

Course Outline

COURSE:	LAWS 4100, Section B – Modern Legal Theory
TERM:	Winter 2023
PREREQUISITES:	LAWS 2908 and 4th year Honours Standing
CLASS:	Day & Time: Wednesdays 6:05 pm to 8:55 pm (Eastern Standard Time) Room: Loeb Building B243
INSTRUCTOR:	Andrew Costa
CONTACT:	Office Hrs: By Appointment (Via Zoom) Telephone: N/A Email: andrewcosta@cunet.carleton.ca

CALENDAR COURSE DESCRIPTION

Modern Legal Theory

Realist and post-realist legal scholarship; emphasis on Canadian, American and British approaches. Topics include the Canadian treatise tradition, American legal realism, empirical approaches to legal problems, the sociological movement in law, critical and Canadian feminist legal scholarship, Marxian theories of law, normative economic theory.

COURSE DESCRIPTION

This course analyzes how Modern Legal Thought has been characterized by conflicts between Conceptual and Pragmatic approaches to theorizing law. Conceptual approaches are animated with concerns about bringing universal moral and political values to bear on how law should be understood and applied. Pragmatic approaches accept that law could be animated by moral and political values but believe that these values are tied to policy preferences, legal officials' career advancement and a whole host of other matters that are far removed from metaphysical conceptions of value.

This course also looks at how Socio-Legal theories can bring together these warring concepts of law through an analysis of how everyday legalities are cultivated and mobilized in court rooms and in social spaces. The course then also explores how Indigenous legal traditions and global legal theories impact the divides between

Conceptual and Pragmatic legal theories.

Key questions the course asks include:

How did conflicts between Conceptual and Pragmatic Legal Theories emerge? Do these debates remain relevant to Modern Legal Thought? How are these theories brought to bear on Everyday conceptions of Law? How can Non Western Legal Theories impact these conflicts? How do Indigenous Legal Traditions and their relational roots overcome the divide between Concept and Practice?

COURSE OBJECTIVES

Upon successful completion of this course, students should be able to:

- Learn about the conflicts between Conceptual and Pragmatic Legal Theories and their enduring impact on Modern Legal Thought.
- Understand how the connections and tensions between Conceptual and Pragmatic Legal Theories are evident in analyses of Law in Everyday Life
- Learn about how Global and Plural Legalities impact the debates that have animated Modern Legal Thought
- Learn how Indigenous Legal Traditions contribute to these discussions through illustrating how law is bound up through relationships that emphasize connection across all existence.

REQUIRED TEXTS

All required and supplementary readings will be posted and available on Bright Space

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.

<u>Assignment</u>	<u>Description</u>	<u>Due Date</u>	<u>Weight</u>
Presentations 1 and 2	Discussion	Ongoing	30%
Critical Reflection # 1	3 to 4 Pages	February 15	20%

Critical Reflection # 2	3 to 4 Pages	March 29	20%
Research Paper	10 Pages	Exam Period	30%

Course Components

Presentation 1 (15%) and Presentation 2 (15%)

This course depends on student participation and informed discussion throughout each class. Throughout your presentations, it is imperative that you bring your own critical perspectives to discussions after reading each course text. In the process, there will be a greater range of interpretations on which to analyze the texts and, in turn, contribute to a successful class.

During your presentations, you are required select a reading to summarize, critique and to ask questions of. You may be required to present on multiple course texts. This ultimately depends on the length of the course texts you are presenting on. You may also use supplemental learning aids (Videos, Music, Artwork, etc.,) to help deliver your presentations. Please talk with me about what you may be planning on including before hand if you are using learning aids during your presentations.

Critical Reflection 1 (20%) and 2 (20%)

You must analyze a key issue identified from a selected text that has been brought up in class. Responses do not require the use of outside material, but you may refer to other course texts to help your analysis. You cannot write a reflection on the same text that you are presenting on, but you can complete a reflection on a different course text on the same week you may be presenting.

Critical responses must be completed at the beginning of the same class for which the reading is to be discussed. The first reflection must be submitted no later than **February 15**. The second reflection must be submitted no later than **March 29**.

Major Paper (30%)

You are required to develop a longer and more complex argument that shows how you engage with the course material to develop your own unique perspective on a text outside of the discussions we have had in the course. You must use 3 to 5 outside academic sources that have not been taken up in the course to help you support your argument. You can also include up to 2 primary sources (news articles, photographs, pamphlets, etc.,) as well. You will be

graded according to argument, sources, structure, and style. The paper will be assigned during the last class (**April 5**) and will be due during the Exam Period.

GRADE REQUIREMENTS

Grading of assignments includes evaluation of the students' knowledge of, and ability to discuss, information and ideas presented. Grading will also take matters of spelling, grammar, punctuation, proper citation, and clarity of expression into account.

To appeal a grade please wait 48 hours after receiving your grade to reflect on the justification given. Emails sent before the 48-hour period will not receive a response. After the 48-hour period, you must send your T.A. a detailed explanation that explains why you believe you deserve a better mark based on the required guidelines. If upon appealing to the T.A. you are still unclear or unhappy about your grade you can then contact the Instructor. The instructor will then evaluate your grade.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

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).

All assignments must be submitted via CU Learn. It is your responsibility to upload assignments BEFORE the deadline and in readable formats that are compatible with the CU Learn system (e.g., PDF, .docx).

SCHEDULE

Week 1: Introduction

January 11

Syllabus Review

No Readings

Week 2: Law's Theoretical Foundations

January 18

Required Readings:

Ronald Dworkin (1997) "In Praise of Theory" Arizona State Law Journal. 29 (2),

353 – 376

Brian Z. Tamanaha (2005) "The Tension Between Legal Instrumentalism and the Rule of Law" *Syracuse J. Int'L. & Com.* 33 (1), 131 – 155

Robert Yazzie (1994) "Life Comes from It: Navajo Justice Concepts" *New Mexico Law Review.* 24 (2), 175 – 190.

Week 3: Law's Rooted Concepts

January 25

Required Readings:

Ronald Dworkin (1982) "'Natural Law' Revisited" *University of Florida Law Review.* 34 (2), 165 – 188

Ronald Dworkin (1990) "Equality, Democracy, and Constitution" *Alberta Law Review.* 28 (2), 324 - 346.

Mark D. Walters (2008) "Legal Humanism and Law-As-Integrity" *Cambridge Law Journal* 67 (2), 352 - 375.

Week 4: Law's Pragmatic Evolution

February 1

Required Readings:

Richard Posner (1990) "What Has Pragmatism to Offer Law?" *Southern California Law Review.* 63 (6), 1653 - 1670

Richard Posner (1997) "Conceptions of Legal Theory: A Response to Ronald Dworkin" *Arizona State Law Journal.* 29 (2), 377 – 388

David Luban (1996) "What's Pragmatic About Legal Pragmatism?" *Cardozo Law Review.* 18 (1), 43 - 74.

Week 5: Law's Anti-Conceptual Backlash

February 8

Brian Leiter "In Praise of Realism (and Against Nonsense Jurisprudence)" *Georgetown Law Journal.* 100 (3), 865 – 894

Frederick Schauer (2000) "Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior" *U Cin L Rev.* 68 (3), 615

Week 6: Law's Dual Practical and Conceptual Value

February 15

Required Readings:

Jeremy Webber (2009) "The Grammar of Customary Law" *McGill Law Journal.*

54. 579 - 625

Jack M. Balkin (2012) "The Roots of the Living Constitution" Boston University Law Review. 92 (6), 1129 – 1160

John Borrows (2017) "Challenging Historical Frameworks: Aboriginal Rights, The Trickster, Originalism" The Can 98 (1), 114 - 135

Week 7: Reading Week

February 22

No Required Reading

Week 8: Laws and Indigenous Worldviews

March 1

Required Readings:

James (Sakej) Youngblood Henderson (2002) "Postcolonial Indigenous Legal Consciousness" Indigenous Law Journal. 1 (1), 1 - 57

Tuma Young (2016) "L'nuwita'simk: A Foundational Worldview for a L'nuwey Justice System" Indigenous Law Journal. 13 (1), 75-102

Lindsay Borrows (2016) Dabaadendiziwin: Practices of Humility in a Multi-Juridical Legal Landscape" Windsor Yearbook of Access to Justice.

Week 9: Law's Internal and External Emergence

March 8

Required Readings:

Roger Cotterrell (2015) "Leon Petrazycki and Contemporary Socio-Legal Studies" International Journal of Law in Context. 11 (1),

Michal Peno (2019) "Leon Petrazycki and a Pluralism of the Sources of Law" Juridical Tribune. 9 (1), 246 - 260.

K. Alex Ziegert (1998) "A Note on Eugen Ehrlich and the Production of Legal Knowledge" Sydney Law Review. 20 (10), 108-126

David Nelken (2008), "Eugen Ehrlich, Living Law, and Plural Legalities" Theoretical Inquiries in Law. 9 (2), 443 - 472

Week 10: Law's Everyday Presence

March 15

Lynette J. Chua & David M. Engel (2019) "Legal Consciousness Reconsidered" Annual Review of Law and Social Science. 15, 335 – 353.

Marc Hertogh (2004) "A European Conception of Legal Consciousness: Rediscovering Eugen Ehrlich" Journal of Law and Society. 31 (4), 457 – 481.

L. Jane McMillan (2011) "Colonial Traditions, Co-optations, and Mi'kmaq Legal Consciousness" Law and Social Inquiry 36 (1), 171 - 200.

Week 10: Laws and Global Pluralism

March 22

Required Readings:

Franz von Benda-Beckmann (2002) "Who's Afraid of Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law*. 47 (1), 37 – 82.

Keebet von Benda-Beckmann and Bertram Turner (2018) "Legal Pluralism, Social Theory, and the State" *Journal of Legal Pluralism*. 50 (3), 255 – 274.

Alan Hanna (2018) "Spaces for Sharing: Indigenous Law on the Canadian Legal Landscape" *U.B.C. Law Review*. 51 (1), 105 - 159.

Week 12: Law's Natural Imagination

March 29

Required Readings:

Peter D. Burdon (2012) "A Theory of Earth Jurisprudence" *Australian Journal of Legal Philosophy*. 60 (1), 29 – 60.

Kirsten Anker (2017) "Law as Forest: Eco-Logic, Stories and Spirits in Indigenous Jurisprudence" *Law, Text, Culture*. 21 (1), 191 – 211.

Mark Antaki (2012) "The Turn to Imagination in Legal Theory: The Re-Enchantment of the World?" 23 (1), 1 – 20.

Week 13: Major Paper Review

April 5

No Assigned Reading

Winter 2023 Sessional Dates and University Closures	
<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. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.

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

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:
<https://students.carleton.ca/course-outline/>.

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 Department of Equity and Inclusive Communities (EIC):
<https://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 Department of Equity and Inclusive Communities (EIC):
<https://carleton.ca/equity/>.

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>.

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/studentsupport/svpolicy/>.

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 contact the departmental administrator or 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/>.

Intellectual Property and Copyright Policy

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videos, etc.) have either been licensed for use in this course or fall under an exception or limitation in Canadian Copyright law.