

**Carleton University  
Department of Law  
LAWS 5007 - Race, Ethnicity and the Law**

**TERM:** Winter 2010-11  
**PLACE:** TBA  
**TIME:** 6:05-8:55 MONDAYS

**INSTRUCTOR'S NAME:** TREVOR PURVIS

**CONTACT:** OFFICE: D599 LOEB  
**OFFICE HRS:** 2:45-5:45 Wednesdays (or by appointment)  
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"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](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."

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**COURSE DESCRIPTION AND ORGANIZATION**

The course examines the complex relationship between law, race and ethnicity. The legal institutions of late-modern societies intersect with the ideas of race and ethnicity on many fronts. Laws concerning immigration, policing, welfare, minority rights, reproductive rights, etc., are frequently refracted through lenses tinted by issues of race and ethnicity in ways that reproduce the subordination of minorities. At the same time, the persistence of ethnicist, racist and racialist tendencies within society dictate that some sort of response backed by the force of law is imperative to combating the most odious aspects of race and ethnic discrimination and oppression.

The course works from the premise that law exists in a constitutive relation with social reality; that is to say it is simultaneously a condensation of prevailing social relations and a site of social and political contestation and change. Moreover, law is only one of myriad regulatory discourses and practices governing the production (and mediating the reproduction) of racial and ethnic identities and relations.

Thus, the course focuses on law as a complex of discourses, institutions and practices implicated in the mediation of racial and ethnic relations. But, in keeping with the MA program's interdisciplinary focus, we also explore the intersections of law, modernity and enlightenment, and the role law has played in relation to, and in tandem with, expert and disciplinary discourses and practices in the constitution of social subjects as raced, classed, gendered, ethnicized, and nationalized in historically specific ways.

Ultimately we seek to explore what of value might reside in discourses of race and ethnicity, and what place law might play in the future as we struggle to both recognize and valorize difference whilst seeking to overcome the limitations imposed by essentialisms and the political retreat to separatisms.

The course will follow seminar format. At the end of each week's session a few students will be assigned (on a rotating basis) one of each of the subsequent week's readings. The following week, they will be responsible for introducing the main arguments, themes, concepts, etc developed in the article/chapter assigned.

## COURSE REQUIREMENTS AND EVALUATION

20% Class Participation  
20% Weekly Position Papers  
60% Term Paper

### Class Participation

The seminar nature of this course makes it *absolutely essential* that everyone *actively* participates in weekly discussions. Marks for participation will be based on two criteria. First, students will be expected to contribute to general weekly seminar discussions and to lead discussion of particular readings on a rotating basis. Weekly presentation of readings should *not* consist of summaries of articles, but should reflect a *critical engagement* with the material.

### Weekly Position Papers

Each week students will submit a brief written reflection on the week's readings. It is understood in advance that you will not be able to cover all readings every week with equal rigour. The purpose of the 'position papers' is to have you engage with at least some of the readings in a written form on a weekly basis. The orientation of these papers should be guided by two considerations:

- first, they should attend to a recognition of the relationship between the articles in question and the theme of the week's readings and the course more generally (Why this reading in this course? And why this reading in combination with the other readings selected for the week in question?);
- secondly, they should address themselves to problems you detect in the readings, or reflections upon what you view as the most important insights you have garnered from the readings.

Like your seminar presentation of weekly readings, these should *not* be simple summaries of the materials, but a *brief* critical engagement with some features of the readings. Each paper should be approximately 1-2 pages in length.

While I will read all position papers, I will not have time to comment extensively on them. Nor will I grade each submission. Your final position paper grade will be aggregated from your overall engagement with the course materials on a weekly basis.

### Term Papers

Students will submit a brief paper proposal (approximately 1/2 page) on **February 28, 2011**, so start thinking about topics early. You are welcome to explore a specific case study that is not addressed in the course readings. If you do so, however, you must ensure my prior knowledge of your intention (i.e., your proposal should specify the nature of the case study). Moreover, regardless of your chosen 'case study' *it is imperative that your paper evidences an effort to seriously engage the theoretical materials explored in class.*

Term papers are to be submitted no later than **the last day of term**. All papers should be handed in to me personally, or submitted through the drop-off box at the main office of the Law Department. Under no circumstances should papers be left under my office door. In the absence of a medical certificate late papers will be penalized one grade point per day (an A- will be reduced to a B+ etc.).

Papers should be word-processed or typed, of approximately 5,000 to 6,500 words in length (about 20-25 pages, typed and double-spaced). You are strongly advised to retain a copy of your paper.

*All submitted work must be original!* All papers should be properly referenced. Either in-text or footnote citations are acceptable, just ensure you use one citation method, and do so consistently. Each paper must also include a complete bibliography of all materials cited. Where referencing is concerned, thoroughness and consistency should be your aim. *Students should be familiar with departmental regulations regarding*

plagiarism.

### **COURSE TEXTS**

I have ordered copies of the following book:

- Arendt, H. (1994). *Eichmann in Jerusalem: A Report on the Banality of Evil* (revised and enlarged edition). New York: Penguin.
- Lopez, I. H. (2006). *White By Law: The Legal Construction of Race* (revised and updated, 10<sup>th</sup> anniversary ed.). New York: New York University Press.
- Williams, R. A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press.

The books have been ordered through Mother Tongue Books at 1067 Bank Street (between Sunnyside and the Canal) and are now available.

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### **COURSE OUTLINE**

#### **Wk 1: January 3, 2011 Introduction**

#### **Wk 2: January 10, 2011 Culture, Identity, Modernity**

##### **Required Reading**

- Balibar, E. (1991). The Nation Form: History and Ideology. E. Balibar and I. Wallerstein In *Race, Nation, Class: Ambiguous Identities* (pp. 93-106). London & New York, Verso. (excerpt)
- Hall, S. (1996). The Question of Cultural Identity. In S. Hall, D. Held, D. Hubert, & K. Thompson (Eds.), *Modernity* (pp. 595-634). Oxford & Cambridge Mass.: Blackwell.
- Larrain, J. (1994). *Ideology and Cultural Identity: Modernity and the Third World Presence*. Cambridge: Polity. Chapter 1, 'Ideology, Reason and the Construction of the Other'.
- Said, E. (1986). An Ideology of Difference. In H. L. Gates (Ed.), *"Race", Writing and Difference* (pp. 38-58) Chicago, University of Chicago Press.

#### **Wk 3: January 17, 2011 Law, Knowledge and the Other – Encounters I**

##### **Required Reading**

- Hall, S. (1996). The West and the Rest: Discourse and Power. In S. Hall, D. Held, D. Hubert, & K. Thompson (Eds.), *Modernity* (pp. 184-227). Oxford & Cambridge Mass.: Blackwell.
- Williams, R.A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press. Parts I & II.

#### **Wk 4: January 24, 2011 Law, Knowledge and the Other – Encounters II**

##### **Required Reading**

- Said, E.W. 1978. *Orientalism*. Harmondsworth, Middlesex: Penguin.
- Tully, J. (1993). *An approach to political philosophy: Locke in contexts*. Cambridge: Cambridge University Press. Chapter 5, 'Rediscovering America: The Two Treatises and Aboriginal Rights'.
- Williams, R.A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press. Part III.

#### **Wk 5: January 31, 2011 Justice, Modernity and the Holocaust**

##### **Required Reading**

- Arendt, H. (1994). *Eichmann in Jerusalem: A Report on the Banality of Evil* (revised and enlarged edition). New York: Penguin.

#### **Wk 6: February 7, 2011 Legal Constructions of Difference**

##### **Required Reading**

- Goodrich, P. (1990). *Languages of Law: From Logics of Memory to Nomadic Masks*. London: Weidenfeld and Nicolson. pp. 179-186.
- Lopez, I. H. (2006). *White By Law: The Legal Construction of Race* (revised and updated, 10th anniversary ed.). New York: New York University Press. (Especially Chapters 1,2,3 & 5)

**Wk 7: February 14, 2011 Imagining 'Us'/Imagining 'Them'**

**Required Reading**

- McCalla, A., & Satzewich, V. (2002). Settler Capitalism and the Construction of Immigrants and "Indians" as Racialized Others. In W. Chan & K. Mirchandani (Eds.), *Crimes of Colour: Racialization and the Criminal Justice System in Canada* (pp. 25-44). Peterborough: Broadview Press.
- Macklin, A. (2005). Can We Do Wrong to Strangers? In D. Dyzenhaus & M. Moran (Eds.), *Calling Power to Account: Law, Reparations, and the Chinese Head Tax Case* (pp. 60-91). Toronto: University of Toronto Press.
- Pratt, A. C. (1999). Dunking the Doughnut: Discretionary Power, Law and the Administration of the Canadian Immigration Act. *Social & Legal Studies*, 8(2), 199-226.
- Shapiro, M. J. (1997). Narrating the Nation, Unwelcoming the Stranger: Anti-Immigration Policy in Contemporary "America". *Alternatives*, 22(1), 1-34.

**Wk 8: February 21, 2011 Reading Week – No Class**

**Wk 9: February 28, 2011 Designating and Regulating Racial and Ethnic Subjects**

**Required Reading**

- Elliott, M. A. (1999). Telling the Difference: Nineteenth-Century Legal Narratives of Racial Taxonomy. *Law & Social Inquiry*, 24(3), 611-636.
- Omi, M. (1997). Racial Identity and the State: The Dilemmas of Classification. *Law & Inequality*, 15(1), 7-23.
- Pascoe, P. (1996). Miscegenation Law, Court Cases, and Ideologies of "Race" in Twentieth-century America. *The Journal of American History*, 83(1), 44-69.
- Smith, D. (1993). The Emergence of "Eskimo Status": An Examination of the Eskimo Disk List System and Its Social Consequences, 1925-1970. In N. Dyck & J.B. Waldram (Eds.), *Anthropology, Public Policy, and Native Peoples in Canada* (pp. 41-74). Montreal: McGill Queens University Press.
- Thompson, D. 2009. 'Racial Ideas and Gendered Intimacies: The Regulation of Interracial Relationships in North America'. *Social & Legal Studies* 18: 353-371.

**Wk 10: March 7, 2011 The Problem of Essentialism**

**Required Reading**

- Calhoun, C. (1995). *Critical Social Theory* (pp. 193-204). Oxford: Blackwell.
- Harris, A.P. (1995). Race and Essentialism in Feminist Legal Theory. In R. Delgado (Ed.), *Critical Race Theory: The Cutting Edge* (pp. 253-266). Philadelphia: Temple University Press.
- Stubblefield, A. (1995). Racial identity and non-essentialism about race. *Social Theory and Practice*, 21 (Fall), 341-368.
- Winant, H. (1998). Racism Today: Continuity and Change in the Post-Civil Rights Era. *Ethnic and Racial Studies*, 21(4), 755-766.

**Wk 11: March 14, 2011 Race, Crime and Policing**

**Required Reading**

- Gilroy, P. (1987). *There Ain't No Black In the Union Jack*. London: Routledge. Chapter 3, 'Lesser Breeds Without the Law'.
- Jefferson, Tony. (1988). Race, Crime and Policing: Empirical, Theoretical and Methodological Issues. *International Journal of the Sociology of Law* 16:521-539.
- Jiwani, Y. (2002). The Criminalization of "Race" and the Racialization of Crime. In W. Chan & K. Mirchandani (Eds.), *Crimes of Colour: Racialization and the Criminal Justice System in Canada* (pp. 67-86). Peterborough: Broadview Press.
- Rose, W. (2002). Crimes of Color: Risk, Profiling, and the Contemporary Racialization of Social Control. *International Journal of Politics, Culture and Society*, 16(2), 179-205.
- Wacquant, L. J. D. (2002). From Slavery to Mass Incarceration: Rethinking the 'race question' in the US. *New Left Review*, 13(January/February), 41-60.

**Wk 12: March 21, 2011 Troublesome Bodies**

**Required Reading**

- Hyde, Alan. (1997). *Bodies of Law* (pp. 222-240). Princeton: Princeton University Press.
- Gilman, S. L. (1986). Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late

Nineteenth-Century Art, Medicine and Literature. In H. L. Gates (Ed.), *"Race", Writing and Difference* (pp. 223-261). Chicago: University of Chicago Press.

Sears, A. (1990). Immigration Controls as Social Policy: The Case of Canadian Medical Inspection 1900-1920. *Studies in Political Economy*, 33(Autumn), 91-112.

**Wk 13: March 28, 2010 The Colour of Terror**

**Required Reading**

Bahdi, R. (2003). No Exit: Racial Profiling and Canada's War Against Terrorism. *Osgoode Hall Law Journal*, 41(2&3), 293-316.

Bell, C. (2006). 'Subject to Exception : Security Certificates, National Security and Canada's Role in the "War on Terror"'. *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 21: 63-83.

Fekete, L. (2004). Anti-Muslim Racism and the European Security State. *Race & Class*, 46(1), 3-29.

French, M. (2007). In the Shadow of Canada's Camps. *Social & Legal Studies*, 16(1), 49-69.

Mathur, S. (2006). Surviving the dragnet: 'special interest' detainees in the US after 9/11. *Race & Class*, 47(3), 31-46.