

**COURSE:** LAWS 5000 – Theories of Law and Social Transformation

**TERM:** Fall - 2017

**PREREQUISITES:** *(Please refer to the public schedule on Carleton Central)*

**CLASS:** **Day & Time:** Wednesdays 11:35–2:25pm  
**Room:** Please check with Carleton Central for current room location

**INSTRUCTOR:** Professor Philip Kaisary

**CONTACT:** **Office:** D485 Loeb Building  
**Office Hrs:** Tuesdays 4:00 – 5:30pm  
**Telephone:** 613-520-2600 x. 4181  
**Email:** Philip.Kaisary@carleton.ca

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#### **Academic Accommodations:**

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 more details visit the Equity Services website: <http://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 Equity Services website: <http://carleton.ca/equity/>

**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. 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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website ([www.carleton.ca/pmc](http://www.carleton.ca/pmc)) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

#### **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:

<http://carleton.ca/studentaffairs/academic-integrity/>

**Student Services:** The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4<sup>th</sup> floor of MacOdrum Library or online at [carleton.ca/csas](http://carleton.ca/csas)

### **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.

<http://carleton.ca/law/current-students/>

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## **COURSE DESCRIPTION**

This course comprises an interdisciplinary exploration of law's relationship to social transformation and repression. We will begin by considering natural law theory in the context of the late 18<sup>th</sup> century's Age of Revolutions and the inheritance of the American, French, and Haitian revolutions for modern legal thought. Following this introduction, we will consider key questions including: Is modern law inherently capitalist? What is the relationship between law, authority, and violence? In what ways did law help or hinder anticolonial theory and praxis? Is imperialism a useful analytical category for understanding international law today? How has law been deployed in the service of 'discipline' and regulation? We will devote three seminars to the close reading and collaborative analysis of Colin Dayan's *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton University Press, 2011). We will read this book from cover to cover and consider its argument that the law has long since sustained terror and repression even while it upholds civil order. We will ask whether it is possible to recuperate law as an emancipatory tool, in the light of the evidence that Dayan presents about law's ability to marginalize, exclude, and dehumanize.

## **REQUIRED TEXTS**

Required purchase:

Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons*  
(Princeton University Press, 2011).

Available at Octopus Books, 116 Third Avenue, Ottawa, K1S 2K1. Tel: 613-233-2589.  
<http://octopusbooks.ca>.

*The Law is a White Dog* is also available for purchase at the University Bookstore, Amazon, and Abe Books among many others.

The following texts are variously available on ARES, on our CU Learn course page, the University Library, or online:

Antony Anghie "Francisco De Vitoria and the Colonial Origins of International Law", *Social & Legal Studies* (Vol. 5, No. 3, 1996): 321–336

Available online at: <http://sls.sagepub.com.proxy.library.carleton.ca/content/5/3/321.full.pdf+html>

Walter Benjamin, "Critique of Violence" [1921] in *Reflections: Essays, Aphorisms, and Autobiographical Writings*, (New York: Schocken Books, 1986): 277–300.

Ernst Bloch, *Natural Law and Human Dignity*, (The MIT Press, 1987): Chapter 19: "Aporias and the Heritage of the Tricolor: Liberty, Equality, Fraternity": 153–180.

Frantz Fanon, *The Wretched of the Earth* [1963] (New York: Grove Press, 2004): Chapter 1 "On Violence": 1–62.

Michel Foucault, *Discipline and Punish: The Birth of the Prison* [1975] (New York: Vintage, 1995): All of Part 3: "Discipline": 135–230.

Jurgen Habermas, "Natural Law and Revolution" (1963), in *Theory and Practice*, (London: Heinemann, 1974): 82–120.

Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (Oxford University Press, 2012): Chapter 34: 897–936.

Philip Kaisary, "To Break Our Chains and Form a Free People": Race, Nation, and Haiti's Imperial Constitution of 1805. Forthcoming in *Race and Nation in the Age of Emancipations* eds. Whitney Stewart and John Marks, University of Georgia Press, 2018.  
PDF to be provided on CU Learn.

China Miéville, "Multilateralism as Terror: International Law, Haiti and Imperialism," *Finnish Yearbook of International Law* 18 (2007).  
Available online at: <http://eprints.bbk.ac.uk/783/2/HaitiBirk.pdf>

Nick Nesbitt, "Jacobinism, Black Jacobinism, and the Foundations of Political Violence," *Caribbean Critique: Antillean Critical Theory from Toussaint to Glissant* (Liverpool University Press, 2013): 159–172.

Evgeny Pashukanis, *General Theory of Law and Marxism*. Introduction & Chapters 1–4 (Pluto Press, 1987): 47–133.  
Also available at: [www.marxists.org/archive/pashukanis/1924/law/](http://www.marxists.org/archive/pashukanis/1924/law/)

## **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.

**Course participation (weekly participation plus group presentation/s):** 20%

**Research outline and annotated bibliography:** 30%  
(5 or 6 pages due November 15, 2017)

**Course paper (4,000 words max):** due Wednesday, Dec. 6, 2017 50%

**COURSE PAPER**

The paper for this course **may draw on the theoretical perspectives or issues** on which we focus in this course or from the critiques of these theories or issues. Your paper could be conceived around an in-depth consideration of the implications of one or more theorist's work for understanding 'law and social transformation' or **show how one or more theories illustrate a particular problem or issue that concerns you**. You also could apply some of these theoretical perspectives/ methodologies to a critical examination of the potential and limits of law and legal thought for understanding and promoting social change. **You are also permitted to draw on and make use of theoretical resources not covered directly by the course material.**

**GENERAL PARTICIPATION**

The evaluation for participation will depend on both regular attendance and consistent involvement in seminar discussions in ways that indicate a familiarity and engagement with the required readings. Critical presentations and evaluations on the readings will take place in groups of 3 to 4 students. Groups may have 2 or more presentations during the term.

**GUIDELINES FOR SEMINAR PRESENTATIONS**

1. Do not simply summarize the required readings! Instead, you should provide a critical reflection on what you have read. Critical reflection does not necessarily mean criticizing the ideas of an author. However, your critical evaluation should isolate key themes and ideas in each reading to show both what the author is attempting to show and how they construct their arguments in order to accomplish what they set out to do. You should identify key assumptions by the author and consider the broader implications of the questions and arguments raised in each reading. If you agree or disagree with an author you should explain your position to other members of the class.
2. You should organize your presentation in such a way as to **stimulate discussion** about issues that you think are particularly important. Ideally you should identify a limited number of issues at the beginning of your seminar and proceed to explain why they are important. Although it is not required, either a typed outline presented to all members of the class at the beginning or an overhead presentation may help to focus discussion. You should have questions that provoke other members of the class to respond.
3. Feel free to incorporate material from other readings that you have done in this course and even material from other courses that illustrate your perspective.

**SCHEDULE****Seminar 1: Introduction [Sept. 6]**

No required reading

**Seminar 2: Enlightenment, Revolution, and Rights [Sept. 13]**

Required reading:

Jonathan Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (Oxford University Press, 2012): Chapter 34: 897–936.

Philip Kaisary, "To Break Our Chains and Form a Free People": Race, Nation, and Haiti's Imperial Constitution of 1805. (PDF to be provided on CU Learn. Forthcoming in *Race and Nation in the Age of Emancipations* eds. Whitney Stewart and John Marks, University of Georgia Press, 2018.)

**Seminar 3: Natural Law and Revolution [Sept. 20]**

Required reading:

Ernst Bloch, *Natural Law and Human Dignity*, (The MIT Press, 1987): Chapter 19: “Aporias and the Heritage of the Tricolor: Liberty, Equality, Fraternity”: 153–180.

Jurgen Habermas, “Natural Law and Revolution” (1963), in *Theory and Practice*, (London: Heinemann, 1974): 82–120.

**Seminar 4: Is Modern Law Inherently Capitalist? [Sept. 27]**

Required reading:

Evgeny Pashukanis, *General Theory of Law and Marxism*. Introduction & Chapters 1–4 (Pluto Press, 1987): 47–133.

The Pashukanis reading is also available at:

[www.marxists.org/archive/pashukanis/1924/law/](http://www.marxists.org/archive/pashukanis/1924/law/)

And also in: *Selected Writings on Marxism and Law*, P. Birne and R. Sharlet (eds.), Peter Maggs (trans.), (London: Academic Press, 1980): 32–131.

Further reading:

Maureen Cain and Alan Hunt, *Marx and Engels on Law*, (London: Academic Press, 1979).

Michael Head, *Evgeny Pashukanis: A Critical Reappraisal*, (New York: Routledge, 2008).

**Seminar 5: Law, Authority, and Violence [Oct. 4]**

Required reading:

Walter Benjamin, “Critique of Violence” [1921] in *Reflections: Essays, Aphorisms, and Autobiographical Writings*, (New York: Schocken Books, 1986): 277–300.

Nick Nesbitt, “Jacobinism, Black Jacobinism, and the Foundations of Political Violence,” *Caribbean Critique: Antillean Critical Theory from Toussaint to Glissant* (Liverpool University Press, 2013): 159–172.

Further reading:

Jacques Derrida, “Force of Law: ‘The Mystical Foundation of Authority’” in *Deconstruction and the Possibility of Justice*, Drucilla Cornell, Michel Rosenfeld, & David Gray Carlson (eds.) (Routledge, 1992): 3–67.

**Seminar 6: Law and Anti-Colonialism [Oct. 11]**

Required reading:

Frantz Fanon, *The Wretched of the Earth* [1963] (New York: Grove Press, 2004): Chapter 1 “On Violence”: 1–62.

Further reading:

*New Formations: After Fanon Special Issue No. 47* (Summer 2002).

David Macey, *Frantz Fanon: A Life* (2<sup>nd</sup> Ed.) (London: Verso, 2012)

**Seminar 7: Law, Post-Colonialism, and Imperialism [Oct. 18]**

Required reading:

Antony Anghie "Francisco De Vitoria and the Colonial Origins of International Law", *Social & Legal Studies* (Vol. 5, No. 3, 1996): 321–336

Available online at: <http://sls.sagepub.com.proxy.library.carleton.ca/content/5/3/321.full.pdf+html>

China Miéville, "Multilateralism as Terror: International Law, Haiti and Imperialism," *Finnish Yearbook of International Law* 18 (2007).

Available online at: <http://eprints.bbk.ac.uk/783/2/HaitiBirk.pdf>

## FALL BREAK: OCT. 23 – 27

### **Seminar 8: Law and Regulation [Nov. 1]**

Required reading:

Michel Foucault, *Discipline and Punish: The Birth of the Prison* [1975] (New York: Vintage, 1995: All of Part 3: "Discipline": 135–230.

### **Seminar 9: The Law is a White Dog: I [Nov. 8]**

Required reading:

Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton University Press, 2011): 1–70. (Chapters 1 and 2.)

### **Seminar 10: The Law is a White Dog: II [Nov. 15]**

Required reading:

Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton University Press, 2011): 71–176. (Chapters 3, 4, and 5)

### **Seminar 11: The Law is a White Dog: III [Nov. 22]**

Required reading:

Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton University Press, 2011): 177–252. (Chapters 6 and 7.)

### **Seminar 12: Reflections [Nov. 29]**