Legal Studies & History 502:
LAW & COLONIALISM
Prof. Mitra Sharafi
Spring 2011

Class Time:	TTh 2.30-3.45pm
Class Location:	Social Sciences 6116
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Phone:	(608) 265-8428
Office:	Law 6112 *(Directions: the Law Building is halfway up Bascom Mall on the left. When you enter from Bascom Mall, turn right and take the elevators or stairs to the sixth floor. Other routes will not necessarily lead to 6112.)*
Office Hours:	W 4.30-6pm or by appointment
Course Page:	Moodle course page accessible via UW Law School Moodle webpage: http://moodle.law.wisc.edu/ or via Learn@UW link on right side of UW-Madison website (under "My UW-Madison")

Course Description:

This course explores the role of law in the context of empire. We will consider the uses of rule-of-law ideology in justifying colonial rule and in unraveling it; the negotiation of cultural and racial identities in the legal arena; and the circulation and transformation of legal concepts and personnel across empire. The course begins with a general introduction to the history of European colonialism. We will then examine the operation of colonial legal institutions including the courts, police, prisons and penal colonies. The latter half of the course links particular areas of law and social life. Among other themes, we will consider criminal law and violence; gender, property and family law; and race, class, contract, and labor, including slavery and indentured servitude. The course puts special emphasis upon the British Empire, and particularly South Asia, in the nineteenth and twentieth centuries.

Grades & Course Requirements:

Your final grade will be based upon the following:

- **Midterm Exam (20%):** in-class closed-book exam on **T, March 8, 2011 in Sewell Social Science Computer Lab, room 3218. *Please note that the midterm will *not* be held in our usual classroom.***

- **Primary Source paper (20%):** 8-10 pages examining a colonial law-related personality, event or phenomenon reported in a primary source. This paper must be typed in 12-point font with 1-inch margins. It must be double-spaced. You must identify your topic via the sign-up screen on our Moodle course page, and must confirm that no classmate has claimed the same topic. (If there is a conflict, the student who signed up earliest will have the stronger claim to the topic.) If in doubt about potential overlap with another student, please discuss your topic idea with me.
  You must *declare your topic* (via our Moodle course page) by midnight on **W, March 30, 2011.**
  You must *submit your paper* (via our Moodle course page) by midnight on **W, April 13, 2011.**

- **Final exam (40%)**: two-hour closed-book exam; **Sunday, May 8, 2011, 7.45am-9.45 in Sewell Social Science Computer Lab, room 3218.** ***Please note that our exam will *not* be held at the official exam location posted on the university's timetable.***

- **Class participation (including attendance) (20%)**: you are expected to attend class and contribute regularly to class discussions. We will be using the on-call system: you should be particularly well prepared on the days when you are "on call." Your performance in **two in-class "Colonial Moot Court" sessions on Th, Feb.3 and Th, March 3** will also contribute to your participation grade, as will your **oral presentation on your primary source paper in class on April 19 or 21**

"On Call" System:

- Groups: At the beginning of the semester, I will divide the class into the following five groups of roughly four students each: red, yellow, green, blue and purple. The color identification refers to the color of name card you will be assigned. You should bring this card with you to class.

- Rotations: Each group will be on call for approximately five classes over the course of the semester. I have indicated which group will be on call for each class. **Know when you are on call, and be sure to be well prepared for those classes especially.** If you need to miss a class when you are on call, I expect you to swap days with a classmate, and to notify me of the new arrangements in advance.

Course Materials:

All readings for the course are included in the course reader, available at the Copy Center (not the Bookmart) on the 2nd floor of the UW Law School (on Bascom Mall).

Technology:

- Laptop use in class: Because I appreciate the value of having typed course notes, I permit students to use laptops in class. However, I consider in-class internet use to be unacceptable**.** Being on the internet during class is distracting to your classmates and disrespectful to me. If it appears to me that you are online during class, I will factor this into your participation grade.

- Recording devices: Students may record the class for their own study purposes if they obtain prior permission from me. Such recordings are not to be made available to anyone outside of our class.

Academic Misconduct:

- The stakes: You have a lot to lose if found to have committed academic misconduct. Misconduct during your undergraduate years may be recorded and submitted to future potential employers and institutions for post-graduate study. If you plan to apply to law school or grad school, you should realize that any academic misconduct could prevent you from being accepted, or from pursuing your desired profession later on (e.g. practicing law). It is therefore critical that you familiarize

yourself with UW's policies and procedures governing academic misconduct: http://students.wisc.edu/saja/misconduct/UWS14.html

- Plagiarism: Any intentional attempt to claim the work or efforts of another person without authorization or citation constitutes academic misconduct. This includes cutting and pasting text from the web without quotation marks or proper citation, or paraphrasing from the web (or any other source) without crediting the original. I take such actions seriously. If I suspect that you have plagiarized, I may penalize you in grading your assignment. Alternatively or in addition, I may pursue disciplinary measures.

- Other forms of misconduct: Because I grade on a curve, any cheating by your classmates will affect your grade directly. If you believe that a classmate is cheating or committing any other kind of academic misconduct, report it to me.

Course Reading Schedule:

- **T, Jan. 18, *Class 1*: Introduction**

GENERAL HISTORY OF EUROPEAN COLONIALISM

- **Th, Jan. 20, *Class 2* (red): Early Trade Colonialism**
  - Robert Tignor et al, *Worlds Together, Worlds Apart: A History of the World from the Beginnings of Humankind to the Present* (New York: Norton, 2008), 553-78, 626-37

- **T, Jan. 25, *Class 3* (yellow): High Colonialism**
  - Maps from T. O. Lloyd, *The British Empire 1558-1995* (Oxford: Oxford University Press, 1996): (i) Overseas Empires in 1815; (ii) Queen Victoria's Empire 1897; (iii) the Empire in 1920
  - Tignor , *Worlds Together, Worlds Apart,* 719-30, 735-61

THE BIG IDEAS

- **Th, Jan.27, *Class 4* (green): What is Colonialism all about?**
  - George Orwell, *The Road to Wigan Pier* (San Diego: Harcourt, 1958),143-8
  - M. K. Gandhi, "Letter to Adolf Hitler" (Wardha, India, 24 Dec. 1940) in *Collected Works of Mahatma Gandhi* (Delhi: Government of India, 2000-1), 6th ed., 453-6
  - Edward Said, *Orientalism* (New York: Vintage, 1978), "Introduction," 1-12
  - Homi Bhabha, *The Location of Culture* (New York: Routledge,1994), "Ch.4: Of Mimicry and Man: The ambivalence of colonial discourse," 85-92

- **T, Feb.1, *Class 5* (blue): What is the Rule of Law all about?**
  - E. P. Thompson *Whigs and Hunters: The Origin of the Black Act* (New York: Random House, 1975) , 258-69, plus cover note
  - Jörg Fisch, "Law as a Means and as an End: Some Remarks on the Function of European and Non-European Law in the Process of European Expansion" in W. J. Mommsen and J. A. De Moor, eds., *European Expansion and Law: The Encounter of*

European and Indigenous Law in 19th- and 20th-Century Africa and Asia (Oxford: Berg, 1992), 15-38

COLONIAL MOOT COURT #1

- **Th, Feb.3, *Class 6* (no group on call today)*:* The Hindu Joint Family—*Manish v Manish***
  - Read the *Manish v Manish* problem and prepare your case. You must have met with your team in advance to plan your strategy and divide duties. You will argue your case in class today.

Part 1: Sites & Sources of Law—Legal Players & institutions

- **T, Feb. 8, *Class 7* (purple): Legislation & the Courts**
  - G. W. H. Fletcher, *Analysis of Jeremy Bentham's Theory of Legislation* (London: Trübner and Co., 1864), 1-18
  - Lord Haldane, "The Work for the Empire of the Judicial Committee of the Privy Council," *Cambridge Law Journal* 1 (1923), 143-55

- **Th, Feb. 10, *Class 8* (red): Legal Education**
  - Thomas Babington Macaulay, "Minute on Indian Education" (1835) in Mia Carter with Barbara Harlow, eds., *Archives of Empire. Vol.1: From the East India Company to the Suez Canal* (Durham, NC: Duke University Press, 2003), 227-38
  - Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006), 106-23 (with notes at 241-4)

- **T, Feb. 15, *Class 9* (yellow): Lawyers**
  - Rob McQueen, "Of Wigs and Gowns: A Short History of Legal and Judicial Dress in Australia" in Rob McQueen and W. Wesley Pue, eds, *Misplaced Traditions* (Annandale, Australia: Federation Press, 1999), 31-58
  - Mary Jane Mossman, "Gender and Professionalism in Law: The Challenge of (Women's) Biography," *Windsor Yearbook of Access to Justice* 27 (2009), 19-34

- **Th, Feb. 17, *Class 10* (green): Judges**
  - George Orwell, *Burmese Days* (London: Penguin, 1989), 1-13 & plot summary (2 pp.)
  - Norval Morris, "The Brothel Boy: A Fragment of a Manuscript" (by Eric Blair AKA George Orwell), Occasional Papers from the Law School, University of Chicago, No. 18 (Chicago: University of Chicago, 1982), 1-17
  - Thomas Strangman, *Indian Courts and Characters* (London: Heinemann, 1931), 20-2

- **T, Feb. 22, *Class 11* (blue): Juries**
  - James Oldham, *Trial by Jury: The Seventh Amendment and Anglo-American Special Juries* (New York: New York University Press, 2006), "Ch.5: The Jury of Matrons," 80-92, 97-114, and "Ch.7: The English Origins of the Special Jury," 127-8, 138-42

- **Th, Feb. 24, *Class 12* (purple)**: **Police**
    - Andrew R. Graybill, *Policing the Great Plains: Rangers, Mounties and the North American Frontier, 1875-1910* (Lincoln, Nebraska: University of Nebraska Press, 2007), "Ch.1: Instruments of Incorporation," 5-16; "Ch.2: Subjugating Indigenous Groups," 23-4, 51-63; "Ch.3: Dispossessing Peoples of Mixed Ancestry," 64-6, 99-109

- **T, March 1 *Class 13* (red)**: **Prisons, Penal Colonies & Detention Centers**
    - "A Brief Overview of the Mau Mau Rebellion," excerpted from Richard Dowden, "State of Shame," *The Guardian* (UK) (5 Feb 2005), online edition
    - Caroline Elkins, *Imperial Reckoning: the Untold Story of Britain's Gulag in Kenya* (New York: Henry Holt and Co., 2005), "Ch.6: The World Behind the Wire," 154-91, plus cover note

COLONIAL MOOT COURT #2

- **Th, March 3, *Class 14* (no group on call today): *Islamic Divorce—Amina v Abdul***
    - Read the *Amina v Abdul* problem (distributed in advance) and prepare your case. You must have met with your team in advance to plan your strategy and divide duties. You will argue your case in class today.

- ***T, March 8, Class 15: *In-class Midterm exam—not in our normal classroom, but in 3218 Sewell Social Science Computer lab****

Part 2: Law & Social Life

SOVEREIGNTY & CONTROL

- **Th, March 10, *Class 16* (yellow)**: **Legal Pluralism & Sovereignty**
    - Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, MA: Harvard University Press, 2010), "Ch.8: Perfect Settler Sovereignty" and "Conclusion," 183-210 (with notes at 289-96)

- ***Sat., March 12 - Sunday, March 20, 2011: Spring Break***

- **T, March 22, *Class 17* (green)**: **Jurisdiction & Procedure**
    - Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), "Ch.3: Order out of Trouble: Jurisdictional Tensions in Catholic and Islamic Empires," 80-114, 124-6

- **Th, March 24, *Class 18* (blue): Property & Inheritance**
    - Stuart Banner, "Why *Terra Nullius?* Anthropology and Property Law in Early Australia," *Law and History Review* 23 (2003), 95-131

MANAGING DIVERSITY

- **T, March 29, *Class 19* (purple): Law & Custom**
  - Assaf Likhovski, *Law and Identity in Mandate Palestine*, "Ch.9: 'Arif al-'Arif and Nomadic Identity," 192-210 (with notes at 259-63)
  - Aref El-Aref, *Bedoin Love, Law and Legend* (Jerusalem: Cosmos, 1944), "The Badawi Himself," 20-4; "At Short Range," 28-37; 'The Judicial System," 105-110; "Blood Money," 126-30

- ***W, March 30:*Primary Source Paper topic must be declared by midnight tonight (i.e. at the end of today) via our Moodle course page***

- **Th, March 31, *Class 20* (red): Law & Religion**
  - Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), "Anglo-Hindu Law," 239-49; "African Religions and Socio-Ritual Processes," 413-21; "African Laws under Colonial Rule," 444-59

MIXING & MOBILITY

- **T, April 5, *Class 21* (yellow): Subjects & Citizens**
  - R. A. Huttenback, "The British Empire as a 'White Man's Country'—Racial Attitudes and Immigration Legislation in the Colonies of White Settlement," *Journal of British Studies* 13:1 (1973), 108-37

- **Th, April 7, *Class 22* (green): Marriage, Gender and Race**
  - Lora Wildenthal, "Race, gender and Citizenship in the German colonial empire," in Frederick Cooper and Ann L. Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley: U of C Press, 1997), 263-83

VIOLENCE &CRIME

- **T, April 12, *Class 23* (blue): Criminal Law & Social Hierarchies**
  - Trevor Burnard, "Theater of Terror: Domestic Violence in Thomas Thistlewood's Jamaica, 1750-1786" in Daniels and Kennedy, *Over the Threshold,* 237-53
  - Lauren Benton, *Law and Colonial Cultures,* "Ch.5: Subjects and Witnesses: Cultural and Legal Hierarchies in the Cape Colony and New South Wales," 183-206

- ***W, April 13: *Primary Source Paper due by midnight (i.e. at the end of today); to be submitted via our Moodle course page***

- **Th, April 14, *Class 24* (purple): Criminal Law continued**
  - Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010), "Ch.4: 'One scale of justice for the planter and another for the coolie': Law and Violence on the Assam Tea Plantations," 142-184

ORAL PRESENTATIONS ON PRIMARY SOURCE PAPERS

- **T, April 19, *Class 25* (no group on call today): Presentations I**
  For the next two classes, students will present their findings from their research papers in very short oral presentations to the class.

- **Th, April 21, *Class 26* (no group on call today): Presentations II**

LABOR

- **T, April 26, *Class 27* (red): Slavery**
  - Philip D. Morgan, "The Black Experience in the British Empire, 1610-1810" in P. J. Marshall, ed., *The Oxford History of the British Empire: Vol.II. The Eighteenth Century* (Oxford: Oxford University Press, 1998), 465-86
  - Alan Watson, *Slave Law in the Americas* (Atlanta: University of Georgia Press, 1989), "Ch.10: Conclusions on Slavery and Slave Law," 130-4

- **Th, April 28, *Class 28* (yellow): Indentured Servitude**
  - Chris Tomlins, *Freedom Bound: Law, Labor and Civil Identity in Colonizing English America, 1580-1865* (Cambridge: Cambridge University Press, 2010), "Ch.1: Manning," 21-2, 29-35, 51-4, 64-6; "Ch.2: Planting," 78-82
  - Prabhu Mohapatra, "Assam and the West Indies, 1860-1920: Immobilizing Plantation Labor" in Douglas Hay and Paul Craven, eds., *Masters, Servants and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill: University of North Carolina Press, 2004), 455-65

THE END OF EMPIRE?

- **T, May 3, *Class 29* (green): Lawyers, Independence Movements & Decolonization**
  - Tignor, *Worlds Together, Worlds Apart,* 865-79
  - Statement by Gandhi at his trial in Thomas Strangman, *Indian Courts and Characters,* 209-13
  - Mohandas Karamchand Gandhi, *The Law and the Lawyers* S. B. Kher, ed. (Ahmedabad: Navajivan, 2004), "Section IV: Lawyers and Satyagraha," 118-25; "Ch.63: The Place of the Lawyers in a Non-Violent Society," 228-31; "Ch. 65: 5,000 Miles Away," 234-7

- **Th, May 5, *Class 30* (blue): Final Review: Post-colonial Reverberations (Law & Empire today)**
  - *readings TBA; to be posted on our Moodle course page*

- ***<u>Sunday, May 8, 2011, 7.45am-9.45am: *Final Exam (40%) in Sewell Social Science Computer Lab, room 3218</u>***