

# LA383-15 Issues in the Legal History of Race

**23/24**

**Department**

School of Law

**Level**

Undergraduate Level 3

**Module leader**

Carolina Alonso Bejarano

**Credit value**

15

**Assessment**

100% coursework

**Study location**

University of Warwick main campus, Coventry

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## Description

### Introductory description

In this module, students encounter different theorists from across the world who reflect upon the relation between the law and the construction of racial difference. The history of Anglo-European colonialism is mobilized as a prism to explore the ways in which race, racism and the law intersect at different points in time and in various parts of the globe.

In particular, the module will focus on the case of the United States of America, understanding it as a colonial power, and also as a set of former British, Spanish, Dutch and French colonies.

[Module web page](#)

### Module aims

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### Outline syllabus

This is an indicative module outline only to give an indication of the sort of topics that may be covered. Actual sessions held may differ.

The module will begin with an introductory week in which we will consider the fundamental question of "What is Race?" through Aníbal Quijano's classic work on Eurocentrism and coloniality of power. Noting the emergence of the category of 'race' during the early modern/colonial era, a period of rapid global capitalist expansion, I will introduce students to the notion of 'decolonial theory' and the idea that it is not possible to understand racial inequalities in the 21st century absent of a long historical perspective that sheds light on the lived experience of differently colonized peoples.

Next, in weeks 2 and 3, we will consider the distinction between 'coloniality' and colonialism in the context of different legal constructions of race. We will read Aimé Césaire's celebrated 'Discourse on Colonialism' dealing with French colonialism in the Caribbean, along with Sylvia Wynter's essay on the invention of 'Man' as a subject of rights during the Enlightenment and concurrent colonization of the Americas.

In week 4, we will discuss the role of colonial racial ideologies in the emergence of Liberalism during the Enlightenment. In particular, we will read John Locke's writing on property rights along with Barbara Arneil's analysis of Locke's theories on British colonizers' natural right to American land. For this lecture I will draw on my own work pertaining the relation between the colonization of New Jersey and the current illegalization of immigrants in the United States.

Having established the relation between the European colonial project and modern legal constructions of race, in week 5 we will introduce the much cited and misunderstood concept of intersectionality. In reading Kimberlé Crenshaw's seminal essays on the topic, we will analyze how race as a legally constructed category intersects with other legally constructed identity markers, such as gender, sexuality and class.

Following reading week, in weeks 7 and 8 we will consider the question of the relation between race and the law intersectionally. Specifically, we will discuss the legal construction of race in the contexts of gender and sexuality. We will read María Lugones' essay on the coloniality of gender along with Sally Engle Merry's work on the use of the law to regularize family structures during the U.S. colonization of Hawai'i. We will follow by reading Michel Foucault's 'History of Sexuality' along with Ann Laura Stoler's 'Race and the Education of Desire,' which places the relationship between biopower, bourgeois sexuality and what Foucault identifies as 'racisms of the state' under the light of the Dutch and French colonial archives.

In week 9, we will consider yet another intersecting category pertaining the legal construction of race: Citizenship. In particular we will focus on the ever-expanding prison industrial complex and the current illegalization of immigrants in the context of the United States. In juxtaposing Michelle Alexander's 'The New Jim Crow' with Nicholas De Genova's work on migrant 'illegality' and deportability, we will explore how certain bodies share histories of illegalization and dehumanization and therefore can/not gain access to citizen and human rights in the (post) colonial state. For this lecture I will draw on my own work on the relation between the illegalization of Black Americans and Latinxs in the United States.

Finally, in week 10 we will discuss Frantz Fanon's 'The Wretched of the Earth,' in particular his conceptualization of transcendence in the discussion of anti-colonial violence: that which works against the violence of the state and towards a new politics that can replace colonial structures of domination. We will close with Audre Lorde's essay on 'master's tools' and a discussion on whether or not modern law can be mobilized by legally minoritized peoples in order to advance their own empowerment and, quoting Lorde, 'dismantle the master's house.'

Throughout the module I will use a wide variety of materials, including music, poetry, film, and

interactive media, to encourage interdisciplinary thinking.

## Learning outcomes

By the end of the module, students should be able to:

- Demonstrate an advanced knowledge of legal, historical, and political ideologies of 'race.'
- Undertake advanced interdisciplinary study and research.
- Demonstrate enhanced key-skills including written and oral communication skills, problem solving, working independently and in groups, and broad research skills.
- Demonstrate their ability to construct and substantiate comprehensive and sophisticated scholarly arguments in written and oral work

## Indicative reading list

Week 1: Introduction: Colonialism and the Legal Construction of Race

Silvio Torres-Saillant & Nancy Kang. 2017. "Race" in *Keywords for Latina/o Studies*. D. Vargas, N. Mirabal & L. La Fountain-Stokes (eds.) 175-180. New York University Press: New York

Aníbal Quijano. 2000. "Coloniality of Power, Eurocentrism, and Latin America." *Nepantla* 1(3): 533-80

Winthrop D. Jordan. 1968. "First Impressions: Initial English Confrontation with Africans," in *White Over Black: American Attitudes Towards the Negro 1520-1812*, 3-43. Chapel Hill: University of North Carolina Press

John Biewen. 2019. *The Invention of Race*. New York Public Radio Archives. Available at: <https://www.wnyc.org/story/invention-race/>

Weeks 2, 3 & 4: The Enlightenment, Rights and Racial Difference

John Locke. 1988 (1690). *Two Treatises of Government*, 90-126. Cambridge: Cambridge University Press

Barbara Arneil. 1996. "Colonialism: Locke's Theory of Property," in *John Locke and America: The Defense of English Colonialism*, 132-167. New York: Clarendon Press

Aimé Césaire. 1972 (1950). *Discourse on Colonialism*. New York: Monthly Review Press

Nelson Maldonado-Torres. 2006. "Césaire's Gift and the Decolonial Turn." *Radical Philosophy Review* 9(2): 111-138

Sylvia Wynter. 2003. "Unsettling the Coloniality of Being/Power/Truth/Freedom." *The New Centennial Review* 3(3): 257-337

Walter D. Mignolo. 2011. "Coloniality: The Darker Side of Western Modernity," in *The Darker Side of Western Modernity: Global Futures, Decolonial Options*, 1-25. Durham: Duke University Press.

W.E.B. DuBois. 2014 (1900). "The Present Outlook for the Dark Races of Mankind" in *The Problem of the Color Line at the End of the Twentieth Century*, 111-138. New York: Fordham University Press

Lewis Gordon. 2004. "Philosophical Anthropology, Race and the Political Economy of Disenfranchisement." *Columbia Human Rights Law Review* 36(1): 145-172.

Colin Dayan. 2011. "A Legal Ethnography" in *The Law is a White Dog: How Legal Rituals Make and Unmake Persons*, 138-176. Princeton: Princeton University Press

Carolina Alonso Bejarano. 2020. "'Native' Roots, Colonial Routes: Freehold Tenure and Anti-Immigration Ordinances in New Jersey." *American Quarterly* (forthcoming).

Week 5: Intersectionality: Women of Color and the Law

Kimberlé Crenshaw. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum* 1: 139-167

Kimberlé Crenshaw. 1991. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color" in *After Identity: A Reader in Law and Culture*. K Engle & D. Danielsen (eds.) 132-354. New York: Routledge

Ngairé Naffine. 2011. "Women and the Cast of Legal Persons" in *Gender, Sexualities and Law*. J. Jones, A. Grear, R. Fenton & K. Stevenson (eds.), 15-25. New York: Routledge

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

Catherine MacKinnon. 1983. "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence," *Signs* 8(4): 635-658

Week 6: Reading Week

Weeks 7 & 8: Race at the Intersection: Gender, Sexuality and the Law

María Lugones. 2007. "Heterosexualism and the Modern/Colonial Gender System," *Hypatia* 22(1): 186-209

Sally Engle Merry. 2000. "Sexuality, Marriage, and the Management of the Body" in *Colonizing Hawai'i: The Cultural Power of Law*, 221-257. Princeton: Princeton University Press

Oyeronke Oyewumi. 1997. "Colonizing Bodies and Minds: Gender and Colonialism," *The Invention of Women: Making African Sense of Western Gender Discourses*. Minneapolis: University of Minnesota Press

Michel Foucault. 1990 (1976). "We 'Other Victorians'" in *The History of Sexuality, Volume 1*, 1-14. New York: Vintage

Michel Foucault. 2003 (1997). "28 January 1976" in "Society Must Be Defended": *Lectures at the Collège de France 1975-1976*, New York: Picador

Ann Laura Stoler. 1995. "Toward a Genealogy of Racisms: The 1976 Lectures at the Collège de France" in *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, 55-94. Durham: Duke University Press

Week 9: Race at the Intersection: Citizenship and Illegality

Michelle Alexander. 2010. "Introduction" in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press

Ava DuVernay. 2016. 13th (Documentary). Sherman Oaks: Kandoo Films

Nicholas De Genova. 2002. "Migrant 'Illegality' and Deportability in Everyday Life." *Annual Review of Anthropology* 31(1): 419-447.

Linda Bosniak. 2012. "Birthright Citizenship, Undocumented Immigrants and the Slavery Analogy." *Social Science Research Network*. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2194874](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2194874)

Devon Carbado. 2005. "Racial Naturalization." *American Quarterly* 53(3): 633-658.

Leo Chavez. 2008. "Latina Sexuality, Reproduction and Fertility as Threats to the Nation" in *The Latino Threat: Constructing Immigrants, Citizens and the Nation*. Stanford: Stanford University Press

Mae Ngai. 2004. "Deportation Policy and the Making and Unmaking of Illegal Aliens" in *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press

Week 10: Conclusion: Decolonization and the Law

Frantz Fanon. 2004 (1961). "On Violence" in *The Wretched of the Earth*. New York: Grove Press

Audre Lorde. 2007 (1982). "The Master's Tools Will Never Dismantle the Master's House" in *Sister Outsider*. Berkeley: Crossing Press

Sabelo J. Ndlovu-Gatsheni. 2013. "Why Decoloniality in the 21st Century?." The Thinker 48: 10-15  
Silvia Rivera Cusicanqui. 2012. "Ch'ixinakax utxiwa: A Reflection on the Practices and Discourses of Decolonization," The South Atlantic Quarterly 111(1): 95-119  
Peter Fitzpatrick. 2013. "The Revolutionary Past: Decolonizing Law and Human Rights," Revista de Estudos Constitucionais, Hermeneutica e Teoria do Direito 5(2): 97-105

## **Research element**

## **Interdisciplinary**

Throughout the module I will use a wide variety of materials, including music, poetry, film, and interactive media, to encourage interdisciplinary thinking.

## **International**

## **Subject specific skills**

No subject specific skills defined for this module.

## **Transferable skills**

No transferable skills defined for this module.

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## **Study**

### **Study time**

<b>Type</b>	<b>Required</b>
Lectures	18 sessions of 1 hour (72%)
Seminars	7 sessions of 1 hour (28%)
Total	25 hours

### **Private study description**

No private study requirements defined for this module.

## **Costs**

No further costs have been identified for this module.

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## **Assessment**

You do not need to pass all assessment components to pass the module.

Students can register for this module without taking any assessment.

## Assessment group A1

	Weighting	Study time
Reflective piece	30%	
2000 word essay	70%	

## Feedback on assessment

Summative feedback via Tabula. Informal one to one feedback available by request during office hours.

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## Availability

## Courses

This module is Unusual option for:

- UPHA-V7MW Undergraduate Politics, Philosophy and Law
  - Year 2 of V7MW Politics, Philosophy and Law
  - Year 2 of V7MW Politics, Philosophy and Law
  - Year 3 of V7MW Politics, Philosophy and Law
  - Year 3 of V7MW Politics, Philosophy and Law