

**Class Schedule**

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**COURSE:** LAWS 5000 G - Law and Social Transformation  
**TERM:** Fall 2010  
**CLASS:**     **DAY:** Monday  
                  **TIME:** 08:30 - 11:30  
                  **ROOM:** D492 LA (Loeb)  
**INSTRUCTOR:** Professor Peter Swan  
**CONTACT:**   **OFFICE:** D 489 Loeb  
                  **OFFICE HRS:** Monday 1:00 - 3:00 or by Appointment  
                  **TELEPHONE:** 520-2600, Ext. 8212  
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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html). If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 15, 2010 for Fall exams and March 12, 2011 for Winter exams. 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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This course explores the relationship between law and contemporary social and political theory. The central focus of the course will be on theoretical perspectives that attempt to clarify the potential of law and legal thought for realizing or inhibiting social change. It will approach this broad issue by considering the implications of a selected range of theories. Through an examination of modern and contemporary theories from social theorists such as Emile Durkheim, Max Weber, Jürgen Habermas and Michel Foucault and from contemporary feminist theory we will examine issues such as the effects of purposive or material law on the ideal of the rule of law, the limits of law as a mode of regulation, the relationship between the ideal of universalism embodied in modern legal principles and institutions and the 'fact' of social pluralism. From the social theory of Pierre Bourdieu, we will examine the significance of theory as a method in legal and cultural studies. We also will examine contemporary theoretical analyses of legal responses to issues such as the phenomenon of globalization, law as a form of cultural production and the role of legal norms in exceptional circumstances such as the contemporary "War on Terror".

**EVALUATION:**

<b>Course participation (weekly participation plus presentation[s]):</b>	<b>25%</b>
<b>Research outline and annotated bibliography</b> ( 5 or 6 pages due November 1, 2010)	<b>25%</b>
<b>Course paper:</b> due Monday, Dec. 6, 2010	<b>50%</b>

**COURSE PAPER**

The paper for this course is expected to draw on the theoretical perspectives or issues on which we focus in this course or from the critiques of these theories or issues. Your paper could be conceived around an in-depth consideration of the implications of one or more theorist's work for understanding 'law and social transformation' or show how one or more theories illustrate a particular problem or issue that concerns you. You also could apply some of these theoretical perspectives/ methodologies to an critical examination of the potential and limits of law and legal thought for understanding and promoting social change.

The paper should be about 20 pages long ( between 18- 25 pages)

**GENERAL PARTICIPATION**

The evaluation for participation will depend on both regular attendance and consistent involvement in seminar discussions in ways that indicate a familiarity and engagement with the required readings. Critical presentations and evaluations on the readings will take place in groups of 3 to 4 students. Groups may have 2 or more presentations during the term.

**GUIDELINES FOR SEMINAR PRESENTATIONS**

1. Do not simply summarize the required readings! Instead, you should provide a critical reflection on what you have read. Critical reflection does not necessarily mean criticizing the ideas of an author. However your critical evaluation should isolate key themes and ideas in each reading to show both what the author is attempting to show and how they construct their arguments in order to accomplish what they set out to do. You should identify key assumptions by the author and consider the broader implications of the questions and arguments raised in each reading. If you agree or disagree with an author by an author you should explain your position to other members of the class.
2. You should organize your presentation in such a way as to **stimulate discussion** about issues that you think are particularly important. Ideally you should identify a limited number of issues at the beginning of your seminar and proceed to explain why they are important. Although it is not required, either a typed outline presented to all members of the class at the beginning or an overhead presentation may help to focus discussion. You should have questions that provoke other members of the class to respond.
3. Feel free to incorporate material from other readings that you have done in this course and even material from other courses that illustrate your perspective.

## CLASS SCHEDULE

**1. Introductory Meeting: September 13****2. I. Law and Social Transformation: Thinking Theoretically September 20**

This session will explore some of the themes that are significant in the course. The readings and discussions will focus on potential roles that legal thought and institutions may play in promoting or inhibiting social change. We also will look at elements of the relationship between law and social science and social theory and at a number of the most significant issues that are emerging in legal and social theory at the end of this century.

- a) Roger Cotterrell, "Law in Social Theory and Social Theory in the Study of Law" in *The Blackwell Companion to Law and Society* (2004) pp. 15 - 29.
- b) Hunt, Alan "Law as a Constitutive Mode of Regulation" in *Explorations in Law and Society: Toward a Constitutive Theory of Law* Routledge: New York, 1993, pp.301-33

Why treat law as a form of regulation?

**II. LAW AND MODERNITY**

This section of the course will explore the different ways in which law has been presented by some of the key social thinkers of the 20<sup>th</sup>-century. We will begin by examining the role of law in the works of Emile Durkheim and Max Weber. In the latter's work we will examine how the "generality" that characterizes the ideal of the rule of law may be undermined by forms of law that are designed to achieve certain substantive purposes of the state in improving the welfare of its citizens or in promoting social values such as equality. We will also analyze the potential effects of these developments on individual autonomy and on democracy. In addition, we will examine some of the work of Michel Foucault that suggests that the law no longer plays such an important role in the regulation of the behaviour of individuals and suggests alternative modes by which citizens are able to be 'governed'.

**3. Emile Durkheim September 27**

- a) Durkheim, Emile "Types of Law in Relation to Types of Social Solidarity" from *The Division of Labour in Society* [1893] Free Press of Glencoe: New York, 1964, pp.68-112.

Why does Durkheim focus attention on the types of law? What is social solidarity?

- b) Durkheim, Emile "Two Laws of Penal Evolution" [1900] (intro. T. Anthony Jones and Andrew Scull) 2 *Economy and Society* 285-308 (1973)

What primary concepts does Durkheim seek to link? How does this approach differ from that in *The Division of Labour*?

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**4. Max Weber: Formal and Substantive Rationality** **October 4**a) Law in Relation to Economic Activity

Max Weber, *Economy and Society*, Gunther Roth & Claus Wittich eds., (University of California Press, 1978) 311-325

b) Transition to Modern Law

Max Weber, *Economy and Society* 809-815, 852-855

What does Weber understand by 'rational'? Distinguish between 'formal', 'substantive', 'rational' and 'irrational'.

Gary Boucock, "The 'Specific and Peculiar Rationalism' of Modern Authority: The Problematic Relation between Modern Freedom and Domination" in G. Boucock, *In the Grip of Freedom: Law and Modernity in Max Weber* (University of Toronto press, 2000)

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**5. Juridification and Law and Democracy: Jürgen Habermas** **October 18**a) Jürgen Habermas, *The Theory of Communicative Action* Vol. 2 pp. 357-373.

How are 'medium' and 'institution' distinguished? How are they related to 'life-world' and 'system'?

b) Habermas, Jürgen "Paradigms of Law" 17 Cardozo Law Rev. 771-84 (1996)

What is 'materialized law'? How does Habermas hope to rectify its defects?

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**6. Power and Law: Michel Foucault** **October 25**a) Foucault, Michel "The Means of Correct Training" in *Discipline and Punish: The Birth of the Prison* Pantheon: New York, 1977, pp.170-84

What is the relationship between discipline and law?

b) Michel Foucault, "Two Lectures" in Michel Foucault *Power/Knowledge*. pp. 77-108. Read Lecture Two, **only**.

What is power? Why does Foucault want to avoid sovereignty?

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**7. Governmentality and Law** **November 1**a) Michel Foucault, "Governmentality"[1978] in Graham Burchell, Colin Gordon and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality* Harvester-Wheatsheaf: Hemel Hempstead, 1991, pp.87-104.

What is 'governmentality'? Is law a form of governmentality?

b) Rose, Nikolas and Mariana Valverde "Governed By Law?" 7:4 *Social and Legal Studies* 569-79 (1998).

In what sense is law hybrid? How is law related to medical, psychiatric and other forms of knowledge?

**8. Weber & Foucault on Contemporary Governance and Pierre Bourdieu: Law and Symbolic Power** **November 8**

- a) Colin Gordon, "The Soul of the Citizen", in Max Weber", *Rationality and Modernity*, eds. Sam Whimster and Scott Lash, London, 1987, pp. 293-316.
- b) Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 *The Hasting Law Review* pp. 805-853. Also available online at [cablemodem.fibertel.com.ar/seminario/bourdieu.pdf](http://cablemodem.fibertel.com.ar/seminario/bourdieu.pdf)

**Question:** To what extent is Weber's concept of power similar to that of Bourdieu?

**9. Feminist Theory in Relation to Law and Social Transformation** **November 15**

- a) Joanne Conaghan -- "Reassessing the Feminist Theoretical Project in Law" (2000) 27 *Journal of Law and Society* 351-385 To be accessed electronically at <http://catalogue.library.carleton.ca/search/?tjournal+of+law+and+society/tjournal+of+law+and+society/1,1,1,B/1856~b1281875&FF=tjournal+of+law+and+society&1,1,,1,0/indexsort=-/startreferer//search/tjournal+of+law+and+society/tjournal+of+law+and+society/1,1,1,B/frameset&FF=tjournal+of+law+and+society&1,1,/endreferer/>
- b) Therese Murphy, 'Feminism Here and Feminism There: Law, Theory and Choice' in D Buss and A Manji (eds) *International Law: Modern Feminist Approaches* (Oxford: Hart 2005).

**III. Emerging Issues in the Theory of Law, Culture and Global Politics**

In this section of the course we will examine how both "social facts" such as globalization and global justice and emerging theoretical perspectives force us to address the limits and potential of law and legal thought. We will examine how Cultural Studies evaluates law as one cultural practice in relation to other cultural practices. We will also explore a contemporary theoretical attempt to examine the limits of law in a "state of exception" in which law participates in its own suspension in times of crises.

**10. Law and Cultural Studies** **November 22**

- a) "Law as Culture" by Naomi Mezey in *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism* edited by Austin Sarat and Jonathan Simon 2003, Durham and London: Duke UP, pp. 37-XX.
- b) "The Cultural Lives of Law" by Austin Sarat & Thomas R. Kearns, eds. (1998) in *Law in the Domains of Culture*, University of Michigan Press. , pp. 1-20.

**11. The Rule of Law and its Discontents** **November 29**

- a) William E. Scheuerman, "Economic Globalization and the Rule of Law", (1999) 6 *Constellations* 3.
- b) Giorgio Agamben, "The State of Exception as Paradigm of Government" in G. Agamben, *The State of Exception*, pp. 1-32, University of Chicago Press, 2005
- c) **Supplementary Reading:** Franz Neumann, "The Change in the Function of Law in Modern Society" in *The Democratic and Authoritarian State* (1957)

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**12. Law and the State of Exception****December 6**

- a) John Ferejohn and Pasquale Pasquino, "The Law of the Exception: a Typology of Emergency Powers" (2004) 2 *International Journal of Constitutional Law* pp. 210-239  
Available at  
<http://catalogue.library.carleton.ca/search/tinternational+Journal+of+constitutional+law/tinternational+journal+of+constitutional+law/1%2C1%2C1%2CB/l856&FF=tinternational+journal+of+constitutional+law&1%2C0%2C%2C1%2C0>
- b) Kim Lane Scheppelle, "North American Emergencies: The Use of Emergency Powers in Canada and the United States" (2006) 4 *International Journal of Constitutional Law* pp. 213-243  
Available at  
<http://catalogue.library.carleton.ca/search/tinternational+Journal+of+constitutional+law/tinternational+journal+of+constitutional+law/1%2C1%2C1%2CB/l856&FF=tinternational+journal+of+constitutional+law&1%2C0%2C%2C1%2C0>