

Carleton University
Course Outline

Department of Law and Legal Studies

COURSE: LAWS 3908.B Approaches in Legal Studies II

PREREQUISITES: LAWS 2908

TERM: Winter 2013

CLASS: Day & Time: Thursdays, 11:35am-2:25pm

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb

Office Hrs: Wednesday, 10-12 (walk-in) & by appointment

Email: Christiane_Wilke@carleton.ca

[please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

This course combines discussions of theories and research methods in legal studies with the study of a theme (human rights). The emphasis is on research as a process that involves asking questions, drawing on theories, interpreting texts, questioning concepts, and assembling the outcome of this messy process in a coherent form (a research paper). We will review some basic research techniques (finding articles and documents), but mostly focus on understanding different theories, using them for asking research questions, answering these questions.

Why human rights? Why case studies from South Africa and Canada? Human rights are floating and fleeting concepts: they can point to aspirations, to practices, to legislation; they are invoked by governments, citizens, advocates, and corporations. We will study concepts of human rights as well as human rights problems and litigation in practice. In addition, we will think about what it means to do research on a notoriously complex and fleeting thing such as human rights. The course will encourage and foster creative and interdisciplinary questions and projects.

The case studies are: the recognition of same-sex marriage in South Africa and Canada, race, equality and urban infrastructure in South Africa, and questions of citizenship and belonging in Canada raised by the case of Omar Khadr. Together, these case studies will prompt us to read theories about and around human rights, asking questions about equality, sexuality, race, postcoloniality, urban space, and citizenship. It will be an exciting journey through contemporary human rights struggles.

NOTE ON ACADEMIC ACCOMMODATION**(STUDENTS WITH DISABILITIES, RELIGIOUS OBLIGATIONS, PREGNANCY)**

You may need special arrangements to meet your academic obligations during the term because of disability, pregnancy or religious obligations. Please review the course outline promptly and write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist.

Students with disabilities requiring academic accommodations in this course must register with the **Paul Menton Centre for Students with Disabilities (PMC)** for a formal evaluation of disability-related needs. Documented disabilities could include but not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that your Instructor receives your Letter of Accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the last official day to withdraw from classes in each term.

Students requiring accommodation on the grounds of religious observance must submit to their instructors a formal request with suggestions for alternate dates and/or means of satisfying any academic requirements involved. Such requests should be made during the first two weeks of any given academic term, or as soon as possible after a need for accommodation is known to exist, but in no case later than the second-last week of classes in that term.

Pregnancy accommodation may involve a temporary modification of the elements of the student's academic program (e.g., laboratory, mid term, final exam, or field work).

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/accommodation>

A NOTE ON ACADEMIC FREEDOM:

In this course, we will discuss history, literature, culture and ideas in connection to human rights in South Africa. The course material might contain or convey ideas about ethics, law, and culture that will be unfamiliar and sometimes disturbing. The course material is not designed to convey a particular "conclusion" but to encourage discussion about complex issues. All participants in the course must be willing to examine the relevant texts, must make a sincere effort to understand the presuppositions of others, and be willing to discuss, verbally and in writing, the objects of study. By enrolling in this course, students accept a commitment to academic freedom for all participants, themselves, and the instructor. If you have any questions relating to this statement, please let me know.

COURSE MATERIAL:

All course materials are accessible through cuLearn.

EVALUATION:

- **Attendance: 5%**
- **Participation: 5%**
- **Paper 1: 15%**
- **Paper 2: 20%**
- **Paper 3: 20%**
- **Final Exam (take home) or research paper: 35%**

- **Attendance and participation:** This class is structured around discussions and workshops on doing research. So it is important that you both do the readings that will be the basis of our discussions and group work, and that you come to class to participate in the workshops. Attendance and participation are valued at 10% combined, but regular attendance and informed participation will help you write much better assignments.
- **Everyone's active participation** is crucial for the success of the class. Participation is valued at **5 points** and presumes, of course, that you have read the texts carefully and that you attend class.
- **Attendance policy:** regular attendance is the key to the success in seminar classes. Attendance counts for **5 points**. After the first class you missed, each further class that you miss without a documented excuse leads to a 1 point deduction. (Example: If you miss two classes, you will get 4 out of 5 points for attendance.)

- **The short papers (5-7 pages)** are responses to essay questions/tasks that will be handed out in class in advance. You will answer one out of two or three questions. The emphasis is on applying theoretical concepts to primary material. Some of the questions/task will ask you to construct your own research question. Short paper 3 will contain the option of writing a research paper proposal.

- **The three short papers are due on these dates (not in class!):**
- **Paper 1: February 4th,**
- **Paper 2: February 25th**
- **Paper 3: March 25th**

- **The final exam will contain two options: You** either write a 12 page research paper building on the research paper proposal that's an option for the third paper. Alternatively, you will answer two essay questions. **The final exam is due on April 27th. No late final exams will be accepted without a documented emergency.**

- **Late penalty for short papers: 10% (2 points out of 20, or 1.5 out of 15) per day.**
- **All papers have to be submitted to the Law & Legal Studies Department Drop Box next to C473 Loeb before 4pm on the due date.**

SCHEDULE:**1. January 10th****Introduction****2. January 17th****Human Rights**

What are some of the most important approaches to human rights?

What do they suggest about the promise and limits of human rights?

Readings:

Marie-Bénédicte Dembour, "What Are Human Rights? Four Schools of Thought." *Human Rights Quarterly* 32 (2010), 1-20.

Ratna Kapur, "Human Rights in the 21st century: Take a Walk on the Dark Side." *Sydney Law Review* 28 (2006), 665-687.

Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press, 2010), 44-119.

Recommended:

Costas Douzinas, *Human Rights and Empire* (London: Routledge, 2007), 34-50.

Richard Wilson, "Human Rights." In *A Companion to the Anthropology of Politics*, ed. David Nugent and Joan Vincent (Malden, MA: Blackwell, 2004), 231-247.

Upendra Baxi, "Postcolonial Legality" in Henry Schwarz and Sangeeta Ray, ed., *A Companion to Postcolonial Studies* (Malden, MA: Blackwell, 2000), 540-555.

Jean Comaroff and John Comaroff, "Reflections on liberalism, policulturalism and ID-ology: citizenship and difference in South Africa," *Social Identities* 9 (2003), 445-473.

3. January 24th**Doing Research on Human Rights**

How can we do human rights research? Which fields & disciplines can we draw on, and how?

What can interdisciplinarity look like?

Readings:

Rhiannon Morgan, "Introduction: human rights research and the social sciences," in *Interpreting Human Rights: Social Science Perspectives*, ed. by Rhiannon Morgan and Bryan S. Turner (New York: Routledge, 2009), 1-22.

Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108 (2008): 38-51.

Ariadna Estévez, "Human Rights in Contemporary Sociology: the Primacy of Social Subjects," *Human Rights Quarterly* 33 (2011): 1142-1162.

Chiara Bottici, "Imagining Human Rights: Utopia or Ideology?" *Law & Critique* 21 (2010): 111-130.

Recommended:

Susan Marks, "Human Rights and Root Causes," *Modern Law Review* 74 (2011): 57-78.

David Kennedy, "The International Human Rights Movement: Part of the Problem?" *Harvard Journal of Human Rights* 15 (2002): 101-125.

Fuyuki Kurusawa, *The Work of Global Justice: Human Rights as Practices* (New York: Cambridge University Press, 2007).

4. January 31st**Intersectionality and complex inequality in South Africa**

How can we make sense of complex identities? How are complex identities tied to complex inequalities?

Readings:

Leslie McCall, "The Complexity of Intersectionality," *Signs* 30 (2005): 1771-1800.

Ange-Marie Hancock, "When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm," *Perspectives on Politics* 5 (2007): 63-79.

Catherine Albertyn, "Substantive Equality and Transformation in South Africa," *South African Journal on Human Rights* 23 (2007), 253-276.

Constitution of South Africa, section 9.

Recommended:

Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1241-1299.

Mari Matsuda, "Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition," *Stanford Law Review* 43 (1991), 1183-1192.

Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver & Toronto: UBC Press, 2002).

Emily Grabham et al. (eds.), *Intersectionality and Beyond: Law, power, and the politics of location* (New York: Routledge, 2009).

Sylvia Walby, "Complexity Theory, Systems Theory, and Multiple Intersecting Social Inequalities," *Philosophy of the Social Sciences* 37 (2007): 449-470.

Sylvia Walby, Jo Armstrong, and Sofia Strid, "Intersectionality: Multiple Inequalities in Social Theory," *Sociology* 46 (2012): 224-240.

5. February 7th**Sexuality, Marriage, Citizenship**

How can complexity theories help us think about gender, sexuality, and discussions of marriage and relationships?

How do legal regulations of marriage shape relationships? Which inequalities are ameliorated, shaped, or created?

Readings:

- Henriette Gunkel, "'I myself had a sweetie ...': re-thinking female same-sex intimacy beyond the institution of marriage and identity politics," *Social Dynamics: A Journal of African Studies* 36 (2010): 531-546.
- Daniel Conway, "'All these long-haired fairies should be forced to do their military training. Maybe they will become men'. The end conscription campaign, sexuality, citizenship and military conscription in Apartheid South Africa." *South African Journal on Human Rights* 20 (2004): 207-229.
- Mikki van Zyl, "Are Same-Sex Marriages UnAfrican? Same-Sex Relationships and Belonging in Post-Apartheid South Africa," *Journal of Social Issues* 67 (2011): 335-357.
- BJ Wray, "Screening Desire: Same-Sex Marriage Documentaries, Citizenship, and the Law," *Canadian Journal of Law and Society* 24 (2009): 1-24.

Recommended:

- Mark D. White, "Same-sex marriage: the irrelevance of the economic approach to law," *International Journal of Law in Context* 6 (2010): 139-149.
- Nicola Barker, "Ambiguous Symbolism: recognising customary marriage and same-sex marriage in South Africa," *International Journal of Law in Context* 7 (2011): 447-466.
- Pierre de Vos, "The 'Inevitability' of Same-Sex Marriage in South Africa's Post-Apartheid State." *South African Journal of Human Rights* 23 (2007), 432-464.
- Elsje Bonthuys, "Possibilities Foreclosed: The Civil Union Act and Lesbian and Gay Identity in Southern Africa." *Sexualities* 11 (2008), 726-739.
- Ruthann Robson, "Sexual Democracy." *South African Journal of Human Rights* 23 (2007), 409-431.
- Pierre de Vos, "A judicial revolution? The court-led achievement of same-sex marriage in South Africa." *Utrecht Law Review* 4 (2008), 162-174.

6. February 14th**Two Judgments**

How did the Canadian Supreme Court and the South African Constitutional Court conceptualize gender, sexuality, and marriage? How do their decisions compare? What impact did they have?

Readings:

- Elsje Bonthuys, "Race and Gender in the Civil Union Act," *South African Journal on Human Rights* 23 (2007): 526-542.
- Reference re Same-Sex Marriage*, 2004 SCC 79; available online: <http://www.canlii.org/en/ca/scc/doc/2004/2004scc79/2004scc79.html>.
- Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; available online: <http://www.saflii.org/za/cases/ZACC/2005/19.html>.

7. February 28th**Race, Memory, Inequality**

How did ideas and categories of race develop? How did they shape inequalities?

Readings:

Deborah Posel, "Race as Common Sense: Racial Classification in Twentieth-Century South Africa," *African Studies Review* 44 (2001): 87-113.

Zimitri Erasmus, "Race and Identity in the Nation." In *State of the Nation: South Africa 2004-2005*, ed. John Daniel, Roger Southall, Jessica Lutchman (East Lansing: Michigan State University Press, 2005), 9-33.

Yoon Jung Park, "Black, yellow, (honorary) white or just plain South African?: Chinese South Africans, identity and affirmative action," *Transformation: Critical Perspectives on Southern Africa* 77 (2011): 107-121.

Recommended:

Deborah Posel, "What's in a name? Racial categorisations under apartheid and their afterlife," *Transformations* 47 (2001): 50-74.

Amy Ansell, "Two nations of discourse: mapping racial ideologies in post-apartheid South Africa," *Politikon* 31 (2004), 3-26.

Jeremy Seekings, "The continuing salience of race: Discrimination and diversity in South Africa." *Journal of Contemporary African Studies* 26 (2008), 1-25.

Achille Mbembe, "Passages to Freedom: The Politics of Racial Reconciliation in South Africa" *Public Culture* 20 (2008), 5-18.

David Theo Goldberg, *The Racial State* (Malden, MA: Blackwell, 2002).

Courtney Jung, *Then I Was Black: South African Political Identities in Transition* (New Haven: Yale University Press, 2000).

8. March 7th**Law and Complex Inequalities**

Which inequalities matter? Why? How? And to whom?

Readings:

Daryl Glaser, "Class as a Normative Category: Egalitarian Reasons to Take It Seriously (With a South African Case Study)," *Politics & Society* 38 (2010): 287-309.

Jeremy Seekings, "The continuing salience of race: Discrimination and diversity in South Africa," *Journal of Contemporary African Studies* 26 (2008): 1-25.

Susan Parnell and Edgar Pieterse, "The 'Right to the City': Institutional Imperatives of a Developmental State," *International Journal of Urban and Regional Research* 34 (2010): 146-162.

Recommended:

David Theo Goldberg, *The Racial State* (Malden, MA: Blackwell, 2002).

Debra Thompson, "Is race political?" *Canadian Journal of Political Science* 41 (2008): 525-547.

Marie-Benedicte Dembour, "Postcolonial Denial: Why the European Court of Human Rights Finds It So Difficult to Acknowledge Racism," in Kamari Maxine Clarke and Mark Goodale, ed., *Mirrors of Justice: Law and Power in the Post-Cold War Era* (Cambridge University Press, 2010), 45-66.

9. March 14th

Equality, Inequality, and Discrimination: When garbage collection becomes political

How did the South African Constitutional Court interpret equality in a context of racialized inequality? How can we think of cities and infrastructures as sites of contentions about social justice?

Readings:

Alex Wafer, "Discourses of Infrastructure and Citizenship in Post-Apartheid Soweto," *Urban Forum* 23 (2012): 233-243.

City Council of Pretoria vs. Walker, CCT 8/97 [1998] ZACC 1; available online: <http://www.saflii.org/za/cases/ZACC/1998/1.html>

Recommended:

Dinah Rajak, "Platinum City and the New South African Dream," *Africa: The Journal of the International African Institute* 82 (2012): 252-271.

Cheryl McEwan, "Engendering citizenship: gendered spaces of democracy in South Africa," *Political Geography* 19 (2000): 627-651.

10. March 21st

Belonging in/to Canada

What are the contours, frictions, and blind spots of Canadian citizenship?

Readings:

Peter Nyers, "The accidental citizen: acts of sovereignty and (un)making citizenship," *Economy and Society* 35 (2006): 22-41.

Audrey Macklin, "Who Is The Citizen's Other? Considering The Heft Of Citizenship," *Theoretical Inquiries in Law* 8 (2007): 333-366.

Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law & Politics* (Toronto: University of Toronto Press, 2008), 3-16, 25-58.

Recommended:

Daiva Stasiulis and Darryl Ross, "Security, Flexible Sovereignty, and the Perils of Multiple Citizenship," *Citizenship*

Studies 10 (2006): 329-348.

Catherine Dauvergne, "Citizenship with a Vengeance," *Theoretical Inquiries in Law* 8 (2007), article 6.

Claude Denis, "Canadians in Trouble Abroad: Citizenship, Personal Security, and North American Regionalization," *Politics & Policy*, Volume 35, No. 4 (2007): 648-663.

Linda Bosniak, "Citizenship Denationalized," *Indiana Journal of Global Legal Studies* 7 (2000): 447-509.

Linda Bosniak, "Varieties of Citizenship," *Fordham Law Review* 75 (2007): 2449-2453.

Christiane Wilke and Paula Willis, "The Exploitation of Vulnerability: Dimensions of Citizenship and Rightlessness in Canada's Security Certificate Legislation," *Windsor Yearbook of Access to Justice* 26 (2008): 25-51.

11. March 28th

Human Rights, Law, and Politics: Omar Khadr's belated return

What can the case of Omar Khadr tell us about citizenship and human rights in Canada?

Primary materials:

Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 SCR 44; available online: <http://www.canlii.org/en/ca/scc/doc/2010/2010scc3/2010scc3.html>.

Pre-Trial Agreement, Diplomatic Notes between the U.S. and Canada. Available online: <http://library.law.utoronto.ca/khadr-case-resources-page>.

12. April 4th

Human Rights, and/or what else?

Concluding Reflections.

Reading:

Rosemary J. Coombe, "Honing a Critical Study of Human Rights," *Communication and Critical/Cultural Studies* 7 (2010): 230-246.

Note on the assignments: All assignments have to be original work by the student who is submitting them. Collaboration on assignments is not permitted. (The only possible exception to this rule in this course may be joint presentations of two or more students with the specific permission of the instructor.) In addition, students should note Carleton University's policy on instructional offences, available at www.carleton.ca/cuuc/regulations/acadregsuniv14.html. Penalties for academic offences may range from a reprimand to expulsion from the university. The use of outside material without proper references is one of the most common and most easily avoidable instructional offences. Whatever language and ideas you take from other sources needs to be referenced. Make yourself familiar with different citation styles! The Carleton University library has many resources that can help you. See: www.library.carleton.ca/howdoi/citing.html.