

CARLETON UNIVERSITY
Department of Law and Legal Studies

Course Outline

COURSE:	LAWS 3904B – Selected Legal Topics Legal Personhood in Law and Culture
TERM:	Winter 2015
PREREQUISITES:	3rd year standing, or permission from the professor
CLASS:	Tuesdays, 11:35 – 2:25 Residence Commons 214
INSTRUCTOR:	Professor Sheryl Hamilton
OFFICE HOURS:	Thursdays 10:00 am – 11:30 pm in Loeb C463 (or by appointment)
CONTACT:	sheryl.hamilton@carleton.ca Phone: X 1178 and X1975 River Building 4316 and Loeb C463

COURSE DESCRIPTION

In this course we will take up the question of who is a person? More specifically, we will examine the ways in which we construct individuals as subjects in legal culture, within formal legal structures and in popular culture. The ‘person’ is a notoriously unstable notion in both law and Western modernity, and yet much is done in its name. As Ngaire Naffine notes, “Perhaps the greatest political act of law is the making of a legal person (simply put, he who can act in law) and, in the same move, the making of legal non-persons (those who cannot act in law and who are generally thought of as property)” (2003: 347).

Drawing upon a wide range of interdisciplinary scholarship, we will ask what it means to be a person at, before, in, and of, the law. This will lead us to consider such issues as: what is the relevance of the body to personhood? Does one have to be conscious, emotive, or morally cognizant to be a person? Can only human beings be persons? What kinds of expertise arise to help us define personhood? How is the person reproduced? Where and when does the person begin and end? How is legal personhood connected to citizenship in the modern nation state? We will explore these questions through a number of case studies of “problematic” persons.

LEARNING OBJECTIVES AND OUTCOMES

There are a number of learning objectives and outcomes for this course:

- to ground our explorations in the theoretical and philosophical foundations of legal personhood in historical and contemporary contexts;
- to learn about the historical emergence of a number of types of entities who/which have made a claim to legal personhood;
- to obtain a conceptual vocabulary through which to make sense of personhood claims in new situations;
- to recognize law and legality in a variety of cultural locations;
- to diagnose the assumptions underlying various claims to personhood and the social implications of these;
- to develop and hone skills in critically analyzing a diversity of primary source material, including critical reading, analytic writing, and thoughtful discussion and debate.

REQUIRED READING

Readings will be placed on CULearn or links will be provided in the course outline. Some sources may be accessed through the Carleton library website.

EVALUATION

Students will be evaluated in the following areas:

1. Participation (15%)
2. Two Discussion Piece Analyses (15% each X 2 = 30%)
3. Film Analysis (25%)
4. Final Examination (30%)

The requirements for each assignment will be discussed on the first day of class, with supplementary information to be provided as necessary throughout the course. If, at any time, you have questions about any element of an evaluation, please speak to me as soon as possible. Failure to complete the Final Examination will result in a final grade of F.

Please note that all assignments must be typed or word-processed and submitted in hard copy. Assignments will not be accepted by email. Please retain a copy of the submitted work. In the event of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your work. I also recommend that you keep earlier drafts of your work and/or your research material.

Participation

Students are expected to attend all classes, respect the start and finish times of the class, read the required readings and discussion pieces in advance of the class for which they are assigned, and come to class prepared to identify and discuss issues emerging from these in a thoughtful and informed manner. The participation grade will assess students' level of engagement in the classroom, the quality of participation in classroom activities, and the ability to bring concepts, critiques and ideas from the readings into classroom discussion.

Mobile communication devices should remain turned off and stored in a purse, book bag, pocket, etc. during class time, except for laptops being used for note-taking purposes only. **Repeated use of mobile communication devices, tablets or laptops for non-course related purposes will result in a grade of 0 for participation.**

Attendance will be taken at every class. However, good attendance is a prerequisite for a good participation grade, not an equivalent to it. Participation is about respect, engagement, and working productively in a collaborative manner to enhance your own and others' learning. You are encouraged to ask questions, share experiences, and relate course material to issues you see around you in your everyday life. Demonstrated knowledge of the content of assigned readings is essential to a participation grade above a C.

Some of the topics we will be discussing are often considered 'controversial' and members of the class may have strongly held differences of opinion. This is great and can serve as a foundation for a robust discussion. However, all discussion, remarks and observations should be respectful of others, of differently held views, and of the classroom space as one of learning requiring participation from all of us.

Discussion Piece Analyses

Students will note that certain readings/websites/videos etc. have been designated each week as Discussion Pieces (DPs). Over the course of the term, each student is to submit two (2) critical analyses (3-5 double-spaced, typed pages) of two different DPs. The DP should be critically analyzed in relation to the other readings for that week (and any other relevant course material from previous weeks). No further research is required; however, you are required to address all of the readings from that particular class.

When thinking critically about the DP, you should be guided by the following questions. Please note that these questions are only prompts to your critical evaluation of the material. Not all questions will work equally well for all types of DP's and your analyses should not merely be answers to these questions.

- who/what is the author of the DP and where was it published? How do those factors effect the content, style, and argument of the DP?
- in what medium is the DP and how does that shape its content, perspective, and so on?
- is the genre of the DP relevant and if so, how?
- how are you as the reader being addressed?

- what assumptions is the author making about the nature of persons? of bodies? Of consciousness? Of intelligence? Of social relations? Of community? Of the law? Etc.
- what are the assumptions made in the piece about who holds power and who does not?
- what is the nature of the problem that the author is trying to address with their piece? How are they framing the problem? How are they understanding the solution?
- How do these assumptions and framing cohere with or differ from those in the other readings?
- Is there anything important that the DP author does not address that it would have been appropriate to do?
- Are there any concepts, arguments or ideas in the other readings that can assist in explaining/analyzing the argument or content of the DP?
- Do the various authors agree or disagree, why or why not?
- is the DP persuasive? Why or why not? Does the author mobilize convincing evidence for their claims? How can you enhance your analysis of this using the other readings?

Each Discussion Piece Analysis (DPA) will be due at the beginning of the class when we are discussing those materials. These assignments will not be accepted late. If you miss the deadline, you should complete a DPA for another week.

Film Analysis

You will be required to prepare a written analysis of the film, *Rise of the Planet of the Apes*, which will be screened in class on February 10th. There will be a worksheet to complete at that time and we will discuss the film in class. Using relevant readings from the course, a minimum of three other academic (peer reviewed) sources that you find, and resources from our discussion, you should complete a written analysis of one or a few of the personhood issues that occur in the film. The analysis should be 6-8 pages long and should not contain a lengthy description of the film, nor should it be a “review” of the film. A print copy of your film analysis and your completed worksheet are due on February 24th.

Final Examination

There will be a final examination scheduled in the exam period. It will examine students on their integrated and critical knowledge of all course materials – lectures, readings and discussions. It will be comprised of concepts, short answers, and essay questions. The exam will be discussed in more detail on the last class during the examination review.

Academic Integrity and Plagiarism

All assignments that you complete must be your original work. Please review the student Academic Integrity Policy <http://www2.carleton.ca/studentaffairs/academic-integrity>. You responsible for conduct in accordance with the policy.

The University Senate defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This can include:

- reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs."

Plagiarism is a serious offence which cannot be resolved directly with the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

Policy on Late Work

All assignments are to be turned in to me at the beginning of the class in which they are due. With the exception of the DPAs, late assignments will be marked down one-third letter grade (e.g. from B to B-) for each day they are submitted after the due date without a medical note. All extensions for medical reasons require written proof from an appropriate healthcare professional.

SPECIAL NEEDS

Students Requiring Formal Accommodation

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your *Letter of Accommodation* at the beginning of the term, and no later than two weeks before the first in-class

scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made satisfactorily.

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

Other Special Needs

If you have any other special needs which require scheduling accommodation for you to maximize your learning experience (e.g. employment, childcare, travel, etc.) and for which formal accommodations are not available, please speak to me at the beginning of term so that we can arrange a mutually satisfactory approach. Do not expect this type of accommodation for such requests during the week in which an assignment is due if we have not already arranged it.

SCHEDULE OF READINGS AND LECTURES:

January 6 Introduction

January 13 Personhood, Law, Culture: Mapping Concepts and Issues

Harvard Law Review Editors (2001), “Notes: What We Talk About When We Talk About Persons: The Language of a Legal Fiction” in *Harvard Law Review* 114(6): 1745-1768.

Naffine, Ngaire (2003), “Who Are Law’s Persons? From Cheshire Cats to Responsible Subjects” in *Modern Law Review* 66: 346-67.

Travis, Mitchell (2014), “We’re all infected: Legal Personhood, Bare Life and the *Walking Dead*” in *International Journal for the Semiotics of Law*.

January 20 Gendering the Subject: Women Become Persons ...

Naffine, Ngaire (2004), “Our Legal Lives as Men, Women and Persons” in *Legal Studies* 21(4): 621-642.

Bright, David (1999), “The Other Woman: Lizzie Cyr and The Origins of the ‘Persons Case’” in *Canadian Journal of Law and Society* 13: 99-115.

Discussion Piece: Please review the Famous Five Foundation website <http://www.famous5.ca> – specifically the sections entitled, “The Famous Five Women,” “History,” “The ‘Persons’ Case,” and “Resources.”

January 27 The Dilemmas of Moral Responsibility: Corporate Personhood

Kirsch, Stuart (2014), “Imagining Corporate Personhood” in *PoLAR: Political and Legal*

Anthropology Review 37(2): 207-217.

Neocleous, Mark (2003), “Staging Power: Marx, Hobbes and the Personification of Capital” in *Law and Critique* 14: 147-165.

Discussion Piece: Milligan, Kevin (2011), “Corporations don’t walk or talk – and don’t pay taxes” in *Globe and Mail* -- <http://www.theglobeandmail.com/report-on-business/economy/economy-lab/corporations-dont-walk-or-talk---and-dont-pay-taxes/article613901/>

And Dobbin, Murray (2010), “Citizen Psychopaths: Time to Remove Corporate ‘Personhood’” in *rabble.ca* -- <http://rabble.ca/columnists/2010/11/citizen-psychopaths-time-remove-corporate-personhood>

February 3 Pets, Property or People? Animals and Personhood

Francione, Gary L. (2004), “Animals – Property or Persons?” in *Animal Rights: Current Debates and New Directions* (Cass R. Sunstein and Martha C. Nussbaum, eds.), Oxford: Oxford University Press, pp. 108-142.

Kylmicka Will and Sue Donaldson (2014), “Animals and the Frontiers of Citizenship” in *Oxford Journal of Legal Studies* 34(2): 201-19.

Discussion Piece:

McKinley, Jesse (2014), “Chimps Don’t Have the Same Rights as Humans, Court Says” in *New York Times* – please watch the embedded video documentary about Steven Wise’s efforts at http://www.nytimes.com/2014/12/05/nyregion/chimps-dont-have-same-rights-as-humans-court-says.html?_r=0

February 10 Screening and Discussion

Rise of the Planet of the Apes (2011)
Worksheet to be handed out in class

February 17 Spring Break!

February 24 Inventing Persons: Humans, Clones and Their Kin

Film Analysis is due!

Limon, Cressida (2013), “Inventing Animals,” in *Law and the Question of the Animal: A Critical Jurisprudence* (Yoriko Otomo and Ed Mussawir, eds.), London: Routledge, pp. 54-70.

De Villiers, J.H. and M. Slabbert (2011), “*Never Let Me Go: Science Fiction and Legal Reality*” in *Literator* 32.3: 85-104.

Discussion Piece: *Reference Re: Assisted Human Reproduction Act* [2010], 3 S.C.R. 457 (SCC) at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7905/index.do>

March 3 Salvation versus Liberation: Considering Children as Rights Bearing Subjects

McGillivray, Anne (2011), “Children’s Rights, Paternal Power and Fiduciary Duty: From Roman Law to the Supreme Court of Canada” in *International Journal of Children’s Rights* 19(1): 21-54.

Ruddick, Sue “At the horizons of the subject: Neoliberalism, Neo-conservatism and the Rights of the Child” (Part Two: Parent, Caregiver, State) in *Gender, Place and Culture* 14(6): 627-40.

Discussion Piece: Sykes, Katie (2006), “Bambi Meets Godzilla: Children’s and Parents’ Rights in Canadian Foundation for Children, Youth and the Law v. Canada (2006)” in *McGill Law Journal*, 51(1): 131-165.

March 10 Disability, Morality and Personhood

Devlin, Richard and Dianne Pothier (2006), “Introduction: Toward a Critical Theory of Dis-Citizenship” in *Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law*, pp. 1-22.

Flynn, Eilionoir and Anna Arstein-Kerslake (2014), “Legislating Personhood: Realising the Right to Support in Exercising Legal Capacity” (2014) *International Journal of Law in Context* 10(1): 81-104.

Discussion Piece:
Johnson, Harriet McBryde (2003), “Unspeakable Conversations” in the *New York Times*, February 16, 2003 at <http://www.nytimes.com/2003/02/16/magazine/unspeakable-conversations.html>

March 17 Professor attending a conference – class cancelled

March 24 Property, Parasites or Persons? Considering the Unborn

Saurette, Paul and Kelly Gordon (2013), “Arguing Abortion: The New Anti-Abortion Discourse in *Canadian Journal of Political Science* 46(1): 157-185.

Ruhl, P. Lealle (2002), “Disarticulating Liberal Subjectivities: Abortion and Fetal Protection” in

Feminist Studies 28(1): 37-60.

Discussion Piece:

Please review the following websites. Please compare and contrast imagery, tone, authorship, photography, etc.

Campaign Life Coalition <http://www.campaignlifecoalition.com>

Abortion Rights Coalition of Canada <http://www.arcc-cdac.ca/home.html>

March 31 Citizens and Personhood: Considering Prisoners

Parkes, Debra (2005), "Prisoner Voting Rights in Canada: Rejecting the Notion of Temporary Outcasts" in *Civil Penalties, Social Consequences* (Christopher Miela and Teresa Miller, eds.), New York: Routledge, chapter 14.

Plaxton, Michael and Heather Lardy (2010), "Prisoner Disenfranchisement: Four Judicial Approaches" in *Berkeley Journal of International Law* 28(1).

Discussion Piece: Sauvé v. Canada (Chief Electoral Office) (2002), 3 SCR 519 (SCC) at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do>

April 7 Wrap up and Exam Review