

Carleton University

Department of Law and Legal Studies

Course Outline

COURSE: Identities and Legalities (LAWS 5903Y)**TERM:** Winter 2017**PREREQUISITES:** None**DAY:** Monday**TIME:** 8:30am**ROOM:** TBD**INSTRUCTOR:** Sebastien Malette, Ph.D.**Contact:****Office:** D591 Loeb**Office Hrs.:** Fridays, 10:00 a.m. to 12:30, or by appointment**Telephone:** 520-2600 ext. 3681 during office hours only**Email:** sebastien.malette@carleton.ca

Academic Accommodations:

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://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://carleton.ca/equity/>

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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made.

Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

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

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes 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. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures.

Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

1. COURSE OBJECTIVES AND CONTENT

This seminar will seek to problematize Law in relation to the question of Identity. It will explore various processes by which Law and Identities connect via different power dynamics (strategies and tactics), intertwined with the construction of social/cultural norms, forms of agency, and what French thinker Michel Foucault calls "regimes of truth." Among the questions this seminar will ask: how identities are affirmed, created, resisted or being coopted within a legal context, which, in Canada, is significantly informed by colonial, antagonistic, liberal and democratic rationalities of government?

As its starting point, this seminar will discuss the concept of aboriginality in relation to Canadian Law. This seminar will also include other areas of research. Students will be asked to critically engage with a diverse range of material problematizing Law and Identity, in order to identified contested terrains and unsettling issues on this subject matter. Students will thus be given the opportunity to engage with different subject

matters on the issue of law and Identity. These subject matters include sexual orientation, gender, ethnicities, feminism, children rights and animal rights (or other non-anthropocentric legal explorations). Key notions we will explore throughout this research journey include culture, autonomy, violence, responsibility, theories of justice, critique and domination. The objective of the course is to build deeper understanding of problematic aspects involved in Identity politics at the intersections of legal rationalities, technologies of power, court cases and what can be described as (neo)liberal forms of governmentality.

Creativity, theoretical sophistication and critical thinking will be encouraged in this course. In creating our research community, each student will be responsible for a portion of this course. Each student will offer a presentation (60 minutes), underlining what concepts or issues they wish to introduce and discuss further. Peers will be asked to prepare and discuss a short comment about the designated readings as part of their weekly preparation and assignment. A long paper will complete the assignment requirements (15 pages), which will be reflective of the criticisms and comments offered in class on the chosen subject matter (or key notions identified).

2. CLASS FORMAT

The classes will consist of lectures, with opportunity for questions and discussion. Students will be expected to attend classes regularly, to answer questions, and to discuss the issues. Students must read the materials assigned, before the relevant class. Weekly meetings will progress as such: the first half hour will consist of a short framing lecture by Prof. Malette in which the material will be contextualized and key issues problematized. This will be followed by one/two presentations of 60 minutes each by student presenters assigned to the topic. The second part of the class will consist of discussions of the reading material (30 to 60 minutes). Commentaries written by students will then be briefly presented and discussed. Students who are not presenting will be expected to participate in class discussions.

Important: If students wish to suggest an alternative reading for their seminar, they must offer their reading suggestion at least 7 days before the class when material is discussed, with full references, scanned copy or PDF file sent by email to Prof. Malette. The material suggested should be a chapter from an academic book or an academic article (between 15 to 30 pages max). Each class will have minimally 3 assigned readings; one by Prof Malette, and a maximum of 2 suggested by the students presenting (pending approval of Prof. Malette). Please expect between 60 to 90 pages of reading weekly.

3. THEMES (to be supplemented by students)

Please refer to CuLearn to access readings.

Jan 9: No readings.

Introduction. Outline. Methods. Negotiations.

Jan 16: Sovereignty, Power, Autonomy (Open to student [1=OP])

de Ville, J. (2011). Rethinking power and law: Foucault's society must be defended. *International Journal for the Semiotics of Law - Revue Internationale De Sémiotique Juridique*, 24(2), 211-226

McLoughlin, D. (2009). Crisis, modernity, authority: Carl schmitt on order and the state. *Australian Feminist Law Journal*, the, 31(1), 135-152.

Burchell, G. (1996) "Liberal Government and Techniques of the Self." In Barry, B., Osborne, T., Rose, N. (eds.) *Foucault and Political Reason. Liberalism, Neo-Liberalism and Rationalities of Government*. Chicago: The University of Chicago Press. 19-37.

Ingram, A. (1994) Constructing a Theory of Rights: Building in Conversational Constraints. In Ingram, A. *A Political Theory of Rights*. Oxford: Oxford University Press.

Jan: 23: Governmentality, Colonialism, Law (open to student [2=OP])

Pels, P. (1997) The Anthropology of Colonialism: Culture, History, and the Emergence of Western Governmentality. In *Annual Review of Anthropology*, 26. 163-183.

Iverson, D. (2002) "Disagreement and public reason." In *Postcolonial liberalism*. Cambridge: Cambridge University Press. 73-94.

Asch, M. (2002) "From Terra Nullius to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution." 17 *Can. J. L. & Soc* 23.

Jan 30: Identity, Indigeneity, Mobility (3=OP)

Forte, C. M. (2013) "'Who Is an Indian?' The Cultural Politics of a Bad Question" In *Who is an Indian? Race, Place and the Politics of Indigeneity in the America*. Toronto: U of T Press. 3-51.

Borrows, J. (2016) "Physical Philosophy: Mobility and Indigenous Freedom." In *Freedom and Indigenous Constitutionalism*. Toronto: U of T Press. 19-48.

Foxcurran, R., Bouchard, Malette, S. (2016) "The Politics of Becoming." In Foxcurran, R., Bouchard, Malette, S. *Songs Upon the River. The Curried History of French-Speaking Canadiens and Métis from the Great lakes and Mississippi across the Pacific*. Montreal: Baraka Book. 355-385.

Feb 6: Law, Feminism, Regulation (4=OP)

Lawrence, B. (2003) Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview. *Hypatia* 18(2), 3-31.

Buckley, L. (2015) Relational Theory and Choice Rhetoric in the Supreme Court of Canada. *Canadian Journal of Family Law*, 29(2). 251-308.

Lépinard, E. (2010) In the name of equality? The missing intersection in Canadian feminists' legal mobilization against multiculturalism. *American Behavioral Scientist*, 53(12), 1763-1787.

Feb 13: Children, Authority, Subordination (5=OP)

McGillivray, Anne. (2011) Children's Rights, Paternal Power and Fiduciary Duty: From Roman law to the Supreme Court of Canada. *The International journal of children's rights*. (19) 1. 21 - 54.

Douglas, H., & Walsh, T. (2013) Continuing the stolen generations: Child protection interventions and indigenous people. *The International Journal of Children's Rights*, 21(1). 59-87.

Rajabi-Ardeshiri, M. (2011) Children and Conflict: Exploring Children's Agency at UK Mosque Schools. *International Journal of Children's Rights* 19(4). 691-704.

Feb 20: No class

Feb 27: Race, Sex, Equality (6=OP)

Stoler, A.L. (1995) "Toward a Genealogy of Racisms: the 1976 Lectures at the College de France." In Stoler, A. L. *Race and education of desire*. Durham: Duke University Press. 55-94.

Karst, K. L. "Myths of identity: individual and group portraits of race and sexual orientation." *UCLA Law Review*, 12/1995, Volume 43, Issue 2. 267-353.

Wintemute, R. (2004) Sexual orientation and the Charter: The achievement of formal legal equality and its limits. *McGill Law Journal*, 49(4). 11-43.

Mar 6: Multiculturalism, Recognition, Emancipation (7=OP)

Phillips, A. (2009) "What's Wrong with Cultural Defence?" In *Multiculturalism without Culture*. Princeton University Press. 73-100.

Levy, J. T. "Incorporating Indigenous Law." In Levy, J. *The Multiculturalism of Fear*. Oxford: Oxford University Press, 2000.

Eisenberg, A. (2014) "Self-determination versus Recognition." In Coulthard, G., Webber, J.H.A., Eisenberg, A., Boisselle, A., *Recognition versus self-determination: dilemmas of emancipatory politics*, Vancouver: UBC Press. 293

Mar 13: Law, Personhood and Antropocentrism (8=OP)

Steiner, G. "Rethinking the moral status of animals." In Steiner, G. (2005) *Anthropocentrism and its discontents: The moral status of animals in the history of western philosophy*. Pittsburgh, PA: University of Pittsburgh Press. 223-253.

Jewkes, M. and Grégoire, J.F. (2016) Models of Citizenship, Inclusion and Empowerment National Minorities, Immigrants and Animals? An Interview with Will Kymlicka. *Political Theory*. Vol 44, Issue 3. 394 – 409.

Deckha, M. (2013) Initiating a non-anthropocentric jurisprudence: the rule of law and animal vulnerability under a property paradigm, *Alberta Law Review*, vol. 50, no. 4. 783-814.

Mar 20: Law and Spatial Identities (9=OP)

Economides, Kim. (2012) Centre-periphery tensions in legal theory and practice: can law and lawyers resist urban imperialism? *International journal of rural law and policy*. 1-8.

Magnusson, W. (2015) "Local Self-Government and the Right to the City" In *Local Self-Government and the Right to the City*, Montreal: McGill-Queen's University Press. 251-272.

McCrossan, M., & Ladner, K. L. (2016). Eliminating indigenous jurisdictions: Federalism, the supreme court of Canada, and territorial rationalities of power. *Canadian Journal of Political Science*, 49(3). 411-431.

Mar 27: Negotiating Ontologies, Making Wolds? (10=OP)

Hsiao, E. (2012) New Zealand: Whanganui River Agreement - Indigenous Rights and Rights of Nature. *Environmental policy and law*. (42)6. 371-375.

Melkevik, B. (2004) "The Customary Law of Indigenous Peoples and Modern Law: Rivalry or Reconciliation?" In Clammer J., Poirier S., Schwimmer (eds.), *Figured Wolds. Ontological Obstacles in Intercultural Relations*. Toronto: U of T Press. 225-243.

Ross, L. R. "How First Nations Sacred Sites Have Fared in Canada's Courts." In Ross, M. L. (2005) *First nations sacred sites in Canada's courts*. Vancouver: UBC Press. 153-170.

April 3: Conclusion on Identities and Law**4. READING COMMENTARIES (20%) and PARTICIPATION (10%).**

Students will prepare ten brief reading commentaries to structure their engagement in class (between Jan 16 to March 27). Reading commentaries will focus on one of the readings assigned every week—starting on the second week (Jan 16, 2017).

Commentaries should be uploaded on CuLearn, using the link attached to each class,

before the day the material is presented and discussed in class, by 5pm.

Commentaries should be one page (12, double-spaced), with student names and identification number. They should resume briefly the reading material and offer a critical engagement on key notions, problematic aspects, etc. Commentaries will be presented and discussed in class by their authors in order to fuel our conversations on the reading materials and topics.

Be prepared to answer questions from your commentaries. Full participation in class will be evaluated (10%).

Late commentaries will not be accepted, except for medical and other justified reasons.

5. ORAL PRESENTATION (30%)

Oral presentation will be 60 minutes long. They will discuss the material assigned to students from a critical perspective, highlighting the issues and concepts in a clear and concise fashion. The issue of Identity and Law should be central to the contribution. Presentation should aim for originality, clarity and theoretical sophistication. The usage of power point is encouraged. No media or film over 15 minutes is allowed.

6. COURSE PAPER (40%)

(a) General Requirements

The course paper is central to LAWS 5903, and research and communication skills are at least as important as substantive knowledge. Familiarize yourself with these instructions, heed suggestions made in class, and use the research and writing guides listed below. Look at the paper and electronic resources at MacOdrum Library, the reference works in the Department of Law's Law Resource Centre at D494 Loeb, Quicklaw, WestlaweCarswell, and other electronic data bases, and internet search engines and other research tools. Make use of the Writing Tutorial Service at 520-2600, extn. 6632, if needed.

(i) topics

All students must write a course paper focusing on one of the subjects discussed in this course. Papers on other topics will not receive marks. Please consult Prof. Malette to have your topic accepted.

(ii) format

The paper must be a maximum of 15 pages (about 12 typed or word-processed pages, excluding footnotes, etc.). It must be well-prepared, with proper citation, footnotes or endnotes, and a reference section. In all matters

of legal citation and form, papers must comply with the McGill *Guide* referred to below.

(iii) content

Important qualities are: good organization and use of sources, comprehensive, up-to-date treatment of the subject matter, originality (i.e., no quoting or paraphrasing of secondary sources without explicit acknowledgment), accuracy (in grammar, spelling, and law), conciseness, reasoned analysis (discussion of pros and cons, comparisons, assessments, concrete examples, logical arguments, etc., rather than pure description or pure subjective opinion), and clarity, gender-appropriate language (e.g., avoiding use of male gender where both genders are relevant). See also the research, writing, and citation guides listed below.

(iv) originality

The paper must be researched and written entirely and exclusively by the student who submits it. All use of other peoples' words or ideas must be fully and clearly acknowledged. Work (a) that contains plagiarism - from the web or elsewhere, or (b) that was previously or is concurrently submitted for credit in this course, or (c) that was or is submitted for credit in any other course, will be given no credit. It is a very serious academic offence, subject to the penalties in the Department of Law's *Policy and Procedure Statement* below. Keep quotations and paraphrasing to a minimum. Where you use words or thoughts of others, give full credit. If you must paraphrase, use your own words and fully acknowledge all the original sources. All theories, views, and opinions of others must be fully acknowledged.

(v) presentation

The paper must be a computer-printable document on standard-sized paper using WORD or PDF Outlet, with title page but no cover. Pages must be numbered. Papers are due on April, 3 2017, 5pm, and must be uploaded via CuLearn. An assignment slot in the corridor outside the Departmental Office, Room C473, Loeb Building is available for emergency only (notify me by email for any emergency). Students must keep an extra copy of the completed paper. Marks will be deducted for failure to type or print the paper, or to submit it on time - at the rate of 7% per day late, including weekends.

Extensions will not be granted, except for (i) disabling illness, verified by a medical certificate indicating precise period of disablement or (ii) death in immediate family, verified by certificate of date of death. The instructor must be notified of the illness or death before the paper deadline. No credit is given for papers submitted after the University's final submission deadline.

(b) Research, writing, and citation guides

The paper must follow the legal citation requirements in the McGill *Guide* (McGill Law Journal, Canadian Guide to Uniform Legal Citation, 6th ed. (Scarborough, Ont.: Carswell, 2006).