

Course Outline

COURSE:	LAWS 4100B – Modern Legal Theory
TERM:	Fall 2014
PREREQUISITES:	2.0 credits from LAWS 2105, LAWS 2201, LAWS 2202, LAWS 2301, LAWS 2302, LAWS 2501, or LAWS 2502
CLASS:	Day & Time: Friday 8:35-11:35am Room: Please check with Carleton Central for room location
INSTRUCTOR:	Stacy Douglas
CONTACT:	Office: Loeb D496 Office Hrs: Friday 11:35-12:35 Telephone: 613.520.2600 x. 8028 Email: Stacy_Douglas@carleton.ca

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://www2.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://www2.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 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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.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://www.carleton.ca/studentaffairs/academic-integrity/>

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://www.carleton.ca/law/student-resources/department-policies/>

COURSE DESCRIPTION

This first part of this course looks at key pieces of what are commonly imagined to be the foundations of modern Western legal theory. The second part of the course focuses on theorists who take critical aim at this tradition. Some key themes we explore are: sovereignty and constitutionalism, as well as the distinctions between constituent and constituted power, immanence and transcendence, and 'politics' and 'the political'. We also reflect on the very category of 'modern legal theory' to consider what we think 'modern legal theory' is and where we think we find it. The course is intentionally designed around theory written by largely white Western European male authors. These theories will be used as launching off points to both chart the imagined tradition (in all of its particularity), as well as to critique it. As such, we will explicitly be reflecting on questions that are central to feminist, anti-racist, post-colonial, and queer critiques of law and legal thinking.

The class is based on weekly in-depth class discussions that require excellent preparedness, including a weekly writing component designed to improve critical reading and writing skills (18%). The final grade is further comprised of two essays (20% and 25%, respectively) and a short presentation (15%). Students interested in pursuing close readings of primary texts and engaging with questions about law's place (or non-place) in the world will enjoy this course. However, students unfamiliar with or nervous about approaching theory, but who are eager to put in the required time and effort, are encouraged to register.

REQUIRED TEXTS (Available at: Octopus Books, 116 Third Ave., 613-233-2589)

1. Course Pack
2. Schmitt, Carl (1985) *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press.
3. Coetzee, J.M. (2000) *Disgrace*. Vintage Press.

SUPPLEMENTARY TEXTS

Brown, Wendy (1995) *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton

University Press.

Ferreira Da Silva, Denise (2007) *Toward a Global Idea of Race*. Minneapolis: University of Minnesota Press.

Hall, Stuart (1984) The State in Question. In: *The Idea of the Modern State*. Eds. Gregor McLennan, David Held, and Stuart Hall. Milton Keynes: Open University Press, 1-28.

Mehta, Uday Singh (1999) *Liberalism and Empire: A Study in Nineteenth-Century Political Thought*. Chicago: University of Chicago Press.

Minkinen, Panu (2009) *Sovereignty, Knowledge, Law*. London: Routledge.

Motha, Stewart (Ed.) (2007) Democracy's Empire: Sovereignty, Law, and Violence. *Journal of Law and Society* [Special Issue], 34(1-2).

Stone, Matthew, Illan Wall, and Costas Douzinas (2012) *New Critical Legal Thinking: Law and the Political*. Abingdon: Birkbeck Law Press.

Valls, Andrew (Ed.) (2004) *Race and Racism in Modern Philosophy*. Ithaca: Cornell University Press.

EVALUATION

(All components must be completed in order to get a passing grade)

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.

Assignment	Weight	Due Date
Weekly Assignments	18%	Six due throughout term
Participation	12%	Weekly
First Essay	25%	10 October
Presentation	15%	28 November
Final Paper	30%	5 December

I) Weekly Assignments (18%)

You are required to submit SIX one- to two-page assignments (double-spaced, with proper references) throughout the term. Submitted assignments must include the following three elements, in sentence form, for every assigned reading:

- 1) A description of the author's central thesis;
- 2) A description of the author's supporting points, as well as a reflection on the strength of these points (i.e., are they well-made and, if so, how?). Please note that this is not a request for your personal opinion on the piece);
- 3) A reflection on what the piece says about law and its relationship to political community. For example, is law a necessary stabilizing force for political community for the author, or are the two at odds? How or how not?

These must be handed in at the start of every class so remember to print two copies or keep a secure back up for your own records. Each assignment is worth 3%. This means that you must complete the assigned readings and consider the given questions before you arrive in class. By the end of the course you will have submitted six weekly assignments (one assignment at 3% each for 6 weeks = 18%). You may also choose to submit more than six assignments and I will count your six highest marks.

II) Participation (12%)

You are expected to attend seminar every week and participate in engaged, informed, and thoughtful discussion with your colleagues.

III) First Essay (25%)

The Foundations of Modern Law?

Choose one of the 'foundational' thinkers of modern legal theory that we have looked at in Part I of the course. Write a 2500 word essay (not including footnotes and bibliography) on how their work contributes (or not) to the concept of sovereignty. In your essay you must also demonstrate a thorough understanding of existing *critiques* of this element of their work. As such, you must utilize 1-2 other scholars who also comment on your chosen thinker as well as the theme of sovereignty when constructing your essay. Reflect on what questions these critiques raise about this thinker and their contribution to the so-called 'foundations' of modern law.

You may go 10% below or above the word count on your essay without penalty.

Due: 10 October - NO EXTENSIONS

IV) Presentation (15%)

This presentation will take place the week before your final essays are due. You will give a 5-minute presentation on the theme and author you have chosen to write your final paper on. Essential parts of your presentation will include telling your audience:

- which thinker you have chosen;
- what theme you have chosen;
- how your chosen theme challenges (or does not challenge) the 'foundations' of modern law we looked at in the first half of the course;
- what one other scholar has said about this person's approach to this theme;
- what the thesis of your final paper is;
- how you will support your argument.

You will be evaluated on your ability to i) adequately attend to the elements set out above, ii) present your thoughts orally to your colleagues, and iii) answer further questions asked of you. Please stick to time. Giving a well-timed, concise, and prepared presentation on your topic is part of the challenge. Due to time constraints, I ask that you not use audio visual aids (i.e., power point) in your presentation.

You must also submit a **two-page presentation outline** to me electronically by 12pm on Thursday 27 November. I will provide you with a template for this on Friday 21 November.

Due: 28 November

V) Final Paper (30%)

Critiques of Modern Legal Theory

Choose one of the 'critical' legal theorists we have looked at in Part II or III of the course. Write a 3000 word essay (not including footnotes and bibliography) on how their work contributes to a critical reflection on the concept of sovereignty. In your essay you must also demonstrate a thorough understanding of existing critiques of their work. As such, you must utilize 1-2 other scholars who also comment on your chosen thinker and their engagement with sovereignty when constructing your essay.

You may go 10% below or above the word count on your essay without penalty.

Due: 5 December - NO EXTENSIONS

GRADING

The following percentage equivalents apply to all final grades at Carleton:

A+	90-100	B+	77-79	C+	67-69	D+	57-59		
A	85-89	B	73-76	C	63-66	D	53-56	F	0-49
A-	80-84	B-	70-72	C-	60-62	D-	50-52		

When I grade your assignments I will be marking with the following criteria in mind:

Style

Has the author taken care in their formatting, grammar, attention to word count, and appropriate referencing? Where appropriate, have they attempted to infuse their work with creative flourish?

Structure

Has the author laid out a clear and effective argument for their reader? In particular did the author begin with a clear introduction and overview of their supporting points, and use signposting throughout? Is it a convincing argument overall?

Content

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and other academic sources?

Research

Has the author demonstrated a thoughtful and meticulous approach to their research? Have they been intellectually honest about their sources by seeking out primary material and bolstering their interpretation with appropriate secondary sources?

Critical Analysis

Has the author been able to understand the material, communicate about it clearly, **and** use their critical reading and writing skills to analyze the material? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

CULEARN

Our course will also utilize the 'CU Learn' learning management system. Here you will find electronic copies of the LAWS 4100 syllabus, announcements, as well as relevant links and articles. **All students are required to check cuLearn regularly (i.e., at least once a week) for updates and announcements.** If you experience problems using cuLearn visit the Educational Development Centre's website for support: <http://www1.carleton.ca/lmssupport/students/>

REFERENCING

The Law Department recommends that you follow the Legal Style set out here:

http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide students and faculty assistance with the teaching and learning of academic writing. Please contact them in advance and make use of their services: <http://www.carleton.ca/wts/>

Tips for avoiding plagiarism:

- Give yourself enough time to work on your assignment, so you are not tempted to copy text from other sources.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.

For more help see: <http://www.library.carleton.ca/help/citing-your-sources>

Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties on academic misconduct.

Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

**ALL INSTANCES OF PLAGIARISM WILL BE REPORTED
DIRECTLY TO THE DEAN.**

LAWS 4100 Course Overview		
2 September	Seminar One	What is 'modern legal theory'?
PART I: SOVEREIGNTY AND THE SOCIAL CONTRACT		
12 September	Seminar Two	<i>Thomas Hobbes & Monarchical Sovereignty</i>
19 September	Seminar Three	<i>John Locke & the Propertied Individual</i>
26 September	Seminar Four	<i>Jean-Jacques Rousseau & the General Will</i>
PART II: CRITIQUES OF SOVEREIGNTY		
3 October	Seminar Five	<i>Carl Schmitt & Political Theology</i>
10 October	Seminar Six*	<i>Antonio Negri & Constituent Power</i>
17 October	Seminar Seven	<i>Walter Benjamin & the Pursuit of Pure Means</i>
24 October	Seminar Eight	<i>Jean-Luc Nancy & the Problem of Community</i>
31 October	-----	Reading Week
PART III: CRITIQUES IN CONTEXT		
7 November	Seminar Nine	<i>Sovereignty and Decolonization</i>
14 November	Seminar Ten	<i>Psychic Legacies of Sovereignty</i>
21 November	Seminar Eleven	<i>Non-sovereign sovereignty?</i>
PART IV: REFLECTIONS		
28 November	Seminar Twelve	Presentations
5 December	Seminar Thirteen*	<i>Modernity, Legality, Theory</i>

* Denotes that an essay is due *in class* that week

SEMINAR OUTLINE**SEMINAR ONE:
WHAT IS 'MODERN LEGAL THEORY'?**
(5 September)

SEMINAR CANCELLED

PART I: SOVEREIGNTY AND THE SOCIAL CONTRACT**SEMINAR TWO:
THOMAS HOBBS & MONARCHICAL SOVEREIGNTY**
(12 September)

Assigned Readings:

1. Hobbes, Thomas (2008) Part II: Of Commonwealth, Chapters Seventeen to Twenty-One. In: *Leviathan*. Ed. J.C.A. Gaskin. Oxford: Oxford University Press, 111-148. (37 pages).
2. Pavlich, George (2010) On the Subject of Sovereigns. In: *After Sovereignty: On the Question of Political Beginnings*. Eds. Charles Barbour and George Pavlich. London: Routledge, 22-36. (14 pages).

Additional Readings:

Flathman, Richard E. (2002) Of Making and Unmaking. In: *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*. Lanham: Rowman and Littlefield, 1-9. (9 pages).

Foucault, Michel (2003) 4 February 1976. In: *Society Must Be Defended, Lectures at the Collège de France, 1975-76*. Trans. David Macey. Eds. Mauro Bertani and Alessandro Fontana. New York: Picador, 87-114. (27 pages).

MacPherson, C.B. (1962) Human Nature and the State of Nature. In: *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 17-45. (28 pages).

Martel, James (2010) Politics Without Sovereignty. In: *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*. New York: Columbia University Press, 221-247. (26 pages).

Skinner, Quentin (2007) Hobbes on Persons, Authors, and Representatives. In: *The Cambridge Companion to Hobbes's Leviathan*. Ed. Patricia Springborg. New York: Cambridge University Press, 157-180. (23 pages).

Wolin, Sheldon S. (1990) Hobbes and the Culture of Despotism. In: *Thomas Hobbes and Political Theory*. Ed. Mary G. Dietz. Lawrence, Kansas: University Press of Kansas, 9-36. (27 pages).

Questions:

What does Hobbes's thought contribute to the foundations of modern legal thinking?

Hobbes is often thought of as the preeminent thinker of modern sovereignty. Why?

What does Hobbes say about the place and role of the state?

What was the historical backdrop for Hobbes's writing? What role, if any, do you think this played in his thinking?

What does Foucault argue that Hobbes contributes to the thinking of sovereignty?

Key Concepts:

sovereignty – individualism – social contract – arbitrary power – liberalism

**SEMINAR THREE:
JOHN LOCKE & THE PROPRIETED INDIVIDUAL**
(19 September)

Assigned Readings:

1. Locke, John (1995) *Treatise of Civil Government*, Chapters One to Five. In: *Treatise of Government and a Letter Concerning Toleration*. Ed. Charles L. Sherman. New York: Irvington Press, 1-33. (33 pages).
2. Winnubst, Shannon (2006) Liberalism's Neutral Individual: Delimiting Racial and Sexual Difference. In: *Queering Freedom*. Indianapolis: Indiana University Press, 23-57. (34 pages).

Additional Readings:

Bhandar, Brenna (2012) Disassembling Legal Form: Ownership and the Racial Body. In: *New Critical Legal Thinking: Law and the Political*. Eds. Matthew Stone, Illan Wall, and Costas Douzinas. Abingdon: Birkbeck Law Press, 112-127. (15 pages).

Blomley, Nicholas (2003) Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid. *Annals of the Association of American Geographers*, 93(1), 121-141. (20 pages).

MacPherson, C.B. (1962) Locke: The Political Theory of Appropriation. In: *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 194-221. (27 pages).

Mills, Charles W. (1997) Overview. In: *The Racial Contract*. Ithaca: Cornell University Press, 9-40. (31 pages).

Tully, James (1994) *Aboriginal Property and Western Theory: Recovering a Middle Ground*. *Social Philosophy and Policy*, 11(2), 153-180. (27 pages).

Questions:

What are Locke's contributions to the foundations of modern legal theory? How do they differ from Hobbes's?

How does Lockean theory inform our contemporary legal practices and thinking?

What does Winnubst mean by 'liberalism's neutral individual'?

What does the work of Tully (1994) and Bhandar (2012) say about Locke and modern legal theory?

Key Concepts:

appropriation – colonialism – social contract – labour – sovereignty - liberalism

Writing Tip #1: The importance of an introduction

**SEMINAR FOUR:
JEAN-JACQUES ROUSSEAU & THE GENERAL WILL**
(26 September)

Assigned Readings:

1. Rousseau, Jean-Jacques (1988) Book One and Book Two. In: *The Social Contract and Discourses*. Trans. J.D.H. Cole. London: J.M. Dent and Sons, 181-228. (47 pages).
2. James, C.L.R. (2009) Rousseau and the Idea of General Will. In: *You Don't Play with Revolution: The Montreal Lectures of C.L.R. James*. Ed. David Austin. Oakland: AK Press, (105-120). (15 pages).

Additional Readings:

Esposito, Roberto (2010) Chapter Three: Law. In: *Communitas: The Origin and Destiny of Community*. Trans. Timothy C. Campbell. Stanford: Stanford University Press, 62-85. (23 pages).

Scott, David (2004) Future's Past. In: *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*. Durham: Duke University Press, 23-57. (34 pages).

Wittig, Monique (2002) On the Social Contract. In: *Feminist Interpretations of Jean-Jacques Rousseau*. Ed. Lydia Lange. College Station: Penn State University Press, 383-392. (9 pages).

Questions:

How does Rousseau's theory differ to that of Hobbes and Locke? How is it similar?

What is Rousseau's key contribution to the foundations of modern legal theory?

What is "popular sovereignty"?

What is the relationship between Rousseau's theory and that of C.L.R. James's?

Key Concepts:

general will – popular sovereignty – revolution – political community

****Writing Tip #2: Finding an Essay Structure****

PART II: CRITIQUES OF SOVEREIGNTY

**SEMINAR FIVE:
CARL SCHMITT & POLITICAL THEOLOGY**
(3 October)

Assigned Reading:

1. Schmitt, Carl (1985) *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press. (66 pages).

Additional Readings:

Mouffe, Chantal (1998) Schmitt and the Paradox of Liberal Democracy. In: *Law as Politics: Carl Schmitt's Critique of Liberalism*. Ed. David Dyzenhaus. Durham: Duke, 159-178. (19 pages).

Schwab, George (1996) Introduction. In: *The Concept of the Political*. Chicago: University of Chicago Press, 3-16. (13 pages).

Vatter, Miguel (2008) The Idea of Public Reason and the Reason of State: Schmitt and Rawls on the Political. *Political Theory*, 36(2), 239-271. (32 pages).

Questions:

What does Schmitt's say about sovereignty?

What is the relationship between liberalism and religion for Schmitt?

What is the significance of the “decision” for Schmitt?

Key concepts:

decisionism – parliamentary-democracy – sovereignty – liberalism – friend/enemy distinction – politics vs. the political

**SEMINAR SIX:
ANTONIO NEGRI & CONSTITUENT POWER
(10 October)**

FIRST ESSAY DUE IN CLASS

Assigned Readings:

1. Negri, Antonio (1999) Constituent Power: The Concept of a Crisis. In: *Insurgencies: Constituent Power and the Modern State*. Trans. Maurizia Boscagli. Minneapolis: University of Minnesota Press, 1-36. (35 pages).

Additional Readings:

Agamben, Giorgio (1998) Potentiality and Law. In: *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 39-48. (9 pages).

Derrida, Jacques (1986) Declarations of Independence. Trans. Thomas Keenan and Thomas Pepper. *New Political Science*, 15, 7-15. (8 pages).

Fitzpatrick, Peter (2004) The Immanence of Empire. In: *Empire's New Clothes: Reading Hardt and Negri*. Eds. Paul A. Passavant and Jodi Dean. London: Routledge, 31-55. (24 pages).

Sieyès, Emmanuel Joseph (1963) Chapters One and Two. In: *What is the Third Estate?* Trans. M. Blondel. Ed. S.E. Finer. New York: Praeger, 49-66. (17 pages).

Wall, Illan (2012) The Authority of Change: Sieyès and Kant. In: *Human Rights and Constituent Power: Without Model or Warranty*. London: Routledge, 45-59. (14 pages).

Questions:

What is Negri's critique of Arendt?

What does Negri mean by “immanence”?

What is constituent power? What relationship does it have to the foundations of modern legal theory?

What is the difference between Rousseau's concept of the “general will” and Negri's concept of “constituent power”?

Key concepts:

constituted vs. constituent power – anti-foundationalism – transcendence – immanence – Spinoza

Writing Tip #3: Sentence Structure

**SEMINAR SEVEN:
WALTER BENJAMIN & THE PURSUIT OF PURE MEANS**
(17 October)

Assigned Readings:

1. Benjamin, Walter (1978) Critique of Violence. In: *Reflections: Essays, Aphorisms, Autobiographical Writings*. Trans. Edmund Jephcott. Ed. Peter Demetz. New York: Schocken Books, 276-300. (24 pages).

Additional Readings:

Agamben, Giorgio (1999) The Messiah and the Sovereign. In: *Potentialities: Collected Essays in Philosophy*. Trans. and Ed. Daniel Heller-Roazen. Stanford: Stanford University Press, 160-174. (14 pages).

Derrida, Jacques (1990) Force of Law: The 'Mystical Foundation of Authority'. Trans. M. Quaintance. *Cardozo Law Review*, 11(5-6), 919-1045. (126 pages).

Hamacher, Werner (1994) Afformative, Strike: Benjamin's 'Critique of Violence'. In: *Walter Benjamin's Philosophy: Destruction and Experience*. Trans. Dana Hollander. Eds. Andrew Benjamin and Peter Osborne. London: Routledge, 110-138. (28 pages).

Martel, James (2012) Walter Benjamin's Dissipated Eschatology. In: *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty*. London: Routledge, 47-66. (19 pages).

Whyte, Jessica (2009) 'I Would Prefer Not To': Giorgio Agamben, Bartleby and the Potentiality of the Law. *Law and Critique*, 20, 309-324. (15 pages).

Questions:

Benjamin critiques a persistent logic in this essay. What is that logic?

Benjamin describes two types of strikes. Which one does he uphold and why?

What does Benjamin say about police power in this piece?

Ultimately, what does Benjamin's piece say about law?

Key concepts:

pure means – messianism – divine violence vs. mythic violence - sovereignty

****Writing Tip #4: Signposting****

**SEMINAR EIGHT:
JEAN-LUC NANCY & THE INOPERATIVE COMMUNITY**
(24 October)

Assigned Reading:

1. Nancy, Jean-Luc (1991) *The Inoperative Community*. In: *The Inoperative Community*. Trans. Simona Sawhney. Ed. Peter Connor. Minneapolis: University of Minnesota Press, 1-42. (41 pages).

Additional Readings:

Fynsk, Christopher (1991) Foreword: Experiences of Finitude. In: *The Inoperative Community*. Ed. Peter Connor. Minneapolis: University of Minnesota Press, vii-xxxv. (27 pages).

Hutchens, Benjamin (Ed.) (2012) *Jean-Luc Nancy: Justice, Legality and World*. London: Continuum.

Norris, Andrew (2000) Jean-Luc Nancy and the Myth of the Common. *Constellations*, 7(2), 272-295. (23 pages).

Sheppard, Darren, Simon Sparks, and Colin Thomas (2005) *On Jean-Luc Nancy: The Sense of Philosophy*. London, Routledge.

Questions:

Why is Nancy critical of 'community'?

Nancy makes a critique of 'community' but also discusses a positive concept of 'community'. What is the difference?

Why is this essay called 'the inoperative community'?

What does Nancy's theory say about law?

Key Concepts:

community – immanence - sovereignty – exposure – inoperativity – ontology – being-in-common

READING WEEK
(31 October)

NO SEMINAR
Start reading *Disgrace* if you haven't already!

PART III: CRITIQUES IN CONTEXT

**SEMINAR NINE:
SOVEREIGNTY & DECOLONIZATION**
(7 November)

Assigned Reading:

1. Alfred, Taiaiake (2002) Sovereignty. In: *A Companion to American Indian History*. Eds. Philip J. Deloria and Neal Salisbury. Oxford: Blackwell, 460-474. (14 pages).
2. Smith, Andrea (2010) Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism. *GLQ: A Journal of Lesbian and Gay Studies*, 16(1-2), 41-68. (27 pages).

Additional Readings:

Borrows, John (2002) With or Without You: First Nations Law in Canada. In: *Recovering Canada: The Resurgence Of Indigenous Law*. Toronto: University of Toronto, 3-28. (25 pages).

Coulthard, Glen (2007) Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada. *Contemporary Political Theory*, 6(4), 437-460. (23 pages).

Rifkin, Mark (2012) Introduction. In: *The Erotics of Sovereignty: Queer Native Writing in the Era of Self-Determination*. Minneapolis: University of Minnesota Press. (328 pages).

Simpson, Audra (2014) Indigenous Interruptions: Mohawk Nationhood, Citizenship, and the State. *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press, 1-36 (35 pages).

Questions:

What do Smith and Alfred have to say about sovereignty? What is the basis for their argument?

How do the theories of Alfred and Smith resonate with Nancy's thinking (or not)?

What role does gender and sexuality play in the construction or deconstruction of sovereignty?

Key Concepts:

sovereignty – decolonization – gender – settler state – queer theory – indigenous law

**SEMINAR TEN:
PSYCHIC LEGACIES OF SOVEREIGNTY**
(14 November)

Assigned Reading:

1. Coetzee, J.M. (2000) *Disgrace*. Vintage Press. (220 pages).

Additional Readings:

Fanon, Frantz (2005) *Wretched of the Earth*. New York: Grove Press. (320 pages).

Mamdani, Mahmood (2002) Amnesty or Impunity: A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC). *Diacritics*. 32 (3-4) 33-59. (26 pages).

McGonegal, Julie (2009) The Agonistics of Absolution in a Post-Apartheid Era: Responsibility and the Right of Grace in Coetzee's *Disgrace*. In: *Imagining Justice: Postcolonial Forgiveness and Reconciliation*. Montreal: McGill-Queen's University Press. 147-178. (31 pages).

Spivak, Gayatri (2002) Ethics and Politics in Tagore, Coetzee, and Certain Scenes of Teaching. *Diacritics*. 32 (3-4) 17-31. (14 pages).

Questions:

What is this novel about?

What is the significance of it being narrated through the eyes of David Lurie?

Why do you think this novel has stirred so much political controversy in South Africa and abroad?

Keywords:

colonial violence – entitlement – reconciliation – agonism – gender – ethics

**SEMINAR ELEVEN:
NON-SOVEREIGN SOVEREIGNTY?**
(21 November)

Assigned Reading:

1. Ramose, Mogobe (1999) Law Through *Ubuntu*. In: *African Philosophy Through Ubuntu*. Harare: Mond Books, 102-127. (25 pages).
2. Cornell, Drucilla and Nyoko Muvangua (2012) The Recognition of *Ubuntu*. In: *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence*. Eds. Drucilla Cornell and Nyoko Muvangua. New York: Fordham University Press, 1-27. (27 pages).

Additional Readings:

Bekker, Thino (2012) The Reemergence of *uBuntu*: A Critical Analysis. In: *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence*. Eds. Drucilla Cornell and Nyoko Muvangua. New York: Fordham University Press, 377-387. (10 pages).

leRoux, Wessel and Karin van Marle (Eds.) (2007) *Law, Memory and the Legacy of Apartheid: Ten years after AZAPO v President of South Africa*. Pretoria: Pulp Press. **(ask Prof. Douglas for access to this text)**.

Motha, Stewart (2009) Archiving Colonial Sovereignty: From *Ubuntu* to a Jurisprudence of Sacrifice. *South African Public Law*, 24. 297-327. (30 pages).

van der Walt, Johannes L. (2010) Ubuntugogy for the 21st Century. *Journal of Third World Studies*. 27 (2). 249-264. (15 pages).

Questions:

What is *ubuntu*? What, if any, are the differences between Ramose and Cornell's definitions? Is there a tension between the two?

Reflecting on all of the readings throughout the term, do you think it is possible to introduce such a fluid concept into constitutional discourse? What might some of the dilemmas be? What might be the beneficial outcomes?

Can thinking through the use of *ubuntu* in the South African Constitutional Court inspire different legal approaches in Canada?

Keywords:

ubuntu – non-sovereignty – indigenous law – constitutionalism – decolonization – relationality

PART IV: REFLECTIONS

SEMINAR ELEVEN: PRESENTATIONS (28 November)

PROPOSALS DUE DAY BEFORE CLASS AT 12PM
PRESENTATIONS IN CLASS

****No readings assigned. Therefore, no weekly writing assignment due****

SEMINAR TWELVE: MODERNITY, LEGALITY, THEORY (5 December)

FINAL ESSAY DUE IN CLASS

****No readings assigned. Therefore, no weekly writing assignment due****

Questions:

What is modern legal theory?

Where do we find modern legal theory?

**** SCREENING OF FILM FOLLOWED BY DISCUSSION****