

Course Outline

COURSE:	LAWS 4903A – Conservatism, Social Order, and the Law
TERM:	Fall 2017 – 4th year seminar
PREREQUISITES:	Fourth Year Honours Standing
CLASS:	Day & Time: Friday, 2:35-5:25 Room: Please check with Carleton Central for current room location
PROFESSOR:	Dr. Dale Spencer
CONTACT:	Office: Loeb D597 Office Hrs: By Appointment Telephone: Ext. 8096 Email: dale.spencer@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/>

The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

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/>

COURSE DESCRIPTION

(Please refer to the public schedule on [Carleton Central](#))

Students will be exposed to the social and political philosophies associated with conservatism. In this course we are engaging with the systematic and reflective forms of conservative thought within this tradition over the last two centuries. This course will elucidate different forms of conservatism and their relationship to other political philosophies including libertarianism, liberalism, and neoliberalism. We will not be engaging either with anti-intellectual conservative political commentaries or analysis of conservative

political parties and movements. This course will engage with matters related to jurisprudence, sovereignty, constitutionalism, and democracy. Other subthemes include conservative approaches to liberty, crime, and social order.

REQUIRED TEXTS

- *Coursepack – Miscellaneous readings*
- Schmitt, C. (2008). *The Concept of the Political: Expanded Edition*. (G. Schwab, Trans.) (Expanded). Chicago: University Of Chicago Press.

The coursepack and text for this course can be found at the Carleton University bookstore.

SUPPLEMENTARY TEXTS

All supplementary texts can be found on cuLearn.

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 professor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Presentations (10% X 2=20%): Each student will conduct *two* presentations. See sign-up sheet (Students will co-present the readings). Presentations will introduce the class to the major issues related to the designated topic, will synthesize the required readings of the respective week, and will interpret the material. The presenter(s) will prepare a presentation of approximately 30 minutes in length. The remainder of the class will be dedicated to a discussion of the issues. The use of visual aids is encouraged as the aim of the presentation is to promote class discussion and debate not only on the content of the material but also on the general theme.

Participation and Attendance (20%): Students who are not presenting are expected to attend each presentation and are responsible for engaging in scholarly debate, posing critical questions, or raising scholarly points for discussion on the assigned readings and the presentation of the assigned readings. Your grade is based on participation, not just attendance. It is insufficient to offer your personal opinions; your arguments/points of view

should be based on a critical reading and evaluation of the weekly readings and course themes.

Analytical Papers (15% X 2 = 30%): A set of questions will be distributed in the seminars, two weeks in advance of the due date (see weekly breakdown). Students will hand in a **5-page essay** that answers one of the sets of questions in a critical and informed manner. The course readings and seminar discussions should provide all the material required to reflect on and engage with the questions. Students can use up to **three** outside resources for the assignment. Proper referencing is required for all citations.

Analytic papers will be graded for your critical engagement with the questions, your use of the course material, your reflection on the ideas from the readings, and your clarity of thought. It is expected that your approach will become cumulative over the course of the term, and that you will be able to reference earlier materials from the course as, or if, these are useful to your analysis. Clarity of writing, grammar, spelling, and proper referencing will also count in your grade.

Length: 5 pages (not including title page and bibliography). Answers to be typed, double-spaced, 1" margins, 12 pt font.

Late papers will be penalized by 5% per day (including weekends), and may not receive comments.

Research Paper (30%) – Due December 8th, 2017

For this assignment, students shall write an essay on a subject matter suitable to the course. It is important to utilize ideas, arguments, and concepts presented in class and in course readings and to discuss and critically evaluate the materials you use in your paper. The aim of the research paper is to synthesize, discuss, and assess (not simply describe or summarize) scholarly literature and to develop a conceptual analysis of the topic chosen.

Papers shall be **15 pages** and must be **typed** and **double-spaced**.

Composition of the Research Paper: The paper should reflect and communicate specific information from the writer to the reader. It should start with a statement of intentions and objectives, followed by a discussion and analysis of supporting and illustrative materials. Do not limit yourself to descriptive analyses only; employ relevant concepts and incorporate theoretical (or formal explanatory) arguments within your study. In writing your essay, you should be able to summarize the **thesis** (major argument) in a brief statement or short

paragraph.

Layout of the Research Paper:

Introduction: The introduction presents the theme or issues explored in the essay. It briefly outlines your approach to the topic and the major ideas and argument(s) advanced in the main body of the essay. This section is 1-2 pages in length.

Main body of the research essay: This section develops and contains the central thesis or argument(s) of the essay. This main body should review and assess the appropriate literature, while providing an exposition of the central points. The research theme, together with ideas relating to the central thesis, should be clearly presented and substantiated. Ideally, each paragraph should focus upon a major point related to the central argument(s) or theoretical framework. Internal headings and sub-headings are useful as a device to mark shifts in discussion while, at the same time, maintaining an integration of points to the central theme. This section is 10-12 pages in length.

Conclusion: This last section provides a brief summary of the essay's major argument(s) within the context of the central theme addressed. The conclusion is 1-2 pages in length.

Bibliography/References: A minimum of fifteen cited scholarly references is required including journal articles or academic quality book chapters on your selected topic by different reputable social scientific authors. You are not allowed to use Wikipedia or newspaper articles as sources.

References to source(s) of information should include the author's surname, year of publication, and pagination as in the *American Psychological Association Style Guide (5th or 6th edition)* or the *Harvard Style Guide*.

Citation of the sources must always be given for the following: all direct quotations; paraphrases of the statements of others; opinions, ideas, and theories not your own; and, information which is not a matter of general knowledge. Even when using proper citation, it is a mistake to place too much reliance on one source. Furthermore, direct quotations from one or more authors should seldom occur in an essay and should not be longer than two or three sentences in length. All quotations of over four text lines should be indented and single spaced with quotation marks omitted. Quotations of any kind, however, must be acknowledged by a reference to the source, and include the page number(s). Quotations should be used as a way to emphasize a point or because the original author has an authority of expertise that can be best expressed by her/him).

Late papers will be penalized by 5% per day (including weekends), and may not receive comments.

SCHEDULE

Week 1 – September 8, 2017: Introductions

Week 2 – September 15, 2017: Beginnings of Conservative Thinking

Required Readings:

Burke, E. (1982) The Tension of Order and Freedom. In R. Kirk (ed.) *The Portable Conservative Reader*, pp. 1-25, 35-40. New York: Viking.

Coleridge, S.T. (1830) “Chapter 5” in *On the Constitution of the Church and State*, pp. 48 – 57. London: Hurst, Chance and Co.

Week 3 – September 22, 2017: What is Conservatism?

Required Readings:

Kekes, J. (1997) “What is Conservatism?” *Philosophy*, 72(281): 351–374.

Weaver, R. (1948/2013) ‘Distinction and Hierarchy’ in *Ideas Have Consequences*. pp. 32-47. Chicago: University of Chicago press.

Oakeshott, Michael (1991) “On Being Conservative” In *Rationalism in Politics and other essays*. pp. 407-437. Indianapolis: Liberty Press.

Recommended reading:

Kirk, Russell (1993) “Ten Conservative Principles”. In *The Politics of Prudence*, pp. 15-29. Pennsylvania: Intercollegiate studies institute.

O’Hara, Kieron (2011) “First Principles”. In *Conservatism*, pp 5-22. London: Reaktion Books.

Week 4 – September 29, 2017: Neo-conservatism

Kristol, Irving (2011) "Reflections of a Neoconservative." In *The Neoconservative Persuasion*, pp. 127-130. New York: Basic Books.

Kristol, Irving (2011) "What is a "Neoconservative"?" In *The Neoconservative Persuasion*, pp. 148-150. New York: Basic Books.

Thompson, Bradley with Yaron Brook (2010) Chapters 1 and 2. *Neoconservatism: An obituary for an idea*. Boulder and London: Paradigm.

Brennan, G., & Hamlin, A. (2016). Practical Conservatism. *The Monist*, 99(4), 336–351.

Week 5 – October 6, 2017: Conservatism and its antagonists

Hayek, F.A. (1960) "Why I am not a conservative" in *The Constitution of Liberty* 1-13. Chicago: University of Chicago Press.

Nisbet, R. (1980) Conservatives and Libertarians: Uneasy cousins. *Modern Age, A quarterly review*, 1-8.

Skorupski, J. (2015) "The Conservative Critique of Liberalism", in Steven Wall (ed.), *The Cambridge Companion to Liberalism*, pp. 401–422, Cambridge: Cambridge University Press.

Analytical Paper #1 Due

Week 6 – October 13, 2017: Conservatism and Democracy

Schmitt, C. (2008). *The Concept of the Political: Expanded Edition*. pp. 19-79. (G. Schwab, Trans.) (Expanded). Chicago: University Of Chicago Press.

*** There will be no student presentations of this material. There will be general class discussion led by Dr. Spencer.**

Week 7 – October 20, 2017: Justice, Jurisprudence, and Conservatism

Kirk, Russell (1996) "The Meaning of 'Justice'". In *Redeeming the Time*, pp. 181-195. Delaware: Intercollegiate Studies Institute.

Wilkinson, J. H. (2003). Why Conservative Jurisprudence Is Compassionate. *Virginia*

Law Review, 89(4), 753–771.

Week 8 – October 23-27, 2017: Fall Break – No Classes

Week 9 – November 3, 2017: Conservatism and Equality

Kirk, Russell (1996) “The Injustice of Equality”. In *Redeeming the Time*, pp. 213-226. Delaware: Intercollegiate Studies Institute.

Dorey, Peter (2011) “The Importance of Inequality in Conservative Thought”. In Oszel, D. (ed.), *Reflections on Conservatism*, pp. 54-80. Cambridge Scholars.

Week 10 – November 10, 2017: Conservatism and Judicial Decision Making

Strauss, D. A. (2011). Originalism, Conservatism, and Judicial Restraint. *Harvard Journal of Law & Public Policy*, 34, 137-146.

Young, E. A. (2002). Judicial Activism and Conservative Politics. *University of Colorado Law Review*, 73(4), 1139–1216.

Week 11- November 17, 2017: Conservatism, Liberty, and Rights

Kirk, R. (1996) “The Illusion of Human Rights”. In *Redeeming the Time*, pp. 181-195. Delaware: Intercollegiate Studies Institute.

Scruton, R., (1980) “Chapter 1” *The Meaning of Conservatism*, pp. 15-26. Harmondsworth, Middlesex: Penguin.

Analytical Paper #2 Due

Week 12 – November 24, 2017: Conservatism and Culture

Kirk, Russell (1996) “The Fraud of Multiculturalism”. In *Redeeming the Time*, pp. 16-28. Delaware: Intercollegiate Studies Institute.

Cohen, A.B. (2011) “Rescuing Conservatism: A defense of existing value”, In R.J. Wallace, R. Kumar, & Freeman, S. (eds.), *Reasons and Recognition: Essays on the Philosophy of T.M. Scanlon*, pp. 203-230. Oxford: Oxford University Press.

Week 13 – December 1, 2017: Crime, Social Order, and Conservatism

Wilson, J.Q. and Kelling, G. (1982) “Broken Windows.” *The Atlantic Monthly* 249: 29-38.

Kania, R. R. E. (1988). Conservative ideology in criminology and criminal justice. *American Journal of Criminal Justice*, 13(1), 74–96.

Week 14 – December 8, 2017

No class: Final Paper Due