

**Course Outline**

<b>COURSE:</b>	<b>LAWS 4309 A – State Security and Dissent</b>
<b>TERM:</b>	<b>Fall 2008/09</b>
<b>PREREQUISITES:</b>	<b>Fourth-year Honours standing, LAWS 3305, LAWS 3503 or LAWS 3509</b>
<b>CLASS:</b>	<b>Day &amp; Time: Tuesday – 6:05-8:55 pm</b> <b>Room: B243 LA (Loeb)</b>
<b>INSTRUCTOR: (CONTACT)</b>	<b>Yavar Hameed</b>
<b>CONTACT:</b>	<b>Office: 43 Florence Street. Ottawa ON</b> <b>Office Hrs: By appointment only</b> <b>Telephone: 613-232-2688 x. 228</b> <b>Email: <a href="mailto:yhameed@hf-law.ca">yhameed@hf-law.ca</a></b>

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"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive 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 accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html)

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**COURSE SYNOPSIS**

Methods of State control vary through times of war and peace, constantly shifting in an attempt to locate the susceptibility of society towards compromising civil liberties in favour of enhancing security. Yet at appropriate historical junctures, civil society dissents from the ostensible moral consensus that suffuses the security paradigm through direct action, mass social movements or systemic legal challenges. This course explores counter-hegemonic resistance by Canadian civil society to policy, law and other State institutions, which exercise ideological and repressive control over society. The impact, successes and relevance of this resistance are considered both historically and in a contemporary context in an effort to identify the importance of dissent within the frame of the liberal democratic "Security State". Situated outside of the normal purview of systemic political discourse, movements of dissent provide a vehicle to understand the ideological foundations and social and moral consequences of state sponsored notions of Canadian security.

**EVALUATION SCHEME**

The first three seminars will take the form of a lecture followed by open discussion within the class. Students will be expected to hand in two questions pertaining to the readings that should be discussed during each seminar in the context of general discussion.

The remaining seminars will consist of in class debates followed by general class discussion. The resolution for each debate will be provided on the first day of class and will be tailored according to the questions in the syllabus. Each debate will be preceded by a short 15 to 20 minute lecture by the instructor. Thereafter, the student debates will continue for up to 45 minutes depending upon the flow of discussion. A good debate will not necessarily be cut off at a precise time, but will be moderated by the panel of judges.

**Debate 50 %**

The last seven or eight weeks will be structured around debate resolutions. The class will be divided into groups of four for this purpose. Students will then pair off and choose whether their pair will take a position for or against the resolution. The debates themselves will be judged by a panel of students, the instructor and/or the guest lecturer. The remainder of the class will act as a jury and, after the close of the debate, will deliberate in private and come up with an independent conclusion. The jury and judges will rationalize their respective decisions after their evaluation. The outcome of the debate will not be determinative of the mark assigned, but the level of preparation, contribution and interventions of the student debaters will form part of their participation mark.

**a. Brief of Argument and External Readings 30%**

On the day before the debate, students are to email to the instructor a brief of their position to be discussed in the debate. On the day of the debate, the students should bring at least three copies of the brief to be handed up to the panel of judges. The brief will be approximately 10 to 15 pages in length. The brief should consist of a recitation and interpretation of the resolution question, an outline of the argument and a more detailed breakdown of the points to be argued. The brief should attempt to persuade the judges by drawing upon assigned readings and external readings. Where external readings are relied upon by either party, they are to be exchanged with the party opposite at least two days prior to the debate. On the day of the debate, there should be three copies of external readings also available for the judges.

**b. Oral Argument 10%**

The judges and jury will be assessing the debaters and their organization and level of preparation; they will not determine the mark. A mark will be assigned by the instructor to be shared by each group of 2 students for oral argument. NB: Debaters are also expected to play a pivotal role in facilitating post-debate discussion within the class.

**c. Overall Participation in Debates and Class Discussion 10%**

In addition to participation in discussion as debaters, students will also be expected to contribute to class discussion as jury members, judges and in the plenary discussion. The overall participation mark will be self-assessed by the students in consultation with the instructor.

**Major Project 50%****a. Proposal 10% (due on October 7, 2008)**

You are to propose a major project for the course to respond to one of a series of topics that the instructor will distribute at the start of the term. The project must engage directly with the questions provided, but can take any one of various forms including: organizing a public discussion or seminar, creating a documentary film, conducting and analyzing a survey, creating a blog or website, conducting investigative journalism, doing policy analysis with a view to providing the analysis to an NGO, government or private actor, proposing and developing the framework for a conference or dialogue, or other suitable format.

The specifics of how to design the proposal will be discussed in class.

**b. Major Project 40%**

The major project or “MP” will be assessed on the basis of content, creativity, original thinking, ability to assimilate course themes and readings, external research, relevance to the audience that is chosen for dissemination, structure and feasibility. Where the MP is in a multimedia or non-written format, an accompanying document should be provided to explain the relationship of the project to the course themes or relevant social problem discussed in seminar. Each MP should also include a self-assessment component, which explains any difficulties or limitations in the project that would assist the instructor in the evaluation process.

**LIST OF SEMINARS****Week 1 (Sept 9): Introduction and Background: Hegemony and Modes of State Control**

State security in liberal democracies is created and maintained by the use of violence and by the construction of institutions that ideologically promote conformity and adherence to the Rule of Law. While civil society is constrained by the overt and ideological modes of State control, movements of resistance develop within civil society at historical moments of political disequilibrium. Such movements challenge the priorities of the “Security State” and its modes of activity. This seminar introduces notions of power, hegemony and the relationship between hegemonic control of the security state and policy and legislative formation.

**Readings:     Course Pack is available at OCTOPUS BOOKS – 116 THIRD AVENUE**

Louis Althusser, “Ideology and Ideological State Apparatuses: Notes Towards an Investigation” in *Lenin and Philosophy and Other Essays* (London: New Left Books, 1971) 127.

Gary Kinsman et al., “How the Centre Holds- National Security as an Ideological Practice” in Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 278.

**Suggested Readings:**

Naomi Klein, “Blank is Beautiful: Three Decades of Erasing and Remaking the World” in *The Shock Doctrine: The Rise of Disaster Capitalism* (Toronto: Knopf Canada, 2007) 3.

Antonio Gramsci, *Prison Notebooks* (New York: Columbia University Press, 1994).

**PART I: Forming and Maintaining the Security of the Canadian State****Week 2 (Sept 16): State Formation and the Negotiation of National Interests**

As a White “settler society”, Canada was founded on principles, which privileged certain national and racial categories, while denying political and economic participation to other groups such as aboriginal nations and immigrants from Asia and Africa. The formation of the Canadian State, therefore, reflects this hierarchy through an exclusionist immigration system and differential application of domestic laws based upon racial category.

**Film Excerpt:     **A. Kazimi, The Continuous Journey****

- Readings:** Sherene H. Razack, "Introduction: When Place Becomes Race" in Sherene H. Razack, ed., *Race, Space and the Law: Unmapping a White Settler Society*, (Toronto: Between the Lines, 2002) 1.  
 Andrew Parnaby & Gregory S. Kealey, "The Origins of Political Policing in Canada: Class, Law, and the Burden of Empire" (2003) 41 *Osgoode Hall L.J.* 211.

### **Week 3 (Sept 23): Surveillance and the Role of CSIS**

Surveillance of civil society is an intrinsic part of state security, and has played an important role in the case of formation of the Canadian State. The Canadian Security Intelligence Service (CSIS) inherited the invasive surveillance methods of the RCMP while failing to create greater reliability or accountability in the government's systems of intelligence gathering. CSIS had struggled in the years immediately following the demise of the Cold War, but has gained renewed importance in the post 9-11 era. However, cases such as the extraordinary rendition of Maher Arar, bring into relief the potential for abuse in terms of the use of Canadian intelligence and surveillance in tandem with arbitrary arrest, detention and even torture.

- Readings:** Gary Kinsman, "Challenging Canadian and Queer Nationalisms" in *In a Queer Country: Gay and Lesbian Studies in the Canadian Context*, 209.  
 Stuart Farson, "In Crisis and in Flux: Politics, Parliament and Canada's Intelligence Policy" (Spring 1996) *The Journal of Conflict Studies*.  
<http://www.lib.unb.ca/Texts/JCS/bin/get.cgi?directory=S96/articles/&filename=farson.html>

#### **Suggested Readings:**

- Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York: Vintage Books, 1995).  
*Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar: Analysis and Recommendations (Part 7) Information Sharing with US Agencies* (Ottawa: Public Works and Government Services Canada, 2006)  
[http://www.ararcommission.ca/eng/AR\\_English.pdf](http://www.ararcommission.ca/eng/AR_English.pdf), 101-127.

### **Week 4 (Sept 30): Confronting Claims of Aboriginal Sovereignty**

The negotiation of aboriginal treaty rights with the Crown created proprietary control over land, which previously was not subject to ownership (in its Western definition) by aboriginal nations. Moreover, the unconscionability of the negotiation of treaties and the ramifications of these treaties is the subject of debate to this day. Frustrated with the poverty and marginalization of their people, certain aboriginal nations developed resistance movements to assert a claim to their land by occupying Crown or corporate controlled land. Efforts at occupation by aboriginal nations, however, have resulted in violent confrontation with the Canadian State. What justifies the use of force by the State against its aboriginal people? Can violent confrontation shift the discourse of security and state sovereignty that constrains the rights of aboriginals in Canada?

**RESOLUTION: BE IT RESOLVED THAT direct action occupation is a justifiable method of redress to advance First Nations' sovereignty in Canada.**

**Guest Speaker: TBA**

**Video Presentation:** *Shawn Brant and the Direct Terrorist Threat to Canada*, online video download : <<http://www.caledoniawakeupcall.com/topics/shawnbrant.html>>

**Readings:** Linda Pertusati, “Nations at War: Voice, Peaceful Resistance and Mobilization” and “Nations at War: Voice, Armed Resistance and Maintenance of Mobilisation” in *In Defense of Mohawk Land: Ethnopolitical Conflict in Native North America* (Albany: State University of New York Press, 1997) 81.  
Ward Churchill, “The New Face of Liberation: Indigenous Rebellion, State Repression, and the Reality of the Fourth World” in *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003) 13.

**For Arguments Against Direct Action Occupation, please see:**

“Legalized Myths of Illegal Occupation” (Canadian Advocates for Charter Equality, May 2008): <http://www.caledoniawakeupcall.com/canace/Myths.pdf>  
“Cost of Native Occupations” (CANACE, August 2007):  
<http://www.caledoniawakeupcall.com/canace/CostofNativeOccupations.pdf>  
“The Human Costs of Illegal Occupations” (CANACE, December 2007):  
<http://www.caledoniawakeupcall.com/canace/HumanCost.pdf>

**Week 5 (Oct 7): The Demonization of Islam and the Creation of the Other (OUTLINE DUE)**

Since the attack on the World Trade Centre in September 2001, the dynamics of global security have been reconceptualized on the basis of fundamental “clashes” of civilization. Within this new paradigm, the Muslim world has become politically and philosophically identified as being antithetical to “Western” values. This construction of global international relations has provided a pretext for naked wars of economic imperialism by the United States (and Canada in tow) in Afghanistan and Iraq, while reorienting security policies, laws and bureaucracy in Canada with adverse consequences for Canadian Muslims. This seminar focuses upon the architecture of the Canadian post 9-11 Security State and the implications for Muslims and Arabs in Canada.

**RESOLUTION: BE IT RESOLVED THAT increased scrutiny of minorities is a justifiable side effect in the promotion of National Security post 9/11.**

**Readings:** Reem Bahdi, “No Exit: Racial Profiling and Canada’s War Against Terrorism” (2003) 41 Osgoode Hall L.J. 293.  
Zuhair Kashmeri, “When CSIS Calls: Canadian Arabs, Racism, and the Gulf War” in Gary Kinsman et al., ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 256.

**Readings Exploring the State perspective of National Security Enforcement:**

“Canadian Security and Military Preparedness: The Government’s Response to the Report of the Standing Senate Committee on National Security and Defence” (October 2002).  
Carl F. Horowitz, “Profiling in an Age of Terrorism” *The Social Contract* (Fall 2006).

**PART II: STATE SECURITY AND DISSENT DURING TIMES OF WAR**

**Week 6 (Oct 14): Internship of Japanese-Canadians**

During periods of war, individual freedom is often subverted in the interest of building a common movement and collective “war effort”. The promotion of nationalism provides moral justification for the promotion of State interests abroad, while it also serves to create and consolidate a generally compliant attitude within civil society susceptible to the suggestions of the dominant class. Within this paradigm, normally unimaginable programs such as the internship of Canadian

citizens based on ethnicity, increased surveillance, racial profiling, arbitrary detention and torture can be advanced, with little or no opposition, in the name of national security. This seminar considers the internment of Canadians of Japanese ancestry or origin during World War II.

**RESOLUTION: BE IT RESOLVED THAT the Supreme Court of Canada in *Reference re: Persons of Japanese Race* erred in upholding the Order-in-Council which permitted the deportation of so called Japanese-Canadians to Japan.**

**Readings:** *Reference re: Persons of Japanese Race* [1946] SCJ No. 7.  
Judith Roberts Moore, “Establishing Recognition of Past Injustices: Uses of Archival Records in Documenting the Experience of Japanese Canadians During the Second World War” (2002) *Archivaria* 64.

**Week 7 (Oct 21): The Cold War and Ideological Security**

The Cold War provided an interesting metaphor capable of maintaining the nationalistic intensity of a war effort during a protracted and undefined period as against a generically defined global enemy whose scope of influence justified an expanded State role in the scrutiny and surveillance of the private lives and activities of people in Canada. A culture of suspicion, distrust and ideological profiling created fertile ground for enforcing a moral consensus capable of prioritizing national security and the necessity of quelling dissent.

**RESOLUTION: BE IT RESOLVED THAT the gathering of security intelligence during the Cold War diminished security for Canadians.**

**Readings:** Gary Kinsman, “The Canadian Cold War on Queers: Sexual Regulation and Resistance” in Richard Cavell, ed., *Love, Hate and Fear in Canada’s Cold War* (Toronto, University of Toronto Press, 2004) 108.  
Julie Guard, “Women Worth Watching: Radical Housewives in Cold War Canada” in Gary Kinsman et al., ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 73.  
Stéphane Leman-Langlois, Jean-Paul Brodeur “Terrorism Old and New: Counterterrorism in Canada” *Police Practice and Research*, 121

**Week 8 (Oct 28): The War in Afghanistan**

Canada is involved in a war in Afghanistan, which has no clear objective or simple anticipated conclusion. Strong domestic sentiment exists in Canada to support our troops, but few have spoken out against the legality of the War and the political question of withdrawal continues to be deferred into the future. What accounts for the lack of self-reflexivity of Canadians in respect of the continued occupation of Afghanistan? Is the War necessary for peace and stability in the region and for Canada’s National Security?

**RESOLUTION: BE IT RESOLVED THAT Canadian Forces should be enjoined from transferring Afghan prisoners detained by Canadian Forces to the Afghan Department of National Defence.**

**Readings:** *Amnesty International Canada v. Canadian Forces*, 2008 FC 162 (CanLII)

**Other Case Material Accessible through the Federal Court File**

**Part III: DISSENT AND DISTURBING OF THE PEACE****Week 9 (Nov 4): Promoting Prosperity through Immigration?**

Bill C-50, the *Budget Implementation Act 2008*, had embedded within it significant amendments to the *Immigration and Refugee Protection Act*, which serve to expedite the immigration of certain classes of persons to Canada. There was significant public outcry that the bill was a politically expedient move to facilitate migration of temporary workers to Canada, while vesting too much discretion in the Minister to control which immigrants are approved or rejected. However, despite apparent public discontent, the federal continued to endorse the Bill relying on economic and moral arguments. The Bill was passed in June 2008.

**RESOLUTION: BE IT RESOLVED THAT the *Budget Implementation Act 2008* creates economic and political security for Canada and for those immigrants, who will enter Canada under its auspices.**

**Readings:** Excerpt from the Speech of the Parliamentary Secretary to the Minister of Immigration, Ed Komarnicki, 39<sup>th</sup> Session, Part II (Hansard: April 3, 2008).  
Submission of the Canadian Bar Association to the Standing Committee on Finance re: Bill C-150 (April 30, 2008).

**Week 10 (Nov 11): Legislating Against Perceived Insurrection**

The FLQ Crisis in 1970 stands out as a pinnacle example of state response and state interest toward quelling dissent in the name of national security. Who defines the moment when dissent becomes crisis? At what stage does it become acceptable to limit fundamental freedoms in an effort to preserve the security of the *status quo*? What legislative responses emerge in the wake of a perceived breach of national security?

**RESOLUTION: BE IT RESOLVED THAT the judicial assessment of rights of assembly and free speech in the era of the FLQ crisis was inimical to basic rights in a free and democratic society.**

**Readings:** *AG Canada v. Montreal (City of)* [1978] 2 SCR 770.  
*Jamieson v. British Columbia (Attorney General)* [1971] B.C.J. No. 126.

**Suggested Readings:**

Pierre Elliott Trudeau, “War Measures Act Speech” (CBC Television news, October 16, 1970), online: CBC Archives  
<[http://archives.cbc.ca/IDCC-1-71-101-618/conflict\\_war/october\\_crisis/](http://archives.cbc.ca/IDCC-1-71-101-618/conflict_war/october_crisis/)>.  
FLQ, Manifesto of October 1970, see:  
<http://www.marxists.org/history/canada/quebec/flq/1970/manifesto.htm>

**Week 11 (Nov 18): Disturbing of the Peace**

The Canadian State is based on the constitutionally enshrined principles of “peace, order and good governance”. These principles, however, legitimize the values of the State, maintaining the integrity of private property and the authority of corporations and their owners. The control of the dominant class is therefore ensured by the legal infrastructure of the State. Accordingly, to challenge the dominant class in the interests of the socially marginal or disenfranchised may involve direct action to redress social injustice. While symbolically and practically valuable, direct action, by disturbing of “the peace”, may result in a contravention of the Law. Does disturbing

the peace necessarily undermine the security of the State? Can challenging the basis of unjust laws result in greater economic and social security? How does the approach or strategy used change the answers to these questions?

**RESOLUTION: BE IT RESOLVED that the use of breach of peace arrests during protests is consistent with the exercise of fundamental freedoms in a free and democratic society.**

**Readings:** John Clarke, "Social Resistance and the Disturbing of the Peace" (2003) 41 *Osgoode Hall L.J.* 491.  
Jackie Esmonde, The Policing of Dissent: The Use of Breach of the Peace Arrests at Political Demonstrations (2002), 1 *J.L. & Equality* 246.

### **Week 12 (Nov 25): Social Movements and Popular Protest**

The logic of Canadian democracy is premised upon the capacity of our elected officials to represent the interests of society. Many relevant policy issues, however, are developed unilaterally by the State without reference to public opinion. Moreover, for those who are inherently marginalized from the political process, the promotion of ideas through popular protest acts as a voice to express dissent, discontent and to mobilize around specific public policy concerns. This seminar considers recent social movements in the areas of anti-globalization politics, continental integration and immigration and the corresponding responses they have drawn from the Canadian State.

**RESOLUTION: BE IT RESOLVED THAT the police response to anti-globalization protest at International Summits is motivated by an interest of protecting Canada's reputation and not by legitimate concerns of physical security.**

**Readings:** Karen Pearlston "APEC Days at UBC: Student Protests and National Security in an Era of Trade Liberalization" in Gary Kinsman et al., ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 267.  
Jackie Esmonde, "Bail, Global Justice and the Limits of Dissent" (2003) 41 *Osgoode Hall Law Journal* 324.