

## Course Outline

<b>COURSE:</b>	<b>LAWS 4100</b>
<b>TERM:</b>	<b>Fall 2012</b>
<b>PREREQUISITES:</b>	<b>2.0 credits from LAWS 2105, LAWS 2201, LAWS 2202, LAWS 2301, LAWS 2302, LAWS 2501, or LAWS 2502</b>
<b>CLASS:</b>	<b>Day &amp; Time: Monday 14:35-17:25</b> <b>Room: Please check with Carleton Central for room location</b>
<b>INSTRUCTOR:</b>	<b>Stacy Douglas</b>
<b>CONTACT:</b>	<b>Office: Loeb D496</b> <b>Office Hrs: Monday 12:00-14:00</b> <b>Telephone: 613.520.2600 x. 8028</b> <b>Email: Stacy_Douglas@carleton.ca</b>

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Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but are not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, **613-520-6608**, every term to ensure that I receive your Letter of Accommodation, no later than two weeks before the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the deadlines published on the PMC website. <http://www1.carleton.ca/pmc/students/dates-and-deadlines/>. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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## **COURSE DESCRIPTION**

This first part of this course looks at key pieces of what are commonly imagined to be the foundations of modern Western legal theory. The second half of the course focuses on theorists who take critical aim at this tradition. Some key themes we will explore are: sovereignty, secularism, and constitutionalism, as well as the distinctions between constituent and constituted power, immanence and transcendence, and 'politics' and 'the political'. We will also reflect on the very category of 'modern legal theory' to consider what we think 'modern legal theory' is and where we think we find it. The course is intentionally designed around theory proposed by largely white Western European male authors. These theories will be used as launching off points to both chart the imagined tradition (in all of its particularity), as well as to critique it. As such, we will explicitly be reflecting on questions that are central to feminist, anti-racist, post-colonial, and queer critiques of law and legal thinking.

The class will include short weekly lectures, as well as in-class discussions, and group activities. Due to the depth of the reading we will be doing, the participation mark in this class is heavily weighted (40%) and includes a small weekly writing component designed to improve students' critical reading and writing skills. The final grade is further comprised of two essays (20% and 25%, respectively) and a short presentation (15%). Students interested in pursuing close readings of primary texts and engaging with questions about law's place (or non-place) in the world will enjoy this course. Students unfamiliar with or nervous about approaching theory, but who are eager to put in the required time and effort, are encouraged to register.

**REQUIRED TEXTS** (Available at: Octopus Books, 116 Third Ave., 613-233-2589)

1. Course Pack
2. Kafka, Franz (1995) *The Trial*. Trans. Willa and Edwin Muir and E.M. Butler. New York: Schocken Books.
3. Schmitt, Carl (2007) *The Concept of the Political*. Trans. George Schwab. Chicago: University of Chicago Press.

**SUPPLEMENTARY TEXTS**

Brown, Wendy (1995) *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press.

Cornell, Drucilla (2007) *Moral Images of Freedom: A Future for Critical Theory*. New Jersey: Rowman and Littlefield.

Douzinas, Costas, and Adam Gearey (2005) *Critical Jurisprudence: The Political Philosophy of Justice*. Oxford: Hart.

Ferreira Da Silva, Denise (2007) *Toward a Global Idea of Race*. Minneapolis: University of Minnesota Press.

Hall, Stuart (1984) The State in Question. In: *The Idea of the Modern State*. Eds. Gregor McLennan, David Held, and Stuart Hall. Milton Keynes: Open University Press, 1-28.

Hartley, George (2003) *The Abyss of Representation: Marxism and the Postmodern Sublime*. Durham: Duke University Press.

Loughlin, Martin and Neil Walker (2007) *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*. Oxford: Oxford University Press.

Marchart, Oliver (2007) *Post-foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau*. Edinburgh: Edinburgh University Press.

Mehta, Uday Singh (1999) *Liberalism and Empire: A Study in Nineteenth-Century Political Thought*. Chicago: University of Chicago Press.

Minkkinen, Panu (2009) *Sovereignty, Knowledge, Law*. London: Routledge.

Motha, Stewart (Ed.) (2007) Democracy's Empire: Sovereignty, Law, and Violence. *Journal of Law and Society* [Special Issue], 34(1-2).

Stone, Matthew, Illan Wall, and Costas Douzinas (2012) *New Critical Legal Thinking: Law and the Political*. Abingdon: Birkbeck Law Press.

Valls, Andrew (Ed.) (2004) *Race and Racism in Modern Philosophy*. Ithaca: Cornell University Press.

## **EVALUATION**

### **I) Participation (40%)**

Every week you are required to submit a one- to two-page assignment (double-spaced, with proper references). Submitted assignments must include the following three elements, in sentence form, *for every assigned reading*:

- 1) A description of the author's central thesis;
- 2) A description of the author's supporting points, as well as a reflection on the strength of these points (are they well-made, flimsy, etc...? Please note that this is not a request for your personal opinion on the piece);
- 3) A reflection on what the piece says about law and its relationship to political community. For example, is law a necessary stabilizing force for political community for the author, or are the two at odds? How or how not?

These must be handed in at the start of every class so remember to print two copies or keep a secure back up for your own records. Each assignment is worth 3% each. **You have two 'grace' weeks where you can choose not to submit an assignment without penalty**. By the end of the course you will have submitted six of these weekly assignments. Your participation mark will break down as follows:

- one assignment at 3% each for 6 weeks = 18%
- in-class attendance = 12%
- in-class participation = 8%

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TOTAL = 40%

Please note that since essays are due in class for Seminar Five (15 October) and Seminar Twelve (3 December), you are not required to hand in a one-page assignment for those weeks. Your participation mark for those weeks will come entirely from your informed participation in class. This means that you must complete the assigned readings and consider the given questions before you arrive in class.

### **II) First Essay (20%)**

*The Foundations of Modern Law?*

Choose one of the 'foundational' thinkers of modern legal theory that we have looked at in the first part of the course. Write a 2500 word essay (not including footnotes and bibliography) on how their work contributes to the 'foundation' of modern legal thinking. However, rather than try and explore their entire work, focus on one aspect of it (i.e., Locke's concept of labour). In your essay you must also demonstrate a thorough understanding of existing *critiques* of this element of their work. As such, you must utilize 1-2 other scholars who also comment on your chosen thinker (and the relevant theme) when constructing your essay. Reflect on what questions these critiques raise about this thinker and their contribution to the so-called 'foundations' of modern law.

You may go 10% below or above the word count on your essay.

**Due: 15 October 2012 – NO EXTENSIONS**

### III) Presentation (15%)

This presentation will take place the week before your final essays are due. You will give a 5-minute presentation on the theme you have chosen to write your final paper on. Essential parts of your presentation will be telling your audience:

- what theme you have chosen;
- whose work you have focused on to explore your chosen theme;
- how your chosen theme challenges (or does not challenge) the 'foundations' of modern law we looked at in the first half of the course;
- what one other scholar has said about this person's approach to this theme.

You will be evaluated on i) your ability to adequately answer the questions set out above, ii) your ability to present your thoughts orally to your colleagues, and iii) your ability to answer further questions asked of you. Please stick to time. Giving a well-timed, concise, and prepared presentation on your topic is part of the challenge. Due to time constraints, I ask that you not use visual aids (such as power points, etc...) in your presentation.

**In class: 26 November 2012**

### IV) Second Essay (25%)

#### *Critiques of Modern Legal Theory*

Choose one **theme** from our discussions of 'critical' approaches to modern legal theory that we have looked at in the second half of the course. Write a 3000-word essay (not including footnotes and bibliography) on how this theme unsettles – or does not unsettle – the supposed 'foundations' of modern legal thinking we looked at in the first half of the course. As you explore this theme, focus on one thinker from the 'critical' tradition, along side 1-2 other scholars who either support or critique their approach to this theme. Be sure to comment and reflect on why this theme is important to modern legal theory.

You may go 10% below or above the word count on your essay.

**Due: 3 December 2012 - NO EXTENSIONS**

## **ESSAY EVALUATIONS**

When I read your essays I will be marking based on the following criteria:

### **Style**

Has the author take care in their formatting, grammar, attention to word count, and appropriate referencing?

### **Structure**

Has the author laid out a clear and effective argument for their reader? In particular did the author begin with a clear introduction and overview of their supporting points, and use signposting throughout? Is it a convincing argument overall?

### **Content**

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and other academic sources?

### **Critical Analysis**

Has the author been able to understand the material and communicate about it clearly, and ALSO use their critical reading and writing skills to analyze the material? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

## **REFERENCING**

The Law Department recommends that you follow the Legal Style set out here:

[http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal\\_style\\_sheet.pdf](http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf)

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago, etc...). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide students and faculty assistance with the teaching and learning of academic writing. Please contact them in advance and make use of their services:

<http://www.carleton.ca/wts/>

**Tips for avoiding plagiarism:**

- Give yourself enough time to work on your assignment, so you are not tempted to copy text from other sources.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.

For more help see [www.library.carleton.ca/howdoi/citing.html](http://www.library.carleton.ca/howdoi/citing.html).

*Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties on academic misconduct. Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.*

**CU LEARN**

Our course will also utilize the new 'CU Learn' learning management system. This is the new online learning environment that will replace WebCT. Here you will find electronic copies of the LAWS 4100 syllabus, announcements, as well as relevant links and articles. **All students are required to check into the course online regularly (i.e., at least once a week) for updates and announcements.**

CU Learn is very similar to WebCT so upper-year students shouldn't have a problem using it, but if you do, you can visit the Educational Development Centre's website here for support:

<http://www1.carleton.ca/lmssupport/students/>

<b>LAWS 4100 Course Overview</b>		
10 September	Seminar One	<i>What is 'modern legal theory'?</i>
<b>PART I: FOUNDATIONS OF MODERN LEGAL THEORY?</b>		
17 September	Seminar Two	<i>Thomas Hobbes, the Individual &amp; Sovereignty</i>
24 September	Seminar Three	<i>John Locke &amp; the Appropriation of Property</i>
1 October	Seminar Four	<i>Jean-Jacques Rousseau &amp; the General Will</i>
8 October	-----	-----
15 October	Seminar Five*	<i>Franz Kafka &amp; The Aporia of Law</i>
<b>PART II: CRITIQUES OF MODERN LEGAL THEORY</b>		
22 October	Seminar Six	<i>Carl Schmitt &amp; the Concept of the Political</i>
29 October	Seminar Seven	<i>Hannah Arendt On the Political</i>
5 November	Seminar Eight	<i>Antonio Negri &amp; Constituent Power</i>
12 November	Seminar Nine	<i>Walter Benjamin &amp; the Pursuit of Pure Means</i>
19 November	Seminar Ten	<i>Jean-Luc Nancy &amp; the Inoperative Community</i>
26 November	Seminar Eleven	Presentations
3 December	Seminar Twelve*	<i>Modernity, Legality, Theory</i>

\* Denotes that an essay is due *in class* that week

## **SEMINAR OUTLINE**

### **SEMINAR ONE: WHAT IS 'MODERN LEGAL THEORY'?** (10 September)

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#### Task:

**Everyone is asked to bring a piece of modern legal theory with you to class.** Interpret this assignment as you will, but be prepared to discuss what you brought and why you brought it with the class. This will be counted towards your overall participation mark.

#### Questions:

What does 'modern legal theory' mean? What does it help us do?

Where do we find modern legal theory?

Do we read modern legal theory and, if so, how?

What is the relationship between modern legal theory and what is imagined to be 'proper' law?

<b>PART I: THE FOUNDATIONS OF MODERN LEGAL THEORY?</b>
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### **SEMINAR TWO: THOMAS HOBBS, THE INDIVIDUAL & SOVEREIGNTY** (17 September)

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#### Assigned Readings:

1. Hobbes, Thomas (2008) Part II: Of Commonwealth, Chapters Seventeen to Twenty-One. In: *Leviathan*. Ed. J.C.A. Gaskin. Oxford: Oxford University Press, 111-148. (37 pages).
2. Flathman, Richard E. (2002) Of Making and Unmaking. In: *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*. Lanham: Rowman and Littlefield, 1-9. (9 pages).

#### Additional Readings:

Foucault, Michel (2003) 4 February 1976. In: *Society Must Be Defended, Lectures at the Collège de France, 1975-76*. Trans. David Macey. Eds. Mauro Bertani and Alessandro Fontana. New York: Picador, 87-114. (27 pages).

MacPherson, C.B. (1962) Human Nature and the State of Nature. In: *The Political Theory of Possessive*



*Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 17-45. (28 pages).

Martel, James (2010) Politics Without Sovereignty. In: *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*. New York: Columbia University Press, 221-247. (26 pages).

Pavlich, George (2010) On the Subject of Sovereigns. In: *After Sovereignty: On the Question of Political Beginnings*. Eds. Charles Barbour and George Pavlich. London: Routledge, 22-36. (14 pages).

Skinner, Quentin (2007) Hobbes on Persons, Authors, and Representatives. In: *The Cambridge Companion to Hobbes's Leviathan*. Ed. Patricia Springborg. New York: Cambridge University Press, 157-180. (23 pages).

Wolin, Sheldon S. (1990) Hobbes and the Culture of Despotism. In: *Thomas Hobbes and Political Theory*. Ed. Mary G. Dietz. Lawrence, Kansas: University Press of Kansas, 9-36. (27 pages).

### Questions:

What does Hobbes's thought contribute to the foundations of modern legal thinking?

What does Flathman argue that Hobbes contributes to the foundations of modern legal thinking? What about Martel?

Hobbes is often thought of as the preeminent thinker of modern sovereignty. Why?

What does Hobbes say about the place and role of the state?

What was the historical backdrop for Hobbes' writings? What role, if any, do you think this played in his thinking?

### Key Concepts:

*sovereignty – individualism – bourgeois – social contract – arbitrary power – liberalism*

## **SEMINAR THREE: JOHN LOCKE & THE APPROPRIATION OF PROPERTY** (24 September)

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### Assigned Readings:

1. Locke, John (1995) Treatise of Civil Government, Chapters One to Five. In: *Treatise of Government and a Letter Concerning Toleration*. Ed. Charles L. Sherman. New York: Irvington Press, 1-33. (33 pages).
2. Winnubst, Shannon (2006) Liberalism's Neutral Individual: Delimiting Racial and Sexual Difference. In: *Queering Freedom*. Indianapolis: Indiana University Press, 23-57. (34 pages).

Additional Readings:

Bhandar, Brenna (2012) Disassembling Legal Form: Ownership and the Racial Body. In: *New Critical Legal Thinking: Law and the Political*. Eds. Matthew Stone, Illan Wall, and Costas Douzinas. Abingdon: Birkbeck Law Press, 112-127. (15 pages).

Blomley, Nicholas (2003) Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid. *Annals of the Association of American Geographers*, 93(1), 121-141. (20 pages).

MacPherson, C.B. (1962) Locke: The Political Theory of Appropriation. In: *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 194-221. (27 pages).

Mills, Charles W. (1997) Overview. In: *The Racial Contract*. Ithaca: Cornell University Press, 9-40. (31 pages).

Tully, James (1994) Aboriginal Property and Western Theory: Recovering a Middle Ground. *Social Philosophy and Policy*, 11(2), 153-180. (27 pages).

Questions:

What are Locke's contributions to the foundations of modern legal theory? How do they differ from Hobbes's?

What does Winnubst mean by 'liberalism's neutral individual'?

How does Lockean theory inform our contemporary legal practices and thinking?

What does the work of Tully (1994) and Bhandar (2012) say about Locke and modern legal theory?

Key Concepts:

*appropriation – colonialism – social contract – labour – sovereignty – liberalism*

**\*\*Writing Tip #1: The importance of an introduction\*\***

**SEMINAR FOUR:  
JEAN-JACQUES ROUSSEAU & THE GENERAL WILL  
(1 October)**

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Assigned Readings:

1. Rousseau, Jean-Jacques (1988) Book One and Book Two. In: *The Social Contract and Discourses*. Trans. J.D.H. Cole. London: J.M. Dent and Sons, 181-228. (47 pages).
2. James, C.L.R. (2009) The Haitian Revolution in the Making of the Modern World. In: *You Don't*

*Play with Revolution: The Montreal Lectures of C.L.R. James*. Ed. David Austin. Oakland: AK Press, (51-70). (19 pages).

Additional Readings:

Esposito, Roberto (2010) Chapter Three: Law. In: *Communitas: The Origin and Destiny of Community*. Trans. Timothy C. Campbell. Stanford: Stanford University Press, 62-85. (23 pages).

Scott, David (2004) Future's Past. In: *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*. Durham: Duke University Press, 23-57. (34 pages).

Wittig, Monique (2002) On the Social Contract. In: *Feminist Interpretations of Jean-Jacques Rousseau*. Ed. Lydia Lange. College Station: Penn State University Press, 383-392. (9 pages).

Questions:

How does Rousseau's theory differ to that of Hobbes and Locke? How is it similar?

What is the relationship between Rousseau's theory and that of C.L.R. James's?

What is Rousseau's key contribution to the foundations of modern legal theory?

What is "popular sovereignty"?

Key Concepts:

*general will – popular sovereignty – revolution – political community*

**\*\*Writing Tip #2: Finding an Essay Structure\*\***

**UNIVERSITY CLOSED**  
(8 October)

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NO CLASSES

**SEMINAR FIVE:  
FRANZ KAFKA & THE APORIA OF LAW**  
(15 October)

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FIRST ESSAY DUE IN CLASS

**\*\*No weekly writing assignment due\*\***

Assigned Reading:

1. Kafka, Franz (1995) *The Trial*. Trans. Willa and Edwin Muir and E.M. Butler. New York: Schocken Books. (312 pages).

Additional Reading:

Fitzpatrick, Peter (1992) The Mythic Foundation of Modern Law. In: *The Mythology of Modern Law*. London: Routledge, 44-87. (43 pages).

Questions:

Can you read legal theory in this novel? If so, what elements and where?

What does this novel say about the themes of modern legal theory we have looked at thus far?

What questions does this novel ask of its reader?

Other than the obvious stylistic difference, is this novel different to the theory of Hobbes, Locke, and Rousseau? If so, how? How is it similar?

Why read this novel in this course?

What does Fitzpatrick's critique of the civilizational discourse that undergirds modern law have to do with *The Trial*?

Key Concepts:

*aporia – transcendence – immanence – origins – civilizational discourse*

<b>PART II: CRITIQUES OF MODERN LEGAL THEORY</b>
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**SEMINAR SIX:  
CARL SCHMITT & THE CONCEPT OF THE POLITICAL**  
(22 October)

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Assigned Reading:

1. Schmitt, Carl (2007) *The Concept of the Political*. Trans. George Schwab. Chicago: University of Chicago Press, 19-79. (60 pages).

Additional Readings:

Kahn, Paul (2011) Introduction: Why Political Theology Again? In: *Political Theology: Four New Chapters on the Concept of Sovereignty*. New York: Columbia University Press, 1-30. (29 pages).

Mouffe, Chantal (1998) Schmitt and the Paradox of Liberal Democracy. In: *Law as Politics: Carl Schmitt's Critique of Liberalism*. Ed. David Dyzenhaus. Durham: Duke, 159-178. (19 pages).

Schwab, George (1996) Introduction. In: *The Concept of the Political*. Chicago: University of Chicago Press, 3-16. (13 pages).

Sheth, Falguni A. (2009) Producing Race: Naturalizing the Exception through the Rule of Law. In: *Toward a Political Philosophy of Race*. Albany: State University of New York Press, 111-128. (17 pages).

Vatter, Miguel (2008) The Idea of Public Reason and the Reason of State: Schmitt and Rawls on the Political. *Political Theory*, 36(2), 239-271. (32 pages).

Questions:

What is Schmitt's critique of liberalism?

What is his answer to this critique?

What is the difference between 'the political' and 'politics'?

What does Schmitt mean when he says 'Sovereign is he who decides on the exception'?

Key concepts:

*decisionism – parliamentary-democracy – sovereignty – liberalism – friend/enemy distinction – politics vs. the political*

**SEMINAR SEVEN:  
HANNAH ARENDT ON THE POLITICAL**  
(29 October)

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Assigned Reading:

1. Arendt, Hannah (2006) On the Social Question. In: *On Revolution*. London: Penguin, 49-105. (56 pages).

Additional Readings:

Brown, Wendy (1988) Arendt: The Fragility of Politics. In: *Manhood and Politics: A Feminist Reading of Political Theory*. New Jersey: Rowman and Littlefield, 23-31. (8 pages).

Christodoulidis, Emiliios (2011) Depoliticizing Poverty: Arendt in South Africa. *Stellenbosch Law Review*, 22(3), 501-520. (19 pages).

Honig, Bonnie (1991) Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic. *American Political Science Review*, (85)1, 97-113. (16 pages).

Pitkin, Hannah (1998) The Problem of the Blob. In: *The Attack of the Blob: Hannah Arendt's Concept of the Social*. Chicago: Chicago University Press, 1-18. (17 pages).

Scott, David (2004) Epilogue. In: *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*. Durham: Duke University Press, 209-222. (13 pages).

Questions:

What is Arendt's critique of Rousseau? Marx?

What is the "social" for Arendt? What is the "political"?

What is the difference – if any – between Arendt and Schmitt?

What is the relationship between Arendt's political theory and constitutionalism?

What does Scott (2004) critique Arendt for doing? Christodoulidis (2011)?

Key concepts:

*promise – the social vs. the political – the polis – republicanism – popular sovereignty*

**SEMINAR EIGHT:  
ANTONIO NEGRI & CONSTITUENT POWER**  
(5 November)

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Assigned Readings:

1. Negri, Antonio (1999) *Constituent Power: The Concept of a Crisis*. In: *Insurgencies: Constituent Power and the Modern State*. Trans. Maurizia Boscagli. Minneapolis: University of Minnesota Press, 1-36. (35 pages).
2. Fitzpatrick, Peter (2004) *The Immanence of Empire*. In: *Empire's New Clothes: Reading Hardt and Negri*. Eds. Paul A. Passavant and Jodi Dean. London: Routledge, 31-55. (24 pages).

Additional Readings:

Agamben, Giorgio (1998) *Potentiality and Law*. In: *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 39-48. (9 pages).

Derrida, Jacques (1986) *Declarations of Independence*. Trans. Thomas Keenan and Thomas Pepper. *New Political Science*, 15, 7-15. (8 pages).

Sieyès, Emmanuel Joseph (1963) *Chapters One and Two*. In: *What is the Third Estate?* Trans. M. Blondel. Ed. S.E. Finer. New York: Praeger, 49-66. (17 pages).

Wall, Illan (2012) *The Authority of Change: Sieyès and Kant*. In: *Human Rights and Constituent Power: Without Model or Warranty*. London: Routledge, 45-59. (14 pages).

Questions:

What is Negri's critique of Arendt?

What does Negri mean by "immanence"? What is its relationship to Spinoza?

What is constituent power? What relationship does it have to the foundations of modern legal theory?

What is the difference between Rousseau's concept of the "general will" and Negri's concept of "constituent power"?

What is Fitzpatrick's critique of Negri?

Key concepts:

*constituted vs. constituent power – anti-foundationalism – transcendence – immanence – Spinoza*

**SEMINAR NINE:**  
**WALTER BENJAMIN & THE PURSUIT OF PURE MEANS**  
(12 November)

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Assigned Readings:

1. Benjamin, Walter (1978) Critique of Violence. In: *Reflections: Essays, Aphorisms, Autobiographical Writings*. Trans. Edmund Jephcott. Ed. Peter Demetz. New York: Schocken Books, 276-300. (24 pages).
2. Hamacher, Werner (1994) Afformative, Strike: Benjamin's 'Critique of Violence'. In: *Walter Benjamin's Philosophy: Destruction and Experience*. Trans. Dana Hollander. Eds. Andrew Benjamin and Peter Osborne. London: Routledge, 110-138. (28 pages).

Additional Readings:

Agamben, Giorgio (1999) The Messiah and the Sovereign. In: *Potentialities: Collected Essays in Philosophy*. Trans. and Ed. Daniel Heller-Roazen. Stanford: Stanford University Press, 160-174. (14 pages).

Derrida, Jacques (1990) Force of Law: The 'Mystical Foundation of Authority'. Trans. M. Quaintance. *Cardozo Law Review*, 11(5-6), 919-1045. (126 pages).

Martel, James (2012) Walter Benjamin's Dissipated Eschatology. In: *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty*. London: Routledge, 47-66. (19 pages).

Whyte, Jessica (2009) 'I Would Prefer Not To': Giorgio Agamben, Bartleby and the Potentiality of the Law. *Law and Critique*, 20, 309-324. (15 pages).

Questions:

Benjamin critiques a persistent logic in this essay. What is that logic?

Benjamin describes two types of strikes. Which one does he uphold and why?

What does Benjamin say about police power in this piece?

Ultimately, what does Benjamin's piece say about law?

Key concepts:

*pure means – messianism – divine violence vs. mythic violence - sovereignty*

\*\*Writing Tip #4: Signposting\*\*



**SEMINAR TEN:  
JEAN-LUC NANCY & THE INOPERATIVE COMMUNITY**  
(19 November)

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Assigned Reading:

1. Nancy, Jean-Luc (1991) The Inoperative Community. In: *The Inoperative Community*. Trans. Simona Sawhney. Ed. Peter Connor. Minneapolis: University of Minnesota Press, 1-42. (41 pages).

Additional Readings:

Alfred, Taiaiake (2002) Sovereignty. In: *A Companion to American Indian History*. Eds. Philip J. Deloria and Neal Salisbury. Oxford: Blackwell, 460-474. (14 pages).

Fynsk, Christopher (1991) Foreword: Experiences of Finitude. In: *The Inoperative Community*. Ed. Peter Connor. Minneapolis: University of Minnesota Press, vii-xxxv. (27 pages).

Norris, Andrew (2000) Jean-Luc Nancy and the Myth of the Common. *Constellations*, 7(2), 272-295. (23 pages).

Ramose, Mogobe (1999) Law Through *ubuntu*. In: *African Philosophy Through Ubuntu*. Harare: Mond Books, 102-127. (25 pages).

Smith, Andrea (2010) Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism. *GLQ: A Journal of Lesbian and Gay Studies*, 16(1-2), 41-68. (27 pages).

Questions:

What does 'the inoperative community' mean?

What does 'exposure' mean?

What does Nancy's theory of community say about the law?

How does Nancy's thinking resonate (or not) with the theories of Alfred (2002) and Smith (2010)?

Key Concepts:

*community – immanence – sovereignty – exposure – inoperativity – ontology – being-in-common*

**SEMINAR ELEVEN:  
PRESENTATIONS**  
(26 November)

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PRESENTATIONS IN CLASS

**\*\*No readings assigned. Therefore, no weekly writing assignment due\*\***

**SEMINAR TWELVE:  
MODERNITY, LEGALITY, THEORY**  
(3 December)

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FINAL ESSAY DUE IN CLASS

**\*\*No readings assigned. Therefore, no weekly writing assignment due\*\***

Questions:

What is modern legal theory?

Reflect on the piece of modern legal theory you brought to the first class. If you were asked to complete this assignment again, would you bring the same thing? Why or why not?

**\*\*FILM SCREENING AND DISCUSSION\*\***