

Course Outline

COURSE:	LAWS 5000F – Law and Social Transformation
TERM:	FALL 2019
CLASS:	Day & Time: Mondays 14:35pm – 17:25pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Peter Swan
CONTACT:	Office: Room D590 Loeb Building Office Hrs: Tuesday 1:00pm – 3:00pm or by appointment Telephone: 613-520-2600 x. 8212 Email: peter.swan@carleton.ca

CALENDAR COURSE DESCRIPTION

Examines three groups of theories of law (liberal, sociological and Marxist) focusing on different ways law is conceived as an object of inquiry and on different accounts of trajectories of legal development. Potential of law for realizing or inhibiting social change provides analytic framework.

COURSE DESCRIPTION

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 as reflected in debates in feminist and postcolonial theory. From the social theory of Pierre Bourdieu, we will examine the continuing significance of law as a mode of social and cultural power.. 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

(All components must be completed in order to get a passing grade)

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.

Course participation (weekly participation plus Group presentation[s]):	25%
Research outline and annotated bibliography (5 or 6 pages due November 5, 2018)	25%
Course paper: due Friday, December 7, 2018	50%

COURSE PAPER

The paper for this course **may 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 a critical examination of the potential and limits of law and legal thought for understanding and promoting social change. **You are also permitted to draw on and make use of theoretical resources not covered directly by the course material.**

The paper should be about 20 pages long (between 18- 25 pages)

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. Critical presentations and evaluations on the readings will take place in groups of 3 to 4 students. Groups may have 2 or more presentations during the term.

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 reflection does not necessarily mean criticizing the ideas of an author. However your critical evaluation should isolate key themes and ideas in each reading to show both what the author is attempting to show and how they construct their arguments in order to accomplish what they set out to do. You should identify key assumptions by the author and consider the broader implications of the questions and arguments raised in each reading. If you agree or disagree with an author by an author you should explain your position to other members of the class.
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. You should have questions that provoke other members of the class to respond.
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.

Course Readings can be accessed through Library Reserves in the Library or by following the web addresses posted below.

SCHEDULE**CLASS SCHEDULE****1. Introductory Meeting: September 9****2. I. Law and Social Transformation: Thinking Theoretically September 16**

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 23**(Presentation, Group 1)**

- 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

September 30

(Presentation, Group 2)

- 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’.

Weber and Mentalities of Governance: Contemporary Assessment

Colin Gordon, *The Soul of the Citizen: Max Weber and Michel Foucault on Rationality and Government*, in: S. Whimster & S. Lash (eds.), *Max Weber, Rationality and Modernity*, London: Allen & Unwin, pp. 293-316

Gordon, Colin “Plato in Weimar Weber revisited via Foucault: two lectures on legitimation and vocation 43 Number 3 *Economy and Society* August 2014 available <http://dx.doi.org/10.1080/03085147.2014.956464>

David Trubek, “Max Weber on Law and the Rise of Capitalism”, 1972 *Wisconsin Law Review* pp. 720- 753

available online at <http://www.law.wisc.edu/facstaff/trubek/publications.html>

Use Trubek only as background for presenting Weber himself. Do not present this article

5. Juridification and Law and Democracy: Jürgen Habermas

October 7

Presentation Group 3

- 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)
- c) Rainer Forst, "The Power of Critique" 2011 39 (1) *Political Theory* 18-23
Available online at
http://journals2.scholarsportal.info.proxy.library.carleton.ca/details.xqy?uri=/00905917/v39i0001/118_tpoc.xml

6. Power and Law: Michel Foucault

October 28

Presentation Group 4

- 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. Read lecture Two, **only**.

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

7. Governance and Law, November 4
Presentation Group 5

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. Bourdieu: Law and the Symbolic Power of Law & Cultural Studies and Law November 11
Presentation Group 1

a) 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 cablemodem.fibertel.com.ar/seminario/bourdieu.pdf

b) "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

9. Feminist Theory in Relation to Law and Social Transformation November 18
Presentation Group 2

a) Joanne Conaghan -- "Reassessing the Feminist Theoretical Project in Law" (2000) 27 *Journal of Law and Society* 351-385 To be accessed online at <http://catalogue.library.carleton.ca/search/?tjournal+of+law+and+society/tjournal+of+law+and+society/1,1,1,B/1856~b1281875&FF=tjournal+of+law+and+society&1>

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- 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, Post Colonialism and a Global State of Exception

In this section of the course we will examine how both “social facts” such as globalization and global justice and emerging theoretical perspectives addressing issues of the relationships between law and postcolonial experience force us to address the limits and potential of law and legal thought. 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 Postcolonialism

November 25

Presentation Group 3

- a) John Strawson, “Islamic Law and English Texts” VI *Law and Critique* no. 1, 21-48
Available online at
<http://journals/.scholarsportal.info.proxy.library.carleton.ca/journal.xqy?uri=/0957856>
- b) Antony Anghie “Francisco De Vitoria and the Colonial Origins of International Law”, 1996
Social & Legal Studies September 5 at 321-336 Available online at
<http://sls.sagepub.com.proxy.library.carleton.ca/content/5/3/321.full.pdf+html>

11. Contemporary Challenges to the Rule of Law

December 2

Presentation Group 4

- a) William E. Scheuerman, “Economic Globalization and the Rule of Law” (1999)
Constellations Number 1 at p. 3-25 Also available online at
<http://onlinelibrary.wiley.com.proxy.library.carleton.ca/doi/10.1111/1467-8675.00117/pdf>

- b) 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

12. Law and the State of Exception
Presentation Group 5

December 9

- a) John Ferejohn and Pasquali Pasquino, “The Law of the Exception: A Typology of Emergency Powers” 2 *International Journal of Constitutional Law* 210- 235 (2004) Available online at <http://icon.oxfordjournals.org/content/2/2/210.full.pdf>
- 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/1856&FF=tinternational+journal+of+constitutional+law&1%2C0%2C%2C1%2C0>

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: <https://carleton.ca/equity/accommodation/academic/students/>

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: <https://carleton.ca/equity/accommodation/academic/students/>

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). <https://carleton.ca/pmc/students/accommodations/>

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/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://carleton.ca/equity/accommodation/academic/>

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/>