

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

TERM: Winter 2008-2009
PLACE: B454 LA (Loeb Building)
TIME: 11:30-2:30 MONDAYS

INSTRUCTOR: Professor Trevor Purvis

CONTACT: OFFICE: D599 LOEB
OFFICE HRS: 2:45-5:45 Mondays (or by appointment)
EMAIL: tpurvis@ccs.carleton.ca
PHONE: 520-2600 ext. 3673

""Students with documented 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 include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives 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 accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by November 7, 2008 for December exams and by March 6, 2009 for April exams." Also available at http://www.carleton.ca/pmc/faculty/acom_statement.html . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: www.carleton.ca/equity

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 23, 2009**, 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 **April 7, 2009**. 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 books:

- 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, 10th 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.

COURSE OUTLINE

Wk 1: January 5, 2009 Introduction

Wk 2: January 12, 2009 Legal Discourse and the 'Others' of Western Legal Thought I

Required Reading

Williams, R.A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford & New York: Oxford University Press.

Wk 3: January 19, 2009 Legal Discourse and the 'Others' of Western Legal Thought II

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

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.

Wk 4: January 26, 2009 Race, Culture and 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 5: February 2, 2009 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 9, 2009 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 16, 2009 Reading Week – Classes Suspended

Wk 8: February 23, 2009 Imagining 'Us'/Imagining 'Them'

Required Reading

Kobayashi, A. (1995). Challenging the National Dream: Gender Persecution and Canadian Immigration Law. In P. Fitzpatrick (Ed.), *Nationalism, Racism and the Rule of Law* (pp. 61-73). Aldershot: Dartmouth Publishing Company.

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 toAccount: 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 9: March 2, 2009 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 9, 2009 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 16, 2009 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 23, 2009 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 30, 2009 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.
- 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.