
COURSE:		LAWS 5903F - Contemporary Topics in Legal Studies – Law, Power, Indigeneity
TERM:		FALL 2020
PREREQUISITES:		None
CLASS:	Day & Time:	11:35—14:25. Please check Carleton Central for current Class Schedule.
	Room:	All Courses in the Fall 2020 term are offered online. See CuLearn; Big Blue Button technology will be used.
PROFESSOR:		Sebastien Malette, Ph.D.
CONTACT:	Office:	D591 Loeb Building
	Office Hrs:	By appointment and office hours using Big Blue Button: Fridays, 13:00—15:00
	Telephone:	613-520-2600 x. 3681
	Email:	sebastien.malette@carleton.ca

COURSE DESCRIPTION

This seminar will investigate Law through the work of Michel Foucault, especially in relation to the politics of rights and identity in the contemporary era. The work of Foucault will be used to further investigate various rationales we find embedded in juridical narratives on what constitutes indigeneity (i.e. “regimes of truth”), as well as the power/knowledge strategies and tactics involving various indigenous actors aiming at defining--and often limiting--the scope of such concept in the International and Canadian context. The seminar will encourage an open discussion on issues of the politics of Law/Identity, and students will be encouraged to investigate subject matter on this topic. Other possible domains, which could be analyzed using this framework, include topics such as gender, sexual identities, ethnicities as well as immigration, giving students an opportunity to pursue research in their own fields of interest in line with the Foucauldian theoretical framework explored.

REQUIRED TEXTS

A list of articles and chapters will be made accessible on CuLearn (listed below in the schedule section).

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.

Participation:	10%
In-class attendance and class participation (10%)	
Presentation/introduction of one of the weekly readings (15 minutes)	
2 Oral presentations	40%
Course Paper: Submitted the last class of the course	50%

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%).

Each student will be responsible to present one of the weekly readings. The reading should be summarized with key points briefly unpacked, and a critical appraisal offered. 15 minutes. No PowerPoint support for this presentation will be allowed.

B. 2 oral presentations (40%)

Oral presentations will be between 30-60 minutes long. They will discuss the material assigned to students from a critical perspective, highlighting the issues and concepts in a clear and concise fashion. Foucauldian scholarship, notions of Indigeneity and the Law should be central to the contribution. The other weekly readings should also be critically discussed in relation to the main material covered. Presentation should aim for originality, clarity and theoretical sophistication. Following the presentation, the student will be in charge of leading the discussion in class. The usage of power point is encouraged. No media or film over 10 minutes is allowed.

C. Course paper on Law, power and Indigeneity (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, WestlaweCarswell, and other electronic data bases, and internet search engines and other research tools. Make use of the Writing Tutorial Service at 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 % p e r d a y 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/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

September 7, 2020	Statutory Holiday, University Closed
September 9, 2020	Fall Term Begins. Fall and Fall/Winter Classes Begin
October 12, 2020	Statutory Holiday, University Closed
October 26 – 30, 2020	Fall Break, No Classes
December 11, 2020	Fall Term Ends
	Last Day of Fall Term Classes
	Classes follow a Monday Schedule
December 12 – 23, 2020	Formally Scheduled Final Exams May Be Held
December 25 – 31, 2020	University Closed
January 1, 2021	University Closed

Knowledge and understanding of the readings material will help ensure that you can contribute to class discussions and pass the examinations. Please make sure to consult CUlearn to access extra reading material on each subject below.

1. Presentation of the Outline. Introduction

- No reading.

2. Readings for the second seminar (Theoretical framework. Why Michel Foucault?):

- Ingram, A. (1994) *Constructing a Theory of Rights: Building in Conversational Constraints*. In Ingram, A. *A Political Theory of Rights*. Oxford: Oxford University Press.
- Iverson, D. (2002) "Disagreement and public reason." In *Postcolonial liberalism*. Cambridge: Cambridge University Press. 73-94.

- C. Borrows, J. (2016) "Physical Philosophy: Mobility and Indigenous Freedom." In *Freedom and Indigenous Constitutionalism*. Toronto: U of T Press. 19-48.
- D. Rose, N., O'Malley, P., & Valverde, M. (2006). Governmentality. *Annual Review of Law and Social Science*, 2(1), 83-104.
- E. de Ville, J. (2011). Rethinking power and law: Foucault's society must be defended. *International Journal for the Semiotics of Law - Revue Internationale De Sémiotique Juridique*, 24(2), 211-226
- F. Woolhandler, J. (2014;). Toward a Foucauldian legal method. *University of Pittsburgh Law Review*, 76(1), 131.

3. Readings for the third seminar (Colonialism and Indigeneity: the Functions of Law):

- A. Scott, D. (1995). Colonial governmentality. *Social Text*, 43(43), 191-220.
- B. Asch, M. (2007). Governmentality, state culture and indigenous rights. *Anthropologica*, 49(2), 281-284.
- C. Lawrence, B. (2003) Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview. *Hypatia* 18(2), 3-31.
- D. Bell, C., & Schreiner, K. (2018). The international relations of police power in settler colonialism: The "civilizing" mission of Canada's Mounties. *International Journal*, 73(1), 111-128.
- E. Pasternak, S. (2014). Jurisdiction and settler colonialism: Where do laws meet? *Canadian Journal of Law and Society*, 29(2), 145-161.
- F. Asch, M. (2002). From terra nullius to affirmation: Reconciling aboriginal rights with the Canadian constitution. *Canadian Journal of Law and Society*, 17(2), 23-39.

4. Readings for the fourth seminar (Indigenous political ontologies):

- A. Oksala, J. (2010). Foucault's politicization of ontology. *Continental Philosophy Review*, 43(4), 445.
- B. "The mandate and the dissolution of sovereignty" in Anghie, A. (2005). *Imperialism, sovereignty, and the making of international law*. Cambridge, UK; New York;: Cambridge University Press.
- C. McCrossan, M., & Ladner, K. L. (2016). Eliminating indigenous jurisdictions: Federalism, the supreme court of Canada, and territorial rationalities of power. *Canadian Journal of Political Science*, 49(3). 411-431.
- D. Ulloa, A. (2011). The politics of autonomy of indigenous peoples of the Sierra Nevada de Santa Marta, Colombia: A process of relational indigenous autonomy. *Latin American and Caribbean Ethnic Studies*, 6(1), 79-107.
- E. Daigle, M. (2016). Awawanenitakik: The spatial politics of recognition and relational geographies of indigenous self-determination. *The Canadian Geographer / Le Géographe Canadien*, 60(2), 259-269.
- F. Blaser, M. (2014). Ontology and indigeneity: On the political ontology of heterogeneous assemblages. *Cultural Geographies*, 21(1), 49-58.

5. Readings for the fifth seminar (Indigenous authenticity and processes of subjectifications):

- A. Phillips, A. (2009) "What's Wrong with Cultural Defence?" In *Multiculturalism without Culture*. Princeton University Press. 73-100.
- B. "Introduction." In Forte, M. C. (2013). *Who is an Indian?: Race, place, and the politics of indigeneity in the Americas*. Toronto: University of Toronto Press.
- C. Chapter 5." In Lawrence, B. (2012). *Fractured homeland: Federal recognition and Algonquin identity in Ontario*. Vancouver: UBC Press.
- D. Dickson-Gilmore, E. J. (1999). "This is my history, I know who I am": History, factionalist competition, and the assumption of imposition in the Kahnawake Mohawk nation. *Ethnohistory*, 46(3), 429-450.
- E. Quigley, D. (2018). Indigenous identity construction: Enacted upon us, or within us. *Social Identities*, 1-10.
- F. CEPEK, M. L. (2011). Foucault in the forest: Questioning environmentality in Amazonia. *American Ethnologist*, 38(3), 501-515.

6. Readings for the sixth seminar (Indigeneity: regimes of truth and the "Politics of Ourselves"):

- A. Chaput, C. (2009). Regimes of truth, disciplined bodies, secured populations: An overview of Michel Foucault. *Science Fiction Film and Television*, 2(1), 91-104.
- B. Brännström, L. (2014). Law, objectives of government, and regimes of truth. *Foucault Studies*, (18), 173.
- C. Lemke, T. (2011). Critique and experience in Foucault. *Theory, Culture & Society*, 28(4), 26-48.
- D. Kolopenuk, J. (2018). "Pop-Up" Métis and the rise of Canada's Post-Indigenous formation. *American Anthropologist*, 120(2), 333-337.
- E. Malette, S., & Marcotte, G. (2017). Marie-Louise: Protector of Louis Riel in Québec. *Mediatropes*, 7(1), 26-74.
- F. Anderson, R., & Wong, J. (2013). Truth and the 'Politics of ourselves'. *The Southern Journal of Philosophy*, 51(4), 419-444.

7. Readings for the seventh seminar (Indigeneity and the challenge of Neo-liberal governmentality):

- A. Lemke, T. (2001). 'the birth of bio-politics': Michel foucault's lecture at the collège de france on neo-liberal governmentality. *Economy and Society*, 30(2), 190-207.
- B. Dilts, A. (2011). From 'Entrepreneur of the self' to 'Care of the self': Neo-liberal governmentality and Foucault's ethics. *Foucault Studies*, (12), 130.
- C. Borrows, J. (2015). Aboriginal title and private property. *Supreme Court Law Review*, 71, 91.
- D. Lindroth, M. (2014). Indigenous rights as tactics of neoliberal governance: Practices of expertise in the United Nations. *Social & Legal Studies*, 23(3), 341-360.
- E. Pasternak, S., & Dafnos, T. (2018). How does a settler state secure the circuitry of capital? *Environment and Planning D: Society and Space*, 36(4), 739-757.
- F. Grewcock, M. (2018). Settler-colonial violence, primitive accumulation and Australia's genocide. *State Crime Journal*, 7(2), 222.

8. Readings for the eighth seminar (Social media, power/knowledge and Indigeneity):

- A. Murthy, D. (2012). Towards a sociological understanding of social media: Theorizing twitter. *Sociology*, 46(6), 1059-1073.
- B. Soriano, C. R. (2012). The arts of indigenous online dissent: Negotiating technology, indigeneity, and activism in the cordillera. *Telematics and Informatics*, 29(1), 33-44.
- C. Cheney-Lippold, J. (2011). A new algorithmic identity: Soft biopolitics and the modulation of control. *Theory, Culture & Society*, 28(6), 164-181.
- D. Castro, J. C. L. (2016). Social networks as dispositives of neoliberal governmentality. *Journal of Media Critiques*, 2(7), 85-102.
- E. Ochigame, R., & Holston, J. (2016). Filtering dissent: Social media and land struggles in Brazil. *New Left Review*, (99), 85.
- F. Introna, L. D. (2016). Algorithms, governance, and governmentality: On governing academic writing. *Science, Technology, & Human Values*, 41(1), 17-49.

9. Readings for the ninth seminar (Subjectivity, nationalism, critique):

- A. Rossi, A. (2017). Foucault, critique, subjectivity. *Journal for Cultural Research*, 21(4), 337-350.
- B. Chapter 5. McAdam, S. (2015). *Nationhood interrupted: Revitalizing nêhiyaw legal systems*. Saskatoon, SK, Canada: Purich Publishing Limited.
- C. Coakley, J. (2018). 'Primordialism' in nationalism studies: Theory or ideology? *Nations and Nationalism*, 24(2), 327-347.
- D. Chatterjee, P. (2017). Empires, nations, peoples: The imperial prerogative and colonial exceptions. *Thesis Eleven*, 139(1), 84-96.
- E. Lindroth, M. (2011). Paradoxes of power: Indigenous peoples in the permanent forum. *Cooperation and Conflict*, 46(4), 543-562
- F. Eudaily, S. P., & ProQuest (Firm). (2004). *The present politics of the past: Indigenous legal activism and resistance to (neo)liberal governmentality*. New York: Routledge.

10. Readings for the tenth seminar (Drawing on Indigenous laws [and beyond]):

- A. Hunt, S. (2014). Ontologies of indigeneity: The politics of embodying a concept. *Cultural Geographies*, 21(1), 27-32.
- B. Tola, M. (2018). Between Pachamama and Mother Earth: Gender, political ontology and the rights of nature in contemporary Bolivia. *Feminist Review*, 118(1), 25-40.
- C. Rùhs, N., & Jones, A. (2016). The implementation of earth jurisprudence through substantive constitutional rights of nature. *Sustainability*, 8(2), 174.
- D. Snyder, E., Napoleon, V., & Borrows, J. (2015). Gender and violence: Drawing on indigenous legal resources. *University of British Columbia Law Review*, 48(2), 593.
- E. Borrows, J. (2016). Heroes, tricksters, monsters, and caretakers: Indigenous law and legal education. *McGill Law Journal*, 61(4), 795-846.
- F. Melkevik, B. (2004) "The Customary Law of Indigenous Peoples and Modern Law: Rivalry or Reconciliation?" In Clammer J., Poirier S., Schwimmer (eds.), *Figured Worlds. Ontological Obstacles in Intercultural Relations*. Toronto: U of T Press. 225-243.

11. Reading for the eleventh seminar: (Law, relationality, reconciliation):

- A. MacDonald, D. B., & Hudson, G. (2012). The genocide question and Indian residential schools in Canada. *Canadian Journal of Political Science / Revue Canadienne De Science Politique*, 45(2), 427-449
- B. Eisenberg, A. (2014) "Self-determination versus Recognition." In Coulthard, G., Webber, J.H.A., Eisenberg, A., Boisselle, A., *Recognition versus self-determination: dilemmas of emancipatory politics*, Vancouver: UBC Press. 293
- C. Dietrich, R. (2017). The biopolitical logics of settler colonialism and disruptive relationality. *Cultural Studies ↔ Critical Methodologies*, 17(1), 67-77.
- D. Bird-David, N. (2017). Before nation: Scale-blind anthropology and foragers' worlds of relatives. *Current Anthropology*, 58(2), 209-226.
- E. Chapter 8. In Borrows, J., Asch, M., & Tully, J. (2018). *Resurgence and reconciliation: Indigenous-settler relations and earth teachings*. London; Toronto [Ontario]; Buffalo;: University of Toronto Press.
- F. Country, B., Wright, S., Suchet-Pearson, S., Lloyd, K., Burarrwanga, L., Ganambarr, R., . . . Sweeney, J. (2016). Co-becoming bawaka: Towards a relational understanding of place/space. *Progress in Human Geography*, 40(4), 455-475.

12. Conclusion:

- No reading

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://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

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/studentssupport/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. <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/current-students/>