

Carleton University

Department of Law

Course Outline

COURSE: LAWS 3908.A Legal Studies Methods and Theory II

PREREQUISITES: LAWS 2908

TERM: Winter 2009

CLASS: Day & Time: Wednesdays, 8:35-11:25am
Room: A 720 Loeb

INSTRUCTOR: Professor Christiane Wilke

CONTACT: **Office:** D485 Loeb
Office Hrs: Wednesday 1-3 (walk-in) & by appointment
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[please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

This course combines inquiry about a theme (human rights in South Africa) with consideration of theories and research methods in legal studies. We will read, think, and talk about where we can get ideas for research, how we can approach a subject that we find interesting, and how different approaches to interdisciplinary legal studies differ from one another. This course will train not only your research skills, but also your intellectual curiosity.

Since talking about methods and theories alone can be a bit too abstract, the course will have a thematic focus: human rights in South Africa. Since the end of apartheid, the South African governments have embraced human rights as a key ideal for the country. The new constitution enshrines a wide array of social and economic rights. The South African Constitutional Court's judgments on human rights issues are remarkable: the Court declared the death penalty unconstitutional, gave effect to the right to adequate housing, affirmed a right of access to certain essential HIV/AIDS medication, legalized same-sex marriages, and gave prisoners the right to vote in elections. Where do these gains come from? And what do they mean for the people in South Africa? The politics, law, and culture of human rights in South Africa are complex and interesting. We will take this fascinating subject as the focus of our course in order to think about what it means to do research in legal studies.

We will read both about human rights issues in South Africa and acquaint ourselves with theories and approaches that allow us analyze and probe these issues. We will ask how human rights claims interact with issues of race, gender, class, sexuality, culture, colonialism, migrations, and legacies of violence. We will read articles that help us to understand these issues from different overlapping perspectives. We will read critical race, feminist and postcolonial theory relating to South Africa. We will read a number of court decisions, and we will read texts that challenge us to read court decisions from different angles.

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 when you find out that you'll need some adjustments or an accommodation. I'd be happy to be flexible, but I need to know about possible concerns and conflicts **well before** the paper deadline, presentation date, etc.

Students with documented 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 include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC, 613-520-6608, early each 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 require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by November 7, 2008 for December exams, and by March 6, 2009 for April exams."

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:

- J.M. Coetzee, *Waiting for the Barbarians* (Picador), \$21.95.
- Course pack LAWS 3908.A

Both items are available from:

Octopus Books, 116 Third Ave, off Bank Street. (613)233-2589, <http://www.octopusbooks.org>. Please check online for book & course pack availability, or call ahead.

The book and a copy of the course pack are also on reserve at the library. You make take out the course pack to read and photocopy, but please make sure to put all items back in the same order.

Please note the availability indications in the outline next to the readings. Materials marked [*pdf*] are posted on WebCT.

EVALUATION:

- **Attendance: 5%**
- **Participation: 5%**
- **Short paper 1: 15%**
- **Short Paper 2: 20%**
- **Research Paper Proposal: 15%**
- **Final paper: 40%**

- **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. In this class, attendance counts for **5 points**. After the first class you missed, each further class that is missed without a documented hardship leads to a 1 point deduction. (Example: If you miss two classes, you will get 4 out of 5 points for attendance.)

- **The two short papers (5-6 pages)** are responses to essay questions that will be handed out in class. You will answer one out of two or three questions. The essays emphasize theoretical reflection as well as some independent research. Short paper 1 is due on **February 7th**, and short paper 2 is due on **March 7th**.

- **The Research Paper Proposal** builds on the in-class workshops. In the proposal, you will state your project for the research paper; and you will explain why and how you want to pursue this project. The proposal should be 4-5 pages in length (plus bibliography). It is the ground work and road map towards your research paper. The research paper proposal is due on **March 22nd**.

- The Research Paper is the culmination of the work you will do in this course. You choose a topic connected to the theme of the course; you formulate your research question or problem; you decide which approaches will suit your inquiry; and you find appropriate sources. The research paper will be 12-15 pages in length, and it is due at the end of the exam period (**April 27th**). **Late research papers will not be accepted without a documented emergency.**

- **Late penalty for short papers and research paper proposals: 2 points per day.**

- **All papers should be submitted to the Law Department Drop Box next to C473 Loeb.**

- Papers are due before 8:30 am on the next working day after the deadline. (Example: the paper that is due on Saturday, March 7th needs to be submitted by Monday, March 9th at 8:30 am.)

SCHEDULE:**1. January 7th****Introduction**Readings:

Amnesty International, 2008 Report on South Africa:

<http://www.amnesty.org/en/region/south-africa/report-2008>.

United States Department of State, Country Report on Human Rights Practices: South Africa 2007:

<http://www.state.gov/g/drl/rls/hrrpt/2007/100505.htm>.

2. January 14th**Histories of Race in South Africa**Readings:

Robert Ross, *A Concise History of South Africa* (Cambridge: Cambridge University Press, 1999), 21-53.

[course pack]

Paul Maylam, *South Africa's Racial Past: The history and historiography of racism, segregation, and apartheid*

(Aldershot: Ashgate, 2001), 179-204. [course pack]

Courtney Jung, *Then I Was Black: South African Political Identities in Transition* (New Haven: Yale

University Press, 2000), 1-39. [course pack]

Freedom Charter (South Africa, 1955): <http://www.anc.org.za/ancdocs/history/charter.html>.

Recommended:

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

Adrian Guelke, *Rethinking the Rise and Fall of Apartheid* (Basingstoke: Palgrave, 2005).

Martin Daunton and Rick Halpern, ed., *Empire and Others: British Encounters with Indigenous Peoples,*

1600-1850 (Philadelphia: University of Pennsylvania Press, 1999).

Zine Magubane, *Bringing the Empire Home: Race, Class, and Gender in Britain and Colonial South Africa*

(Chicago and London: University of Chicago Press, 2004).

3. January 21st**Human Rights in contemporary South Africa**Readings:

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

David Chioni Moore, "Is the Post- in Postcolonial the Post- in Post-Soviet? Toward a Global Postcolonial

Critique." *PMLA* 116 (2001), 111-128. [pdf]

Achille Mbembe, "Passages to Freedom: The Politics of Racial Reconciliation in South Africa" *Public Culture*

20 (2008), 5-18. [pdf]

Albie Sachs, *Advancing Human Rights in South Africa* (Cape Town: Oxford University Press, 1992), 2-8, 188-

194. [course pack]

South African Constitution,

Preamble (<http://www.info.gov.za/documents/constitution/1996/96preamble.htm>),

Founding Provisions (<http://www.info.gov.za/documents/constitution/1996/96cons1.htm>), Bill of

Rights (<http://www.info.gov.za/documents/constitution/1996/96cons2.htm>)

Recommended:

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, policutluralism and ID-ology: citizenship and difference in South Africa," *Social Identities* 9 (2003), 445-473.

4. January 28th**Memory, Testimony, and the Search for Truth**Readings:

Paul Gewirtz, "Narrative and Rhetoric in the Law." In Peter Brooks and Paul Gewirtz, ed., *Law's Stories* (New Haven: Yale University Press, 1995), 2-13. [course pack]

Sanford Levinson, "The Rhetoric of Judicial Opinion." In Peter Brooks and Paul Gewirtz, ed., *Law's Stories* (New Haven: Yale University Press, 1995), 187-205. [course pack]

Deborah Posel, "History as Confession: The Case of the South African Truth and Reconciliation Commission," *Public Culture* 20 (2008), 119-141. [pdf]

Fiona Ross, "On Having Voice and Being Heard: Some after-Effects of Testifying Before the South African Truth and Reconciliation Commission." *Anthropological Theory* 3 (2003), 325-341. [pdf]

Recommended:

Mahmood Mamdani, "Amnesty or Impunity? A preliminary critique of the Report of the Truth and Reconciliation Commission of South Africa." In *Identities, Affiliations, and Allegiances*, ed. by Seyla Benhabib, Ian Shapiro, and Danilo Petranovic (Cambridge: Cambridge University Press, 2007), 325-361.

5. February 4th**Narratives of Amnesty and Reconciliation**Readings:

Truth and Reconciliation Commission of South Africa Report, Volume 1, 1-23, 24-43; Volume 6, **excerpts tba.** [pdf]

Truth and Reconciliation Commission, Amnesty Hearing (25 May 1999, East London). Online:

http://www.doj.gov.za/trc/amntrans/1999/99052527_el_990525el.htm.

(optional: Truth and Reconciliation Commission, Amnesty Hearing (27 May 1999, East London). Online:

http://www.doj.gov.za/trc/amntrans/1999/99052527_el_990527el.htm.)

Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001), 33-61. [course pack]

Recommended:

Madeleine Fullard, "Dis-Placing Race: The South African Truth and Reconciliation Commission (TRC) and Interpretations of Violence" CSVr Race and Citizenship in Transition Series,

www.csvr.org.za/papers/paprctp3.htm

Janet Cherry, John Daniel and Madeleine Fullard, "Researching the 'Truth': A View from inside the Truth and

Reconciliation Commission,” in Deborah Posel and Graeme Simpson, ed., *Commissioning the Past* (Johannesburg: Witwatersrand University Press, 2002), 17-36.

6. February 11th

The Complexity of Human Rights in South Africa

Readings:

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

Joanne Conaghan, “Intersectionality and the feminist project in law” in *Intersectionality and Beyond: Law, power, and the politics of location*, ed. Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (New York: Routledge, 2009), 21-48. [course pack]

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

Penelope Andrews, “Globalization, Human Rights, and Critical Race Feminism: Voices from the Margins,” *Journal of Gender Race & Justice* 3 (2000), 373-399. [pdf]

Recommended:

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.

7. February 25th

Sex, Marriage, and the State

Readings:

Minister of Home Affairs v. Fourie/Lesbian and Gay Equality Project v. Minister of Home Affairs, Case CCT 60/04, case CCT 10/05, **excerpts t.b.a.** [pdf]

Elsje Bonthuys, “Race and Gender in the Civil Union Act,” *South African Journal on Human Rights* 23 (2007): 526-542. [pdf]

8. March 4th

Law, Culture, and Literature

Readings:

Naomi Mezey, “Law as Culture.” In *Cultural Analysis, Cultural Studies and the Law*, ed. Austin Sarat and Jonathan Simon (Durham and London: Duke University Press, 2003), 37-72. [course pack]

Patrick Lenta, “Waiting for the Barbarians after September 11,” *Journal of Postcolonial Writing* 42 (2006), 71-83. [pdf]

J.M. Coetzee, *Waiting for the Barbarians* (New York: Vintage, 2004).

Recommended:

Chimamanda Ngozi Adichie, “The Headstrong Historian” *The New Yorker* (23 June 2008), online: http://www.newyorker.com/fiction/features/2008/06/23/080623fi_fiction_adichie.

Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007).

9. March 11th**Research and/on Social Movements**Readings:

David S. Meyer, "Scholarship that Might Matter." In Croteau, David et al. eds., *Rhyming Hope and History: Activists, Academics, and Social Movement Scholarship* (Minneapolis: University of Minnesota Press, 2005), 191-205. [course pack]

Richard Ballard, Adam Habib, Imraan Valodia and Elke Zuern, "Globalization, Marginalization and Contemporary Social Movements in South Africa," *African Affairs* 104/417 (2005), 615-634. [pdf]

Charmaine Pereira, "Between Knowing and Imagining: What Space for Feminism in Scholarship on Africa?" *Feminist Africa*, Issue 1 (2002), online: <http://www.feministafrica.org/index.php/between-knowing-and-imagining>.

Recommended:

Deborah Mindry, "Neoliberalism, Activism, and HIV-AIDS in Postapartheid South Africa," *Social Text* 26 (2008), 75-93.

10. March 18th**HIV/AIDS in South Africa**Readings:

Nicoli Nattrass, *Mortal Combat: AIDS Denialism and the Struggle for Antiretrovirals in South Africa* (Scottsville, South Africa: University of KwaZulu-Natal Press, 2007), 91-127. [course pack]

Ed Cohen, "Immune Communities, Common Immunities" *Social Text* 26 (2008), 95-114. [pdf]

Marius Pieterse, "The Legitimizing/Insulating Effect of Socio-Economic Rights" *Canadian Journal of Law and Society* 22 (2007), 1-20. [pdf]

11. March 25th**HIV/AIDS and Socio-Economic Rights**Readings:

Minister of Health v. Treatment Action Campaign, CCT 8/02. [pdf]

Amnesty International, Women, HIV/AIDS and human rights. AI Index: ACT 77/084/2004 (2004). [pdf]

12. April 1st**Research Paper Workshop**

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.