

Course Outline

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| COURSE: | LAWS 3104 A Critical Theory for Legal Studies: An Introduction |
| TERM: | Winter 2023 |
| PREREQUISITES: | Prerequisite(s): 1.0 credit in LAWS at the 2000 level |
| CLASS: | Day & Time: Fridays 11:35–14:25 Room: Tory Building 236 (A weekly in-person lecture course) |
| INSTRUCTOR: | Dr. Philip Kaisary |
| CONTACT: | Office: D485 Loeb Building Office Hrs: By appointment Telephone: x. 4181 Email: Philip.Kaisary@carleton.ca |

CALENDAR COURSE DESCRIPTION

Introduction to the general contours of critical theory as it pertains to law and legal studies. The course will introduce key concepts and controversies in the field, identify specific theoretical debates, and consider what conceptual consequences follow from the elaboration of specific positions or arguments.

COURSE DESCRIPTION

This course is intended as an introduction to the project of reading critical theory for legal studies. The core objectives of critical theory are to analyze the ways in which our present society falls short of being a just and liberated society and to consider new possibilities by which universal justice and liberation might be attained.

Lectures and readings will impinge upon such topics as rights, colonization, power, resistance, social transformation, race, class, gender, indigeneity, morality, and progress. The core objective of the course is the development of competence in the field of critical theory as it pertains to law and legal studies. ‘Competence’ in this context will take the form of an ability to situate specific ideas, methods, schools, and theorists accurately within the wider theoretical field, and to discern what is at stake in specific debates.

Please note: All personal electronic devices are expected to be switched off for the duration of each class. Further, if you take notes on a laptop, you should disconnect it from the internet by disabling the Wi-Fi for the duration of each class.

REQUIRED TEXTS

Texts will be made available online via the Library's Course Reserves (ARES). Texts for which the Library is unable to obtain online copyright permission will be placed in the Library's physical reserves collection.

To encourage a deeper engagement with the materials, I strongly recommend that you read physical (printed) copies of all the assigned readings rather than read from a screen.

SUPPLEMENTARY TEXTS

Wayne C. Booth et al., *The Craft of Research*, [any edition] (University of Chicago Press, 1995–2016).

Gerald Graff and Cathy Birkenstein, *They Say/I Say: The Moves that Matter in Academic Writing*, (5th ed. Norton, 2021).

Gordon S. Harvey, *Writing with Sources: A Guide for Students*, 2nd ed. rev. (Hackett, 2008).

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.

Notebook / lever arch folder of notes: not required, not graded

I *strongly suggest* you keep a *physical* notebook or lever arch folder of notes throughout the course. This will become an essential piece of documentation to map out the material covered and to refer to as you build towards the final essay at the end of the course. Typically, this notebook or folder should include your annotated copies of all reading materials, your independently prepared notes on weekly readings, weekly lecture notes, assignments and drafts of assignments.

Attendance: 10%

Reading response papers x5: 25%

Each reading response is worth 5%, papers will receive either 5% or 0%.

The reading response papers are designed to keep you engaged with the course materials throughout the semester. Each response should be 1-2 pages, double-spaced in 12pt. Times New Roman. In each response paper you should provide a commentary on a single aspect of one of that week's assigned readings. You should not attempt to summarize the reading (2 pages would not be sufficient for a summary); instead, focus on commenting on a single aspect of the reading that you found particularly interesting or provocative: what was being conveyed, elaborated, or argued? Why did you find it interesting or provocative? Did you agree or disagree? Why? What are the implications of what was being conveyed, elaborated, or argued? Reading responses should rely on your own reading, thinking, and analysis, not on outside research. Each response should clearly identify (in the title) which reading is being responded to; for example: "Reading Response 1: Immanuel Kant, 'What Is Enlightenment?'" You do not need to provide a bibliography or list of references and you do not need to use footnotes / citations.

Reading response 1: On any required reading of your choice listed in the schedule below.

Due: Friday January 20, 23:55 (end of week 2)

Reading response 2: On any required reading of your choice listed in the schedule below.

Due: Friday February 3, 23:55 (end of week 4)

Reading response 3: On any required reading of your choice listed in the schedule below.

Due: Friday February 17, 23:55 (end of week 6)

Reading response 4: On any required reading of your choice listed in the schedule below.

Due: Friday March 3, 23:55 (end of week 8)

Reading response 5: On any required reading of your choice listed in the schedule below.

Due: Friday March 17, 23:55 (end of week 10)

Mid-term: 25%

The mid-term assessment will take place in class on Friday February 17 and it will be open book. It will comprise short-answer questions. Students must work alone. Further information will be provided closer to the time.

Due: In class, Friday February 17 (Week 6).

Final essay: 40%

You will research and write a final essay of 10 pages in length (double-spaced, excluding footnotes and bibliography). You will choose from a list of essay questions to be provided. Your essay must have a clear thesis and provide sustained analysis. I recommend consulting *The Craft of Research*, *They Say/I Say: The Moves that Matter in Academic Writing*, and *Writing with Sources: A Guide for Students* (listed under Supplementary Texts, above) for excellent guidance and advice. Further specific research and writing advice will be provided in class. Use Chicago Style for all citations:

<https://library.carleton.ca/sites/default/files/help/Using%20Chicago%20style%20August%202021%206.pdf>.

Due Wednesday April 12, 23:55 (week 14, the last day of the winter term)

Bonus marks available (optional):

Complete one or more Online Learning and Writing Workshop: 2.5% each up to a maximum of 5%. See: <https://carleton.ca/csas/online-support/>

All components must be successfully completed to receive a passing grade

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Late reading response papers will not be accepted.

Late final essays will be treated as follows:

A deduction of 5% if the assignment is submitted after the deadline but before midnight the following day.

A further 10% is deducted at the beginning of each following day (at 12:01am) including weekend days.

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/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

Note: for a full list of important academic dates please see:

<https://calendar.carleton.ca/academicyear/>

Week 1 (Friday January 13): Introduction: What is ‘Theory’? What is ‘Critical Theory’?

Suggested reading:

Stephen Eric Bonner, “Introduction: what is critical theory?” *Critical Theory: A Very Short Introduction*, 2nd ed., Oxford University Press, 2017: 1–6.

Week 2 (Friday January 20): Kant and Hegel: Law, Enlightenment, Dialectics

Required reading:

Immanuel Kant, “What Is Enlightenment?” [1784] *Practical Philosophy: The Cambridge Edition of the Works of Immanuel Kant*, ed. M. Gregor, Cambridge University Press, 1996: 11–22.

Michel Foucault, “What Is Enlightenment?” *The Foucault Reader*, ed. Paul Rabinow, trans. Catherine Porter, Pantheon Books, 1984: 32–50.

G. W. F. Hegel, “Master-Slave Dialectic” in *The Phenomenology of Spirit* [1807], Oxford University Press, 1979: 113–119, paras. 186–196

Further reading:

Hannah Arendt, *Lectures on Kant’s Political Philosophy*, University of Chicago Press, 1982: 7–77

Susan Buck-Morss, “Hegel and Haiti”, *Critical Inquiry*, 26, 2000: 821–865.

Pau Gilroy, “Slavery and the Enlightenment Project,” *The Black Atlantic: Modernity and Double Consciousness*, Harvard University Press, 1993: 46–58

Jürgen Habermas, “Taking Aim At The Heart of the Present: On Foucault’s Lecture on Kant’s *What is Enlightenment?*” in Jürgen Habermas, *The New Conservatism: Cultural Criticism and the Historians’ Debate*, ed. and trans. Shierry Weber Nicholzen, MIT Press, 1989: 173-179.

Dorinda Outram, *The Enlightenment* (4th ed.) Cambridge University Press, 2019.

Week 3 (Friday January 27): Karl Marx and Law

Required reading:

Karl Marx, “On the Jewish Question” [1843] *Karl Marx: Selected Writings*, ed. David McLellan, Oxford University Press, 2000: 46–70.

Karl Marx, “Preface to *A Critique of Political Economy*,” [1859] *Karl Marx: Selected Writings*, ed. David McLellan, Oxford University Press, 2000: 424–428.

Karl Marx, *Capital: A Critique of Political Economy, Vol. 1* [1867], trans. Ben Fowkes, Penguin, 1990: 125–87.

Further reading:

David Harvey, *A Companion to Marx's Capital*, Verso, 2010: 1–53.

Evgeny Pashukanis, *Law and Marxism: A General Theory*, Pluto Press, 1987.

Raymond Williams, “Base and Superstructure in Marxist Cultural Theory,” *New Left Review*, Vol. 1, No. 82, (Nov/Dec, 1973), 3–16.

Week 4 (Friday February 3): Critical Theory and Indigeneity

Note: There is no in-person lecture this week as I will be attending a conference. Learning materials will be posted on the course Brightspace page.

Required reading:

Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, University of Minnesota Press, 2014: 1–24, 131–150.

Further reading:

Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance*, University of Minnesota Press, 2017.

Week 5 (Friday February 10): The Frankfurt School

Required reading:

Walter Benjamin, “Critique of Violence”, *Reflections: Essays, Aphorisms, and Autobiographical Writings*, Schocken Books, 1986: 277–300.

Walter Benjamin, “On the Concept of History”, *Selected Writings Vol. 4: 1938-1940*, ed. Howard Eiland and Michael W. Jennings, trans. Harry Zohn, Harvard University Press, 2003: 389–400.

Peter E. Gordon, “The Authoritarian Personality Revisited: Reading Adorno in the Age of Trump,” *boundary 2*, Vol. 44, No. 2 (2017): 31–56.

Further reading:

Amy Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory*, Columbia University Press, 2016.

Susan Buck-Morss, *The Origin of Negative Dialectics: Theodor W. Adorno, Walter Benjamin, and the Frankfurt Institute*, Free Press, 1977.

Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment: Philosophical Fragments [1947]*, Stanford University Press, 2002.

Week 6 (Friday February 17): Althusser, Bourdieu, and Law***Mid-term in class this week***

Required reading:

Louis Althusser, "Ideology and Ideological State Apparatuses," [1971] *Cultural Theory and Popular Culture: A Reader*, 3rd ed., ed. John Storey, Pearson International Limited, 2006: 336–346.

Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" 38 *Hastings L.J.* 1987: 814–853.

Week 7 (February 20–24, 2023): WINTER BREAK: NO CLASSES**Week 8 (Friday March 3): Postcolonialism, International Law, Critical Theory**

Required reading:

Anthony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities," *Third World Quarterly*, Vol. 27, No. 5, 2006: 739–53.

Frantz Fanon, *The Wretched of the Earth* [1963] trans. Richard Philcox, Grove Press, 2004: 97–144.

Further reading:

Antony Anghie, "Francisco De Vitoria and the Colonial Origins of International Law," *Social & Legal Studies*, Vol. 5, No. 3, 1996: 321–336.

Amy Allen, "Adorno, Foucault, and the End of Progress: Critical Theory in Postcolonial Times," in: *Critical Theory in Critical Times: Transforming the Global Political and Economic Order*, eds. Penelope Deutscher and Cristina Lafont, Columbia University Press, 2017: 183–206.

Neil Lazarus, *The Postcolonial Unconscious*, Cambridge University Press, 2011: 1–20; 161–182.

China Miéville, "Multilateralism as Terror: International Law, Haiti and Imperialism," *Finnish Yearbook of International Law* 18 (2007). Available online at: <http://eprints.bbk.ac.uk/783/2/HaitiBirk.pdf>

Nick Nesbitt, *Caribbean Critique: Antillean Critical Theory from Toussaint to Glissant*, University of Liverpool Press, 2013.

Edward Said, *Orientalism*, Pantheon Books, 1978.

Week 9 (Friday March 10): Critical Theory and Human Rights

Required reading:

Hannah Arendt, “The Decline of the Nation-State and the End of the Rights of Man,” in *Origins of Totalitarianism* [1951] Penguin, 2017: 349–396.

Rainer Forst, “A Critical Theory of Human Rights—Some Groundwork,” in: *Critical Theory in Critical Times: Transforming the Global Political and Economic Order*, eds. Penelope Deutscher and Cristina Lafont, Columbia University Press, 2017: 74–88.

Week 10 (Friday March 17): Feminist Critical Theory and Law

Required reading:

Simone de Beauvoir, “Introduction” and Chapter 14: “The Independent Woman”, *The Second Sex* [1949] trans. Constance Borde & Sheila Malovany-Chevallier, Vintage, 2009: 3–17, 721–751.

Judith Butler, “Sex and Gender in Simone de Beauvoir’s *Second Sex*,” *Yale French Studies*, No. 72, (1986): 35-49.

Angela Davis, “The Meaning of Emancipation According to Black Women,” *Women, Race, & Class*, Vintage, 1983: 87–98.

Further reading:

Ummni Khan, “Hot for kink, bothered by the law: BDSM and the right to autonomy,” *The Canadian Bar Association, Alberta Branch*, August 8, 2016, <https://www.cba-alberta.org/Publications-Resources/Resources/Law-Matters/Law-Matters-Summer-2016-Issue/Hot-for-Kink,-Bothered-by-the-Law-BDSM-and-the-Rig>.

Week 11 (Friday March 24): Psychoanalysis and Law

Required reading:

Sigmund Freud, *Civilization and Its Discontents*, [1930] trans. J. Strachey, Norton, 1961: 11–32.

Sigmund Freud, *New Lectures on Psychoanalysis*, translated by J. Sprott, New York, Norton, 1961 [1933], pp. 104-112.

Further reading:

Peter Fitzpatrick, *Modernism and the Grounds of Law*, Cambridge University Press, 2001.

Jacques Lacan, “The Mirror-phase as formative of the function of the I.” *New Left Review*, Vol. 51, Sept.-Oct. 1968: 63–77.

Week 12 (Friday March 31): Poststructuralism and Law

Required reading:

Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’”, in: *Deconstruction and The Possibility Of Justice*, eds. Drucilla Cornell, Michel Rosenfeld, and David Carlson, Routledge, 1992: 3–67.

Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, Vintage, 1979: 3-31; 135-69; 170-94; 195-228.

Further reading:

Peter Goodrich, Florian Hoffmann, Michel Rosenfeld, and Cornelia Vismann (eds.) *Derrida and Legal Philosophy*, Palgrave Macmillan, 2008.

Anne Schwan and Stephen Shapiro, *How to Read Foucault’s Discipline and Punish*, Pluto Press, 2011.

Week 13 (Friday April 7): Statutory holiday. University closed.**Week 14 (Wednesday April 12): Zoom office hours****University and Departmental Policies****DEPARTMENT POLICIES AND REGULATIONS**

Please review the following webpage to ensure that your practices meet our Department’s expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

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/>.

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

Academic Accommodations for Students with Disabilities

[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). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

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 where 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/equity/sexual-assault-support-services>

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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.

| Winter 2023 Sessional Dates and University Closures | |
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| <i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/ | |
| January 9, 2023 | Winter term begins. |
| January 20, 2023 | Last day for registration and course changes (including auditing) in full winter and late winter courses. |
| February 20, 2023 | Statutory holiday. University closed. |
| February 20-24, 2023 | Winter break. No classes. |
| March 15, 2023 | Last day for academic withdrawal from full winter, late winter, and fall/winter courses. |
| April 7, 2023 | Statutory holiday. University closed. |
| April 12, 2023 | Winter term ends. Last day of full winter, late winter, and fall/winter classes. |
| April 15-27, 2023 | Final examinations in full winter, late winter, and fall/winter courses will be held. |
| April 27, 2023 | All final take-home examinations are due on this day. |