

Course Outline

COURSE:	LAWS 4102A – Controversies in Rights Theory
TERM:	Winter 2021
PREREQUISITES:	Undergraduate level LAWS 2908 Minimum Grade of D- or Undergraduate level PAPM 3000 Minimum Grade of D-
CLASS:	Day & Time: Monday 11:35am-2:25pm Zoom: https://carleton-ca.zoom.us/j/98060297955
INSTRUCTOR:	Stacy Douglas
CONTACT:	Office: Not currently in use Office Hrs: Wednesdays and Fridays 2:30-4:00pm https://stacydouglas.youcanbook.me/ Telephone: Not currently in use Email: Stacy.Douglas@carleton.ca

CALENDAR COURSE DESCRIPTION

This course examines selected controversies in rights theories, practices, and/or historiography. Illustrative questions may include: Are rights universal or culturally relative? Can rights be justified after the demise of natural rights philosophy? Do rights undermine difference? Do communities benefit from a rights-based culture?

COURSE DESCRIPTION

This first part of this course looks at key pieces of what are commonly imagined to be the foundations of modern Western legal theory. The second part of the course focuses on theorists who take critical aim at this tradition. Some key themes we explore are: sovereignty and constitutionalism, as well as the distinctions between constituent and constituted power, immanence and transcendence, and 'politics' and 'the political'. We also reflect on the very category of 'legal theory' to consider what we think 'legal theory' is and where we think we find it. The course is intentionally designed around works written by largely white Western European male authors to be used as launching off points to both chart the imagined tradition (in all of its particularity), as well as to critique it. As such, we will explicitly be reflecting on questions that are central to feminist, anti-racist, anti-colonial, and queer critiques of law and legal thinking.

The class is based on weekly in-depth class discussions that require excellent preparedness. Students interested in pursuing close readings of primary texts and engaging with questions about law's place (or non-place) in the world will enjoy this course. Students unfamiliar with or nervous about approaching theory but who are eager to put in the required time and effort are encouraged to register.

REQUIRED TEXTS

Available via Ares (Online through the library)

SCHEDULE

Please note the following dates:

January 11	Winter term begins
February 15	Statutory holiday
February 15–19	Winter Break
April 2	Statutory holiday
April 14	Winter term ends

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 Equity Services website:

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

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.

Assignment	Weight	Due Date
Participation	10%	Weekly
First Essay	35%	Friday 12 February
Presentations	10% (2 at 5% each)	Monday 8 Feb & 15 March
Final Paper	35%	Friday 19 March
Podcast	10%	Monday 29 March

I) Participation (10%)

You are expected to attend seminar every week and participate in engaged, informed, and thoughtful discussion with your colleagues.

II) First Essay (35%)

The Foundations of Modern Law?

Choose one of the 'foundational' thinkers of modern legal theory that we have looked at in Part I of the course. Write a 2000-word essay (including footnotes and bibliography) on how their work contributes (or

not) to the concept of sovereignty. In your essay you must also demonstrate a thorough understanding of existing critiques of this element of their work. As such, you must utilize 1-2 other scholars who also comment on your chosen thinker. Reflect on what questions these critiques raise about this thinker and their contribution to the so-called 'foundations' of modern law.

You may go 10% below or above the word count on your essay without penalty.

Due: Friday 12 February

III) Presentations (10% = 2 at 5% each)

This presentation will take place the week before your essays are due. You will give a three-minute presentation on the author and topic you have chosen to write your paper on. Essential parts of your presentation will include telling your audience:

- which thinker and topic you have chosen;
- the thesis of your paper;
- how you support your argument, including an outline of the sources you use;
- one potential criticism of your argument and how you will refute it.

You will be evaluated on your ability to i) adequately attend to the elements set out above, ii) present your thoughts coherently to your colleagues, and iii) answer further questions asked of you. Please stick to time. Giving a well-timed, concise, and prepared presentation on your topic is part of the challenge. Due to time constraints, I ask that you not use audio visual aids (i.e., power point) in your presentation.

Due: Monday 8 February and 15 March

IV) Final Paper (35%)

Critiques of Modern Legal Theory

Choose one of the 'critical' legal theorists we have looked at in Part II of the course. Write a 2000-word essay (including footnotes and bibliography) on how their work contributes to a critical reflection on the concept of sovereignty. In your essay you must also demonstrate an understanding of existing critiques of their work. As such, you must utilize 1-2 other scholars who also comment on your chosen thinker and their engagement with sovereignty.

You may go 10% below or above the word count on your essay without penalty.

Due: Friday 19 March

V) Podcast (10%)

Professor Douglas will assign you to a group. In these groups, you will be given approx. 3 hours of class time on 22 March to complete a podcast or short audio file on the concept of "sovereignty". These audio clips will be 3-5 minutes in length and will be comprised of insights gleaned from writing your first and second essays. They will be submitted to/played for Professor Douglas in class on 29 March along with a self-assessment (submitted by email) on your individual contribution to the creation process.

Due: Monday 29 March

GRADING

The following percentage equivalents apply to all final grades at Carleton:

A+	90-100	B+	77-79	C+	67-69	D+	57-59		
A	85-89	B	73-76	C	63-66	D	53-56	F	0-49
A-	80-84	B-	70-72	C-	60-62	D-	50-52		

When I grade your assignments, I mark with the following criteria in mind:

Style

Has the author taken care in their formatting, grammar, attention to word count, and appropriate referencing? Where appropriate, have they attempted to infuse their work with creative flourish?

Structure

Has the author laid out a clear and effective argument for their reader? In particular did the author begin with a clear introduction and overview of their supporting points, and use signposting throughout? Is it a convincing argument overall?

Content

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and other academic sources?

Research

Has the author demonstrated a thoughtful and meticulous approach to their research? Have they been intellectually honest about their sources by seeking out primary material and bolstering their interpretation with appropriate secondary sources?

Critical Analysis

Has the author been able to understand the material, communicate about it clearly, **and** use their critical reading and writing skills to analyze the material? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

REFERENCING

The Law Department recommends that you follow the Legal Style set out here:

http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide students and faculty assistance with the teaching and learning of academic writing. Please contact them in advance and make use of their services:

<http://www.carleton.ca/wts/>

Tips for avoiding plagiarism:

- Give yourself enough time to work on your assignment, so you are not tempted to copy text from other sources.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.

For more help see: <http://www.library.carleton.ca/help/citing-your-sources>

Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties on academic misconduct. Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

***ALL INSTANCES OF PLAGIARISM WILL BE REPORTED
DIRECTLY TO THE DEAN.***

LAWS 4102A Course Overview		
11 January	Seminar One	<i>Introduction to the course</i>
PART I: SOVEREIGNTY AND THE SOCIAL CONTRACT		
18 January	Seminar Two	<i>Thomas Hobbes & Monarchical Sovereignty</i>
25 January	Seminar Three	<i>John Locke & the Propertied Individual</i>
1 February	Seminar Four	<i>Jean-Jacques Rousseau & the General Will</i>
8 February	Seminar Five	<i>Presentations</i>
17 February	-----	Reading Week
PART II: CRITIQUES OF SOVEREIGNTY		
22 February	Seminar Six	<i>Carl Schmitt & Political Theology</i>
1 March	Seminar Seven	<i>Walter Benjamin & the Pursuit of Pure Means</i>
8 March	Seminar Eight	<i>Sovereignty and Decolonization</i>
15 March	Seminar Nine	<i>Presentations</i>
22 March	Seminar Ten	<i>Create podcasts</i>
29 March	Seminar Eleven	<i>Listen to podcasts & farewell!</i>

SEMINAR OUTLINE

**SEMINAR ONE:
WHAT IS 'LEGAL THEORY'?**
(11 January)

Introduction to the class!

PART I: SOVEREIGNTY AND THE SOCIAL CONTRACT

**SEMINAR TWO:
THOMAS HOBBS & MONARCHICAL SOVEREIGNTY**
(18 January)

Assigned Readings:

1. Hobbes, Thomas (2008) Part II: Of Commonwealth, Chapters Seventeen to Twenty-One. In: *Leviathan*. Ed. J.C.A. Gaskin. Oxford: Oxford University Press, 111-148. (37 pages).
2. Tuck, Richard (1994) Introduction. In: *Leviathan*. Ed. Richard Tuck. Cambridge University Press, ix-xxvi. (17 pages).

Additional Readings:

Flathman, Richard E. (2002) Of Making and Unmaking. In: *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*. Lanham: Rowman and Littlefield, 1-9. (9 pages).

Foucault, Michel (2003) 4 February 1976. In: *Society Must Be Defended, Lectures at the Collège de France, 1975-76*. Trans. David Macey. Eds. Mauro Bertani and Alessandro Fontana. New York: Picador, 87-114. (27 pages).

MacPherson, C.B. (1962) Human Nature and the State of Nature. In: *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 17-45. (28 pages).

Martel, James (2010) Politics Without Sovereignty. In: *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*. New York: Columbia University Press, 221-247. (26 pages).

Pavlich, George (2010) On the Subject of Sovereigns. In: *After Sovereignty: On the Question of Political Beginnings*. Eds. Charles Barbour and George Pavlich. London: Routledge, 22-36. (14 pages).

Skinner, Quentin (2007) Hobbes on Persons, Authors, and Representatives. In: *The Cambridge Companion to Hobbes's Leviathan*. Ed. Patricia Springborg. New York: Cambridge University Press, 157-180. (23 pages).

Wolin, Sheldon S. (1990) Hobbes and the Culture of Despotism. In: *Thomas Hobbes and Political Theory*. Ed. Mary G. Dietz. Lawrence, Kansas: University Press of Kansas, 9-36. (27 pages).

Questions:

What does Hobbes's thought contribute to the foundations of modern legal thinking?

Hobbes is often thought of as the preeminent thinker of modern sovereignty. Why?

What does Hobbes say about the place and role of the state?

What was the historical backdrop for Hobbes's writing? What role, if any, do you think this played in his thinking?

Key Concepts:

sovereignty – individualism – social contract – arbitrary power – liberalism

**SEMINAR THREE:
JOHN LOCKE & THE PROPRIETED INDIVIDUAL**
(25 January)

Assigned Readings:

1. Locke, John (1995) *Treatise of Civil Government*, Chapters One to Five. In: *Treatise of Government and a Letter Concerning Toleration*. Ed. Charles L. Sherman. New York: Irvington Press, 1-33. (33 pages).
2. Winnubst, Shannon (2006) Liberalism's Neutral Individual: Delimiting Racial and Sexual Difference. In: *Queering Freedom*. Indianapolis: Indiana University Press, 23-57. (34 pages).

Additional Readings:

Bhandar, Brenna (2012) Disassembling Legal Form: Ownership and the Racial Body. In: *New Critical Legal Thinking: Law and the Political*. Eds. Matthew Stone, Illan Wall, and Costas Douzinas. Abingdon: Birkbeck Law Press, 112-127. (15 pages).

Blomley, Nicholas (2003) Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid. *Annals of the Association of American Geographers*, 93(1), 121-141. (20 pages).

Marx, Karl (1887) Chapter 26: The Secret of Primitive Accumulation. In: *Capital: Volume 1*. Moscow: Progress Publishers. Available here: <https://www.marxists.org/archive/marx/works/1867-c1/ch26.htm>.

MacPherson, C.B. (1962) Locke: The Political Theory of Appropriation. In: *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 194-221. (27 pages).

Mills, Charles W. (1997) Overview. In: *The Racial Contract*. Ithaca: Cornell University Press, 9-40. (31 pages).

Tilley, Lisa, Ashok Kumar & Thomas Cowan (2017) "Introduction: Enclosures and Discontents", *City*, 21:3-4, 420-427.

Tully, James (1994) "Aboriginal Property and Western Theory: Recovering a Middle Ground". *Social Philosophy and Policy*, 11(2), 153-180. (27 pages).

Questions:

What are Locke's contributions to the foundations of modern legal theory? How do they differ from Hobbes's?

How does Lockean theory inform our contemporary legal practices and thinking?

What does Winnubst mean by 'liberalism's neutral individual'?

What does the work of Tully (1994) and Bhandar (2012) say about Locke and modern legal theory?

Key Concepts:

appropriation – colonialism – social contract – labour – sovereignty - liberalism

Writing Tip #1: The importance of an introduction

**SEMINAR FOUR:
JEAN-JACQUES ROUSSEAU & THE GENERAL WILL
(1 February)**

Assigned Readings:

1. Rousseau, Jean-Jacques (1988) Book One and Book Two. In: *The Social Contract and Discourses*. Trans. J.D.H. Cole. London: J.M. Dent and Sons, 181-228. (47 pages).
2. Mills, Charles W. (2000) "Race and the Social Contract Tradition". *Social Identities: Journal for the Study of Race, Nation and Culture*, 6:4, 441-462. (21 pages).

Additional Readings:

Esposito, Roberto (2010) Chapter Three: Law. In: *Communitas: The Origin and Destiny of Community*. Trans. Timothy C. Campbell. Stanford: Stanford University Press, 62-85. (23 pages).

James, C.L.R. (2009) Rousseau and the Idea of General Will. In: *You Don't Play with Revolution: The Montreal Lectures of C.L.R. James*. Ed. David Austin. Oakland: AK Press, 105-120. (15 pages).

Pateman, Carol (1988) *The Sexual Contract*. Stanford University Press.

Scott, David (2004) Future's Past. In: *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*. Durham: Duke University Press, 23-57. (34 pages).

Wittig, Monique (2002) On the Social Contract. In: *Feminist Interpretations of Jean-Jacques Rousseau*. Ed. Lydia Lange. College Station: Penn State University Press, 383-392. (9 pages).

Questions:

How does Rousseau's theory differ to that of Hobbes and Locke? How is it similar?

What is Rousseau's key contribution to the foundations of modern legal theory?

What is "popular sovereignty"?

What is Mills's critique of Rousseau?

Key Concepts:

general will – popular sovereignty – revolution – political community

****Writing Tip #2: Finding an Essay Structure****

**SEMINAR FIVE:
PRESENTATION #1
(8 February)**

See syllabus for instructions.

**READING WEEK
(15 February)**

NO SEMINAR

PART II: CRITIQUES OF SOVEREIGNTY

SEMINAR SIX: CARL SCHMITT & POLITICAL THEOLOGY (22 February)

Assigned Reading:

1. Schmitt, Carl (1985) *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans. George Schwab. Chicago: University of Chicago Press. (66 pages).

Additional Readings:

Mouffe, Chantal (1998) Schmitt and the Paradox of Liberal Democracy. In: *Law as Politics: Carl Schmitt's Critique of Liberalism*. Ed. David Dyzenhaus. Durham: Duke, 159-178. (19 pages).

Schwab, George (1996) Introduction. In: *The Concept of the Political*. Chicago: University of Chicago Press, 3-16. (13 pages).

Vatter, Miguel (2008) The Idea of Public Reason and the Reason of State: Schmitt and Rawls on the Political. *Political Theory*, 36(2), 239-271. (32 pages).

Questions:

What does Schmitt's say about sovereignty?

What is the relationship between liberalism and religion for Schmitt?

What is the significance of the "decision" for Schmitt?

Key concepts:

decisionism – parliamentary-democracy – sovereignty – liberalism – friend/enemy distinction – politics vs. the political

****Writing Tip #3: Sentence Structure****

**SEMINAR SEVEN:
WALTER BENJAMIN & THE PURSUIT OF PURE MEANS**
(1 March)

Assigned Readings:

1. Benjamin, Walter (1978) Critique of Violence. In: *Reflections: Essays, Aphorisms, Autobiographical Writings*. Trans. Edmund Jephcott. Ed. Peter Demetz. New York: Schocken Books, 276-300. (24 pages).

Additional Readings:

Agamben, Giorgio (1999) The Messiah and the Sovereign. In: *Potentialities: Collected Essays in Philosophy*. Trans. and Ed. Daniel Heller-Roazen. Stanford: Stanford University Press, 160-174. (14 pages).

Derrida, Jacques (1990) Force of Law: The 'Mystical Foundation of Authority'. Trans. M. Quaintance. *Cardozo Law Review*, 11(5-6), 919-1045. (126 pages).

Hamacher, Werner (1994) Afformative, Strike: Benjamin's 'Critique of Violence'. In: *Walter Benjamin's Philosophy: Destruction and Experience*. Trans. Dana Hollander. Eds. Andrew Benjamin and Peter Osborne. London: Routledge, 110-138. (28 pages).

Martel, James (2012) Walter Benjamin's Dissipated Eschatology. In: *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty*. London: Routledge, 47-66. (19 pages).

Whyte, Jessica (2009) 'I Would Prefer Not To': Giorgio Agamben, Bartleby and the Potentiality of the Law. *Law and Critique*, 20, 309-324. (15 pages).

Questions:

Benjamin critiques a persistent logic in this essay. What is that logic?

Benjamin describes two types of strikes. Which one does he uphold and why?

What does Benjamin say about police power in this piece?

Ultimately, what does Benjamin's piece say about law?

Key concepts:

pure means – messianism – divine violence vs. mythic violence - sovereignty

Writing Tip #4: Signposting
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**SEMINAR EIGHT:
SOVEREIGNTY & DECOLONIZATION**
(8 March)

Assigned Reading:

1. Alfred, Taiaiake (2002) Sovereignty. In: *A Companion to American Indian History*. Eds. Philip J. Deloria and Neal Salisbury. Oxford: Blackwell, 460-474. (14 pages).
2. Coulthard, Glen (2014) The Politics of Recognition in Colonial Contexts. In: *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press. 25-49. (24 pages).

Additional Readings:

Borrows, John (2002) With or Without You: First Nations Law in Canada. In: *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto, 3-28. (25 pages).

Rifkin, Mark (2012) Introduction. In: *The Erotics of Sovereignty: Queer Native Writing in the Era of Self-Determination*. Minneapolis: University of Minnesota Press. (328 pages).

Simpson, Audra (2014) Indigenous Interruptions: Mohawk Nationhood, Citizenship, and the State. *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press, 1-36 (35 pages).

Smith, Andrea (2010) Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism. *GLQ: A Journal of Lesbian and Gay Studies*, 16(1-2), 41-68. (27 pages).

Questions:

What do Coulthard and Alfred have to say about sovereignty? What is the basis for their argument?

What is the political economy of the social contract according to Marx? Coulthard?

Key Concepts:

sovereignty – decolonization – gender – settler state – queer theory – indigenous law

**SEMINAR NINE:
PRESENTATION #2**
(15 March)

See syllabus for instructions.

**SEMINAR TEN:
CREATING PODCASTS**
(22 March)

See syllabus for instructions.

**SEMINAR ELEVEN:
LISTENING TO PODCASTS**
(29 March)

See syllabus for instructions.
Self-assessments due.