
Course Outline

Course: LAWS 3005 A Law and Regulation

Term: Winter 2006-2007

Class: **Class Time:** Wednesday 11:35-2:25pm
Room: Tory Building, Rm. 447

Instructors: Steve Tasson & Craig McFarlane
(Contract)

Contact: **Office:** Loeb D482
Office Hrs: Wednesday 3-4pm or by appointment
Email: cmcfarla@yorku.ca & stasson@sympatico.ca

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 7, 2005 for December examinations and March 10, 2006, for April examinations. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

Overview of the course

This course serves primarily as an introduction into the study of the relation between ‘the State’ and ‘the Law’ through a careful consideration of three theorists: Emile Durkheim, Michel Foucault and Giorgio Agamben. The abstract theoretical texts will be supplemented by a number of ‘empirical applications’ of the theories on topics ranging from sacrifices and executions to masturbation and drugs to Guantanamo Bay and Terry Schiavo (euthanasia). In addition to the broad consideration of ‘the State’ and ‘the Law,’ we will consider the relation between social structure and law, violence and the law, and politics and the law, looking towards an understanding of the shifting relation between the law and other forms of social and political regulation.

In addition to the concrete study of the changing relation between ‘the State’ and ‘the Law,’ the course additionally serves as an *introduction* (in other words, the course does not presume a previous familiarity with social, political or legal theory) into the reading of complex theoretical texts. Thus, the task of reading theoretical texts is as central to the course as are the particular topics we will investigate.

The course is structured around lectures, however, the texts we will read are timely as are the issues they raise. Hence, students are encouraged to come to class with questions and raise those questions for discussion.

You should have no illusions; this will be a challenging course. This is mainly because it asks you to think differently about law and regulation – about their relationship, what they are, and how they operate in (and constitute) contemporary societies. This can be difficult, but as you can see from the range of topics discussed, a more developed understanding can also allow you to draw connections between a wide variety of controversial topics and issues.

Required Texts

There is a coursepack available off-campus that contains most of the required readings. Some of the readings are easily available on the Internet or through the University library's electronic journals and so they may not be included in the coursepack. Links to these materials or .pdf versions of the articles will be available through the course's WebCT pages if they are not included in the coursepack. More coursepack details will be discussed in the first class.

Course Evaluation

First Paper	25%	(due Friday, February 16 th in the Law dropbox)
Second Paper	35%	(due Friday, March 16 th in the Law dropbox)
Take Home Exam	40%	(exam period, details discussed in class)

Course Components

Papers

There are two papers that comprise the majority of the marks in the class. Each corresponds to the first two sections of the course. These papers ask you to summarize, synthesize and offer a position on some of the material we investigate in the course. Each paper should be **approx. 8 pages** (see below for more details on format). Each is an opportunity for you to discuss a selection of the course readings and draw connections to some of the broader questions posed in the class. No additional secondary research is required or expected. The aim of the paper is to interrogate the course texts. Specific topics will be discussed in more detail in class.

These papers are assessed on several criteria including:

- 1) Have you successfully demonstrated a basic understanding of the readings?
- 2) Have you been able to draw meaningful connections between the readings?
- 3) Have you been able to demonstrate a level of engagement with the readings?
- 4) Is your paper well structured and logically organized?

Take Home Exam

The final assessment takes the form of a take home exam. The format of the exam will be discussed in class closer to the end of the course. Generally the exam is comprised of three questions which are handed out after the last session. Students have a couple of weeks to answer the questions and the completed exam is handed in to the Department of Law Dropbox. Note: late take-home exams cannot be accepted. **THEY MUST BE RECEIVED ON OR BEFORE THE DEADLINE.** Again, more details will be discussed in class.

Weekly Readings

(To help guide your reading, there are a number of questions/ comments for each week that are available on WebCT)

W1 January 3 – Introduction [Steve and Craig]

No Required Readings

W2 January 10 – Law as Regulation: Rethinking Governance and the State [Steve]

Purvis, Trevor (2002) “Regulation, Governance and the State: Reflections on the Transformation of Regulatory Practices in Late-Modern Liberal Democracies,” in MacNeil, M., Neil Sargent and Peter Swan (eds.). *Law, Regulation and Governance*, Toronto: Oxford University Press, 28-54.

Hunt, Alan (2002) “Legal Governance and Social Relations,” in MacNeil, M., Neil Sargent and Peter Swan (eds.). *Law, Regulation and Governance*, Toronto: Oxford University Press, 54-77.

Rose, Nikolas and Mariana Valverde (1998) “Governed By Law?” *Social & Legal Studies* 7(4), 541-551.

W3 January 17 – Emile Durkheim I: Punishment and Social Structure [Craig]

Emile Durkheim (1964[1895]) *The Rules of Sociological Method*, New York: The Free Press, 1-13.

Emile Durkheim (1973[1900]) “Two Laws of Penal Evolution,” *Economy & Society* 2, 285-308.

W4 January 24 – Emile Durkheim II: The Sacred and Society [Craig]

Emile Durkheim (1995[1912]) *The Elementary Forms of Religious Life*, New York: The Free Press, 33-44, 207-16, 231-6, 303-13, 321-9, 348-54, 412-7, 419-33, 440-48.

W5 January 31 – Emile Durkheim III: Applied [Craig]

John Pratt (2002) “Emotive and Ostentatious Punishment: Its Decline and Resurgence in Modern Society,” *Punishment & Society* 2(4): 417-39.

Frank Pearce (2003) “‘Off with their heads’: Public Executions with Klossowski, Caillois and Foucault,” *Economy & Society* 32: 48-73.

W6 February 7 – Michel Foucault I: Moral regulation and law without limits? [Steve]

Foucault, Michel (1977) “The Body of the Condemned,” in *Discipline and Punish*, New York: Vintage Books, 3-31.

Rabinow, Paul (ed.) (1984) *The Foucault Reader*, New York: Pantheon Books, 179-213, 234-238, 227-233 (optional).

Foucault, Michel (1980) “The Eye of Power,” in *Power/Knowledge: Selected interview and other writings 1972-1977*, New York: Pantheon Books, 147-165.

W7 February 14 – Michel Foucault II: Biopolitics Rising [Steve]

Foucault, Michel (1990[1978]) *The History of Sexuality, Vol. I*, New York: Vintage Books, 135-159.

Foucault, Michel (1997) “The Birth of Biopolitics” in Rabinow, Paul (ed.) *Ethics, subjectivity, and truth, Vol. I: The essential works of Michel Foucault*, New York: New Press, 73-79.

Foucault, Michel (1980) “Body/Power,” in *Power/Knowledge: Selected interview and other writings 1972-1977*, New York: Pantheon Books, 54-62.

Rabinow, Paul (ed.) (1984) *The Foucault Reader*, New York: Pantheon Books, 273-289, 333-337.

February 16 – First Assignment Due***February 21 – Reading Week*****W8 February 28 – Michel Foucault III: Applied [Steve]**

Boyle, James (1997). “Foucault in Cyberspace: Surveillance, Sovereignty, and Hard-Wired Censors,” *University of Cincinnati Law Review* 66: 177-205.

<http://eprints.law.duke.edu/archive/00000619/>

Lyon, David (1994). “From Big Brother to the Electronic Panopticon,” in *The Electronic Eye: The Rise of the Surveillance Society*. Minneapolis: University of Minnesota Press, 57-81.

Hunt, Alan (1998). “The Great Masturbation Panic and the Discourses of Moral Regulation in Nineteenth- and Early Twentieth-Century Britain,” *Journal of the History of Sexuality* 8(4): 575-615.

Rous, Trevor and Alan Hunt (2004). "Governing Peanuts: The regulation of the social bodies of children and the risks of food allergies," *Social Science and Medicine* 58: 825-836.

W9 March 7 – Giorgio Agamben I: The Law and ‘the state of exception’ [Steve]

Giorgio Agamben (2002) *State of Exception*, Chicago: University of Chicago Press, 1-31.

Giorgio Agamben (1998[1995]) *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press, 1-12, 15-20, 28-29.

TBA

W10 March 14 – Giorgio Agamben II [Craig]

Giorgio Agamben (1998[1995]) *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press, 119-65, 181-8.

March 16 – Second Assignment Due

W11 March 21 – Giorgio Agamben III – Applied [Craig & Steve]

Judith Butler (2004[2002]) "Indefinite Detention" in *Prekarious Life: The Powers of Mourning and Violence*, London: Verso, 50-100.

Eric L. Santner (2005) "Terry Schiavo and the State of the Exception," available online at http://www.press.uchicago.edu/Misc/Chicago/05april_santner.html

John Protevi (2006) "The Terry Schiavo Case: Biopolitics and Biopower: Agamben and Foucault," presented to the 6th Annual Foucault Circle Conference, University of Memphis.

W12 March 28 – Conclusion [Craig & Steve]

Readings TBA

Some General Guidelines on Assignments for This Course (We will be discussing some of these requirements in more detail in class)

ASSIGNMENT FORMAT

Any written work submitted in this course **must** be typewritten, double-spaced, 12pt Times New Roman font with standard 1" margins. All assignments **must** include a title page that must have, at minimum, your name and student number, the course code and the instructors name on it. Assignments are to be stapled in the top left corner and not put in plastic covers or other bindings. No duo-tangs! Title pages, bibliographies and extensive footnotes are not counted in determining an assignment's page length.

LATE POLICY

Late assignments will be penalized **one grade point per day** that they are late (i.e. B to B-, B- to C+, etc...). Late assignments are to be submitted to the **Law Department's drop box** (Loeb C473) unless otherwise noted. Note as well that email is **not** considered an acceptable means of assignment submission.

BACKUP COPIES

Student must retain a **hardcopy** of anything submitted for a grade in the class. This hardcopy should be maintained for at least 3 months following the end of the class in case there is any discrepancy in final grades. In the very unlikely event that a submitted assignment is misplaced, you must be able to produce another copy if requested.

REFERENCING & PLAGARISM

The assignments in the course must be properly referenced and include a bibliography of all sources used in the preparation of the assignment. We will discuss the citation style in more detail in class. **Failure to reference properly or attempting to pass someone else's ideas off as your own is considered plagiarism.** It is **very** serious! Plagiarism can lead to penalties that range from failure of the course to expulsion from the university. Again, we will talk more about this in the first few weeks of the class.