

Course Outline

COURSE:	LAWS 4106 – Law and Violence
TERM:	Fall 2022
PREREQUISITES:	LAWS 2908 or PAPM 3000 and fourth-year Honours standing.
CLASS:	Day & Time: Mondays, from September 7 to December 9, 2022 14:35 - 17:25 h. (2:35 p.m. to 5:25 p.m. EST).
	Room: Please check Carleton Central for current Class Schedule. Canal Building, Room 2400.
INSTRUCTOR:	Professor Sébastien Malette, PhD.
CONTACT:	D591 Loeb Building
TELEPHONE:	613-520-2600 x. 3681
	Office Hours: By appointment.
	Email: sebastien.malette@carleton.ca

CALENDAR COURSE DESCRIPTION: Examination of how law defines, justifies, and addresses individual, collective, and state violence: contemporary and historical case studies; theoretical inquiries into the relationship between law, legality and different forms of violence.

COURSE DESCRIPTION: Is there a paradox at the heart of the relationship between law and violence? On the one hand, it seems that law and its mechanisms contain and regulate violence, while, on the other, it is argued that law both enables and is a form of violence. Violence is often understood as necessary not only to the modern state's capacity to guarantee order, predictability, and maintain the rule of law - it is also implicated in dispossessing, excluding, and targeting specific populations through legal systems and justifications. How do systems and practices of law encounter, produce, and justify violence? What forms of violence occur within, alongside, outside, and in the wake of law? Throughout the term, we will explore the complex relationship between law and violence and its multiple manifestations through the emergence of narratives, norms, procedures, resistance and more. In approaching these issues, we will engage with a diversity of theoretical texts and topics that demonstrate the complexity of that relationship, its defining aspects to our political imagination, as well as its centrality to our everyday lives.

REQUIRED TEXTS: All articles, excerpts, and other materials will be available using the ARES link on the course Brightspace page. There is no textbook required for this course.

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.

A. Seminar participation (10%).

Mere attendance is the bare minimum. To ensure you receive full marks, please come to class with the readings done, and ready to engage respectfully in discussion. If you come unprepared or show no interest in participation, 5% of your total grade could be deducted.

Each student will be responsible for taking the lead on ONE week's readings at the beginning of each class.

You may choose which week you would like to take on (with the exceptions of Weeks One and Thirteen), and it will be on a first-come, first-served basis. I will circulate a sign-up sheet at the end of our first class. The reading should be summarized with key points briefly unpacked, and a critical appraisal offered. 15 minutes. **No PowerPoint support for this element of the course will be allowed.**

- As the lead, you are expected to prepare 2 questions/prompts to stimulate our discussion (you do not have to "present" during class). This means that you must carefully read the materials for your week, think critically about what is being discussed, and consider which aspects will facilitate discussion (lingering questions, connections to or disagreement with other readings, critiques/criticisms, theoretical and/or practical implications, etc.)
- You must submit your questions/prompts 24 HOURS before the start of class, on Brightspace. Please note this exercise is meant to spark engagement with the readings and conversation – consider it a jumping off point from which the discussion may wander to various places.

B. Oral presentations (40%)

Oral presentations will be 25 minutes long. Each class will have 2 openings in the second hour of our seminar. Oral presentations will discuss the reading material assigned to students from a critical perspective, highlighting the issues and concepts in a clear and concise fashion. Academic scholarship, and, obviously, notions of Law and the Violence, should be central to the contribution. Presentations should aim for originality (10%), critical engagement (40%), conceptual clarity (30%) and theoretical sophistication (20%). The usage of PowerPoint for the oral presentations is encouraged. No media or film over 10 minutes is allowed.

C. Course paper on Law and Violence (50%).

More detailed instruction for the course paper will be discussed in class.

(a) General Requirements

The seminar paper is central to this seminar, and research and communication skills are at least as important as substantive knowledge. Familiarize yourself with these instructions, heed suggestions made in class, and use the research and writing guides listed below. Look at the paper and electronic resources at MacOdrum Library, the reference works in the Department of Law's Law Resource Centre at D494 Loeb, Quicklaw, Westlaw Carswell, and other electronic data bases, and internet search engines and other research tools. Make use of the Writing Tutorial Service at 613-520-2600, extn. 6632.

(i) topics

All students must write a seminar paper on the topic to be assigned by the instructor. Papers on other topics will not receive marks. The topic will be determined/discussed on the first class.

(ii) format

The paper must be between 3500-4000 words (between 15-20 typed or word-processed pages at 12, 1.5 line spacing, excluding endnotes, etc.). It must be well-prepared, with proper citation, footnotes or endnotes, and bibliography. In all matters of legal citation and form, papers must comply with the McGill *Guide* referred to below.

(iii) content

Important qualities are: good organization and use of sources, comprehensive, up-to-date treatment of the subject matter, originality (i.e., no quoting or paraphrasing of secondary sources without explicit acknowledgment), accuracy (in grammar, spelling, and law), conciseness, reasoned analysis (discussion of pros and cons, comparisons, assessments, concrete examples, logical arguments, etc., rather than pure description or pure subjective opinion), and clarity, gender-appropriate language (e.g., avoiding use of male gender where both genders are relevant). See also the research, writing, and citation guides listed below.

(iv) originality

The paper must be researched and written entirely and exclusively by the student who submits it. All use of other peoples' words or ideas must be fully and clearly acknowledged. Work (a) that contains plagiarism - from the web or elsewhere, or (b) that was previously or is concurrently submitted for credit in this seminar, or (c) that was or is submitted for credit in any other seminar, will be given no credit. It is a very serious academic offence, subject to the penalties in the Department of Law's *Policy and Procedure Statement* below. Avoid case headnotes. Keep quotations and paraphrasing to a minimum. Where you use words or thoughts of others, give full credit for every single word or thought you use. Identify all words of others in quotation marks or in indented single-space passages, and link these to acknowledgments in endnotes or

footnotes. If you must paraphrase, use your own words and fully acknowledge all the original sources. All theories, views, and opinions of others must be fully acknowledged.

(v) **presentation**

The paper must be a computer-printable document on standard-sized paper using WORD or PDF Outlet, with a title page. Pages must be numbered. Papers are due on December 11, 2020, 5pm, and must be uploaded via CuLearn. An assignment slot in the corridor outside the Departmental Office, Room C473, Loeb Building is available for emergency only (notify me by email for any emergency). Students must keep an extra copy of the completed paper. Marks will be deducted for failure to type or print the paper, or to submit it on time - at the rate of 5% per day late, including weekends. Extensions will not be granted, except for (i) disabling illness, verified by a medical certificate indicating precise period of disablement or (ii) death in immediate family, verified by certificate of date of death. The instructor must be notified of the illness or death before the paper deadline. No credit is given for papers submitted after the University's final submission deadlines.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS:

Please see the comments in the section above.

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/COVID-19_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 AND READINGS

Monday, September 12, 2022. Week 1
 Introductions
 Syllabus Overview and Expectations for the Term

Suggested “light” readings for the Introduction on Violence:

Mourlet, Michel. “In defense of violence.” *Stardom: Industry of desire*, edited by Christine Gledhill and Paul J. Cloke, Psychology Press, 1991.

Gabbatiss, Josh. “Is Violence Embedded in Our DNA?” Sapiens.org. 22 July 2017.
<https://www.sapiens.org/biology/human-violence-evolution/>

September 19, 2022. Week 2 (**Reading presentations and orals begin**)

Readings (Law and Violence: Situating the Academic Debate):

Bobbio, Norberto. "Law and Force" *The Monist*, 49, 3, (1 July 1965): 321-341.

Cover, Robert M. "Foreword: Nomos and narrative." *Harv. L. Rev* 97 (1983): 4.

Menke-Eggers, Christoph. "Lead Essay." *Law and Violence: Christoph Menke in Dialogue*, edited by Christoph Menke-Eggers, and Alessandro Ferrara. Manchester University Press, 2018.

September 26, 2022. Week 3.

Readings (Narrative, Law, Violence):

Vlastos, Gregory. "Equality and justice in early Greek cosmologies." *Classical philology* 42, no. 3 (1947): 156-178.

David, Joseph E. "The One Who Is More Violent Prevails—Law and Violence from a Talmudic Legal Perspective." *Canadian Journal of Law & Jurisprudence* 19, no. 2 (2006): 385-406.

Friedland, Hadley Louise. "The Wetiko as a Legal Concept or Category." *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization*. University of Toronto Press, 2020: 510.

October 3, 2022. Week 4

Readings (Normativity, Law, Violence):

Gordon, Robert. "New developments in legal theory." *The politics of law: A progressive critique* (1990): 413-425.

Derrida, Jacques. "Force of Law: The 'Mystical Foundation of Authority'" *Deconstruction and the Possibility of Justice*, edited by Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson. Routledge, 2016.

Loughlin, Martin. "Nomos." *Law, Liberty and State: Oakeshott, Hayek and Schmitt on the Rule of Law*, edited by David Dzyenhaus and Thomas Poole. Cambridge University Press, 2015.

October 10, 2022. Week 5: **NO CLASSES.**

October 17, 2022. Week 6

Readings (Procedure, Law, Violence):

Luhmann, Niklas. "Law as a social system." *Nw. UL Rev.* 83 (1988): 136.

Priban, Jiri. "Beyond Procedural Legitimation: Legality and Its 'Infictions.'" *Journal of law and society* 24, no. 3 (1997): 331–349.

Martel, James. "The Law of Rules: Hyperlegalism, Emergency and the Violence of Procedure." *Law, culture and the humanities* 17, no. 1 (2021): 53–70.

October 24, 2022. Week 7

Readings (Economy, Law, Violence: A Marxist Perspective):

Lukács, Georg. "Legality and Illegality." *History and class consciousness: Studies in Marxist dialectics*. Merlin Press, 1967.

Hunt, Alan. "Law, state and class struggle." *Marxism Today* 20, no. 6 (1976): 178-87.

Nguyen, Duy Lap. "On the suspension of law and the total transformation of labour: Reflections on the philosophy of history in Walter Benjamin's 'Critique of Violence'." *Thesis Eleven* 130, no. 1 (2015): 96-116.

October 31, 2022. Week 8: **NO CLASSES.**

November 7, 2022. Week 9

Readings (State, Law, Violence):

Mensch, James R. "Violence and existence: an examination of Carl Schmitt's philosophy." *Continental Philosophy Review* 50, no. 2 (2017): 249-268.

Rae, Gavin. "Divinity within the Law: Schmitt on the Violence of Sovereignty" *Critiquing Sovereign Violence: Law, Biopolitics and Bio-Judicialism*, edited by Gavin Rae. Edinburgh University Press, 2019: 46-66.

Müller, Jan-Werner. "What, if anything, is wrong with Hayek's model constitution?" *Law, Liberty and State: Oakeshott, Hayek and Schmitt on the Rule of Law*, edited by David Dzyenhaus and Thomas Poole. Cambridge University Press, 2015.

November 14, 2022. Week 10

Readings (Governmentality, Law, Violence):

Foucault, Michel. "Truth and juridical forms." *Social Identities* 2, no. 3 (1996): 327-342.

Oksala, Johanna. "Violence and Neoliberal Governmentality." *Constellations* (Oxford, England) 18, no. 3 (2011): 474-486.

Emerson, R. Guy. "Critique of Biopolitical Violence." *Critical studies on security* 10, no. 1 (2022): 3-15.

November 21, 2022. Week 11

Readings (Colonialism, Law, Violence):

Anghie, Antony. "Finding the peripheries: colonialism in nineteenth-century international law." *Imperialism, sovereignty and the making of international law*. Vol. 37. Cambridge University Press, 2007: 32-114.

Smith, Andrea. "The moral limits of the law: Settler colonialism and the anti-violence movement." *Settler Colonial Studies* 2, no. 2 (2012): 69-88.

Borrows, John. "Challenging Historical Frameworks: Aboriginal Rights, The Trickster, and Originalism." *The Canadian historical review* 98, no. 1 (2017): 114-135.

November 28, 2022. Week 12

Readings (Genocide, Law, Violence):

Karpiński, Franziska, and Elysia Ruvinsky. "Sexual Violence in the Nazi Genocide: Gender, Law, and Ideology." *Genocide: New Perspectives on its Causes, Courses and Consequences*, edited by Ugur Üngör. Amsterdam University Press, 2016: 149-174.

Ertur, BaAak. "Law of Denial." *Law and critique* 30, no. 1 (2019): 1-20.

Alexander, Amanda. "The Ethics of Violence: Recent Literature on the Creation of the Contemporary Regime of Law and War." *Journal of genocide research* (2021): 1-17.

December 5, 2022 Week 13 (Reading presentations and orals end)

Readings (Alternative, Resistance, Action):

Sarat, Austin, and Thomas R. Kearns. "Making Peace with Violence: Robert Cover on Law and Legal Theory." *Law, violence, and the possibility of justice*, edited by Austin Sarat. Princeton University Press, 2001: 49-84.

Bedau, Hugh Allan. "Punitive justice and its Alternatives." *Justice, law, and violence* edited by James B. Brady, and Newton Garver, eds.. Philadelphia: Temple University Press, 1991.

Curpatrick, Stephen. "Mandela's Force of Law." *Sophia* 41, no. 2 (2002): 63–72.

December 9, 2022. Week 14. NOTE: This class follows a Monday schedule.

Readings:

No readings.

Review and conversation

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: Please write to the professor 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: Please write to the professor 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 your professor 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 the professor 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 the professor 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 intentionally 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 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/>.

COVID Update

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.