UNIVERSITY OF CALIFORNIA, SAN DIEGO

DEPARTMENT OF ETHNIC STUDIES

FALL 2008

ETHNIC STUDIES 289 – RACE, GLOBALISATION, HUMAN RIGHTS AND THE LAW

Prof. Mark Harris

Lectures: Tuesday & Thursday: 9.30 – 12.20.
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COURSE DESCRIPTION

This course seeks to examine how the concepts of law and human rights are deployed within the framework of globality. We will examine how the utilization of such concepts operate in the framing of projects within those nations that are characterized as either the "Third World" or as developing nations. Drawing from a range of theorists we will then consider how the transcendent vision of natural law and human rights are, as Douzinas (2007: 8) puts it, 'reversed, turning them into tools of public power and individual desire.' Students will then examine how the conjunction of human rights and the law has been deployed within the global project to marginalize, disenfranchise or even erase the presence of the racial "Other' and minority groups. The class will examine the manner in which juridical framings of human rights can create spaces where the modern universals need not, or cannot, go (such as Guantanamo Bay), the criminalisation of the marginal groups in society and the manner in which the definition of the citizen has been reconfigured in western liberal democracies in light of the focus upon security after September 11.

Since the drafting of the Universal Declaration of Human Rights in 1946 which held out the promise of to all there has been uncritical acceptance of the transcendent nature of human rights. Increasingly the furtherance of notions of human rights has also been yoked to the implementation of the rule of law. This course seeks to examine how these ideals have been positioned as integral in the agenda for developing nations. Within the last sixty years there has clearly been a shift in global programs directed towards these nations, moving from decolonisation to development and, in more recent times, to national security concerns (played out on the global stage).. We will begin the course by reading with a range of texts that will provide the means to engage with and (hopefully)

dissect the manner in which the key concepts of law and human rights are deployed within the global context. In the second part of the course we will turn to a range of scenarios that illustrate various dimensions of the conjunction of race, law and human rights in the global arena.

In the first part of the course we will examine the work of Fitzpatrick in relation to the nature of the law (the original violence) and reflect on how the role of the law to curb the 'dangerous' and 'terrorist' geographies paradoxically gives rise to the use of violence so as to install the rule of law. The work by Douzinas will give us pause to consider how the human rights discourse, articulated by NGOs and national players, can actually work towards the subordination, marginalization (and perhaps even obliteration?) of the very peoples it purports to protect. The readings from Foucault and Agamben on bio-power will also be particularly pertinent for the unfolding issues with regard to national security as it is characterized in the post-September 11 social, legal and political terrains.

REQUIRED READINGS*

Douzinas, Coustas *Human Rights and Empire*
Fitzpatrick, Peter, *Modernism and the Grounds of Law*
Agamben, Giorgio, *Homo Sacer: Sovereign Power and Bare Life,*
Foucault, Michel, *Security, Territory, Population: Lectures at the College de France*

COURSE EVALUATION

Class Presentation	20
Final Paper	80

LECTURE SCHEDULE

PART A: A CONCEPTUAL FRAMEWORK

Week One: Introduction – Setting the parameters

In this introductory class we will reflect upon the intersection of human rights and law and how they are represented as critical for the advancement of democratic nations in the twenty-first century. The uncritical rendering of universal notions of human rights is evidenced in the writings of a range of jurists and academics. Similarly we find the rule of law championed by jurists, politicians and academics as being an essential pre-condition to the formation of a viable, successful democratic nation. It is the purpose of this course to dismantle the presumptions and inconsistencies that permeate these views. In doing so we will engage with general consideration of how the conjunction of the lexicons of human rights and the rule of law may not necessarily result in egalitarian, democratic and free societies.
The class will then consider the recent film by Hubert Sauper titled *Darwin's Nightmare* which raises many questions and themes which are relevant to this class.

Film
Darwin's Nightmare (available at UCSD Film and Video Library)

Additional materials

Sassen, S., Losing Control: Sovereignty in an Age of Globalisation, Columbia UP, 1996
See also the film made by John Pilger which deals with the exploitation of child labour and the implications of the globalization of markets
The New Rulers of the World, Bullfrog Films, 2001

Week Two – Making Sense of the Law

Fundamental to the global application of the concept of human rights is the presumption that it will result in the installation of the attributes and particulars of modernity. Routinely the law is invoked as the means by which the savagery that resides in such sites is confronted and annihilated. In the very act of constituting modern society, however, Fitzpatrick argues that the law is located both within and beyond modernity. Paradoxically the capacity of the law to draw from the worlds of the pre-modern and savage, constituted as pre-modernity, is seen as integral to the possibility for the law to operate in this fashion. It is the original violence of the law, which routinely recurs when the functioning of the modern society is fractured, to which we will return throughout the course.

Readings
Fitzpatrick, P., *The Mythology of Modern Law*, Routledge, 1992, pp. 1-9
Fitzpatrick, P., *Modernism and Grounds of Law*, Cambridge, 2001, pp.70-110, 183-215.

Week Two - Whither Human Rights?

The purpose of this week's class is to critically analyse the deployment of human rights in the global context to reflect on whether it utilizes (or reinforces) the socio-historic logic of exclusion.

Reading
Douzinas, C., *Human Rights and Empire*, Routledge-Cavendish, 2007

Weeks Four – Strategies of governance & Sovereign Power

Whilst some human rights activists would argue that that human rights instruments or the rule of law can be deployed to the furtherance of the subjugated or oppressed peoples of the world, we need to also take account of the mode of governance articulated by Foucault and Agamben relating to bio-power. This mode of governance is characteristed by regulation and control of the population, rather than being predicated solely upon the power of the sovereign to dictate life and death.

Reading
Foucault, M., *Security, Territory, Population: Lectures at the College de France*, Palgrave 2007

Week Five – A State of Exception

The Italian philosopher Georgio Agamben has argued that the state of exception has emerged as a constitutive element of governance within the modern state. In this class we will consider the writings of Agamben and more generally the argument as to whether the "state of exception" derives from and constitutes the law or, alternatively, whether it represents an absence (even disavowal) of the law's presence.

Reading
Agamben, G., *Homo Sacer and Bare Life*, Stanford University Press, 1998

PART B Towards a Critique of the Global Security Program

Week Six
Transitional/Transformative Justice: South Africa & the Boundaries of Law

The end of the apartheid regime signaled an end to more than forty years of racial oppression and exploitation enshrined in the laws of the South African nation. The transition was made from a segregated, racist state to the "rainbow nation", which promised in the preamble of the newly drafted constitution that:

> We, the people of South Africa, Recognize the injustices of our past; Honour those who suffered for justice and freedom in our land;
> Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity

In the ensuing decade the legal system of the fledgling nation has wrestled with a range of legal issues. In particular these have included the moral and legal issues surrounding the amnesty given by the Truth and Reconciliation Commission for crimes committed during the apartheid era. No less important have been the determinations of the national Constitutional Court that have engaged a wide range human rights issues. During this week's class we will consider materials from both arenas.

Readings

Maepa, T., *Beyond Retribution: Prospects for Restorative Justice in South Africa*, 2005, pp.66-75

Schaffer, K & Smith, S., Human Rights and Narrated Lives: the Ethics of Recognition, Palgrave, 2004: 53-84.

"Memory, identity and the (im)possibility of Reconciliation."Constellations Vol.5 (2): 250-265

Cases

Azanian Peoples Organisation v President of South Africa CCT 17/96

Bhe & Others v Magistrate CCT 49/03; *Shibi v Sithole & Others* CCT 69/03; *South African Human Rights Commission v President of the Republic of South Africa* CCT 50/03

Week Seven
Violence, Law and Contested Sovereignty

Following from the consideration of the issues that emerged in South Africa we will move to a consideration of the violence directed towards the State's populace, focusing upon the experience of Brazil in particular. Both during and after the period of control by

the military dictatorship from 1964 to 1985 there emerged incontestable evidence of the use of state sanctioned violence to quell any opposition to the military junta. In the subsequent period there continues to be disturbing evidence of state sanctioned violence and 'death squads' employed to eradicate the presence of the urban poor in the *favelas* of cities such as Rio de Janeiro. This week's class will consider the nature of the violence, where the general populace is located in the middle of clashes between the police and the drug gangs that rule the *favelas*.

Reading

Human Rights Watch, *Police Brutality in Urban Brazil*, New York, 1997

Rodrigues, M., "Indigenous Rights in Democratic Brazil." *Human Rights Quarterly*, (2002) 24(2): 487-512

Silva, D., "Towards a Critique of the Socio-Logos of Justice…" *Social Identities* (2001) Vol.7 (3): 421

Taussig, M., *Law in a Lawless Land: Diary of a Limpieza in Colombia*, Chicago, 2003, pp.64-88

Week Eight
Of interventions and bio-power

The relationship between Indigenous populations and the settler-state during the colonial (or frontier) period were invariably marked by violence, often genocidal in its intent. The contemporary manifestation of relations between these parties is no longer marked by such explicit violence directed towards obliteration and erasure. It can be argued, however, that many policy initiatives that are couched in terms of the advancement or welfare of oppressed minorities is directed towards the same ends. An example of this type of intervention occurred in Australia in 2007 when the Australian government authorized the deployment of police and army within more than 80 Aboriginal communities in the Northern Territory (remote Australia). The government intervention was ostensibly based upon the revelations contained in a report titled Little Children Are Sacred that documented disturbing levels of sexual abuse amongst Aboriginal children in some communities. The legislative response of the government involved the suspension of numerous rights and liberties of the Aboriginal inhabitants within the communities, but also included provision for revocation of beneficial land leases and the removal of Aboriginal control of access to their lands. From this perspective it can be seen that the government intervention, couched in humanitarian terms, was in fact directed towards the regulation, control and, arguably, the ultimate dispersal of these isolated Indigenous communities.

Readings

Altman, J., *The National Emergency and Land Rights Reform: Separating fact from fiction*, Briefing Paper prepared for Oxfam Australia, 7 August 2007

Havnen, O., "A response to the Federal Government's intervention in the Northern

Territory." *Impact*, Winter 2007: 6-9.
Schwartz, M., "Policing the Territory", *Indigenous Law Bulletin*, 2007 Vol. 6 No.30:9-10
Shertow, J., "Brasil's Australian-style intervention", *Arena*, 1 February 2008
Wild, R & Anderson, P., *Little Children Are Sacred*, NT Govt Printers, 2007

Current Australian Legislation
*Northern Territory National Emergency Response Act (*Cth) 2007
Discussion of the Legislation at:
http://www.aph.gov.au/library/Pubs/BriefingBook42p/18SocialPolicy-IndigenousAffairs/emergency_intervention.htm

Proposed Brazilian Legislation
Project of Law No. 1057 2007

Week Nine
MultiNational Corporations and States and the law

In recent times there have been numerous exposes of the exploitative labour practices of multinational corporations throughout the developing world. The use of child labour or the sweat-shop practices of labels such as Gap and Nike has prompted widespread outrage in Western liberal democracies. Such practices have routinely occurred notwithstanding the existence of a host of international human rights and labour conventions. This in turn simply serves to illustrate the complexity of human rights, where universal articulations of aspirational rights are grounded in an unsympathetic domestic legality. This class will consider the extent to which MNCs have situated themselves beyond the reach of both international and domestic jurisdiction. We will consider a number of cases where the activities of the companies have resulted in catastrophic environmental despoliation, which has led to death, destroyed the local environment and also caused serious trans-generational illness through contamination. We will consider three cases studies. The first will focus upon the activities of Union Carbide and the Bhopal explosion that occurred in 1984, leaving more than 3000 persons dead and condemning the urban poor to the ongoing effects of contamination from heavy metals in the environment. The second case involves the activities of BHP, a mining company whose activities in the Fly River region of Papua New Guinea resulted in the poisoning of the local rivers and destruction of the way of life of the local villagers. Finally we will consider the oil exploration activities of Shell in the Niger Delta region of Nigeria, which has given rise to local military opposition but has also seen the surrounding environment destroyed. In each of these cases we will reflect upon how the flow of global capital has resulted in massive profit to the MNCs (and often the host nation's government) seen little of this flowing to the impoverished local population. We will also reflect upon how, after catastrophic environmental damage has taken place, the MNCs are able to either minimize their accountability of to even cloak themselves in total immunity from any legal consequences for their actions.

Readings
Amnesty International, *Clouds of Injustice: Bhopal Twenty Years On,*

Banks, G & Ballard, C., *The OK Tedi Settlement*,
Jones, T., *Corporate Killing: Bhopals will happen*, Free Association Books, 1988
Low, N & Gleeson, B., "Situating Justice in the Environment: The Case of BHP at the OK Tedi Copper Mine," *Antipode*, Vol.30 (3): 221-226
Pearce, F & Tombs, S., Bhopal Union Carbide and the Hubris of Capitalist Technology, *Social Justice* 1989, 16 (2): 116-144
Shrivastava, P., *Bhopal: Anatomy of a Crisis*, Cambridge, 1987

Cases

Union Carbide v Union of India [1989] INSC 53 14 February 1989
http://www.commonlii.org/in/cases/INSC/1989/53.html

Nigerian Gas Flaring Decision
Barr & Ors v Shell Petroleum Development Company of Nigeria, Federal High Court of Nigeria, 29 September 2006

Ok Tedi cases
Dagi v BHP [1995] I VR 428
Gagarimabu v BHP [2001] VSC 517

Week Ten

Spaces that the modern universals cannot occupy

Implicit within the notion of the rule of law is the central premise that the law installs order and certainty yet it can be argued that there exist numerous spaces/sites/geographies where the law is absent. In this week's class we ask whether it could be said that this constitutes a place where the law is 'written out' or excluded from application or, alternatively, whether the law is complicit in creating the circumstances which allow for such 'legal limbos' to exit?. Drawing from Agamben and Foucault we will reflect on those locales where the recognition of human rights or access to law has been denied. It is within this legal limbo that individuals are stripped of citizenship, identity and humanity. Spaces like the infamous Camp X-Ray at Guantanamo Bay or the off-shore immigration detention centres created by the Australian government under its infamous "Pacific Solution" or the treatment of "enemy" combatants (and civilians) in the arenas where the current 'war on terror' is being played out. In more recent times it might be argued the juridical response to the execution murder of Jean Charles De Menezes in July 2005 in London by UK security forces is also an example of just such a space – but one that is not characterized by geographic isolation and secrecy. The consistent theme within these spaces is the capacity of the law to authorize lethal violence beyond the law or to validate the juridical erasure of the persons who seek protection from such violence.

Readings

Butler, J., *Precarious Life: The Powers of Mourning and Violence*, Verso, 2004, pp.50-101
Fitzpatrick, P. & Joyce, R., "The Normality of the Exception in Law's Empire", *Journal*

of Law and Society, 2007 Vol.34 (1): 65-76
Roberts, W., "Sovereignty, Biopower and the State of Exception…", *Journal for the Arts, Sciences and Technology*, 2005 Vol.3 (1)

Cases
Rasul v Bush

Additional Resources
Postings on the De Menezes coronial inquest at:
http://www.stockwellinquest.org.uk/

Terry Gill and Elies van Sliedregt Guantánamo Bay: A Reflection On The Legal Status And Rights Of Unlawful Enemy Combatants' *Utrecht Law Review*, (2005) Vol.1 (1): 28