

**Multicultural Rights in Liberal Democracies**  
**University of Ottawa**  
**Winter 2009**

**Course CML 4131: Mondays 3-5pm, FTX 137**  
**Wednesdays 3-5pm, FTX 137**

**Instructor: Professor Natasha Bakht**  
**FTX 330, 562 5800 ext 2916**  
[nbakht@uottawa.ca](mailto:nbakht@uottawa.ca)

**Office Hours: Thursdays 1:30-3pm or by appointment**

**Course Description:**

The end of the Cold War has replaced the old tensions between communism and capitalism with conflicts between ethnic and national groups. The traditional construct of the nation-state with one nation of peoples, one government and one culture is being increasingly eroded. Political disputes about such issues as national symbols, race, language, religion, education curriculum, and land claims are on the rise. Finding solutions to these conflicts is one of the greatest challenges facing liberal democracies.

This course will be interdisciplinary in nature. It will combine the literature in political theory on the accommodation of ethnocultural and religious diversity in liberal states with concrete examples of cases from several countries, such as Canada, the U.S., Germany, Greece and Japan. We will explore the ways in which language, culture and religion factor into legal and political debates about citizenship, national identity and personal freedom. We will consider how law and politics affect the linguistic and cultural identities of national sub-groups and immigrant populations alike. The competing nature of minority right claims, such as the often found conflict between religious freedoms vs. women's equality rights, will also be examined.

**Course Requirements:**

(1) *Weekly Response Papers* (25% of grade)

All students must write 5 brief response papers (no longer than two double-spaced pages) reflecting on the reading(s) of a given class. These papers are due by 10am each Monday or Wednesday before the class. Any paper received after 10am the day of class will not be counted toward fulfilling this requirement. Each paper will be graded out of 5. Papers should be e-mailed to [nbakht@uottawa.ca](mailto:nbakht@uottawa.ca)

The response papers are intended to facilitate participation and need not respond to every aspect of the reading. The papers should be analytical and not overly descriptive. Ideally, one should engage in a critical analysis of a portion(s) of the reading(s). Consider whether you agree or disagree with the author/judge's reasoning and why. Can you imagine alternatives to the argument/issue in question. Consider the underlying assumptions of the article/case and what the broad implications of the argument/case may be.

(2) *Participation* (5% of grade)

Attendance and oral participation are critical to the success of the seminar and will therefore be factored into each student's final grade.

All students are expected to participate actively and regularly in each class. Some of these materials are challenging and may tread upon personal experiences, strongly held beliefs, and indeed your prior academic background. In order to create a learning environment that is intellectual and supportive of new ideas please treat your professor and colleagues with respect and professionalism.

(3) *Class Presentations* (10% of grade)

Each student will be responsible for presenting the materials in one class. Students should be prepared to relay the week's readings in a creative format and to lead the class through discussion questions that they have prepared. A sign-up sheet will be available on the first day of class.

(4) *Final Writing Requirement* (60% of grade)

**Undergraduate law students** must fulfill their final writing requirement by taking an 8-hour, take-home exam at the end of the semester (Tuesday April 28<sup>th</sup>, 8:30am).

**Graduate law students** must fulfill their final writing requirement by writing a research paper of 6000-6500 words (approximately 25 pages). Students must have their topics approved by **Wednesday February 23<sup>rd</sup> 2009**. Please submit a one page proposal with an overview of your paper and an initial bibliography. Final papers are due by the last day of the term (**Thursday April 9<sup>th</sup> 2009**).

Undergraduate students who would prefer to write a research paper must first obtain the professor's approval.

**Readings:**

Readings will consist primarily of book excerpts, journal articles, and case law. A course package of materials is available at Reprography. Students will be informed of any additional required materials in class or via e-mail.

**Mon. February 2<sup>nd</sup>:**                      **Introduction**

**Wed. February 4<sup>th</sup>:**                      **Multiculturalism, Universalism and Liberal Democracy**

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995) at 75-93, 101-105 (Chapter 5 "Freedom and Culture").

**Mon. February 9<sup>th</sup>:**                      **The Justification of Minority Rights**

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995) at 108-126 (Chapter 6 "Justice and Minority Rights").

Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal Universal Citizenship" (1989) 99 *Ethics* 2, 250.

**Wed. February 11<sup>th</sup>: The Classification of Minority Rights**

Jacob Levy, "Classifying Cultural Rights" in *The Multiculturalism of Fear* (New York: Oxford University Press, 2000) at 125.

**Mon. February 16<sup>th</sup>: NO CLASS, Family Day**

**Wed. February 18<sup>th</sup>: Critics of Multiculturalism**

Jeremy Waldron, "Minority Cultures and the Cosmopolitan Alternative" in Kymlicka, ed., *The Rights of Minority Cultures* (New York: Oxford University Press, 1995) at 93.

Chandran Kukathas "Are There Any Cultural Rights?" in Kymlicka, ed., *The Rights of Minority Cultures* (New York: Oxford University Press, 1995) at 228.

**Mon. February 23<sup>rd</sup>: Recognition or Redistribution?**

Nancy Fraser, "From Redistribution to Recognition" in *Justice Interrupts* (New York: Routledge, 1997) at 11-39.

James Tully, "Reconciling Struggles over the Recognition of Minorities: Towards a Dialogical Approach" in *Diversity and Equality* (Vancouver: UBC Press, 2006) at 15.

**Wed. February 25<sup>th</sup>: Identity Groups, Membership Rules and State Limitation on Cultural Practices**

Amy Gutmann, *Identity in Democracy* (Princeton: Princeton University Press, 2003) at 41-53, 56-73 (Chapter 1 "The Claims of Cultural Identity Groups").

*Lovelace v. Canada* (UN Human Rights Committee, 1983),  
<http://www.chass.utoronto.ca/~sraconi/lovelace.html>

*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (Parts I, II, IV (through A), and V of the majority) (Supreme Court of the United States).

**Mon. March 2<sup>nd</sup>: Aboriginal Rights and Multiculturalism**

Evelyn I. Légaré, "Canadian Multiculturalism and Aboriginal People: Negotiating a Place in the Nation" (1995) 1:4 *Identities* 347.

Robert Paine, "Aboriginality, Multiculturalism, and Liberal Rights Philosophy" (1999) 64:3 *Ethnos* 325.

**Wed. March 4<sup>th</sup>: Language Diversity**

Alan Patten & Will Kymlicka, "Language Rights and Political Theory: Context, Issues, and Approaches" in Kymlicka and Patten, eds., *Language Rights and Political Theory* (New York: Oxford University Press, 2003) at 1.

**Mon. March 9<sup>th</sup>: Language Diversity II**

Ruth Rubio-Marín, "Language Rights: Exploring the Competing Rationales" in Kymlicka and Patten, eds., *Language Rights and Political Theory* (New York: Oxford University Press, 2003) at 52.

**Wed. March 11<sup>th</sup>: Language Diversity III**

Norman Dorsen et. al., eds, *Comparative Constitutionalism: Cases and Materials* (New York: Thomson, 2003) at 761-773.

*Mahe v. Alberta*

*Belgian Linguistic Case*

*Meyer v. State of Nebraska*

*Lau v. Nichols*

**Mon. March 16<sup>th</sup>: Religious Diversity**

Amy Gutmann, *Identity in Democracy* (Princeton: Princeton University Press, 2003) at 151-170 and 178-181(Chapter 4 "Is Religious Identity Special?").

Jeremy Webber, "The Irreducibly Religious Content of Freedom of Religion" in *Diversity and Equality* (Vancouver: UBC Press, 2006) at 178.

**Wed. March 18<sup>th</sup>: Religious Diversity II**

Vicki C. Jackson & Mark Tushnet, eds., *Comparative Constitutional Law* (New York: Foundation Press, 1999) at 1157-1201.

W. Cole Durham, "Perspectives on Religious Liberty: A Comparative Framework"

Makau Wa Mutua, "Limitations on Religious Rights: Problematizing Religious Freedom in the African Context"

*German School Prayer Case*

*German Classroom Crucifix Case II*

*Kakunaga v. Sekiguchi*

**Mon. March 23<sup>rd</sup>: Religious Diversity III**

Vicki C. Jackson & Mark Tushnet, eds., *Comparative Constitutional Law* (New York: Foundation Press, 1999) at 1203-1244.

*Lynch v. Donnelly*

*Wisconsin v. Yoder*

*Kokkinakis v. Greece*

*Oregon v. Smith*, 494 U.S. 872 (1990)(Supreme Court of the United States).

Benjamin Berger, "The Cultural Limits of Legal Tolerance" 21 Can. J.L. & Juris. 245.

**Wed. March 25<sup>th</sup>: Cultural Difference and Women's Rights**

Susan Okin, "Is Multiculturalism Bad for Women?" in Cohen, Howard and Nussbaum, eds., *Is Multiculturalism Bad for Women?* (New Jersey: Princeton University Press, 1999) at 9.

Azizah Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?" in Cohen, Howard and Nussbaum, eds., *Is Multiculturalism Bad for Women?* (New Jersey: Princeton University Press, 1999) at 41.

Leti Volpp, "Feminism versus Multiculturalism", (2001) 101 Colum. L. Rev. 1181.

**Mon. March 30<sup>th</sup>: Cultural Difference and Women's Rights II**

Abdullahi-An-Na'im, "Promises We Should All Keep in Common Cause" in Cohen, Howard and Nussbaum, eds., *Is Multiculturalism Bad for Women?* (New Jersey: Princeton University Press, 1999) at 59.

Carolyn Evans, "The 'Islamic Scarf' in the European Court of Human Rights" 2006 Melbourne Journal of International Law 52.

Ayelet Shachar, "The Puzzle of Interlocking Power Hierarchies: Sharing the Pieces of Jurisdictional Authority" (2000) 35 Harv. C.R.-C.L. Rev 385.

**Wed. April 1<sup>st</sup>: Case Study: Religious Arbitration in Ontario**

Natasha Bakht, "Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its Impact on Women" (2004) 1 Muslim World J. of H.R. 1. <http://www.bepress.com/mwjhr/vol1/iss1/art7/>

Marion Boyd, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion" (December 2004) Executive Summary of Report.

Natasha Bakht, "Were Muslim Barbarians Really Knocking On the Gates of Ontario?: The Religious Arbitration Controversy—Another Perspective" (2005) Ottawa Law Review, 40th Anniversary Summer, 67-82.

**Mon. April 6<sup>th</sup>: TBD**

**Wed. April 8<sup>th</sup>: Exam Review**