

Course Outline

COURSE: LAWS 5000 F - Law and Social Transformation
TERM: Fall 2008-09
CLASS: **Day & Time:** Wednesday - 8:35-11:25 am
Room: B454 LA (Loeb)
INSTRUCTOR: Professor Peter Swan
CONTACT: **Office:** D489 LA (Loeb)
Office Hrs: Wednesday - 2:30-4:30 pm
Telephone: 613-520-2600 x. 8212
Email: pswan@ccs.carleton.ca

"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 November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/pmc/students/accom_policy.html

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

Course participation (weekly participation plus presentation[s]) 20%
Research outline and annotated bibliography 30%
(5 or 6 pages due October 29, 2008)
Course paper: due Monday, December 3, 2008 50%

COURSE PAPER

The paper for this course is expected to be 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 (no longer than 25 pages). It is due the last day of Fall Term classes on December 4.

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.

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 evaluation means taking a position and explaining your agreement or disagreement with the authors to other members of the class. Your critical evaluation should isolate key themes and ideas; identify key assumptions; and consider the broader implications of the questions and arguments raised by an author.
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.
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 10

2. I. Law and Social Transformation: Theory and Practice

September 17

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 20th-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 24**

- 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*?

4. Max Weber: Formal and Substantive Rationality**October 1**

- 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'.

5. Juridification and Law and Democracy: Jürgen Habermas**October 8**

- 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?

6. Power and Law: Michel Foucault**October 15**

- 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

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

7. Governmentality and Law**October 22**

- 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. Pierre Bourdieu: Theory as Method in Legal Studies**October 29**

- a) Loï J. D. Wacquant,, Toward a Social Praxeology: the Structure and Logic of Bourdieu's Sociology" in P. Bourdieu and L. Wacquant, *Pierre Bourdieu An Invitation to Reflexive Sociology*, (1992, University of Chicago Press)
- 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 www.cablemodem.fibertel.com.ar/seminario/bourdieu.pdf

9. Feminist Theory in Relation to Law and Social Transformation**November 5**

- 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/856~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 12**

- 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 and Thomas R. Kearns (1998) in *Law in the Domains of Culture*, University of Michigan Press, edited by them, pp. 1-20.

11. The Rule of Law and its Discontents**November 19**

- a) Franz Neumann, "The Change in the Function of Law in Modern Society" in *The Democratic and Authoritarian State* (1957)
- b) William E. Scheuerman, "Economic Globalization and the Rule of Law", (1999) 6 *Constellations* 3.

12. Law and the State of Exception**November 26**

- a) 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
- 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/I856&FF=tinternational+journal+of+constitutional+law&1%2C0%2C%2C1%2C0>