

Course Outline

COURSE: LAWS 4309B State, Security and Dissent

TERM: Winter 2010-11

CLASS: **Day & Time:** Wednesday 18:05 - 20:05
Room: Please check Carleton Central for room location

INSTRUCTOR: Yavar Hameed
(CONTRACT)

CONTACT: **Office:** Loeb C476
Office Hrs: By appointment only
Telephone: (613) 232-2688 ext. 228
Skype: yhameed
Email: yhameed@hf-law.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

Course Synopsis

Methods of state control vary through times of war and peace, constantly shifting in an attempt to reconcile the apparent tension between protecting civil liberties and ensuring security. Significantly, this shifting tide is impacted by individual acts and broader social movements, which challenge the parameters of state control. This course explores counter-hegemonic resistance to state institutions that ideologically define security and in tandem exercise repressive control over Canadian society. Particular emphasis is given to laws in Canada that curtail basic civil liberties and legal challenges that test the limits of state security. The impact, successes and relevance of resistance are considered both historically and in a contemporary context in an effort to identify the relevance of dissent within Canada. To this end, dissent is presented as both a practical and theoretical lens through which one may confront the logic of how security has been defined by the state in Canada (at various and intersecting levels) and to whose benefit it inures.

Accommodation Policy

Students are encouraged to read the Academic Accommodation Policy, which can be found at www.carleton.ca/equity. The salient points of this policy are excerpted at the following web site: http://www.carleton.ca/pmc/students/accom_policy.html . At any time during the course, should any student feel that he or she may require academic accommodation in order to meet a deadline or any requirement of the course please speak with the instructor immediately.

Evaluation Scheme:

The first three classes will take the form of a lecture followed by open discussion within the class. Students will be expected to hand in five questions pertaining to the readings that should be discussed during each seminar. These questions should be handed in every week at the end of class beginning in Week 2 until Week 12.

The remaining classes will consist of in class debates followed by general class discussion.

Debate (50 % of Total Mark)

The remaining eight weeks will be structured around debate resolutions. The resolution for each debate is provided in the syllabus, but may be modified by the instructor to provide greater clarity.

Either individually or in pairs students will take a position for or against the resolution for a selected week. One week prior to the selected week, students will be required to submit a factum (written and sourced argument) and will be responsible during the week in question to present an argument 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 then explain their conclusion to the class. The outcome of the debate (i.e. who wins and who loses, nb: a tie or hung jury is also possible) 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.

Each debate will be preceded by a short introduction by the instructor. Thereafter, the student debates will continue for an hour (with intervening questions from the judges and the class) 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.

Brief of Argument and External Readings 30%

At least one week prior to the scheduled debate, the moving party (for the Resolution) is to identify a series of issues that are to be dealt with in the debate. The issues are necessary questions that must be answered in order to decide the ultimate resolution. Generally speaking, there should be between 3 and 5 issues to be addressed. Within one week and at least two days before the debate, the students are to email the instructor with their factum (brief of argument). A precedent of the brief and detailed explanation on how to prepare the brief will be provided on Web CT.

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, with appropriate footnotes and citations. The parties to the debate are required to exchange their main resources to be used in the argument at least one week before the debate. The parties are also responsible at that time to post the list of resources to Web CT for review by the class.

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 prior to the debate. On the day of the debate, each group should have on hand an additional copy of its factum to submit to the instructor.

Discussion Questions 10%

At the end of each seminar you will be required to hand in five questions intended for broader discussion or debate relating to the debate resolution assigned for that week and/or the seminar topic. These questions will form a gauge of your review of the readings, critical thinking and participation in the seminar.

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 at the end of the semester.

Major Project (MP) (50% of Total Mark)**MP Proposal 10% (due on Wednesday February 2, 2011)**

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 and a precedent proposal will be posted on Web CT.

MP Assignment and “Write Up” 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. An accompanying document or “write up” (approximately 10 pages) should be provided to explain the relationship of the project to the course themes or relevant social problem discussed in seminar. Each final write-up 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 as well as a section that explains the project within the broader literature and/or suggests further methods of developing or using the project.

Readings: ASSIGNED BOOKS AVAILABLE AT OCTOPUS BOOKS – 116 THIRD AVENUE

Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000).

Recommended Texts: (these are not mandatory for the course, but you will find them very useful for your project and your own personal study)

David Barsamian. *Terrorism: Theirs & Ours* (An Interview with Eqbal Ahmed) (New York: Seven Stories Press, 2001).

Ward Churchill, *Acts of Rebellion*, (New York: Routledge, 2003).

Paulo Freire, *Pedagogy of the Oppressed (30th Anniversary Edition)*, (New York: Continuum International Publishing Group Inc., 2007).

David Theodore Goldberg, *The Racial State* (Wiley Blackwell, 2001).

Martin Luther King Jr., *Why we Can't Wait* (New York: The New American Library Inc., 1964).

Gary Kinsman. et al. eds., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000).

Kerry Pither, *Dark Days: The Story of Four Canadians Tortured in the Name of Fighting Terror* (Toronto: Viking Canada, 2008).

Sherene Razack ed. *Race, Space and the Law: Unmapping a White Settler Society*, (Toronto: Between the Lines, 2002).

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

Kent Roach, *September 11: Consequences for Canada* (Montreal: McGill-Queen's University Press, 2003).

Maureen Webb, *Illusions of Security: Global Surveillance and Democracy in the Post-9/11 World* (San Francisco: City Lights, 2007).

Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation* (London: Verso Books, 2007).

LIST OF SEMINARS

Week 1 (Thursday January 5, 2011): 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.

Assigned Readings:

Louis Althusser, "Ideology and Ideological State Apparatuses: Notes Towards an Investigation" in *Lenin and Philosophy and Other Essays* (London: New Left Books, 1971) 127. – **RESERVE/ WEB CT**

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- 85.

Additional Suggested Reading:

Paulo Freire, *Pedagogy of the Oppressed (30th Anniversary Edition)*, (New York: Continuum International Publishing Group Inc., 2007), chapter 2 at pp. 72-86.

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

PART I: Forming and Maintaining the Security of the Canadian State**Week 2 (January 12, 2011): 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**Assigned 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. **RESERVE/ WEB CT**

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. **RESERVE / WEB CT**

Week 3 (January 19, 2011): Surveillance and the Role of Security Intelligence

Surveillance of Canadian society is an intrinsic part of state security and has played an important role in the evolution of the infrastructure of Canadian security intelligence. After the McDonald Commission in 1981, the Canadian Security Intelligence Service (CSIS) succeeded the RCMP. While ostensibly policing and intelligence functions were separated, the new entity failed to engender appropriate reliability or accountability to meet its invasive investigatorial powers. CSIS struggled to find its feet 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 Arar, Almalki, Abdelrazik and others 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 through extraordinary or “opportunistic” rendition.

Assigned Readings:

Introduction in Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 1-8.

“Spymasters, Spies, and their Subjects: The RCMP and Canadian State Repression, 1914-39” in Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 18- 33.

Suggested Readings:

Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York: Vintage Books, 1995).

Kerry Pither, *Dark Days: The Story of Four Canadians Tortured in the Name of Fighting Terror* (Toronto: Viking Canada, 2008).

Week 4 (January 26, 2011): Confronting Claims of First Nations Sovereignty

The negotiation of First Nations 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 the Sureté de Quebec was legally justified in its use of force in dismantling the blockade of Highway 117 erected by Barriere Lake protesters on October 7, 2008.

Assigned Reading:

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. **RESERVE / WEB CT**

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" (CANCE, August 2007): <http://www.caledoniawakeupcall.com/canace/CostofNativeOccupations.pdf>

"The Human Costs of Illegal Occupations" (CANCE, December 2007): <http://www.caledoniawakeupcall.com/canace/HumanCost.pdf>

Week 5 (February 2, 2011): The Demonization of Islam and the Creation of the Other (MAJOR PROJECT PROPOSAL DUE)

Since the attack on the World Trade Centre in September 2001, the dynamics of global security have been reformulated 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 "Project Samosa" proves that nice neighbours can be terrorists.

Assigned Readings:

Reem Bahdi, "No Exit: Racial Profiling and Canada's War Against Terrorism" (2003) 41 Osgoode Hall L.J. 293. **RESERVE / WEB CT**

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. **RESERVE / WEB CT**

PART II: STATE SECURITY AND DISSENT DURING TIMES OF WAR

Week 6 (February 9, 2011): Internment 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 “Japanese-Canadians” to Japan.

Assigned Readings:

Reference re: Persons of Japanese Race [1946] SCJ No. 7. (**obtain through legal database**)

Ann Sunahara. *The War Measures Act: Can Its Use be Controlled?* (Unpublished paper) **WEB CT**

Week 7 (February 16, 2011): 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 RCMP investigation of gays and lesbians as national security risks between 1950 and 1970 was illegal according to the existing laws of Canada.

Assigned Readings:

“Constructing Gay Men and Lesbians as National Security Risks, 1950-70” in Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 143-153.

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 - 88.

“Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946-48” in Gary Kinsman et al, ed., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 143-153.

FEBRUARY 23TH – CLASSES SUSPENDED FOR WINTER BREAK FEBRUARY 21- 25, 2011

Week 8 (March 2, 2011): 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? What is the impact upon civil rights of detainees arrested in the field of battle? What special responsibility if any does Canada have to its own citizens arrested during the war?

RESOLUTION: BE IT RESOLVED THAT Canada should request the repatriation of Omar Khadr to Canada from US authorities.

Assigned Readings:

Canada (Prime Minister) v. Khadr (2010) SCC 3 (**obtain from CanLII or other legal database**)

Part III: DISSENT AND DISTURBING OF THE PEACE**Week 9 (March 9, 2011): Disturbing Campus**

Student protest is becoming a growing feature of campus life. As some students begin to demand more and actively engage in more direct forms of expressing disapproval with administrative policies, different currents of opinion emerge within the larger student body as to the utility of models of direct action. For example, on November 24, 2010, students at the University of Ottawa occupied the President's office as a protest against rising tuition fees. What dictates effective activism? Is student protest a legitimate form of creating change on campus?

RESOLUTION: BE IT RESOLVED THAT student protest on campus is a waste of time.

Readings: TBA, posted on WebCT

Week 10 (March 16, 2011): 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 use of the *War Measures Act* during the FLQ crisis of 1970 was abusive and unnecessary to the protection of Canadian national security.

Assigned Reading:

War Measures Act

Suggested References:

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/>.

FLQ, Manifesto of October 1970, see:

<http://www.marxists.org/history/canada/quebec/flq/1970/manifesto.htm>

Week 11 (March 23, 2011): 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 level of police presence at Toronto's recent (June 2010) G20 summit was necessary for maintaining public order.

Assigned Readings:

John Clarke, "Social Resistance and the Disturbing of the Peace" (2003) 41 *Osgoode Hall L.J.* 491. **WEB CT**

Jackie Esmonde, *The Policing of Dissent: The Use of Breach of the Peace Arrests at Political Demonstrations* (2002),

1 J.L. & Equality 246. **WEB CT**

Week 12 (March 30, 2011): Dissent and the Anti-Apartheid Movement

Canada bears an extremely close relationship with the state of Israel, a trend which has been cemented by the current Harper government through declarations of policy, military partnership and public statements. This steadfast relationship has rhetorically intertwined the security of Canada with that of Israel. Should the status of this relationship remain unaltered in the face of a growing comparison between the history of apartheid South Africa and the asymmetrical civil and political laws in effect within Israel and Palestine? What constitutes apartheid and when is it appropriate to criticize its existence under international law? Is there a legal standard that governs apartheid? How should an apartheid state be measured? Should Canada's support for Israel be influenced by a consideration of whether Israel constitutes an apartheid state?

BE IT RESOLVED THAT Canada should impose an economic boycott against Israel as it did in the case of apartheid South Africa.

Readings:

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)

[http://www.un.org/ga/search/view_doc.asp?symbol=A/res/3068\(XXVIII\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/res/3068(XXVIII))

Geneva Conventions Act, RSC, 1985, c G-3

<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-g-3/latest/rsc-1985-c-g-3.html>

The Citizenship and Entry into Israel Law (5763-2003)

http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm

http://www.hamoked.org.il/items/1140_eng.pdf

Adalah Legal Centre for Arab Minority Rights in Israel and others v. Minister of Interior (HCJ 7052/03)

http://elyon1.court.gov.il/files_eng/03/520/070/a47/03070520.a47.pdf

B. Pogrund "Israel is a democracy in which Arabs vote" *Focus* 40 (2005)

http://www.zionism-israel.com/ezone/Israel_democracy.htm

"Israel is not an Apartheid State" *Winnipeg Jewish Review* (March 2010)

<http://www.crethiplethi.com/israel-is-not-an-apartheid-state/israel/2010/>