

Syllabus

COURSE: LAW, CULTURE, POWER - LAWS 5903 W & ANTH 5708 Y**TERM:** WINTER 2017**PREREQUISITES** NONE**CLASS:** Day & Time: WEDNESDAYS, 11:35 – 2:25
Room: LOEB D492**INSTRUCTOR** PROFESSOR M. KAMARI CLARKE, PH. D.**CONTACT:** Office: BGIoS – Richcraft Hall, Room 2408R
Office Hrs: Wednesdays 3:00 – 4:30PM
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COURSE DESCRIPTION

The study of law, culture and power continues to be a critical area of study for understanding our contemporary world. Since the beginning of the shaping of the social sciences questions about the nature of culture and power have been placed at the center of inquiry. Legal anthropologists have been concerned with related questions about the nature of law, the maintenance of order (particularly in stateless societies) and the relationship between law and custom. Early scholars of law and society found that the study of law provided insights into these and larger questions about societal norms and culturally shaped attitudes. Gradually the sociological and anthropological sub-field for the study of law took shape with these concerns in mind and the approaches have been concerned with what law is, what it does, how we identify it, and what is its relationship to institutions of power?

We are now living in an age in which legality is increasingly displacing cultural and political processes and is shaping solutions to social problems. As a result, scholarship on contemporary debates about law and the spread of human rights, the growth of non-governmental organizations, and the “rule of law” have become all the more important. By exploring the relationships between law, culture and power, as well as the development of the study of those domains, this course offers both an introduction to the cultural study of law, as well as the analytic terrain for exploring contemporary transformations in study of law. The goal is to explore the development of the cultural study of law as well as the analytic terrain for exploring contemporary transformations in study of law.

FORMAT

The weekly meetings will progress with the following format: the first ninety minutes will be broken into two parts; the first half will consist of a short framing lecture by the instructor in which the material will be contextualized and key issues highlighted. This will be followed by a presentation by a student presenter assigned to the topic. The second half of the class will consist of discussions of the reading material. Students who are not presenting will be expected to participate fully in class discussions.

REQUIRED READING

All articles and supplemental readings will be available on the cuLearn website and through **ARES**. The following books are required for the course and can be purchased from the Carleton bookstore:

Required Texts

1. Human Rights and Gender Violence: Translating International Law Into Local Justice. Merry, Sally Engle.
2. The Citizen and the Alien: Dilemmas of Contemporary Membership. Princeton: Princeton University Press. Bosniak, Linda. 2006.
3. Mohawk Interruptus: Political Life Across the Borders of Settler States. Audra Simpson.
4. Our Word is Our Bond: How Legal Speech Acts. Marianne Constable.
5. The Trial of Dedan Kimathi. Wa Thiongo, Ngungi. 1976. Portsmouth, NH: Heinemann Educational Books.

EVALUATION

The course evaluation will be based on the following grade breakdown:

20% One Class Presentation

35% Weekly Reading Responses (8 reading responses, begins as of week #3)

35% Final Paper (15-page double spaced paper – Due April 9th 2017)

10% Class Participation

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the department and the dean.

Explanation of Grade Breakdown:

(a) Class Presentations

Each student is required to give one class oral presentation in which they will serve as a discussant of the material. The discussion should focus on all of the readings for the week in question. Students should prepare a thirty-minute presentation that should serve to orient the weekly discussion. Weekly meetings are to be organized around these presentations and they should incorporate a treatment of the readings that outline critiques, questions and themes for further consideration. Presentations should address one or two broad overarching themes that arise in the assigned text(s) or the student may focus in more detail on shared or divergent perspectives. While it may be useful to point out differences in approaches to empirical data, or to signal aspects of the readings that require clarification, presentations should focus especially on the ways in which authors choose to conceptualize relevant issues. They should ask: what are the general assumptions that underlie competing approaches, and to what degree are they essential to the broader arguments put forth in the articles/books in question? What do you perceive to be some of the principal strengths or weaknesses of these assumptions, and/or the kinds of data that reinforce or undermine their plausibility? In general, it is important to be brief and selective and to raise issues rather than attempt a lengthy summary of the readings. Rather than doing a weekly reading response on the day of the presentation, students should prepare a brief written outline/hand-out to accompany their presentations (please send copies to everyone in the class). A sign-up sheet for weekly presentations will be circulated at the beginning of the semester.

(b) Reading Response Papers

All students must write a total of eight weekly reading responses papers. The response papers should be short one-page weekly responses to the readings. Everyone else is to upload their responses on cuLearn at 9AM each Wednesday morning. The first reading response is due on the Wednesday morning of the THIRD week of class. There is no need to write a reading response on the day that you are doing your class presentation.

The response paper should summarize the author's main points, identify the debates in which he/she is engaged, and indicate whether or not you feel he/she succeeds in supporting and analyzing his/her argument. It should raise critical questions and highlight whether and how the author is challenging theoretical norms. Each response paper should assume that the reader is unfamiliar with the subject matter and therefore should outline what the publication is about (briefly), how it fits into a larger debate, and what the strengths and weaknesses are. As you do the required reading and prepare to write the response paper please focus on how the arguments used support the claims of the author. Look out for the sorts of unstated assumptions that the author uses: what does s/he assume about how humans behave or think? What does she assume about the ability of groups to act collectively, and so on. It is very rare to find a piece of writing that you agree with entirely. As you come across issues with which you disagree with or find unconvincing write them down and bring them along to section for discussion. Also note when you are A good model for how to organize a review of multiple works can be found in the review sections in academic journals.

(c) Final Paper

You will be expected to write a focused final essay or research essay centered around one of the weekly theme outlined in the syllabus. The essay should explore a particular theme or a set of related themes and should be no more than fifteen double-spaced pages (no less than twelve double-spaced pages). The

paper will be due by April 9, 2017 at 11:55PM. The paper should be uploaded on cuLearn but also sent directly to the instructor via electronic mail. Please send to: Kamari.clarke@carleton.ca.

Please use an anthropological citation style for all submitted work. The best examples of this are the major professional journals such as *American Anthropologist* or *American Ethnologist*.

For citations – please cite authors whose ideas you use by listing their last name and the date of publication following the relevant idea being borrowed. If you were influenced by ideas from more than one source, this can also include more than one citation (Ginsburg 1989; Ginsburg and Rapp 1991). If you quote an author it can look like this: "the powers of village women... [do not] provide women with the last word," (Harding 1975:308), you must include the page number(s). Note the placement of punctuation, and that the citation and period/comma are outside of the quotation marks.

References Cited (not "Bibliography"), placed starting on a new page at the end of your text, does not include any publication not cited in the text. All entries must be listed alphabetically by last name of author, and chronologically arranged for two or more titles by the same author. Nothing, except "in," is underlined in References Cited. The layout should be as follows:

1) For a **journal article**, showing the volume and issue numbers, and page numbers: Becker, Gay. 1994 Metaphors in disrupted lives. *Medical Anthropology Quarterly* 8(4):383-410.

2) For an **article in a book of collected essays** (Except for first words and proper nouns, article title is lower case, book title is capitalized): Harding, Susan. 1975 Women and words in a Spanish village. In *Toward an Anthropology of Women*. Rayna R. Reiter, ed. Pp.283-308. New York: Monthly Review Press.

3) for a **book** (title is capitalized; date, place of publication [use the first one listed], and publisher all included): Riedmann, Agnes. 1993 *Science That Colonizes: A Critique of Fertility Studies in Africa*. Philadelphia: Temple University Press.

4) for articles taken from the internet, cite as closely as you can to a printed publication (including author's name, date of publication, title, publisher), followed by the URL of the site you are citing: United Nations.

2009 Revision of the World Population Estimates and Projections. [Http://www.popin.org](http://www.popin.org).

(d) Class Participation

This is a seminar class and each weekly session will be devoted to discussions of the required reading. Therefore, all required readings should be completed in advance. In preparation for class discussion, each student will be expected to complete all required readings. Supplemental/recommended readings listed on the syllabus are optional. All students must be fully prepared to participate in class discussions.

CLASS SCHEDULE AND ORGANIZATION

Wednesday January 11 – WEEK 1 - INTRODUCTION Overview of the Course & Mapping Relevant Debates

What is “law”? How does law Travel? How does the study of “culture” facilitate the study of law?

- Merry, Sally Engle. Human Rights and Gender Violence: Translating International Law Into Local Justice. Introduction, Chapter 1, 2, 3 and 4

SECTION I STUDYING LAW, CULTURE, POWER

Wednesday January 18 – WEEK 2 Law, Culture and Social Order

- Order Without Law: How Neighbors Settle Disputes. Robert Ellickson. Harvard U Press. 1991. Introduction.
- Strathern, Marilyn. 1985. “Discovering ‘Social Control.’” *Journal of Law and Society* 12(2):111-134.

Wednesday January 25 – WEEK 3 Law, Culture, Membership and the Problem of Inequality

• Student Presentation #1; Reading Response #1

- Bosniak, Linda. 2006. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton: Princeton University Press. Excerpts
- Wa Thiongo, Ngungi. 1976. *The Trial of Dedan Kimathi*. Portsmouth, NH: Heinemann Educational Books

Supplemental Reading

- Geschiere, Peter. 2006 *Witchcraft and the Limits of the Law: Cameroon and South Africa*. In

Law and Disorder in the Postcolony, eds. J. Comaroff and J.L Comaroff. Chicago: University of Chicago Press.

- Comaroff, Jean and John Comaroff. 2003. Reflections on Liberalism, Policulturalism, and ID-ology: Citizenship and Difference in South Africa. *Social Identities* 9(4):445-74.
- Comaroff, John and Jean Comaroff 2004. Criminal Justice, Cultural Justice: The Limits of Liberalism and the Pragmatics of Difference in the New South Africa. *American Ethnologist* 31(2):188-204.
- Minnaar, Anthony. 2003. Legislative and Legal Challenges to Combating Witch Purging and *Muti* Murder in South Africa. In *Witchcraft Violence and the Law in South Africa*, ed. John Hund. Pretoria: Protea.
- Comaroff, John and Jean Comaroff. 1999. "Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony." *American Ethnologist* 26(2): 279-303.
- Sieder, Rachel. 2001. Rethinking Citizenship: Reforming the Law in Postwar Guatemala. In *States of Imagination: Ethnographic Explorations of the Postcolonial State*, eds. T. Blom Hansen and F. Stepputat. Durham: Duke University Press.

Wednesday February 1 – WEEK 4

Critical Approaches to the Study of Law and Power

- **Student Presentation #2; Reading Response #2**
- Benjamin, Walter. 1978. Critique of Violence. In *Reflections: Essays, Aphorisms, Autobiographical Writings*. Translated by Edmund Jephcott and edited by Peter Demetz. New York: Schocken Books, pp.277-300.
- Derrida, Jacques. 2002 [1989]. The Force of Law: The "Mystical Foundations of Authority." In *Acts of Religion*, pp.262-98. New York: Routledge.

Supplemental Reading

- Althusser, Louis. 1971. "Ideology and Ideological State Apparatuses: Notes toward an Investigation." In *Lenin and Philosophy and other Essays*. Ben Brewster, trans. New York: Monthly Review Press.
- Gramsci, Antonio. 1991. *Prison Notebooks*. New York: Columbia University Press.
- Pashkukanis. 1989 [1992] *Law and Marxism. A General Theory*. Barbara Einhorn, trans. Worcester: Pluto Press.

Wednesday February 8 – WEEK 5 – NO CLASSES – SEE MAKE-UP on Friday March 3rd.

SECTION II

Power's Inscriptions: Law, Empire, Colonialism

Wednesday February 15 – WEEK 6

Critical Approaches to the Study of Law and Power

- **Student Presentation #3; Reading Response #3**

- Antony Anghie. Imperialism, Sovereignty and the Making of International Law. Chapters 1 & 2 Pgs. 13-114.

Supplemental Reading

- Derrida, Jacques. 2002 [1989]. The Force of Law: The “Mystical Foundations of Authority.” In *Acts of Religion*, pp.262-98. New York: Routledge.
- Althusser, Louis. 1971. “Ideology and Ideological State Apparatuses: Notes toward an Investigation.” In *Lenin and Philosophy and other Essays*. Ben Brewster, trans. New York: Monthly Review Press.
- Gramsci, Antonio. 1991. *Prison Notebooks*. New York: Columbia University Press.

Wednesday February 22 – WEEK 7 - WINTER BREAK – NO CLASSES

Wednesday March 1 – WEEK 8

Law and Empire: The Politics of Colonialism and the Colonial State

- **Student Presentation #4; Reading Response #4**

- Merry, Sally. 1991. Law and Colonialism. *Law and Society Review*, 25(4):889- 922.
- Cohn, Bernard. 1996. Law and the Colonial State in India. In *Colonialism and its Forms of Knowledge*, B. Cohn. Princeton: Princeton University Press, Chapter 3.
- Stoler, Ann. 1985. Perceptions of Protest: Defining the Dangerous in Colonial Sumatra. *American Ethnologist*, 12:642-58.
- Ngai, Mae M. 2004. “From Colonial Subject to Undesireable Alien: Filipino Migration in the Invisible Empire.” In *Impossible Subjects: Illegal Aliens and the Making of Modern America*, pp. 96-126. Princeton: Princeton University Press.

Supplemental Reading

- Comaroff, John. 2001. Law, Culture, and Colonialism: a foreword. *Law and Social Inquiry*, 26(2): 101-110.
- Sweet, C. L. 1982. Inventing Crime: British Colonial Land Policy in Tanganyika. In *Crime, Justice and Underdevelopment*, ed. C. Sumner. London Heinemann.
- Santos, Boaventura de S. 1977. "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada Law," *Law and Society Review* 12: 5-126.
- Mamdani, Mahmood. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton: Princeton University Press, Selections and Chapter 4.
- Comaroff, John. 1998. Reflections on the Colonial State, in South Africa and Elsewhere: fragments, factions, facts and fictions. *Social Identities*, 4(3):321-361.
- Chanock, Martin. 1985 *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.
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Wednesday March 8 – WEEK 5 - Make-Up

On the Creation of Customary Law

• Student Presentation #5; Reading Response #5

- Mohawk Interruptus: Political Life Across the Borders of Settler States. Audra Simpson

Supplemental Reading

- Snyder, Francis G. 1982. Colonialism and Legal Form: The Creation of 'Customary Law' in Senegal. In *Crime, Justice and Underdevelopment*, ed. C. Sumner. London: Heinemann.
- Moore, Sally Falk. 1986. *Social Facts and Fabrications: "Customary" Law on Kilimanjaro*. Cambridge: Cambridge University Press. Chapter 6 (especially pp.156-167).
- Chanock, Martin. 1989. Neither Customary nor Legal: African Customary Law in an Era of Family Law Reform. *International Journal of Law and Family*, 3:72-88. Reprinted in *African Law and Legal Theory*, eds. Gordon R. Woodman and A.O. Obilade. New York: New York University Press, 1995.

Friday March 10th – WEEK 9

Postcolonialism

• Student Presentation #6; Reading Response #6

- Comaroff, Jean and John L. Comaroff. 1998. "Occult Economies and the Violence of Abstraction:

Notes from the South African Postcolony.”

- Merry, SE (2004), "Colonial and Postcolonial Law," in Sarat, A., ed., *The Blackwell Companion to Law and Society*. London: Blackwell: 569-588.
- Comaroff, John and Jean Comaroff. 2006. Law and Disorder in the Postcolony: An Introduction. In *Law and Disorder in the Postcolony*. Chicago: University of Chicago Press. Chapter 1, 3, 4, 5

Supplemental Reading

- Chabal, Patrick and Jean-Pascal Daloz. 1999. *Africa Works: Disorder as Political Instrument*. Bloomington: Indiana University Press. Chapter 6.
- Darian-Smith, Eve and Peter Fitzpatrick, eds. 1999. *Laws of the Postcolonial*. Ann Arbor: University of Michigan Press. (Excerpt)
- Mbembe, Achille. 1992. Provisional Notes on the Postcolony. *Africa: Journal of the International African Institute* 62(1): 3-37.
- Darian-Smith, Eve and Peter Fitzpatrick, eds. 1999. *Laws of the Postcolonial*. Ann Arbor: University of Michigan Press. (Excerpt)^[1]_{SEP}
- Merry, SE (2004), "Colonial and Postcolonial Law," in Sarat, A., ed., *The Blackwell Companion to Law and Society*. London: Blackwell: 569-588.
- Bhabha, Homi K. 1994. *The Location of Culture*. New York: Routledge.
- Bayart, Jean-François, Stephen Ellis, and Béatrice Hibou. 1999. *The Criminalization of the State in Africa*. Bloomington: Indiana University Press. Chapter 1.

**SECTION III
CONTEMPORARY TOPICS:
LANGUAGE, DISCOURSE, AND CULTURAL POLITICS**

Wednesday March 15 – WEEK 10

Law and Language

• Student Presentation #7; Reading Response #7

- Our Word is Our Bond: How Legal Speech Acts. Marianne Constable.

Supplemental Reading

- Coutin, Susan Bibler, Bill Maurer, and Barbara Yngvesson. 2002. "In the Mirror: The Legitimation Work of Globalization." *Law and Social Inquiry* 27(4):801-843.
- Nelson, Diane M. 2001. "Indian Giver or Nobel Savage: Duping, Assumptions of Identity, and other double entendres in Rigobertu Menchú Tum's Stoll/en Past." *American Ethnologist*

- 28(2):303-331.
- Ngai, Mae M. 2004. "From Colonial Subject to Undesireable Alien: Filipino Migration in the Invisible Empire." In *Impossible Subjects: Illegal Aliens and the Making of Modern America*, pp. 96-126. Princeton: Princeton University Press.
- Sierra, Maria Teresa. 2001. "Human Rights, Gender, and Ethnicity: Legal Claims and Anthropological Challenges in Mexico." *PoLAR: Political and Legal Anthropology Review* 24(2):76-93.
- Richland, Justin. 2008. *Arguing with Tradition: the Language of Law in Hopi Tribal Court*. Chicago: University of Chicago Press.

Wednesday March 22 – WEEK 11

Affective Justice: On International Law and the Politics of the ICC in Africa

- **Student Presentation #8; Reading Response #8**
- On The Political Legality of the ICC in Africa. Manuscript. Clarke, Kamari.

Supplemental Reading

- Mahmood, Mamdani. The Politics of Naming: Genocide, Civil War, *Insurgency* 29(5). March 8 2007.
- Branch, Adam. 2007. "Uganda's Civil War and the Politics of ICC Intervention." *Ethics & International Affairs* 21 (2): 179-189.
- Kendall, Sara and Sarah Nouwen. 2013. Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood. Paper No. 24/2013. *Legal Studies Research Paper Series*. University of Cambridge Faculty of Law.
- Van Schendel, Willem and Itty Abraham, eds. 2005 *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. Bloomington, IN: University of Indiana Press.

This class will begin at 11:30AM and will go to 12:30PM and will be continued from 1:00-2:30PM in the African Studies Brown Bag Series in Patterson Hall.

Wednesday March 29 – WEEK 12

STUDENT PAPER PRESENTATIONS

Paper Presentations - Students to present ideas for final papers and to take questions and receive feedback in class. Please upload your one page abstract of paper and outline of your general argument by April 4th at 11:55pm so that everyone can read it prior to your class presentation.

Final Paper Due April 9th, 2017 at 11:55PM; Please upload paper online and email to Instructor

Academic Accommodations:

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: 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. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Religious obligation: 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. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

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/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>