

Course Outline

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COURSE:	LAWS 4100 Modern Legal Theory: What is Liberal Democracy?
TERM:	Winter 2021
PREREQUISITES:	LAWS 2908 and fourth-year Honours standing.
CLASS:	Day & Time: Wednesday, 2:30 am-4:30 pm Room: Lectures in this course will be delivered in live sessions using Zoom.
INSTRUCTOR: (CONTRACT)	Zoran Oklopčić
CONTACT:	Office: LA D587 — not on campus this semester Office Hrs: Immediately after the classes, or upon appointment on Zoom or on skype. Telephone: Email: <a href="mailto:Zoran.oklopacic@carleton.ca">Zoran.oklopacic@carleton.ca</a>

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**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**

Victorious in the struggle against communism in the late 20th century, liberal democracies proved unprepared for the challenges of this one. Increasingly oppressive, institutionally dysfunctional and politically volatile, liberal democracy is in serious trouble. Approaching liberal democracy from a variety of theoretical and empirical perspectives, this course starts from an unnoticed irony: Though most people agree that liberal democracy is in crisis—nobody seems to know what liberal democracy is. 'The confusion of terms', claims one commentator, 'impairs liberals' understanding of their own principles and weakens their politics', which 'their opponents easily exploit the verbal ambiguities'—which why it's 'high time that we clarify what the term "liberal democracy" means and what it stands for'.

In confronting this question, we are inevitably confronted with the set of logically preceding ones: What makes democracy 'liberal'? What makes a liberal democracy a democracy? (3) What is liberal democracy as the form of government, and what are its distinctive features? How does such form of government manifest itself in reality? Will we recognize it—when we see it? And more fundamentally: Is liberal democracy still 'alive', to begin with? Some declared it dead almost two decades ago, while others have reached that conclusion already in 1979—arguing, in fact, that it would be 'be idle to try to fix precisely a date when liberal democracy ceased to be useful as a description of a form of government'.

Could it be that liberal democracy expired long time ago (as suggested by a number of Marxist state theorists)? Or it is simply getting increasingly difficult to keep up with its ever more complicated, refined, and qualified versions, whose distinctive characteristics keep 'morphing' and 'shape-shifting'? If so, which

models of liberal democracy still count as sufficiently 'liberal' and 'democratic' today? Who's to decide? Whose idea of liberty and democracy ought to prevail? In a world in which dysfunctional, militarized, and increasingly cynical 'democracies' casually harm their citizens under the pretext of high moral ideals we no longer have the luxury to ignore those questions, or pretend that they only matter 'theoretically'.

### **REQUIRED TEXTS**

Required texts will be available online.

### **EVALUATION**

**Class participation (20 %)** 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.

**Two reflection pieces (20 % each) + Final essay (40 %)** Your written work should reflect the readings and classroom discussions. The specifics of the format, word length and due dates will be determined together, during our first class.

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.

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS**

Unless there is an overriding concern which justifies an extension in individual cases (family emergency, illness, irreconcilable scheduling conflict at work) the failure to submit the written work (reflection pieces and final essay) the penalty for late submissions will consist in deducting 10 percentage points for each day after the agreed deadline (which will be discussed in the class).

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. [https://carleton.ca/registrar/wp-content/uploads/COVID-19\\_Self-declaration.pdf](https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf)

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

## **SCHEDULE**

1. **Emergency!** *Liberal democracy as an **opaque** form of government*

2. **History:** *Liberal democracy as a **Western** form of government*

- Zakaria, F. (1997), 'Illiberal Democracy.' *Foreign Affairs* 76(6): 22-43.

3. **Imaginary:** *Liberal democracy as an **invented** form of government*

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

4. **Mythology:** *liberal democracy as a **popular** form of government*

- Locke J, (1690), *Second Treatise of Government*, sections 212 — 227.  
<https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>
- The Declaration of Independence (1776)  
<https://www.archives.gov/founding-docs/declaration-transcript>

5. **Tyranny:** *Liberal democracy as a **representative** form of government*

- Madison, J, *Federalist No. 10* <https://guides.loc.gov/federalist-papers/text-1-10>
- Wu, T. (2019), 'The Oppression of the Supermajority', *New York Times* (5 March 2019)  
<https://www.nytimes.com/2019/03/05/opinion/oppression-majority.html>

6. **Authority:** *Liberal democracy as a **constrained** form of government*

- Scheppele, K. (2018), 'Autocratic Legalism.' *U. Chi. L. Rev.* 85: 545-583

7. **Diversity:** *Liberal democracy as **the only legitimate** form of government*

- Kornai, J. (2016), 'Vulnerable Democracies: An Interview with János Kornai' [available online].
- Krastev I. and Holmes S. (2018), 'Explaining Eastern Europe: Imitation and Its Discontents' *Journal of Democracy*. 29: 117-28.

8. **Flexibility:** *Liberal democracy as a **territorial** form of government*

- Supreme Court of Canada, *Reference re Secession of Quebec* [1998] 2 SCR 217.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

**9. Oligarchy: Liberal democracy as a *minority* form of government**

- Gilens. & Page (2014), 'Testing theories of American politics: Elites, interest groups, and average citizens', *Perspectives on politics* 12(3): 564-581.
- Skocpol T, and Hertel-Fernandez, A. (2016), 'The Koch network and republican party extremism.' *Perspectives on Politics* 14(3): 681, 699.

**10. Liberty: Liberal democracy as a *disciplinarian* form of government**

- Walzer, M. (2020), 'What It Means to Be Liberal' *Dissent* (Spring).  
<https://www.dissentmagazine.org/article/what-it-means-to-be-liberal>
- Vermeule, A. (2017), 'Liturgy of Liberalism'  
<https://www.firstthings.com/article/2017/01/liturgy-of-liberalism>

**11. Possibility: Liberal democracy as a *theoretical* form of government**

- Collier, David, and Steven Levitsky. (1997), "Democracy with adjectives: Conceptual innovation in comparative research." *World politics* 49.3 (1997): 430-451.
- Wood, E. M. (1978), 'CB Macpherson: Liberalism and the task of socialist political theory.' *Socialist Register* 15

**12. Antiquity: Liberal democracy as a *surpassed* form of government?**

- Rubin, E. L. (2001), 'Getting past democracy', *University of Pennsylvania Law Review*, 149: 711-792.

September 7, 2020	Statutory Holiday, University Closed
September 9, 2020	Fall Term Begins. Fall and Fall/Winter Classes Begin
October 12, 2020	Statutory Holiday, University Closed
October 26 – 30, 2020	Fall Break, No Classes
December 11, 2020	Fall Term Ends
	Last Day of Fall Term Classes
	Classes follow a Monday Schedule
December 12 – 23, 2020	Formally Scheduled Final Exams May Be Held
December 25 – 31, 2020	University Closed
January 1, 2021	University Closed

## **ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

### **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 Department of Equity and Inclusive Communities (EIC): <https://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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **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](mailto: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) <https://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: <https://carleton.ca/registrar/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:

<https://carleton.ca/studentsupport/svpolicy/>

### **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:

<https://students.carleton.ca/services/accommodation/>

### **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.

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