplicit.org), click on “Participate,” and take at least one of the tests there. Then, after doing the readings for Day 4, describe your views (300-500 words) of the Implicit Association Test, based on your personal experience and the information provided by today’s readings.

**Day 5 (1/9) – The Psychology of Diversity and Inclusion: The Internal Family Systems Model**

- Some questions to consider:
  - What is the IFS model?
  - How is this model relevant to diversity and inclusion issues?
  - In your experience, what techniques are effective in reducing bias?
- Fish bowl demonstration role play
- Guest speakers: Percy Ballard, M.D. and Deborah Levans, LICSW, who will explain the IFS model and its applicability to diversity and inclusion issues.

Reading Assignment:

- “Mediation, Multiple Minds, and Managing the Negotiation Within,” by David Hoffman
- Essay by Percy Ballard, M/D.

Written submission [Due by 9 p.m. 1/8]: This writing assignment has two parts. First, I would like you to do some research (Internet-based research is sufficient for this purpose) and identify one or two articles or other items that describe methods for counteracting implicit bias. Second, please summarize the method(s) described in that material and your opinion of the likely utility of the method(s) based on your reading and your personal experience (300-500 words).

## **Day 6 (1/10) – Gender**

- Some questions to consider:
  - In what ways have you seen gender play a role in conflict and conflict resolution?
  - How does gender fluidity impact the observations and conclusions in this week's reading about gender differences in negotiation?
  - Does sexual orientation have any bearing on those differences?
  - In what ways, if any, can gender be a form of culture?
  - What are the characteristics of 'second wave' as opposed to 'third-wave' feminism?
  - What are the implications of modern feminism for our understanding of whether there are gender differences in moral judgments or in the way men and women negotiate?
  - What are the implications of anti-essentialism for our understanding of other forms of 'difference' in addition to gender?
  - What are the elements of male privilege, and what advantages, if any, might be associated with identifying as female?
- Video lecture by Dr. Pat Heim on gender differences
- Small group discussion: instructions for boys and girls

### Reading Assignment:

- *In a Different Voice*, by Carol Gilligan (excerpt)
- "Anti-Essentialism in Practice: Carol Gilligan and Feminist Philosophy," by Cressida Heyes
- "The Mediation Alternative: Process Dangers for Women," by Trina Grillo (excerpt)
- "Understanding Gender"
- "Girl," by Jamaica Kincaid (excerpt)
- "The Male Privilege Checklist"
- "Women at the Bargaining Table: Pitfalls and Prospects," by Catherine Tinsley et al.
- "The Impact of Gender on Negotiation Performance," by Charles Craver
- "Women in Dispute Resolution: Parties, Lawyers, and Dispute Resolvers – What Difference Does 'Gender Difference' Make?" by Carrie Menkel-Meadow

Written submission [Due by 9 p.m. 1/9]: Please write two short essays/poems of instructions, along the lines of Jamaica Kincaid's "Girl," based on the culture in which you grew up – one essay/poem to be called "Girl" and one called "Boy" (300-500 words total).

## Day 7 (1/11) – Sexual Orientation and Stereotyping

- Some questions to consider:
  - In what ways have you seen sexual orientation play a role in conflict and conflict resolution?
  - What does Yoshino mean by the term “covering” and in what way(s) is covering “a hidden assault on our civil rights”?
  - What do the strategies of passing and covering, as described by Yoshino, have in common with strategies used by others whose differences arise from race, gender, class, disability or other characteristics?
  - In your own life, what characteristics, if any, do you cover, and why?
  - What is meant by the term “queer theory”?
  - What does queer theory add to our understanding of differences in sexual orientation?
  - What are the elements of straight privilege, and what advantages, if any, might be associated with not being straight?
- Stereotyping exercise
- Guest speaker: Katherine Triantafillou, Esq.

### Reading Assignment:

- *Covering: The Hidden Assault on Our Civil Rights*, by Kenji Yoshino (excerpt)
- “Queer Theory: An Introduction,” by Annamarie Jagose
- “Unpacking the Invisible Knapsack of Straight Privilege”
- Public Conversations Project - Stereotyping Exercise

Written submission [Due by 9 p.m. 1/10]: Your assignment for today has two parts. First, please conduct an online search for an essay, article, or blog that describes the experiences/perspectives of being a lesbian with the same sensitivity, nuance, and insight as Kenji Yoshino’s essay exhibits with regard to his experience as a gay man, and then, based on that essay, article, or blog, identify one or more ways in which the experiences/perspectives described in that piece differ from those in Yoshino’s essay (300-500 words). Second, please review the Stereotyping Exercise, fill out parts A, B, and C of the exercise, and think about the following question: how might the Stereotyping Exercise be useful in increasing awareness of our *own* biases. We will discuss this in class. Please note that this second part of today’s assignment is not to be uploaded to Canvas – but please bring it to class, because we will be discussing the exercise and your responses to it.

## Day 8 (1/12) – Class and Culture

- Some questions to consider:
  - What is “culture”?
  - What is “class”?
  - In what ways have you seen socio-economic class or culture play a role in conflict and conflict resolution?
  - With regard to class, what “invisible walls” (to use Stout’s term) have you encountered – from either side of the wall?
  - What strategies can be used to overcome such barriers?

- What light do our readings in this course about intersectionality shed on Barkai's comments about the role of culture in negotiation and dispute resolution?
- What dispute-resolution lessons about culture can be learned from LeBaron's story about the barking dog?
- What dispute-resolution lessons about culture can be learned from the BBC's "translation guide"?
- Creating a "privilege walk" based on socio-economic class and cultural differences

Reading Assignment:

- *The Spirit Catches You and You Fall Down*, by Anne Fadiman (excerpt)
- "Cultural Dimension Interests, the Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution," by John Barkai
- "What the British Say and What They Really Mean" (BBC)
- "Barking Dog Story," by Michelle LeBaron
- *Where We Stand: Class Matters*, by bell hooks (excerpt)
- *Bridging the Class Divide*, by Linda Stout (excerpt)
- "Notes for a Privilege Walk"

Written submission [Due by 9 p.m. 1/11]: Using the format of the "Privilege Walk" in today's readings, create a privilege walk based on socio-economic class and cultural differences (300-500 words).

## Day 9 (1/13) – Race

- TED talk by Mellody Hobson: "Color blind or color brave?"
- Some questions to consider:
  - In what ways is Baldwin's advice to his nephew similar to, or different from, Coates' advice to his son?
  - How do you account for the ways in which their advice is similar / different?
  - What is critical race theory?
  - If you were to design a curriculum for educating white people in the United States about race and privilege, what elements would you include? What pedagogical techniques might you use to enhance learning?
  - What are the elements of white privilege, and what advantages, if any, might be associated with not being white?
- Guest Speaker: Prof. Patricia Elam Walker, who will discuss with us the insights / lessons about race and other matters that emerge from her novel.

Reading / Viewing Assignment:

- *Breathing Room*, by Patricia Elam (excerpt)
- "White Privilege: Unpacking the Invisible Backpack," by Peggy McIntosh
- *Waking Up White*, by Deborah Irving (excerpt)
- "How racism hurts – literally," by Maxine Drexler
- *The Fire Next Time*, by James Baldwin (excerpt)
- *Between the World and Me*, by Ta-Nehisi Coates (excerpt)
- "What is Critical Race Theory?" by Richard Delgado and Jean Stefancic

Written submission [Due by 9 p.m. 1/12]: What light do today's readings, and the other readings for this course, shed on the reasons for the intensity of the conflict over Zadi's hair in the book *Breathing Room*? What does this conflict teach us about intersectionality and cultures within cultures (300-500 words)?

## **Day 10 (1/17) – Disability**

- Guest speakers: Prof. Alonzo Emery and Dr. Cui Fengming, who will lead the discussion of this topic
- TED talk: Stella Young, "I am not your inspiration, thank you very much" - [http://www.ted.com/talks/stella\\_young\\_i\\_m\\_not\\_your\\_inspiration\\_thank\\_you\\_very\\_much](http://www.ted.com/talks/stella_young_i_m_not_your_inspiration_thank_you_very_much)
- "Social Model Animation": <https://www.youtube.com/watch?v=9s3NZaLhcc4>
- Role play exercise

### Reading Assignment:

- "The Relationship between Disability Studies and the Law," by Arlene Kanter
- "Changing Attitudes to Disability," by Richard Reiser
- Excerpts from the Convention on the Rights of Persons with Disabilities, United Nations, 2006
- "Disability is Political: Implications of China's Ratification of the Convention on the Rights of Persons with Disabilities," by Carole J. Petersen
- "Disabled Chinese Struggle for a Good Education, and Acceptance," by Didi Kirsten Tatlow
- "Ratify the UN Disability Treaty," by Michael Ashley Stein and Janet E. Lord
- "The Invisible Backpack of Able-Bodied Privilege Checklist," by Melissa Graham
- "What Disability Means," by Multiple Contributors

Written submission [Due by 9 p.m. 1/16]: Reflecting on how you have seen disabilities addressed in your family and/or community, please describe a situation or circumstance in which disability was handled skillfully and sensitively, and another situation or circumstance where it was not. What light do these readings shed on how people in our society should respond to disabilities? (300-500 words total)

## **Day 11 (1/18) – Building Bridges / Understanding Differences – The Aftermath of the Presidential Election**

- Some questions to consider:
  - What is the impact on diversity and inclusion in our society from online bullying and predation? What measures could we take to mitigate or prevent such harm while avoiding infringement of protected free speech rights?
  - To what extent are the algorithms of the Internet era compromising efforts to advance the lives of disadvantaged people?
  - At Harvard Law School, is there a "privilege" associated with being either politically progressive or politically conservative? If so, what are the elements of that privilege?
  - To what extent have you felt safe/unsafe discussing your views about the 2016 presidential election in settings where you were not sure how the people in that setting voted?



- To what extent does Haidt's moral foundations theory explain the tensions during and after the 2012 and 2016 presidential campaigns?
- Is there more to it than that? If so, what are the additional elements that explain these tensions?
- What are the techniques that dispute resolvers can use when facilitating discussions involving such tensions?
- TED talk by Jonathan Haidt, "The moral roots of liberals and conservatives": [https://www.ted.com/talks/jonathan\\_haidt\\_on\\_the\\_moral\\_mind](https://www.ted.com/talks/jonathan_haidt_on_the_moral_mind)
- Fishbowl demonstration role play: facilitating dialog between fervent Donald Trump supporter and fervent Hilary Clinton supporter
- "Love Has No Labels": <https://www.youtube.com/watch?v=PnDgZuGIhHs>

Reading / Viewing Assignment:

- Audio: "This American Life: Red State, Blue State" (excerpt)
- "Remedying Law's Partiality Through Social Science," by Andrew Perlman
- "Artificial Intelligence's White Guy Problem," by Kate Crawford
- TEDx talk by Anita Sarkeesian on online misogyny

Written submission [Due by 9 p.m. on 1/17]: Please write an essay summarizing what you see as some of the take-aways of the course, based on our readings, discussions, writing assignments, and class exercises. There are no right or wrong answers here, and I anticipate that each of you may draw different conclusions from the work that we did together in this course. For this final writing assignment, we are lifting the 500-word cap on your submissions. You can write an essay that's longer than 500 words, but if you choose to write 300-500 words, that will suffice.

### **Readings for the Course and Class Attendance**

It is very important for the success of this course that everyone stays current with the readings for each class. We learn from each other, and therefore I consider it part of our responsibility to each other to make class discussions as useful and interactive as possible. Please participate in class discussions and attend each class unless there are exigent circumstances of some kind. Because there will be only 11 meetings of this class, an unexcused absence from class will affect your grade. If you cannot attend a class, please let me know beforehand by email, with a copy to Rabiata Akande.

The readings for each week are listed in this syllabus in my suggested order for reading them – in some cases the readings were written in response to the preceding items.

### **Grading**

There will be no exam. Your grade in the course will be based on the daily papers that you submit. Your participation in class discussion and your participation in role play simulations will be evaluated but will not be used to reduce any student's grade; it can only improve your grade.

### **Contact information**

Contact info for Caryn May (Hauser 418): (617) 495-9200; [cjmay@law.harvard.edu](mailto:cjmay@law.harvard.edu)

Contact info for Rabiata Akande: (857) 260-8799, or (preferred) [oakande@sid.law.harvard.edu](mailto:oakande@sid.law.harvard.edu)

Contact info for David Hoffman:

- By email: [DHoffman@BLC.law](mailto:DHoffman@BLC.law) (this works better than my harvard.edu email address)

- By phone at Boston Law Collaborative, LLC: (617) 439-4700 x201 (voice mail is available 24/7)

My preferred mode of communication is email, but if there is something that you would prefer to discuss in person or on the phone, please let me know. Please mark emails as “time-sensitive” if you need a response in less than 48 hours.

### **Office hours in Areeda Hall, Room 126**

I will be available for office hours on an as-needed basis; just let me know when you would like to meet. Conferring by phone, email or Skype is OK too, if that is more convenient. To arrange a time to meet or talk with me, please contact Karen Richards (617-439-4700 x205), who will be keeping my calendar of office hours.

### **Laptops**

Except in special circumstances, such as accommodating a disability, the use of laptop computers is not permitted in class, except (a) during the mid-class break, and (b) during class exercises in which creating a document or doing Internet searching is part of the exercise.

## Videos at lunch

### Day One – Difficult Conversations

“A Class Divided” (PBS – one hour):

<http://www.pbs.org/wgbh/pages/frontline/video/flv/generic.html?s=frol02p66&continous=1>

### Day Two – The Danger of a Single Story

Kim Crenshaw on Intersectionality (TED talk):

<https://www.youtube.com/watch?v=Cjy0DruKBdQ>

Stereotype Threat - <https://www.youtube.com/watch?v=failyIROnrY>

“A Girl Like Me”: <http://www.understandingrace.org/lived/video/index.html>

### Day Three – Identity and Values

“I, Too, Am Harvard”: <http://itooamharvard.tumblr.com/post/78470641492/promo-video-for-i-too-am-harvard-made-by-ahsante>

Hapa Project: <http://www.thehapaproject.com/>

<https://www.youtube.com/watch?v=vILE8CapAKw>

TED: “Confessions of a D-Girl: Colorism and Global Standards of Beauty”:

<https://www.youtube.com/watch?v=fvoWoMlwr-g>

TED: “Enough with the Fear of Fat”:

[http://www.ted.com/talks/kelli\\_jean\\_drinkwater\\_enough\\_with\\_the\\_fear\\_of\\_fat](http://www.ted.com/talks/kelli_jean_drinkwater_enough_with_the_fear_of_fat)

### Day Four - Implicit Bias

Google video: <https://www.youtube.com/watch?v=nLiFTHTgEVU&t=4s>

### Day Five - Psychology

TED talk: Thandie Newton – “Embracing Otherness, Embracing Myself”:

<https://www.youtube.com/watch?v=uzKBGtf0i0M&t=203s>

### Day Six – Gender

TED talk on instructions for men: [http://www.ted.com/talks/tony\\_porter\\_a\\_call\\_to\\_men#t-233185](http://www.ted.com/talks/tony_porter_a_call_to_men#t-233185)

TED talk by Laura Bates, “Everyday Sexism”:

<https://www.youtube.com/watch?v=LhjsRjC6B8U>

Transgender challenges: excerpts from “Transparent” (Season One, Episode One at 21:23; and Season One, Episode Five at 18:19)

### Day Seven – Sexual Orientation

“The Stonewall Riots: Breaking the Wall of Inequality”

<https://www.youtube.com/watch?v=irgtyIAv2bY&list=PLQlEeEF4y1aFPstGkmZPTDGA3QusWX23>

TED talk: Tiq Milan and Kim Katrin Milan: “A queer vision of love and marriage”:  
[http://www.ted.com/talks/tiq\\_milan\\_and\\_kim\\_katrin\\_milan\\_a\\_queer\\_vision\\_of\\_love\\_and\\_marriage](http://www.ted.com/talks/tiq_milan_and_kim_katrin_milan_a_queer_vision_of_love_and_marriage)

#### Day Eight – Class and Culture

TED talk: Derek Sivers, “Weird or Just Different”:  
<https://www.youtube.com/watch?v=1K5SycZjGhI>

TED talk: Pellegrino Riccardi, “Cross Cultural Communication”:  
<https://www.youtube.com/watch?v=YMyofREc5Jk>

“The Lunch Date”: <https://www.youtube.com/watch?v=epuTZigxUY8>

#### Day Nine - Race

“The Story of Race” - [http://www.understandingrace.org/history/timeline\\_movie.html](http://www.understandingrace.org/history/timeline_movie.html)

Bryan Stevenson – TED talk: “We need to talk about an injustice”:  
<https://www.youtube.com/watch?v=c2tOp7OxyQ8>

Mohammed Ali video on YouTube: “Why is Jesus White?” --  
<https://www.youtube.com/watch?v=rtxfTEyJZg4>

Chimamanda Ngozi Adichie: discussion of hair:  
<https://www.youtube.com/watch?v=WWuRA61N8jA>

#### Day Ten - Disability

TED talks about disability:

[http://www.ted.com/talks/sue\\_austin\\_deep\\_sea\\_diving\\_in\\_a\\_wheelchair](http://www.ted.com/talks/sue_austin_deep_sea_diving_in_a_wheelchair)

<https://www.youtube.com/watch?v=36m1o-tM05g>

[http://www.ted.com/talks/rosie\\_king\\_how\\_autism\\_freed\\_me\\_to\\_be\\_myself](http://www.ted.com/talks/rosie_king_how_autism_freed_me_to_be_myself)

<https://www.youtube.com/watch?v=VaRO5-V1uK0>

#### Day Eleven: Building Bridges

“If You Are Scared of Islam, Meet a Muslim”

<https://www.youtube.com/watch?v=xstkCinRUio>

#IWillProtectYou video on YouTube: [https://www.youtube.com/watch?v=0\\_fGzg7GKbs](https://www.youtube.com/watch?v=0_fGzg7GKbs)

Chris Rock’s message for white people (about Obama):  
<https://www.youtube.com/watch?v=R09qvNOcU4c>

“The Bubble” (from SNL): <http://www.nbc.com/saturday-night-live/video/the-bubble/3428577>

Key and Peele: Obama’s Code-Switching --  
<https://www.youtube.com/watch?v=nopWOC4SRm4>

Hari Kondabolu – “2042 & the White Minority”:  
<https://www.youtube.com/watch?v=85fr6nbiMT4>