

**Carleton University
Department of Law**

LAWS 5007 - Race, Ethnicity and the Law

TERM: Winter 2011-12

PLACE: LA492

TIME: 6:05-8:55 MONDAYS

INSTRUCTOR'S NAME: TREVOR PURVIS

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OFFICE HRS: 3:00-6:00 Wednesdays (or by appointment)

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“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 are 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 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 only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the deadlines published on the [PMC website](#).”

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% Journals

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 Journal Entries

Students will be responsible for keeping an on-going course journal. Each week students will submit a brief written reflection on the week's readings to an assignment dropbox on WebCT. It is understood in advance that you will not be able to cover all readings every week with equal rigour. The purpose of the 'journal' is to have you engage with at least some of the readings in a written form on a weekly basis. The orientation of these reflections 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 in the range of 1½ -3 pages.

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

Entries are to be submitted by the beginning of the class each week

Term Papers

Students will submit a brief paper proposal (approximately 1/2 page) on February 27, 2012, 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

In recent years I have used the following complete texts for the course:

- Arendt, H. (1994). *Eichmann in Jerusalem: A Report on the Banality of Evil* (revised and enlarged edition).
- Williams, R. A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press.

The Arendt book is available online both used and new at very reasonable prices so I have not pre-ordered them this year. The Williams text is a bit more difficult. For the past few years Oxford University Press has proven very unreliable in providing copies of the text, with texts sometimes arriving well into the term and forcing a re-ordering of course materials. This year I have decided

to forego ordering Williams as the book is available online through the library and limited copies are available through ABE Books online at a fraction of the cost that OUP asks for its print-on-demand orders. You may want to secure copies of your own through ABE or from students from past years willing to part with their copies. Otherwise you may be satisfied with reading online.

COURSE OUTLINE

Wk 1: January 9, 2012 Introduction

Wk 2: January 16, 2012 Culture, Identity, Modernity

Required Reading

- 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.
- Hall, S. (1996). Who Needs Identity. In S. Hall & P. Du Gay (eds.) *Questions of Cultural Identity*. (pp.1-17). London: Sage.
- 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 23, 2012 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.
- Said, E.W. 1978. *Orientalism*. Harmondsworth: Middlesex: Penguin. Pp.1-72.
- Williams, R.A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press. Part I.

Wk 4: January 30, 2012

Law, Knowledge and the Other – Encounters II

Required Reading

- 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. Parts II & III.

Wk 5: February 6, 2012 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 13, 2012 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.

Marchetti, E. & Ransley, J. (2005) Unconscious Racism: Scrutinizing Judicial Reasoning in 'Stolen Generation' Cases. *Social & Legal Studies*. 14 (4), pg. 533-552.

Wk 7: February 20, 2012

Reading Week – No Class

Wk 8: February 27, 2012

Borders

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.

Pratt, A. (2010) Between a Hunch and a Hard Place: Making Suspicion Reasonable at the Canadian Border. *Social & Legal Studies*. 19(4) 461–480.

Shapiro, M.J. (1997). Narrating the Nation, Unwelcoming the Stranger: Anti-Immigration Policy in Contemporary "America". *Alternatives*, 22(1), 1-34.

Wk 9: March 5, 2012

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.

Wk 10: March 12, 2012

Intersections

Required Reading

Harris, A.P. (1990). Race and Essentialism in Feminist Legal Theory. *Stanford Law Review*. 42(3): 581-616.

- Jiwani, Y. (2011). Trapped in the Carceral Net- Race, Gender, and the “War on Terror”. *Global Media Journal -- Canadian Edition*. 4(2):13-31.
- Wilcox, P. (2005). Beauty and the Beast: Gendered and Raced Discourse in the News. *Social & Legal Studies*. Vol. 14(4): 515–532.
- Williams, T. (2009). Intersectionality Analysis in the Sentencing of Aboriginal Women in Canada: What Difference Does it Make? In D. Cooper (Ed.) *Intersectionality and Beyond: Law, Power and the Politics of Location* (pp. 79-104). New York: Routledge-Cavendish.
- Williamson, M. & Khiabany, G. (2010). UK: The veil and the politics of racism. *Race & Class*. 52(2): 85–96.

Wk 11: March 19, 2012

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’.
- Gordon, T. (2006). Neoliberalism, Racism, and the War on Drugs in Canada. *Social Justice* 33(1): 59-78.
- 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 26, 2012

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.
- Thompson, D. (2009). 'Racial Ideas and Gendered Intimacies: The Regulation of Interracial Relationships in North America'. *Social & Legal Studies* 18: 353-371.
- Wiebe, S. (2009). Producing Bodies and Borders: A Review of Immigrant Medical Examinations in Canada. *Surveillance & Society* 6(2): 128-141.

Wk 13: April 2, 2012

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.