

Course Outline

COURSE:	LAWS 4100A – Modern Legal Theory
TERM:	FALL 2018
PREREQUISITES:	LAWS 2908 and Fourth-Year Honours standing
CLASS:	Day & Time: Tuesday 2:35pm – 5:25pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Zoran Oklopcic
CONTACT:	Office: D587 Loeb Building Office Hrs: By appointment only Email: zoran.oklopcic@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: Please contact 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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

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 Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source.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/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

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/>

CALENDAR COURSE DESCRIPTION

Realist and post-realist legal scholarship; emphasis on Canadian, American and British approaches. Topics include the Canadian treatise tradition, American legal realism, empirical approaches to legal problems, the sociological movement in law, critical and Canadian feminist legal scholarship, Marxian theories of law, normative economic theory.

COURSE DESCRIPTION

What do liberalism, capitalism, socialism, nationalism, and many other '-isms' have in common? What unites aristocracy, democracy, and theocracy? What is the common denominator of monarchy, patriarchy, and oligarchy? What single organizing principle can no liberal state, no communist party, no capitalist enterprise, no national-liberation movement, no cosmopolitan federation do without—not to mention hordes, schools, churches, armies, universities and criminal syndicates? The answer is **hierarchy**, the central theme of this advanced trans-disciplinary course in modern legal theory.

But what is hierarchy? The answer is seemingly simple and straightforward: ‘a system or organization in which people or groups are ranked one above the other according to status or authority’. On closer inspection, our understanding of hierarchy will depend not only on our scholarly or professional perspectives, but also on the ways in which we imagine the basic elements of our (social) world in general (its levels, nodes, interfaces, and modes of control) as well as the ways in which those components relate to other mental and social schemata that play a role in the shaping of our social imaginaries—from queues and networks, to cores, peripheries, systems and swarms. With this in mind, the aim of this course is to explore the boundaries of our hierarchy-dominated political thinking:

- with close attention to the visual representations that make the idea of hierarchy not only imaginable but also (seemingly) sensible (pyramids, trees, chinese boxes, sociograms, and other diagrams);
- across disciplinary divides (eg jurisprudence, anthropology, sociology, ecology, complexity theory);
- in relation to political facts (plurality, unity) ideals (democracy, autonomy), wrongs (patriarchy, inequality) and possible alternatives (anarchy, heterarchy, polyarchy)—all of which presuppose some idea of hierarchy (whether or not they actually embrace it).

REQUIRED TEXTS

(Please specify where these are available to purchase)

SUPPLEMENTARY TEXTS

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

GRADING SCHEME

20 % class participation.

This course is the exploration of less well illuminated corners of legal, social, and political thought. Its success depends on your ongoing interaction with the material, and among yourselves, as its active participants. For that reason, your **attendance is mandatory.** Though I am aware of the challenges you face in negotiating your professional, personal, social, and academic commitments, your absence from the class will not, as a matter of

principle, be accommodated—unless there is an overriding reason that justifies it, corroborated by the supporting evidence (e.g. a letter from your employer, a doctor's note etc). First three unapproved absences will carry the penalty of 5%, and the fourth will disqualify you from the course. Put differently: in order to successfully complete this course your class participation must be higher than 0%, which means that you only have the 'right' to two unapproved absence. To achieve 20% in this component, you ought to attend every class, read the material, and show consistent effort to engage in the discussion thoughtfully and critically.

40% 2 reflection pieces [500—700 words each]

- 20 % 1st reflection piece
- 20 % 2nd reflection piece

Due dates to be determined together during the first class

40 % Essay [2000-2500 words]

SCHEDULE

COURSE OUTLINE:

[Please note that the readings may slightly change]

1. Introduction

Please read only after having reflected on the visual material I've distributed:

Nicholas Verdier, 'A Short Historyx of Hierarchy' in Denise Pumain (ed.) *Hierarchy in Natural and Social Sciences* (Springer 2006) 13–39.

2. Hierarchy: from theology to social imaginary

Johann Taubes, 'Theology and Political Theory' (1955) *Social Research* 57-68.

Charles Taylor, *Modern Social Imaginaries* (2002) 14:1 *Public Culture* 91-124.

3. Hierarchy in society

Jim Sidenius and Felicia Prato, *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression* (Cambridge University Press 1999) 31-61 and 263-299.

Erik Olin Wright, 'Understanding Class. Towards an Integrated Analytical Approach' (2009) 60 *New Left Review* 101-116.

4. **Hierarchy and (everyday) normativity**

Mary Douglas, 'Being fair to hierarchists' (2002) 151 *U. Pa. L. Rev.* 1349-1370

Michael Reisman, 'Lining Up: The Microlegal System of Queues' (1985) 54 *U. Cin. L. Rev.* 417- 444.

5. **Legal hierarchy: justifications and functions**

Neil MacCormick, 'Norms, Institutions and Institutional Facts' (1998) 17[3] *Law and Philosophy* 301-345.

Scott J. Shapiro, *Legality* (Belknap Press 2011) 120-153.

6. **Hierarchy and (legal) sovereignty**

Hans Kelsen, *Introduction to the Problems of Legal Theory* (Clarendon 1992) 55-77.

Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab tr, first published 1922, University of Chicago Press 2006) [excerpts]

Carl Schmitt, *The Concept of the Political* (Georg Schwab tr, first published 1932, University of Chicago Press) [excerpts]

7. **Hierarchy, community and sovereign equality (internationally)**

Anthony D. Smith, *Cultural Foundations of Nations: Hierarchy, Covenant, Republic* (Blackwell 2008) 1-27.

Panu Minkkinen, 'The ethos of sovereignty: A critical appraisal' (2007) 8{2} *Human Rights Review* 33-51.

8. **Between hierarchy and anarchy (globally)**

David Lake, 'Hobbesian hierarchy: the political economy of political organization' (2009) *Annual Review of Political Science* 263-283.

Simon Springer, 'Human geography without hierarchy' (2014) 38[3] *Progress in Human Geography* 402-419.

David Kennedy, 'Law and the Political Economy of the World' (2013) 26{1} *Leiden*

Journal of International Law 7-48.

9. Hierarchy and (capitalist) economy

Karl Marx, *Economic and philosophic manuscripts of 1844* (Foreign languages publishing house 1959) 19-44.

Pierre Bourdieu, 'Forms of Capital' in J. Richardson (ed) *Handbook of Theory and Research for the Sociology of Education* (Greenwood) 241-258.

10. Hierarchy, heterarchy, complexity (more generally)

Hugh Baxter, 'Niklas Luhmann's Theory of Autopoietic Legal Systems' (2013) *Annu. Rev. Law Soc. Sci.* 167.

TFH Allen and Valerie Ahl, *Hierarchy Theory* (Columbia University Press 1996) [excerpts]

11. Hierarchy in the academy: the function of authority

Duncan Kennedy, 'Legal education and the reproduction of hierarchy' (1982) 32:4 *Journal of Legal Education* 591-615.

12. Wrap-up. General discussion