

Course Outline

**COURSE:** LAWS 3908 B – Legal Studies Methods and Theory II

**TERM:** Winter 2011

**CLASS:** Day & Time: Thursdays 11:35 am – 2:25 pm  
Room: SA 502 (Southam Hall)

**INSTRUCTOR:** Professor Sheryl Hamilton

**CONTACT:** Offices: C571 LA (Loeb) or 308 SP (St. Patrick’s)  
Office Hrs: Mondays 3:00 – 4:30 pm in SP 308 or by appointment  
Telephone: 613-520-2600 x 1178 and x1975  
Email: [sheryl.hamilton@carleton.ca](mailto:sheryl.hamilton@carleton.ca) Please do not use Web CT e-mail. I do not check it as regularly.

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Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by the last official day to withdraw from classes in the term.

With regard to accommodations for religious obligations and pregnancy, please see [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html)

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**COURSE DESCRIPTION**

This course will provide in-depth exposure to interdisciplinary and theoretically informed research methods in legal studies through the examination of a particular theme – the legal person. We will take up the question: What is a person?

More specifically, this course will examine the ways in which we construct individuals as legal subjects, as persons at law. 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.

While considering these issues, we will, unpack the *how* of the scholarship we are reading. How are the authors making knowledge? How are they using abstract concepts in order to make their claims more generalizable? What are they actually studying? What kinds of claims are the authors able to make? What kinds of claims remain closed to them because of how they have done their study? Are we convinced – why or why not?

We will then seek to apply the theories and methods deployed by the authors we are reading to the case studies that we are examining in our workshops.

## **OBJECTIVES**

There are a number of learning objectives for this course:

- to learn the theoretical foundations of legal personhood in the historical and contemporary contexts
- to critically analyze a number of different “types” of entities making claims to personhood
- to analyze the nature of various claims to personhood and the underlying assumptions behind them
- to learn to identify the theoretical assumptions in an analysis
- to learn to discern the methodology of an analysis
- to gain experience in the application of theory and methods to primary material

## **COURSE MATERIALS**

Readings will be available through the weblinks provided on the course outline and online through the Carleton library system.

## **EVALUATION**

You are expected to participate thoughtfully in the discussions through posing questions, offering examples, sharing experiences as relevant, and critically analyzing the course material. After the introduction and foundational sections (the first three weeks of the course), the course is divided into two week clusters. In the first of the two weeks, I will provide a grounding lecture and we will discuss the readings. In the second week, we will conduct a workshop where we analyze primary material bringing to bear the theory and methods from that week’s readings as well as those from the previous week.

Evaluation in this course will have five components:

- attendance and participation (10%)
- diagnostic paper (20%)
- critical analysis paper (20%)
- research proposal (20%)
- take-home examination (30%)

Each student must receive a grade in every requirement in order to pass the course.

### Attendance and Participation

Each of you will be evaluated on your attendance and participation in the classroom environment. Participation includes having done the assigned readings every week, being prepared to discuss them in an informed manner, making constructive interventions to facilitate the production of group knowledge, asking questions, and listening to the professor and your colleagues with attention and respect.

Many of the issues we will be discussing in class involve moral and ethical questions, many of which are ‘controversial.’ Opinions and beliefs will inevitably differ and that is very positive. The classroom environment, however, must always be a space where each person feels comfortable both with speaking their view, and having that view critiqued in a constructive and generous manner. We all contribute to that sense of comfort in the classroom.

We will be analyzing primary material every second week as part of our classroom time – the expectation will be that you are sufficiently familiar with the concepts and/or techniques in the readings that you will be able to apply them to the particular ‘case study.’

### Diagnostic Paper

In the Diagnostic Paper you should select a course reading that you enjoy or an academic reading from any other class that you have enjoyed. You will then write a brief paper (approx. 5 double-spaced pages) analyzing its theoretical assumptions and methodological approach. How do these shape and structure the kind of knowledge that is produced by that author in the final article? How did the theoretical and methodological choices made by the author shape your own response to the piece and how convinced you were by the analysis? In a sense, it is working backward from the final product, to uncover the theory and methods used to produce it; you are “reverse engineering” the evidentiary claims of the article. These will be due on **February 3, 2011.**

### Critical Analysis Paper

The due date of the Critical Analysis Paper will be selected by you. In this paper, you should select one of the case studies and complete an analysis of it, applying the readings for the two weeks pertaining to that case study as well as two additional refereed academic articles. You should turn the paper in one week after we take up that particular case study in class so that you can benefit from the class discussion and analysis. You should be careful to select a case study that works with your schedule. If there are additional sources for that particular theme, it is

strongly recommended that you read them. The critical analysis papers will not be accepted late. If you do not complete it by the beginning of the following class after we have done the workshop on that case study, then you should pick a different week's case study.

### Research Proposal

All students will be asked to complete a research proposal for **March 24<sup>th</sup>**. A hand out will be provided in class and a mini-workshop will be conducted to provide you with more information and guidance. The research proposal should detail an original topic for study relevant to the themes of the class and contain the following elements:

- a statement of the question to be answered or issue to be discussed
- a brief discussion of the socio-legal context of that question/issue and its overall social relevance
- a short outline of what five academic authors have had to say on your question/issue
- a brief description of how you would propose answering the question/studying the issue
- a bibliography

The Research Proposal should be approximately 5 double-spaced, typed pages in length, exclusive of the bibliography.

### Take-Home Examination

There are two options for the take-home examination. Both will be due on **Monday, April 11<sup>th</sup>**. Students must complete one option:

1. You can write an examination where you will be provided with a particular case study (not one we have taken up in class) and three academic articles pertaining to it. Using those articles and any other pertinent material from the course, you will be required to answer a series of questions. This is similar to the Case Study Analysis you will have completed in class, but on a new subject matter. The objective is to examine you on your ability to apply theoretical concepts and methodological techniques in order to conduct a primary analysis. The examination response should be approximately 10 double-spaced pages long. The examination materials and questions will be made available to you on the last day of class.
2. You can write a research paper based upon your proposal which should be approximately 10 double-spaced pages long, exclusive of bibliography. It should be on a topic of your choosing pertinent to the class themes and should use at least 5 refereed academic sources (at least two of which must not be from the course material). Feel free to use more.

I will be using the following general criteria when marking your paper. Please bear these in mind when preparing your paper:

- clarity of thesis statement and introduction
- logical development of an argument
- insight and originality
- research effort and skill

- demonstrated critical analysis
- use of sources and evidence
- presentation of references
- spelling, grammar and punctuation
- style

### **Policy on Late Work**

Assignments must be submitted on the due date to be graded out of full marks. No extensions will be granted for course assignments except under exceptional circumstances substantiated by official documentation (doctor's note, etc.). If no extension has been granted, an assignment will be accepted up to three days after the due date. However the mark will be reduced by 1/3 of a letter grade (B+ to a B) for each day late. Assignments more than three days late will not be accepted and will receive a grade of "F." If any assignment is not completed, the grade in the course will be an "F."

### **Special Needs**

If you have any special needs as a student that require accommodation for you to maximize your learning experience (employment, travel, childcare, etc.), please speak to me at the beginning of the term so that we can arrange a mutually satisfactory approach.

### **Schedule of Readings and Discussions**

#### **January 6 Introduction**

#### **January 13 Theory, Methodology, and Becoming a Scholar**

Davies, Margaret (2002), "Ethics and Methodology in Legal Theory a (Personal) Research Anti-Manifesto" in *Law Text Culture* 6(1) at <http://ro.uow.edu.au/ltc/vol6/iss1/2/>

Mezey, Naomi (2003), "Law as Culture" in *Cultural Analysis, Cultural Studies and the Law* (Austin Sarat and Jonathan Simon, eds.), Durham and London: Duke University Press, 37-72. <http://scholarship.law.georgetown.edu/facpub/317/>

Cotterrell, Roger (1992), "Introduction: Theory and Method in the Study of Law" in *The Sociology of Law: An Introduction*, (2e), London: Butterworths, pp. 1-15.

#### **Additional Resources:**

Esterberg, Kristin G. (2002), "Strategies for Beginning Research" in *Qualitative Methods in Social Research*, Boston: McGraw Hill, pp. 25-39.

Alford, Robert (1998), "Constructing a Research Project" in *The Craft of Inquiry: Theories, Methods, Evidence*, New York and Oxford: Oxford University Press, pp. 21-31.

Clement, Wallace (2007), "Methodological Considerations: Thinking about researching work" in *Work in Tumultuous Times: Critical Perspectives* (V. Shalla and W. Clement, eds.), Montreal: McGill-Queen's University Press, pp. 30-51.

### **January 20 Individuals, Human Beings, and Persons**

Berg, Jessica (2007), "Of Elephants and Embryos: A Proposed Framework for Legal Persons" 59 *Hastings Law Journal* 369 <http://law.bepress.com/expresso/eps/1932/>

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 (access through Carleton library's online journals: <http://www.jstor.org/stable/1342652> ).

Teichmann, Jenny (1985), "The Definition of Person" in *Philosophy* 60(232): 175-85 (access through Carleton library's online journals: <http://www.jstor.org/stable/3750997> ).

#### Additional Resources:

Dennett, Daniel (1976), "Conditions of Personhood" in *The Identities of Persons* (Amélie Oksenberg Rorty, ed.), Berkeley, CA: University of California Press, pp. 175-196.

Poole, Ross (1996), "On Being a Person" in *Australasian Journal of Philosophy* 74(1): 38-56

### **January 27 Gendering the Subject: Women and Personhood**

Naffine, Ngaire (2004), "Our Legal Lives as Men, Women and Persons" in *Legal Studies* 24(4): 621-642 (access through Carleton library's online journals).

Lahey, Kathleen A. (1998), "Legal 'Persons' and the *Charter of Rights*: Gender, Race, and Sexuality in Canada" in *The Canadian Bar Review* 77(3-4): 402-427 (access through Carleton library's online journals).

#### Additional Resources:

Davies, Margaret (1994), "Feminist Appropriations: Law, Property and Personality" in *Social and Legal Studies* 3(3): 365-391 (access through Carleton library's online journals).

### **February 3 Workshop: Women as Persons**

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.

L'Heureux-Dubé, Claire (2000), "The Legacy of the 'Persons Case'" in *Saskatchewan Law Review* 63: 389-401 (access through Carleton library's online journals, through LexisNexis).

Additional Resources:

Dorland, Michael and Maurice Charland (2002), “ ‘Impious Civility’: Women’s Suffrage and the Refiguration of Civil Culture, 1885-1929” in *Law, Rhetoric, and Irony: The Formation of Canadian Civil Culture*, Toronto: University of Toronto Press, pp. 191-222.

**Diagnostic Paper Due!**

Case Study:

Stewart-Verger and Teresa Healy (2004), *She Pushed From Behind: Emily Murphy in Story and Song*, Ottawa: Library and Archives of Canada – to be played in class.

**February 10 *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

(<http://law.bepress.com/cgi/viewcontent.cgi?article=1021&context=rutgersnewarklwps> ).

Naffine, Ngaire (2009) “Human and Non-human Animals: The Implications of Darwin, in *Law’s Meaning of Life: Philosophy, Religion, Darwin and the Legal Person*, Oxford and Portland: Hart Publishing, pp. 119-142.

**February 17 Workshop: Animals as Persons**

Nosworthy, Jane (1998), “The Koko dilemma: A Challenge to Legal personality” in *Southern California Law Review* 2 (see [http://www.scu.edu.au/schools/law/law\\_review/V2\\_full\\_text.htm](http://www.scu.edu.au/schools/law/law_review/V2_full_text.htm)

Black, Jason Edward (2003), “Extending the Rights of Personhood, Voice, and Life to Sensate Others: A Homology of Right to Life and Animal Rights Rhetoric” in *Communication Quarterly* 51(3): 312-331 (access through Carleton library’s online journals).

Additional Resources:

Groves, Julian McAllister (2001) “Animal Rights and the Politics of Emotion: Folk Constructs of Emotions in the Animal Rights Movement” in *Passionate Politics: Emotions and Social Movements* (Jeff Goodwin, James M. Jasper and Francesca Polletta, eds.), Chicago: University of Chicago Press, 212-228.

Case Study:

PETA advertising campaigns – to be presented in class

Francione, Gary (Six Principles of the Abolitionist Approach to Animal Rights”  
<http://www.abolitionistapproach.com/about>

Farm Animal Welfare Council “Five Freedoms” <http://www.fawc.org.uk/freedoms.htm>

**February 24 No class – Spring Break!**

**March 3      *Property, Parasites or Persons? Considering the Unborn***

Martin, Emily (1998), “The Fetus as Intruder: Mother’s Bodies and Medical Metaphors” in *Cyborg Babies: From Techno-Sex to Techno-Tots* (R. Davis-Floyd and J. Dumit, eds.), New York: Routledge, pp. 125-142.

Fox, Marie (2000), “Pre-Persons, Commodities or Cyborgs: The Legal Construction and Representation of the Embryo” in *Health Care Analysis* 8(2): 171-188 (access through Carleton library’s online journals).

Additional Resources:

Feinberg, Joel (1986) “Abortion” in *Matters of Life and Death* (Tom Regan, ed.)  
<http://www.ditext.com/feinberg/abortion.html>

**March 10      Workshop: The Unborn as Persons**

English, Jane (1975), “Abortion and the Concept of the Person” in *Canadian Journal of Philosophy* 5(3): 233-243 (access through Carleton library’s online journals).

Ruhl, Lealle (2002), “Disarticulating Liberal Subjectivities: Abortion and Fetal Protection” in *Feminist Studies* 28(1): 37-60 (access through Carleton library’s online journals;  
<http://www.jstor.org/stable/3178494> ).

Case Study:

Anti-Abortion and Pro-Choice materials – to be circulated in class.

**March 17      Class Cancelled – Professor at Conference**

**March 24      *The Dilemma of Moral Responsibility: Corporate Personhood***

Quaid, Jennifer A. (1998), “The Assessment of Corporate Criminal Liability on the Basis of Corporate Identity: An Analysis” in *McGill Law Journal* 43: 67-114  
<http://lawjournal.mcgill.ca/documents/43.Quaid.pdf>

Neocleous, Mark (2003), “Heads of Cabbage and Mouths Full of Water” in *Radical Philosophy*  
[http://www.radicalphilosophy.com/default.asp?channel\\_id=2187&editorial\\_id=14329](http://www.radicalphilosophy.com/default.asp?channel_id=2187&editorial_id=14329)

Additional Resources:



Manning, Rita (1984), "Corporate Responsibility and Corporate Personhood" in *The Journal of Business Ethics* 3(1): 77-84 (access through Carleton library's online journals <http://www.jstor.org/stable/25058221> or at <http://www.sci.brooklyn.cuny.edu/~schopra/Persons/Manning1.pdf>)

### **Research Proposal is due!**

### **March 31 Workshop: Corporate Persons**

Schane, Sanford A. (1987), "The Corporation is a Person: The Language of a Legal Fiction" in *Tulane Law Review* 61: 563-609 <http://www.sci.brooklyn.cuny.edu/~schopra/Persons/>

Johnson, Rebecca and Ruth Buchanan (2009) "Strange Encounters: Exploring law and film in the affective register" in *Law, Politics and Society*, 46: 33-60 (see [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1341474](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1341474) ).

### Case Study:

*Enron the Smartest Guys in the Room* (2005; dir. Alex Gibney) – to be screened in class, but feel free to watch in advance.

**The take-home examination will be distributed in this class. It will be due on Monday, April 11<sup>th</sup> in the drop box at the Law Office. Research Papers are also due on April 11<sup>th</sup> in the drop box at the Law Office.**