Law, state and politics are all deeply implicated in the ‘global war on terror’. In this seminar, we will consider the challenges that the ‘global war on terror’ poses to legality and, conversely, the challenges that legality poses to the ‘war on terror’. How do important contemporary authors attempt to understand the relationships between the ‘war on terror’ and law and legality? We will explore this subject primarily through two lenses: first, the idea of ‘legitimate legality’, and, second, the idea of the ‘state of exception’ as conceptualized initially by the Nazi jurist Carl Schmitt and now by contemporary interpreters like Giorgio Agamben. We will focus, in particular, on Guantanamo Bay as a contested space. Is it an imperial space? Is it a ‘lawless’ space? A “legal black hole”? A “space of exception”? Or, is it a space where the rule of law still (or again?) obtains? Are the ‘legal’ innovations developed for this space likely to infiltrate other spaces? Is the pre-2001 movement toward ‘postnational citizenship’ and the expansion of human rights being contracted, ignored or reconstructed today? And, what are we to make of contests over law’s ‘extraterritorial’ reach? In sum: what is the relationship among law, politics, state and legality today – nearly eight years after September 12?

EVALUATION:

Evaluation will be based on the following combination of participation and written work.

1. A participation mark of 20% based on discussion leadership and weekly participation. The participation mark is a composite mark, evaluating your performance over the entire term.

2. 4 short essays over the course of the term (each essay to be approximately 5 (max) pages double-spaced) 20%.
The short essays may generally be written for any of the substantive weeks of the course: weeks 3 through 11. However, you may not write on week 4 and you must write a short essay for weeks 7 or 8; and for weeks 11 or 12. Each short essay is worth 5% for a total of 20% of your mark. The short essay is due at the beginning of the class for which it is submitted. No late essays will be accepted. You may submit your essay via email attachment prior to class if (and only if) you will miss class that day.

The short essays should evaluate some aspect of the literature/topic for the relevant week and raise at least one question for discussion in class. The evaluation may be tentative but you must go beyond description of the literature. The question(s) should be conceptual rather than primarily empirical in nature. The short essays will be marked on the basis of the thoughtfulness of the issue chosen for consideration, the evaluation provided and the question posed. The essay must address all of the literature read for class that week. While short essays need not be as formal as a research essay or the final exam, writing style, grammar etc. will count and citations are required.

Please provide an indication of which essay you are handing in (your first, second, third etc.) on the title page or at the very beginning of the essay.

3. Take home examination or research essay 60%. You may choose to write a take home examination or write a research essay for this course.

The take home examination will be distributed in the last class meeting. If you choose to write a research essay, you must clear the topic with me by March 25 at the latest.

Both the exam and research essay are due on Friday, April 11, before 4pm. They must be submitted both as a hardcopy to the main Law Dept. office drop box and as an email attachment. Late exams and essays will result in failure in the course in the absence of a solid medical excuse. I determine when the exam has been handed in, not the Law Department stamp.

Course Schedule

1. Introduction January 7

2. No Class – Professor Away January 14

   To make-up for this missed day, if at all possible, please attend the important session organized by the Institute of Political Economy (information below) on Friday January 9.

   Please also use this time to organize readings, sort out discussion leadership preferences (and email me by January 15 with those preferences) and read ahead.
Institute of Political Economy  Celebrating our Graduates Series

Friday, January 9th, 2:00 p.m.

Room 303 Paterson Hall, Carleton University

Mathew Coleman

**Spaces of Insecurity: the Localization of Immigration Enforcement in the War on Terror**

Mathew Coleman (Ph.D., UCLA, 2005) is Assistant Professor of Geography at Ohio State University. He is also Fellow at the Center for Interdisciplinary Law and Policy Studies at Ohio State. He has research and teaching interests in political and economic geography, with a special emphasis on critical geopolitics and the politics of undocumented immigration in the US-Mexico context. His current research explores local-federal immigration policing partnerships in the US, as well as municipal sanctuary laws in the US and their relationship to federal immigration legislation. He is also looking at how contemporary US immigration enforcement at home and abroad blends public and foreign policy issues and spaces into a single field of geopolitical practice and representation. He teaches graduate seminars as well as undergraduate courses on political geography and geopolitics. Mathew received his Master’s degree in Political Economy from Carleton University.

Neil Smith

**Neoliberalism: Dominant but Dead**

Neil Smith is Distinguished Professor of Anthropology and Geography at the Graduate Center of the City University of New York where he is the founding Director of the Center for Place, Culture and Politics. He is also Sixth Century Chair in Geography and Social Theory at University of Aberdeen. His books include *American Empire: Roosevelt’s Geographer and the Prelude to Globalization* which won the Los Angeles Times Book Prize for Biography, 2004; *The Endgame of Globalization* (2005), *New Urban Frontier* (1996) and *Uneven Development* (3rd ed., 2008). His work is translated into more than a dozen languages, he lectures widely, and he is an organizer of the International Critical Geography Group.

3. **Global War on Terror**  January 21

BC Civil Liberties Thursday December 18, 2008 “A Setback for Human Rights Protection: Federal Court of Appeal Rules in Afghan Prisoner Case” (send email)


Supplementary:

4. US Supreme Court Decisions on Guantanamo ‘Conference’ January 28

This week, everyone must read Dworkin’s essay, below. Seminar participants will split up into four groups with each group focusing on one of the Supreme Court decisions, below. Your group should: summarize and evaluate the decision and analysis of the Court and the dissent (if there is one), focusing on the Court’s treatment of ‘enemy combatant’ status, citizenship, territory (does the ‘constitution follow the flag’? and how does international law apply to Guantanamo?), the protections of habeas corpus and the interpretations of the Geneva Conventions (or any other relevant international law). Finally, you are expected to do a bit of research on the fate of the detainee(s) in your case since the decision.

Please assume your group has a maximum of 30 minutes to discuss the case, the detainee’s fate etc.

Please provide a textual summary of the case and other issues to every member of the seminar by 2pm Tuesday January 27.

Every seminar participant is expected to familiarize him/herself with the summaries distributed before the seminar. This way we can have an informed discussion while pooling our knowledge of the most important Supreme Court decisions on Guantanamo Bay in the ‘war on terror’.


http://www.supremecourtus.gov/opinions/03pdf/03-6696.pdf

http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf

http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf

Munaf v. Geren 2008

Just read the headnote (summary) of Munaf

Supplementary:
Emergency after 9/11.” Unpublished manuscript.

5. ‘Unlawful Enemy Combatants’: Unilaterally Constructed Objects of Empire or Products of International Humanitarian Law? February 4


**Supplementary:**
Parhat v. Gates. 2008 US Court of Appeals for DC

6. Torture and Legality  February 11


Guantanamo Torture Log, Detainee 063
http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf

Supplementary:
Goldsmith, Jack. The Terror Presidency, chapter 5.

7. Carl Schmitt on the state of exception  February 25


Supplementary:
McCormick, John. Carl Schmitt’s Critique of Liberalism

8. Giorgio Agamben on state of exception, bare life and ‘the camp’ March 4


Supplementary:


9. **Gregory, Butler and Owen on Agamben, Foucault, Arendt and Schmitt** Mar. 11


**Supplementary**


10. **Guantanamo as State of Exception?** March 18


**Supplementary:**


11. Legality/Legitimacy from a Habermasian Perspective


Supplementary:
12. Rule of Law/Rule by Law/State of Exception  April 1

Take home exam will be distributed this day


Supplementary:
Lievesley, Geraldine. “Cuba, the USA and Guantanamo Bay: the collision between national sovereignty and imperial ambition” Contemporary Politics, March 2006, vol. 12, no. 1, pp. 3-24.
Philbin, Patrick F., and John C. Yoo. 2001. "Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba." U.S. Justice Department Memo to
Before and After September 12: extra-territoriality, postnationalism and ‘juridical othering’ Jan 14


Supplementary: