

Course Outline

COURSE: LAWS 6000 PhD Seminar
TERM: Fall 2014
CLASS: DAY & TIME: Tuesdays, 8:35-11:25am
ROOM: D490 Loeb
INSTRUCTOR: Professor Christiane Wilke
CONTACT: Office: D499 Loeb
Office Hrs: Mondays 10-12pm, Thursdays 2-4pm (drop-in) or by appointment
Email: Christiane.Wilke@carleton.ca
[please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

What is happening in Legal Studies? In this course, we will read texts that speak to key issues in Legal Studies broadly understood. The course makes no claim to set a canon of required, standard or even sacred texts. We will also not try to delineate Legal Studies by defining its boundaries or arguing what it is not. Instead, let us move between different centers of gravity in the field of Legal Studies. We will draw on some classic texts from different centuries that continue to shape the way that law, rights and the state have been conceptualized, but we focus our energy on recent contributions by scholars from a broad range of disciplinary backgrounds. These are (hopefully) inspiring texts to have conversations with and conversations about. In discussions, we will map and evaluate the differences and similarities between approaches, conceptual tools, findings, and styles of argument.

Your assignments ask for both depth of research and breadth of engagement with different topics and approaches. You will write three short critical responses to assigned readings. You will also propose and write a research paper. In addition, you will give two class presentations on assigned texts.

NOTE ON ACADEMIC ACCOMMODATION

(STUDENTS WITH DISABILITIES, RELIGIOUS OBLIGATIONS, PREGNANCY)

You may need special arrangements to meet your academic obligations during the term because of **medical conditions, disability, pregnancy or religious obligations**. Please review the course outline promptly and write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible when you find out that you'll need some adjustments or an accommodation for any assignment or course activity. I'd be happy to be flexible, but I need to know about possible concerns and conflicts **well before** the paper deadline, presentation date, etc.

For **Religious and Pregnancy accommodations**, please contact **Equity Services**, x. 5622 or their website: www.carleton.ca/equity and talk to me.

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. After requesting accommodation from PMC, please come to see me to ensure that the accommodation arrangements are appropriate for you.

COURSE MATERIAL:

All course material will be accessible through ARES via cuLearn. If these acronyms don't mean anything to you or if you are not yet fully registered, please let me know.

Login to cuLearn: <https://www.carleton.ca/culearn/>

You might also want to consider buying some of the books we read; they might become valuable intellectual interlocutors and companions over time.

EVALUATION:

- **Two class presentations 5% each (10% combined)**
 - **Critical responses: 15% each (45% combined)**
 - **Research paper proposal: 5%**
 - **Research paper: 40%**
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- **Class presentation and participation:** This seminar relies on informed participation and discussion. The presentations should provide a short (5 min) critical analysis of the text(s) and set a possible frame for further discussion. Presentations should not summarize the text(s).
 - If everyone brings their own critical perspectives on the texts to the table, we will be able to gauge the range of possible interpretations and critiques of the texts. Thus, everyone's active participation is crucial for the success of the class. Participation presumes, of course, that you have read the texts carefully.
 - **You cannot pass the class if you have missed three sessions or more without a documented excuse.**
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- **Critical responses** offer either a critical analysis of a key issue from assigned readings or make an independent argument on the basis of the assigned texts. You choose the issues addressed in the readings that you write about in 5-6 pages (double-spaced). Critical responses should mainly rely on your critical analysis and conceptual arguments, not on outside research. You may, however, refer back to texts we read earlier in the course. **Critical responses are due at the beginning of the class for which the reading covered in the essay is assigned. Late papers are not accepted.** The first response has to be submitted no later than **September 30th**. The second response is due no later than **November 4th**. The third response is due no later than **November 25th**. **You cannot write a response engaging with the same text that you are giving a presentation on**, but you can write a response paper for the same week you're presenting as long as the response and the presentation are clearly distinct.
 - The **Research Paper** allows you to develop a more sustained and complex argument. The desired length is 20 pages (double-spaced). The research paper is due on **December 14th**. The research paper proposal is due on **November 11th**.

SCHEDULE:

1. September 9th

Introduction: Legal Studies

2. September 16th

Making and Finding Law

Rebecca Johnson, "Living Deadwood: Imagination, Affect, and the Persistence of the Past," *Suffolk University Law Review* XLII (2009): 809-828.

Mariana Valverde, *Everyday Law on the Street: City Governance In an Age of Diversity* (Chicago: University of Chicago Press, 2012), 1-77.

Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham and London: Duke University Press, 2014), 1-35, 115-145.

Recommended:

Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007).

Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'État* (Malden, MA: Polity, 2010).

Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press, 2008).

Ronald Niezen, *Public Justice and the Anthropology of Law* (New York: Cambridge University Press, 2010).

Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Oxford and Portland: Hart, 2009).

3. September 23rd

Stories of Origins 1: Social Contracts and Other Fictions

John Locke, *Second Treatise of Government*, ed. Peter Laslett (Cambridge university Press, 1999), 267-302.

James Tully, *An Approach to Political Philosophy: Locke in Contexts* (New York: Cambridge University Press, 1993), 137-176.

Vanita Seth, *Europe's Indians: Producing Racial Difference, 1500-1900* (Durham and London: Duke University Press, 2010), 1-19, 61-118.

Recommended:

- John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010)
- David Armitage, "John Locke, Carolina, and the Two Treatises of Government," *Political Theory* 32 (2004): 602-627.
- Bradley Bryan, "Legality Against Orality," *Law, Culture & the Humanities* 9 (2013): 261-274.
- Renisa Mawani, "Genealogies of the Land: Aboriginality, Law, and Territory in Vancouver's Stanley Park," *Social & Legal Studies* 14 (2005): 315-339.
- Susan Dianne Brophy, "Freedom, Law, and the Colonial Project," *Law & Critique* 24 (2013): 39-61.
- Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009).
- Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007).

4. September 30th

[first critical response: due no later than today]

Stories of Origins 2: Spatial and Racial Imaginaries and Orders

- Teemu Ruskola, "Raping Like a State," *UCLA Law Review* 57 (2010): 1477-1536.
- Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 104-161.
- Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921* (Vancouver: UBC Press, 2009), 1-77, 163-200.

Recommended:

- Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999).
- Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge University Press, 2002).
- Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2001).
- David Theo Goldberg, *The Racial State* (Malden: Blackwell, 2002).
- James Tully, *Public Philosophy in a New Key, Vol. II: Imperialism and Civic Freedom* (Cambridge: Cambridge

University Press, 2008).

Catherine Dauvergne, *Humanitarianism, Identity, and Nation: Migration Laws in Canada and Australia* (Vancouver: UBC Press, 2005).

Andrea Smith, "Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism," *GLQ: A Journal of Gay and Lesbian Studies* 16 (2010): 41-68.

Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003), esp. chapters 5, 8.

Christopher Tomlins, "After Critical Legal History: Scope, Scale, Structure," *Annual Review of Law and Social Science* 8 (2012): 31-68.

Amanda Nettelbeck, "'Equals of the White Man': Prosecution of Settlers for Violence Against Aboriginal Subjects of the Crown, Colonial Western Australia," *Law and History Review* 31 (2013): 355-390.

5. October 7th

Complex Identities, Complex Inequalities, Complex Memories

Ken Burns (dir.), *The Central Park Five* (2012). [please watch the documentary before this class; I will make a copy available.]

Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1241-1299.

Leslie McCall, "The Complexity of Intersectionality," *Signs: Journal of Women in Culture and Society* 30 (2005), 1771-1800.

Shoshana Felman, "Forms of Judicial Blindness, or Evidence of What Cannot Be Seen: Traumatic Narratives and Legal Repetitions in the O.J. Simpson Case and in Tolstoy's *The Kreutzer Sonata*," in *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002), 54-105.

Recommended:

Gabriele Winkler and Nina Degele, "Intersectionality as multi-level analysis: Dealing with social inequality," *European Journal of Women's Studies* 18 (2011), 51-66.

Joanne Conaghan, "Intersectionality and the feminist project in law," in Emily Grabham et al, ed. *Intersectionality and Beyond* (Abingdon: Routledge, 2009), 21-48.

Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver & Toronto: UBC Press, 2002).

Pascale Fournier, "Calculating Claims: Jewish and Muslim women navigating religion, economics and law in Canada," *International Journal of Law in Context* 8 (2012): 47-72.

- Sylvia Walby, Jo Armstrong, and Sofia Strid, "Intersectionality: Multiple Inequalities in Social Theory," *Sociology* 46 (2012): 224-240.
- Mari Matsuda, "Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition," *Stanford Law Review* 43 (1991), 1183-1192.
- Catherine Albertyn, "Substantive Equality and Transformation in South Africa," *South African Journal on Human Rights* 23 (2007), 253-276.
- Emily Grabham et al. (eds.), *Intersectionality and Beyond: Law, power, and the politics of location* (New York: Routledge, 2009).
- Sylvia Walby, "Complexity Theory, Systems Theory, and Multiple Intersecting Social Inequalities," *Philosophy of the Social Sciences* 37 (2007): 449-470.
- Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004).
- Nancy Fraser, "Rethinking Recognition," *New Left Review* (2000): 107-120.
- Leonard C. Feldman, "Redistribution, Recognition, and the State: The Irreducibly Political Dimension of Justice," *Political Theory* 30 (2002): 410-440.
- Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003), 1-38, 123-151.
- Nancy Fraser and Axel Honneth, *Redistribution of Recognition? A Political-Philosophical Debate* (London: Verso, 2003).

6. October 14th

What does law do?

- Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), 1-68.
- Julie Stone Peters, "Legal Performances Good and Bad," *Law, Culture and the Humanities* 7 (2008): 179-200.
- Dawn Moore and Angus MacLean Rennie, "Hated Identities," *Canadian Journal of Criminology and Criminal Justice* 48 (2006): 823-836.

Recommended:

- J.L. Austin, *How to do Things with Words* (Cambridge, MA: Harvard University Press, 1962).
- Judith Butler, *Bodies that Matter: On the Discursive Limits of 'Sex'* (New York: London: Routledge, 1993).
- Julia Walker, "Why Performance? Why Now? Textuality and the Rearticulation of Human Presence," *The Yale Journal of Criticism* 16 (2003): 149-175.
- Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton: Princeton University

Press, 2007).

Carolyn Emcke, "Between Choice and Coercion: Identities, Injuries, and Different Forms of Recognition," *Constellations* 7 (2000): 483-495.

7. October 21st

Troubled States, Borderline States

Catherine Dauvergne, *Humanitarianism, Identity and Nation: Migration Laws in Canada and Australia*. (Vancouver: University of British Columbia Press, 2005), 1-20, 81-128.

Karolina Follis, *Building Fortress Europe: The Polish-Ukrainian Frontier* (Philadelphia: University of Pennsylvania Press, 2012), 1-53, 88-116.

Roxanne Lynn Doty, "States of Exception on the Mexican Border: Security, 'Decisions,' and Civilian Border Patrols," *International Political Sociology* 1 (2007): 113-137.

Recommended:

Cynthia Weber, "Performative States," *Millenium – Journal of International Studies* 27 (1998): 77-95.

Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013).

Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone, 2009).

Andrew Woolford, "The limits of justice: certainty, affirmative repair, and aboriginality," *Journal of Human Rights* 3 (2004): 429-444.

Brenna Bhandar, "Plasticity and Post-Colonial Recognition: 'Owning, Knowing and Being,'" *Law & Critique* 22 (2011): 227-249.

Sudipta Sen, "Unfinished Conquest: Residual Sovereignty and the Legal Foundations of the British Empire in India," *Law, Culture & the Humanities* 9 (2013): 227-242.

8. November 4th

[second critical response: no later than today]

The Fabulous World of Crime Statistics & Other Knowledges about Bad Things

James C. Scott, "State Simplifications: Nature, Space and People," *The Journal of Political Philosophy* 3 (1995): 191-233.

Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003), 1-28.

Jean Comaroff and John L. Comaroff, "Figuring Crime: Quantifacts and the Production of the Un/Real," *Public Culture* 18 (2006): 209-246.

Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), 181-234.

Recommended:

Michele Leiby, "Digging in the Archives: The Promise and Perils of Primary Documents," *Politics & Society* 37 (2009), 75-100.

Justin Piché and Kevin Walby, "Problematizing Carceral Tours," *British Journal of Criminology* 50 (2010): 570-581.

Didier Fassin and Estelle d'Halluin, "Critical Evidence: The Politics of Trauma in French Asylum Politics," *Ethos* 35 (2007): 300-329.

Dawn Moore, *Criminal Artefacts: Governing Drugs and Users* (Vancouver: UBC Press, 2007).

Cornelia Vismann, *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (Stanford: Stanford University Press, 2008), esp. chapter 1.

Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001), ch. 2 (technologies of truth).

Sherene H. Razack, "Timely Deaths: Medicalizing the Deaths of Aboriginal People in Police Custody," *Law, Culture & the Humanities* 9 (2013): 352-374.

9. November 11th

[research paper proposal due]

Law's Places

Nicholas Blomley, *Unsettling the City: Urban Lands and the Politics of Property* (New York: Routledge, 2003), 1-74.

Irus Braverman, "Hidden in Plain View: Legal Geography from a Visual Perspective," *Law, Culture, and the Humanities* 7 (2010): 173-186.

Derek Gregory, "War and Peace," *Transactions of the Institute of British Geographers* NS 35 (2010), 154-186.

Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham and London: Duke University Press, 2014), 147-176.

Recommended:

- Nicholas Blomley, "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers* 93 (2003): 121-141.
- Derek Gregory, *The Colonial Present* (Malden: Blackwell, 2004).
- Kirsten Campbell, "The City of Law," *International Journal of Law in Context* 9 (2013): 192-212.
- Kevin Walby and Randy Lippert, "Spatial Regulation, Dispersal, and the Aesthetics of the City: Conservation Officer Policing of Homeless People in Ottawa, Canada," *Antipode* 44 (2012): 1015-1033.
- Andreas Philippopoulos-Mihalopoulos, "Law's Spatial Turn: Geography, Justice, and a Certain Fear of Space," *Law, Culture and the Humanities* 7 (2010): 187-202.
- Alison J Williams, "Reconceptualising spaces of the air: performing the multiple spatialities of UK military airspaces," *Transactions of the Institute of British Geographers* NS 36 (2011): 253-267.
- Mariana Valverde, "Questions of Security: A framework for research," *Theoretical Criminology* 15 (2011): 3-22.
- Matt McDonald, "Securitization and the Construction of Security," *European Journal of International Relations* 14 (2008): 563-587.

10. November 18th

Law & Violence

- Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (New York: Routledge, 1992), 3-67.
- Robert Cover, "Violence and the Word," in *Narrative, Violence, and Nomos: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan and Austin Sarat (Ann Arbor: University of Michigan Press, 1995), 203-238.
- Neve Gordon, "Rationalising Extra-Judicial Executions: The Israeli Press and the Legitimation of Abuse," *International Journal of Human Rights* 8 (2004): 305-324.

Recommended:

- Walter Benjamin, "Critique of Violence," in *Reflections*, ed. Peter Demetz (New York: Schocken, 1978), 277-300.
- Achille Mbembe, "Necropolitics," transl. Libby Meintjes, *Public Culture* 15 (2003): 11-40.
- Scott Veitch, *Law and Irresponsibility: On the legitimation of human suffering* (New York: Routledge, 2007).
- Susanne Krasmann, "Targeted Killing and Its Law: On a Mutually Constitutive Relationship," *Leiden Journal of*

International Law 25 (2012): 665-682.

Wendy Brown, *Edgework: Critical Essays on Knowledge and Politics* (Princeton: Princeton University Press, 2005), especially chapter 5.

11. November 25th

[last chance for the third critical response]

Humans, Persons, Human Rights

Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace 1973 [1951]), 267-302.

Costas Douzinas, *Human Rights and Empire: The political philosophy of cosmopolitanism* (Abingdon: Routledge, 2007), 3-50.

Avery Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (Minneapolis: University of Minnesota Press, 1997), 3-28, 137-190.

Recommended:

Sheryl Hamilton, *Impersonations: Troubling the Person in Law and Culture* (Toronto: University of Toronto Press, 2009).

Vasuki Nesiah, "Placing International Law: White Spaces on a Map," *Leiden Journal of International Law* 16 (2003): 1-35.

Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), 52-76.

Wendy Brown, "Suffering Rights as Paradoxes," *Constellations* 7 (2000): 230-241.

Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Belknap, 2010).

Claire Moon, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8 (2009): 71-91.

Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001).

Avery Gordon, *Ghostly Matters* (Minneapolis: University of Minnesota Press, 1997).

Costas Douzinas and Adam Gearey, *Critical jurisprudence: The political philosophy of justice* (Oxford: Hart, 2005).

Emilie Cameron, "Indigenous spectrality and the politics of postcolonial ghost stories," *Cultural Geographies* 15 (2008): 383-393.

Joanna Bourke, "Sexual Violence, Bodily Pain, and Trauma: A History," *Theory, Culture & Society* 29 (2012):

25-51.

Eleni Coundouriotis, "You Only have Your Word:" Rape and Testimony," *Human Rights Quarterly* 35 (2013): 365-385.

Renisa Mawani, "Law's Archive," *Annual Review of Law and Social Science* 8 (2012): 337-365.

12. December 2nd

Class format TBD

Don't forget: The research paper is due on Monday, December 14th (via email). No late papers, no exceptions. Thank you!

Note on the assignments: All assignments have to be original work by the student who is submitting them. Collaboration on assignments is not permitted. (The only possible exception to this rule in this course may be joint presentations of two or more students with the specific permission of the instructor.) In addition, students should note Carleton University's policy on instructional offences, available at www.carleton.ca/cuuc/regulations/acadregsuniv14.html. Penalties for academic offences may range from a reprimand to expulsion from the university. The use of outside material without proper references is one of the most common and most easily avoidable instructional offences. Whatever language and ideas you take from other sources needs to be referenced. Make yourself familiar with different citation styles! The Carleton University library has many resources that can help you. See: www.library.carleton.ca/howdoI/citing.html.