

Course Outline

COURSE:

LAWS 4100 A
Modern Legal Theory
What is Liberal Democracy?

TERM:

Fall 2021

PREREQUISITES:

LAWS 2908 and fourth-year Honours standing.

CLASS:

Day & Time: **Tuesdays, 2:30 am-4:30 pm**

Room: Lectures in this course will be delivered in live sessions using Zoom.

INSTRUCTOR:
(CONTRACT)

Zoran Oklopčic

CONTACT:

Office: LA D587 — not on campus this semester

Office Hrs: Immediately after the classes, or upon appointment on Zoom or on skype.

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COURSE DESCRIPTION

Victorious in the struggle against communism in the late 20th century, liberal democracies proved unprepared for the challenges of this one. Increasingly oppressive, institutionally dysfunctional and politically volatile, liberal democracy is in serious trouble. Approaching liberal democracy from a variety of theoretical and empirical perspectives, this course starts from an unnoticed irony: Though most people agree that liberal democracy is in crisis—nobody seems to know what liberal democracy is. 'The confusion of terms', claims one commentator, 'impairs liberals' understanding of their own principles and weakens their politics', which 'their opponents easily exploit the verbal ambiguities'—which why it's 'high time that we clarify what the term "liberal democracy" means and what it stands for'. In confronting this question, we are inevitably confronted with the set of logically preceding ones: What makes democracy 'liberal'? What makes a liberal democracy a democracy? (3) What is liberal democracy as the form of government, and what are its distinctive features? How does such form of government manifest itself in reality? Will we recognize it—when we see it? And more fundamentally: Is liberal democracy still 'alive', to begin with? Some declared it dead almost two decades ago, while others have reached that conclusion already in 1979—arguing, in fact, that it would be 'be idle to try to fix precisely a date when liberal democracy ceased to be useful as a description of a form of government'. Could it be that liberal democracy expired long time ago (as suggested by a number of Marxist state theorists)? Or it is simply getting increasingly difficult to keep up with its ever more complicated, refined, and qualified versions, whose distinctive characteristics keep 'morphing' and 'shape-shifting'? If so, which models of liberal democracy still count as sufficiently 'liberal' and 'democratic' today? Who's to decide? Whose idea of liberty and democracy ought to prevail? In a world in which dysfunctional, militarized, and increasingly cynical 'democracies' casually harm their

citizens under the pretext of high moral ideals we no longer have the luxury to ignore those questions, or pretend that they only matter 'theoretically'.

EVALUATION

Class participation (20 %)

This course is the exploration of less well illuminated corners of legal, social, and political thought. Its success depends on your ongoing interaction with the material, and among yourselves, as its active participants.

Two reflection pieces (20 % each) + Final essay (40 %)

Your written work should reflect the readings and classroom discussions. The specifics of the format, word length and due dates will be determined together, during our first class. 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.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Unless there is an overriding concern which justifies an extension in individual cases (family emergency, illness, irreconcilable scheduling conflict at work) the failure to submit the written work (reflection pieces and final essay) the penalty for late submissions will consist in deducting 10 percentage points for each day after the agreed deadline (which will be discussed in the class).

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).

COURSE SCHEDULE

(In addition to its contribution to your participation mark, your regular attendance will allow you to stay on top of the weekly readings, which may or may not change, depending on the pace, direction and content of classroom discussions. As for the assigned readings, they are either easily available online, or will be distributed ahead of the class, where that's not the case.

1. **Emergency!** *Liberal democracy as an **opaque** form of government*

2. **History:** *Liberal democracy as a **Western** form of government*

- Fareed Zakaria, 'Illiberal Democracy.' (1997) 76:6 *Foreign Affairs* 22-43.
- Michael Walzer, 'What It Means to Be Liberal' (2020) *Dissent* (Spring).
<https://www.dissentmagazine.org/article/what-it-means-to-be-liberal>

3. **Imaginary:** *Liberal democracy as an **invented** form of government*

- Charles Taylor, 'Modern Social Imaginaries', (2002) 14:1 *Public Culture* 91-124.
- Peggy Rosenthal, *Words and values: Some leading words and where they lead us* (Oxford University Press 1984). [fragments, TBD]

4. **Mythology:** *liberal democracy as a **popular** form of government*

- John Locke, *Second Treatise of Government* (c. 1690) sections 212 — 227.
<https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>
- The Declaration of Independence (1776)
<https://www.archives.gov/founding-docs/declaration-transcript>

5. **Tyranny:** *Liberal democracy as a **representative** form of government*

- James Madison, *Federalist No. 10* <https://guides.loc.gov/federalist-papers/text-1-10>
- Tim Wu, 'The Oppression of the Supermajority', *New York Times* (5 March 2019)
<https://www.nytimes.com/2019/03/05/opinion/oppression-majority.html>

6. **Legality:** *Liberal democracy as a **constitutional** form of government*

- Lorraine Weinrib. "The postwar paradigm and American exceptionalism" in Sujit Choudhry (ed) *The Migration of Constitutional Ideas* (Cambridge University Press 2006). Available at: <http://ssrn.com/abstract=899131>

7. **Authority:** *Liberal democracy as a constrained form of government*

- Kim Lane Scheppelle, 'Autocratic Legalism.' (2018) 85 U. Chi. L. Rev. 545-583

8. **Variety:** *Liberal democracy as the only legitimate form of government*

- Kornai, J. (2016), 'Vulnerable Democracies: An Interview with János Kornai' [available online].
- Ivan Krastev and Stephen Holmes 'Explaining Eastern Europe: Imitation and Its Discontents' (2018) 29 *Journal of Democracy* 117-28.

9. **Flexibility:** *Liberal democracy as a territorial form of government*

- Supreme Court of Canada, Reference re Secession of Quebec [1998] 2 SCR 217. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

10. **Oligarchy!** *Liberal democracy as a minority form of government*

- Theda Skocpol and Alexander Hertel-Fernandez, A. (2016), 'The Koch network and republican party extremism.' *Perspectives on Politics* 14(3): 681, 699.

11. **Liberty?** *Liberal democracy as a disciplinarian form of government*

- Adrian Vermeule, 'Liturgy of Liberalism' (2017) <https://www.firstthings.com/article/2017/01/liturgy-of-liberalism>

12. **Utility:** *Liberal democracy as a surpassed form of government?*

- Rubin, E. L. (2001), 'Getting past democracy', *University of Pennsylvania Law Review*, 149: 711-792.

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs. For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

ACADEMIC ACCOMMODATIONS

Academic Accommodation

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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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/>.

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/>.

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: <https://carleton.ca/law/student-experience-resources/>