

Carleton University

Department of Law

Course Outline

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

PREREQUISITES: LAWS 2908

TERM: Fall 2009

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

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb

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

Telephone: 613-520-2600 ext.4168

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 in South Africa). 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 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 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 rights 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 experiences and categories 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 range of primary materials: pamphlets, court decisions, excerpts from the Truth and Reconciliation Commission Report and hearings, and newspaper editorials. We will read articles that challenge us to read these primary materials 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 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:

- 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 must 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: 20%**
- **Short paper 2 or 3: 20%**
- **Research paper proposal: 10%**
- **Research 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. 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 (5-6 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.
- **There are three short papers, due on different dates (October 17th, Nov. 7th, and Nov. 23rd), but you are only required to write two of them.** The first paper, due Oct 17th, is mandatory for everyone. Then you can choose whether you would rather write your research paper proposal early and write the third short paper (Nov 23rd), or write the second paper (Nov 7th) and then focus on your proposal later. You can also write the second and the third paper; **the best two short paper marks will count.**

- **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. You will also include an annotated bibliography. The proposal should be 3-4 pages in length. It is the ground work and road map towards your research paper. Since the paper proposal points towards your research paper, my emphasis will be on detailed feedback and identifying problem areas for the paper. The proposal can be handed in **any time, but no later than Nov 14th**. The sooner I get your paper proposals, the sooner I can provide you with feedback.

- **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 (**December 22nd**).
- Late research papers will not be accepted without a documented emergency.**
- **Late penalty for short papers and research paper proposals: 10% (2 point out of 20, or 1 out of 10) 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, October 17th, needs to be submitted by Monday, October 19th before 8:30 am.)

SCHEDULE:

1. September 10th

Introduction

2. September 17th

South Africa: Apartheid and Beyond

Overviews of 20th century South African history from different perspectives. We will talk about different ways of thinking about history and their implications for legal studies. We will also closely analyze key documents of the anti-apartheid movement.

Note: Readings under the heading “**literature**” (pieces of scholarly writing such as articles or book chapters) and “**primary material**” (pamphlets, court decisions, and legal documents) **are mandatory**. The “recommended” reading list contains suggestions for further research that might be useful for your research paper topics. They are not provided in the course pack or on WebCT, but I’d be happy to help you find them.

Literature:

Paul Maylam, *South Africa’s Racial Past: The history and historiography of racism, segregation, and apartheid* (Aldershot: Ashgate, 2001), 179-204. [course pack]

Paul Gready and Lazarus Kgalema, “Magistrates Under Apartheid: A Case Study of the Politicisation of Justice and Complicity in Human Rights Abuse,” *South African Journal of Human Rights* 19 (2003), 141-188. [pdf]

Charles Carter, “Community and Conflict: The Alexandra Rebellion of 1986.” *Journal of Southern African Studies* 18 (1991), 115-142. [pdf]

Primary Material:

Freedom Charter (South Africa, 1955). In Francis Meli, *South Africa Belongs To Us* (Bloomington: Indiana University Press, 1989), 210-213. [course pack]

Manifesto of Umkhonto we Sizwe, issued on 16 December 1961. In Francis Meli, *South Africa Belongs To Us* (Bloomington: Indiana University Press, 1989), 214-215. [course pack]

Reference:

Chronology: Important Dates in South African History. In Francis Meli, *South Africa Belongs To Us* (Bloomington:

Indiana University Press, 1989), 216-231. [course pack]

Recommended:

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

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

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. September 24th

Human Rights in contemporary South Africa

Theoretical approaches to human rights; a closer look at human rights institutions in South Africa, and a critical look at the promise and limits of human rights. We'll also analyze parts of the South African Constitution (1996), with a focus on the bill of rights.

Literature:

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

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

Jeremy Sarkin, "The Role of National Human Rights Institutions in Post-Apartheid South Africa." In *Human Rights, the Citizen and the State: South Africa and Irish Perspectives*, ed. Jeremy Sarkin and William Binchy (Dublin: Round Hall Sweet & Maxwell, 2001), 13-51. [course pack]

Primary Materials:

Kader Asmal, "Democracy and Human Rights: Developing a South Africa Human Rights Culture." In *South Africa's Dilemmas in the Post-Apartheid Era*, ed. James Chipasula and Lifyo Chilivumbo (Lanham: University Press of America, 1993), 73-85. [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:

Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist* 108 (2006), 38-51.

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.

4. October 1st**Memories of Human Rights Violations**

Introduction to the South African Truth and Reconciliation Commission (TRC) and critiques of the commission's work; inquiry into how we know and 'see' human rights violations. Excerpts from the TRC report include TRC account of South African history and the construction of 'gross human rights violations.'

Literature:

- 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. [course pack]
- Richard Wilson, "Representing Human Rights Violations: Social Contexts and Subjectivities." In *Human Rights, Culture and Context. Anthropological Perspectives*, ed. Richard Wilson (London: Pluto Press, 1997), 134-160. [course pack]

Primary Material:

Truth and Reconciliation Commission of South Africa Report, Volume 1, 24-43; 158-164. [pdf]

Recommended:

- Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001).
- Deborah Posel, "History as Confession: The Case of the South African Truth and Reconciliation Commission," *Public Culture* 20 (2008), 119-141.

5. October 8th**Testimony, Narratives, and Amnesty**

Testimonies of human rights violations, narratives, and ideas of personal and national identity. We'll put the theories to work in analyzing transcripts of amnesty and victim hearings.

Literature:

- Claire Moon, *Narrating Reconciliation* (Lanham: Lexington, 2008), 47-66. [course pack]
- 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]

Primary Material:

- Truth and Reconciliation Commission, Amnesty Hearing Mthetheli Crosby Kolela, Bafo Gift Nqunge, Mabitani Mani (25 May 1999, East London). Online: http://www.doj.gov.za/trc/amntrans/1999/99052527_el_990525el.htm.
- Truth and Reconciliation Commission, Victim Hearing Zandisile Ntsomi (24 June 1996, George). Online: <http://www.doj.gov.za/trc/hrvtrans/worcest/ct00320.htm>
- Truth and Reconciliation Commission, Victim Hearing Nation Nkosane Bahume (24 June 1996, George). Online: <http://www.doj.gov.za/trc/hrvtrans/worcest/ct00527.htm>

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

James Dawes, "Human Rights in Literary Studies," *Human Rights Quarterly* 31 (2009), 394-409.

Cheryl McEwan, "Building a Postcolonial Archive? Gender, Collective Memory and Citizenship in Post-apartheid South Africa" *Journal of Southern African Studies* 29 (2003), 739-757.

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. October 15th

Postcoloniality and Race in South Africa

Theories of colonialism, the postcolonial, and race. Different perspectives on race and racism in contemporary South Africa. Narratives of colonialism, postcolonialism and liberation.

Literature:

David Chioni Moore, "Is the Post- in Postcolonial the Post- in Post-Soviet? Toward a Global Postcolonial Critique." *PMLA* 116 (2001), 111-128. [pdf]

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. [course pack]

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

Primary material:

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.

Recommended:

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), 1-39.

7. October 22nd

The Complexity of Human Rights in South Africa

Intersectionality theories in different contexts, inquiries into equality, and a look at South African family politics.

Literature:

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

Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver & Toronto: UBC Press, 2002), 3-15. [course pack]

Catherine Albertyn, "Substantive Equality and Transformation in South Africa," *South African Journal on Human*

Rights 23 (2007), 253-276. [pdf]

Judith Stacey and Tey Meadow, "New Slants on the Slippery Slope: The Politics of Polygamy and Gay Family Rights in South Africa and the United States," *Politics & Society* 37 (2009), 167-202. [pdf]

Recommended:

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

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.

8. October 29th

Marriage, the State, and More

The Constitutional Court decision that legalized marriage for same-sex couples, plus an article that examines the gender and race logic in the Act that implemented the court decision.

Primary material:

Minister of Home Affairs v. Fourie/Lesbian and Gay Equality Project v. Minister of Home Affairs, Case CCT 60/04, case CCT 10/05, para. 1-5, 54-162. [pdf]

Literature:

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

Recommended:

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.

9. November 5th

Law, Culture, and Literature

A novel that can be read as a critique of apartheid but is much more than that; we'll use the class for thinking about different connections between law and literature.

Readings:

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

Re-read: Gready & Kgalema, "Magistrates Under Apartheid," (week 2).

Neil Sargent, "Murder and Mayhem in Legal Method: or, the Strange Case of Sherlock Holmes v. Sam Spade." In *Law, Mystery, and the Humanities*, ed. Logan Atkinson and Diana Majury (Toronto: University of Toronto Press,

2008), 39-66. [course pack]

Robert Spencer, "J.M Coetzee and Colonial Violence," *interventions* 10 (2008), 173-187. [pdf]

Recommended:

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

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.

Patrick Lenta, "Waiting for the Barbarians after September 11," *Journal of Postcolonial Writing* 42 (2006), 71-83.

10. November 12th

HIV/AIDS in South Africa

Overview of HIV/AIDS issues in South Africa; different regimes of knowledge about HIV/AIDS, the suitability of the human rights framework for HIV/AIDS policy and activism.

Readings:

Colleen O'Manique, *Neoliberalism and AIDS Crisis in Sub-Saharan Africa: Globalization's Pandemic* (New York: Palgrave MacMillan, 2004), 16-77. [course pack]

Steven Robins, "From 'Rights' to 'Ritual': AIDS Activism in South Africa." *American Anthropologist* 108 (2006), 312-323. [pdf]

Peris Jones and Farhana Zuberi, "A long way from there to here: human rights approaches to HIV/AIDS in a local setting," *HIV/AIDS Policy & Law Review* 10 (2005), 14-19. [pdf]

Veena Das, "Stigma, Contagion, Defect: Issues in the Anthropology of Public Health." Available at www.stigmaconference.nih.gov/FinalDasPaper.htm (accessed 17 July 2009). [WebCT]

Recommended:

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

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

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

Heinz Klug, "Law, Politics, and Access to Essential Medicines in Developing Countries," *Politics & Society* 36 (2008), 207-246.

11. November 19th

HIV/AIDS, Stigma, and Privacy

Constitutional Court decision on the privacy of medical information (HIV/AIDS status), plus two comments on the decision that engage the question of stigma and dignity.

Primary materials:

NM and others v. Charlene Smith and others, CCT 69/05 (2007). Excerpts t.b.a. [pdf]

Jonny Steinberg, "Generous judgment instills stigma." *Business Day*, 24 April 2007. [pdf]

Mark Heywood, "Power, AIDS stigma and the law." Available at AIDS LAW Project:
<http://www.alp.org.za/pdf/Litigation/NM,SMandLHvDeLille,%20SmithandNewAfricaBooks/PowerAIDSStigmaandtheLaw.pdf> (accessed 9 July 2009). [pdf]

Recommended:

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

12. November 26th

Research Paper Workshop

How do you turn a research paper proposal into a research paper? Which steps are important, and where are potential problems? Reflections on researching human rights in South Africa.

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.