

## Course Outline

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| <b>COURSE:</b>        | <b>LAWS 4100 A Law, State and the Constitution</b>  |
| <b>TERM:</b>          | <b>Winter 2026</b>  |
| <b>PREREQUISITES:</b> | Prerequisite(s): LAWS 2908 and fourth-year Honours standing.  |
| <b>CLASS:</b>         | <b>Day &amp; Time:</b> Mondays, 8:35pm-11:25pm<br><b>Room:</b> Online via Zoom  |
| <b>INSTRUCTOR:</b>    | <b>Zoran Oklopovic</b>  |
| <b>CONTACT:</b>       | <b>Office Hrs:</b> via Zoom, after classes or upon appointment<br><b>Telephone:</b><br><b>Email:</b> via Brightspace only |

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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’.

### **CALENDAR COURSE DESCRIPTION**

Realist and post-realistic 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.

### **LEARNING OUTCOMES**

- **Familiarity with leading debates about the crisis of liberal democracy**
- **The ability to critically examine theoretical arguments and cogently present the substance of one’s critique before a skeptical and probing audience**

### **EVALUATION**

The components of your overall grade are as follows:

#### **(I) 20% of the grade: Class Participation**

40% of this component (i.e., 8% of the overall grade) will be awarded for attending at least 10 classes. The remaining 60% of this component (i.e., 12% of the overall grade) is reserved for active classroom participation. Up to 2 percentage points per individual session will be granted to students who meaningfully engage with the readings and actively contribute to classroom discussions.

#### **(II) 25% of the grade: In-Class Oral Presentation**

Students will deliver a 12-15 minute oral presentation on a chosen reading (assigned on a first-come, first-served basis). The presentation will be evaluated according to the following criteria: (a) *Comprehension and analysis* (40%) – You should clearly articulate the structure of the author’s argument, explain the meaning of key terms, and identify the concerns driving the author’s approach to the subject matter; (b) Contribution to classroom discussion (40%) – You should highlight themes and arguments that connect to the class topic and raise questions, problems, or issues that can launch broader in-class debate; (c) Quality of presentation (20%) – You should convey your points effectively, clearly, and engagingly. PowerPoint is not permitted, except for visual materials used as evidence, illustration, or examples. Please note: During or after your presentation, expect interruptions, follow-up or clarifying questions, or requests to substantiate claims with examples. Your grade for this component will reflect both the presentation itself and how well you handle these interactions, which are designed to assess the depth and authenticity of your understanding of the material. (Please review

*the relevant information on the legitimate use of the AI below)*

**(III) 25% of the overall grade: In-Class Multiple-Choice Quiz**

A quiz testing knowledge of basic concepts and debates covered in the course will be held online on March 16, 2026. Please note that tests and examinations in this course will use a remote proctoring service provided by Scheduling and Examination Services. You can find more information at <https://carleton.ca/ses/e-proctoring>. The minimum computing requirements for this service are listed on the SES website (<https://carleton.ca/ses/online-exams/e-proctoring/e-proctoring-course-outline-template>)

**(IV) 30% of the overall grade: Final Essay**

A 1200–1400-word essay, due on the last day of the exam period on a topic selected from a list that will be announced on March 30, 2026. A successful essay will feature a thoughtful examination of the chosen topic; concise writing supported by sound reasoning that makes relevant conceptual connections, addresses advantages and disadvantages of specific approaches, makes apt comparisons, and on the whole develops a well-structured and logically coherent arguments.

**Policy on Classroom Recording**

Students are prohibited from recording class sessions and are also prohibited from the distribution of class recordings.

**Final Grade Approval**

Standing in a course is determined by the course instructor subject to the approval 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 Dean. All components must be successfully completed in order to get a passing grade.

**Required texts (in alphabetical order)**

Students are not required to purchase textbooks or other learning materials for this course. The readings that are not available via Carleton McOdrum library online, will be posted on Brightspace.

- (1) Ankersmit, Frank, 2011. What if our representative democracies are elective aristocracies?. *Redescriptions: Political Thought, Conceptual History and Feminist Theory*, 15(1). 21-44.
- (2) Bell, Duncan. 2014. What is liberalism?. *Political theory*, 42(6). 682-715.
- (3) Blaug, Ricardo. 2007.. "Cognition in a hierarchy." *Contemporary Political Theory* 6.1: 24-44.

(4) Bobbio, Norberto. 1989. Democracy and dictatorship: The nature and limits of state power. U of Minnesota Press.

(5) Brubaker, Rogers. 2017. "Why populism?." *Theory and society* 46.5: 357-385.

(6) Citton, Yves. 2020. "Democratic discontents and the need for mediarchical re-organization." *Electra* 8. 1-7.

(7) Dahl, Robert A. 1990. "The Myth of the Presidential Mandate." *Political Science Quarterly* 105 (3): 355-72.

(8) Friedman, Barry. 2002. "The Birth of an Academic Obsession: The History of the Countermajoritarian Difficulty, Part Five." *Yale Law Journal* 112 (1): 153-259.

(9) Garsten, Bryan. 2009. "Representative Government and Popular Sovereignty." In *Political Representation*, edited by Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, and Alexander S. Kirshner, 90-110. Cambridge: Cambridge University Press.

(10) Hill Collins, Patricia. 2010. "The New Politics of Community." \**American Sociological Review*\* 75 (1): 7-30.

(11) Keane, John. "Democracy and the Media - Without Foundations." *Political Studies*, vol. 40, no. s1, 1992, pp. 116-29.

(12) Krastev, Ivan, and Stephen Holmes. 2018. "Explaining Eastern Europe: Imitation and Its Discontents." *Journal of Democracy* 29 (3): 117-28.

(13) Kaltwasser, Cristóbal Rovira, and Steven M. Van Hauwaert. 2020. "The Populist Citizen: Empirical Evidence from Europe and Latin America." *European Political Science Review* 12 (1): 1-18.

(14) Przeworski, Adam. 2024. Who decides what is democratic?. *Journal of Democracy*, 35(3), 5-16.

(15) Rhoden, Thomas. 2015. "The liberal in liberal democracy." *Democratization* 22.3: 560-578.

(16) Rosenthal, Peggy. 1984. *Words and Values: Some Leading Words and Where They Lead Us*. New York: Oxford University Press.

(17) Sartori, Giovanni. 1975. "Will Democracy Kill Democracy? Decision-Making by Majorities and by Committees." *Government and Opposition* 10 (2): 131-58.

(18) Sartori, Giovanni. 1987. "What democracy is not?" in Sartori, *The Theory of Democracy Revisited*.

(19) Schepppele, Kim Lane. 2018. "Autocratic Legalism." *University of Chicago Law Review* 85 (2): 545-583.

(20) Scheuerman, William E. 2005. "American Kingship? Monarchical Origins of Modern Presidentialism." *Polity* 37 (1): 24-53.

(21) Stenner, Karen, and Jonathan Haidt. 2018. "Authoritarianism Is Not a Momentary Madness, But an Eternal Dynamic Within Liberal Democracies." In *Can It Happen Here? Authoritarianism in America*, edited by Cass R. Sunstein. New York: Dey Street Books. 17-54.

(22) Stråth, Bo. 2001. "Community/Society: History of the Concept." In \**International Encyclopedia of the Social & Behavioral Sciences*\*, edited by Neil J. Smelser and Paul B. Baltes. Oxford: Pergamon. 2378-2383

(23) Tragarth, L. 2001. "Society/People: History of the Concept" in \**International Encyclopedia of the Social & Behavioral Sciences*\*, edited by Neil J. Smelser and Paul B. Baltes. Oxford: Pergamon. 14536-14539.

(24) Walzer, Michael. 1984. "Liberalism and the Art of Separation." *Political Theory* 12 (3): 315-30.

(25) Winter, Steven L. 2001. "When Self-Governance Is a Game." *Brooklyn Law Review* 67 (4): 1171-1210.

(26) Yack, Bernard. 2001. "Popular Sovereignty and Nationalism." \**Political Theory*\* 29 (4): 517-36.

(27) Zakaria, Fareed. 1997. "The Rise of Illiberal Democracy." *Foreign Affairs* 76 (6): 22-43.

(28) Polybius, *Histories* Book VI [on the systems of government]

**SCHEDULE**

| LAWS 4100A Winter 2026 |             |   |
|------------------------|-------------|---|
|                        | date        | TOPICS AND READINGS   |
| 1                      | January 5   | Introduction. Survey of the major themes. Panoramic overview of the challenges to contemporary liberal constitutional democracy. Connection with the narrower questions of legal theory. <b>No readings.</b>  |
| 2                      | January 12  | Basic way of thinking about democracy as a form of government. Democracy in a trichotomy, and democracy in a dichotomy. <b>Readings: Polybius [select passages] and Bobbio, pp. 133-166</b>   |
| 3                      | January 19  | An in-depth exploration of a dichotomous relationship between democracy and autocracy. An in-depth look into two mutually incompatible conceptions of democracy-autocracy relationship. <b>Readings: Kelsen, pp. 84-105.. and Sartori, pp. 181-214</b>  |
| 4                      | January 26  | Popular government or/as representative democracy. Representative democracy as a suspect concept: the <b>Readings: Federalist No. 10 + 14; Ankersmit, pp. 21-44.</b>  |
| 5                      | February 2  | Populist / nationalist challenges to contemporary democracies. The nature of populist dispositions and the dimensions of contemporary populism. <b>Readings: Yack, pp. 517-536; Kaltwasser and Rovira, pp. 1-18; Brubaker, pp. 357-385.</b>   |
| 6                      | February 9  | Authoritarian challenges to contemporary democracies. The nature of authoritarian regimes and the characteristics of authoritarian dispositions. <b>Readings: Scheppelé, pp. 545-583.; Stenner and Haidt, pp. 17-54</b>   |
| Reading week           |             | NO CLASSES  |
| 7                      | February 23 | The challenge of authoritarianism, continued. The promises and pitfalls of monocratic leadership in the era of Donald Trump. The anti-democratic characteristics of the American Presidency. <b>Readings: Scheuerman, pp. 24-53 ; Dahl pp. 355-72; Blaug, pp. 24-44.</b>                                    |
| 8                      | March 2     | The perils of majority rule revisited—with special attention to the historical origins of the counter-majoritarian difficulty, and the character of decision-making in the context of collegial bodies. <b>Readings: Friedman, pp. 153-259. (2 person presentation possible!) and Sartori, pp. 131-158.</b> |
| 9                      | March 9     | An in-depth look into the concept of community and its relationship with the concepts of society, and popular sovereignty. <b>Readings: Rosenthal, pp. 219-234; Hill-Collins, pp. 7-30, (Strath pp. 2378-2383 + Tragarth, pp. 14536-14539: one presentation).</b>   |
| 10                     | March 16    | What is liberal about liberal democracy? A closer look at the tensions between liberalism and democracy. <b>Readings: Bell pp. 682-715; Rhoden, pp. 560-578; Walzer, pp. 315-330.</b>   |
| 11                     | March 23    | A critical look at the scholarly narratives about the development of democracy. Who gets to say what is democratic (and liberal) and what is not? <b>Readings: Zakaria, pp. 22-43, Przeworski, pp. 5-16; Krastev and Holmes, pp. 117-28.</b>  |
| 12                     | March 30    | The role of media in a (contemporary) democracy. How do new media affect the liberal character of democracy? <b>Readings: Winter, pp. 1171-1210; Keane, pp. 116-29; Citton, pp. 1-7.</b>  |
| 13                     | April 6     | Wrap-up. Recapitulation of the debates, <b>No readings.</b>   |

## **Permissibility of the use of generative artificial intelligence tools**

Students may use AI tools for ideas, clarifying challenging concepts or getting started on projects. Some acceptable uses include: Sounding board (e.g. generating essay topics with ChatGPT, using Microsoft Word's Smart Lookup or Copilot to find inspiration and related topics). Creating outlines (e.g. using AI to structure an essay or presentation flow, using Microsoft Word's Outline View with AI suggestions). Providing definitions or explanations of complex concepts (e.g. using AI to explain a difficult theory or to find relevant information). It is necessary to document your use of AI in this course, using the following guidelines: Clearly identify and cite AI-generated text (e.g. "The following paragraph was generated by ChatGPT/Microsoft Word's Researcher tool/Copilot") Review, edit and ensure accuracy and originality of final submissions. AI-generated content should not exceed X per cent (instructor to modify – we recommend no more than 30 per cent) of the total assignment length. This policy supports the use of AI as a supplementary tool, helping students develop ideas and structure their work while emphasizing the importance of transparency and personal engagement with the content. AI can be used for inspiration and foundational support and can encourage students to critically assess and refine AI-generated material. **This policy applies only to class preparation, including preparatory activities related to the in-class oral presentations. In all other respects, the use of AI is prohibited.**

### **Late penalties and requests for extensions**

For information about requesting short-term or long-term extensions, deferrals for final exams, or academic consideration due to illness, injury, or other extraordinary circumstances, please visit the Academic Consideration Policy page. <https://carleton.ca/registrar/academic-consideration-policy/>

## **UNIVERSITY AND DEPARTMENTAL POLICIES**

### **PLAGIARISM**

The University Academic Integrity Policy defines plagiarism as "*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one's own.*" This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

### **STATEMENT ON STUDENT MENTAL HEALTH**

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

For more information, please consult <https://wellness.carleton.ca/>

Emergency Resources (on and off campus):

- <https://wellness.carleton.ca/get-help-now/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

## **ACADEMIC ACCOMMODATIONS**

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances, are outlined on the Academic Accommodations website ([students.carleton.ca/course-outline](http://students.carleton.ca/course-outline)).

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows.

### **Pregnancy and Family-Status Related Accommodations**

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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

### **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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>.

### **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](mailto:pmc@carleton.ca) for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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/>.

**Academic Consideration for Medical and Other Extenuating Circumstances**

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three (3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of-refusal-to-provide-academic-consideration/>. *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).

| <b>Winter 2026 Sessional Dates and University Closures</b>  |  |
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| <i>Please find a full list of important academic dates on the calendar website:<br/><a href="https://calendar.carleton.ca/academicyear/">https://calendar.carleton.ca/academicyear/</a></i> |  |
| <b>January 5, 2026</b>  | Winter term begins.  |
| <b>January 16, 2026</b>   | Last day for registration and course changes (including auditing) for Winter courses.  |
| <b>January 31, 2026</b>   | Last day to withdraw from full winter courses and the winter portion of fall/winter courses with a full fee adjustment.  |
| <b>February 16, 2026</b>  | Statutory holiday. University closed.  |
| <b>February 16-20, 2026</b>   | Winter break. No classes.  |
| <b>March 15, 2026</b>   | Last day for academic withdrawal from Winter courses.  |
|   | Last day to request Formal Examination Accommodations for April full winter, late winter, and fall/winter final examinations from the Paul Merton Centre for Students with Disabilities. Note that it may not be possible to fulfil accommodation requests received after the specified deadlines. |
| <b>March 25, 2026</b>   | Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in full winter term or fall/winter undergraduate courses, before the official April final examination period.  |
| <b>April 3, 2026</b>  | Statutory holiday. University closed.  |
| <b>April 8, 2026</b>  | Winter term ends.  |
|   | Last day of winter and fall/winter classes.  |
|   | Classes follow a Friday schedule.  |
|   | Last day for take home examinations to be assigned.  |
| <b>April 9-10, 2026</b>   | No classes or examinations take place.   |
| <b>April 11-23, 2026</b>  | Final examinations in fall term courses and mid-term examinations in fall/winter courses will be held.   |
| <b>April 23, 2026</b>   | All final take-home examinations are due on this day, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.                                      |