

Course Outline

Course: LAWS 3005A Law and Regulation

Prerequisites: LAWS 2003 or LAWS 2005

Term: Winter 2009

Class: **Class Time:** Wednesday 2:35-5:25PM

Room: 180 University Centre

Instructor: Craig McFarlane

Contact: **Office:** C476 Loeb

Office Hours: Tuesday 11:30-12:00, Wednesday 2:00-2:25, Thursday 11:30-12:00, or by appointment

Email: teaching@theoria.ca

Web: <http://www.theoria.ca/teaching>

Accommodations

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre (500 Unicentre) 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 CUTV 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, 2008 for December examinations and March 6, 2009 for April examinations.

With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

Calendar Description

Definitions and goals of regulation; contemporary theories and debates about legal and non-legal approaches to regulation. Approaches studied may include market mechanisms, public agency regulation, self-regulation and governance in co-operation with associations in civil society.

Note

This course is both writing and reading intensive. The ultimate goal of this course is to make you a better reader and writer. These two activities are inseparable from one another: good readers write a lot and good writers read a lot.

Administrative Details

Course Overview

This course is concerned with the relation between legal and non- or extra-legal modes of social, political and moral regulation. In this course we will take a broadly theoretical and historical approach to the issue of law and regulation drawing upon the body of scholarship largely inspired by the work of Michel Foucault called ‘governmentality.’

We will take the idea of ‘Foucault’s triangle’ of modern power as a point of departure. Foucault suggests that modern power is characterized by the interaction and intersection of sovereignty, discipline and governmentality, taking ‘population’ as its target and using ‘apparatuses of security’ as its means. In this course we will discuss concepts such as the state, sovereignty, the law, governmentality, police, discipline, biopower, and population, as well as some empirical and contemporary ‘applications’ of each.

While the course takes a theoretical approach to the topic, a background in social, political or legal theory is not presumed. The course is intended as much as an introduction to law and regulation as it is to social, political and legal theory.

Course Objectives

- To introduce the student to reading theoretical texts and understanding theoretical perspectives with the ultimate goal of preparing students to integrate them into future coursework.
- To improve the student’s ability to write clearly and read critically.
- To increase the student’s awareness of and appreciation for the role that history plays in forming the present.
- To increase the student’s awareness of how legal and non- or extra-legal modes of regulation interact with one another.

Required Texts

- All readings are available on WebCT in PDF.

Evaluation

Short Papers	60% (2 × 30%)
Summary	10%
Take-Home Exam	30%

- You *must* complete each component of the course in order to receive a passing grade.

Course Components

Short Papers (3 × 20%) - The best way to learn theoretical concepts is to read and write about them. These papers are intended to be short exercises in which the student enquires into the logic of a particular concept, discussing its strengths and weaknesses, and its potential applications. It is expected that papers will extend beyond mere summaries of the readings and will attempt to critically engage with the concepts. Assignments should be roughly seven pages (2100 words) long. The topics for the papers are as follows:

1. What is ‘governmentality’? (Due February 13, 2009)
2. What is ‘police’? (Due April 7, 2009)

Guidelines for completing the assignments will be discussed in greater detail closer to the first due-date. However, the following should be kept in mind:

- Failure to do the reading and attend the lectures will make receiving a satisfactory mark quite difficult, if not impossible. The material is difficult and should be treated accordingly.
- No additional or secondary reading is required or expected. The point of the assignments is to engage with the assigned texts. If you feel that you need to consult secondary sources, please limit yourself to the recommended texts.
- Direct quotation is acceptable, but given the length of the papers, it should be kept to a minimum.
- Evaluation will take the following into account:
 - Have you successfully demonstrated a basic knowledge of the readings and key concepts?
 - Have you successfully identified the important points and arguments?
 - Have you demonstrated a serious attempt to engage with the readings?
 - Is the paper well structured and logically organized?

Summary (10%) - The readings in this course are quite difficult, therefore it is helpful to have as many perspectives on the readings as possible. Each student will be asked to submit one reading summary for use by the rest of the class. This will ensure that everyone has a complete set of notes. *Summaries are due via email to the instructor the Sunday before the reading is discussed in class.* Summaries should be submitted in either **RTF or PDF** formats. I will then post the summaries to WebCT. While I need to know who wrote which summary for evaluative purposes, it is up to the individual student if the public version of their summary is anonymous or not.

In brief, summaries should be no more than two full pages. Single spacing is acceptable, but not required. The student is asked to provide a *brief* summary of the article (one or two paragraphs), to list key concepts, to provide the definitions found in the text of those concepts, to explain the concepts *in their own words* in one or two sentences each. Any unfamiliar words or phrases should also be listed and please provide the relevant definition from the *Oxford English Dictionary* (if you don't know what the word means, chances are others don't know either). Finally, end with any points or questions that may have occurred to you that may be worth taking up in class.

Take-Home Exam (30%) - The take-home exam is intended to allow students to compare and discuss concepts drawn from the entirety of the course. Students will have about three and a half weeks to complete the take-home exam. The take-home exam will be discussed in greater detail in class. The exam is due **no later than** Monday, April 27 at 4:00PM. Late assignments **cannot** be accepted and **will not** be marked per University regulations.

Grading and Assignment Guidelines

Late Policy - Late assignments **will not be accepted** by the instructor. If you require an extension on your assignment, you **must** apply for a Deferral through the Registrar's Office located at 300 Tory Building.

Grading Policy - In addition to the marking guidelines listed under each individual assignment, it should be noted that students will not be marked on spelling and grammar, however it should be noted that spelling and grammar contributes to the general presentation of your assignments - and impressions do matter! If you feel that you have received an unfair mark on your assignment, *please wait one full week*, send me an email outlining your concerns (i.e., you must be specific) and we will make an appointment to discuss your assignment.

Feedback - Providing quality feedback on written work takes a lot of time. In order to expedite the process of marking, I have instituted the following policy: *I will only comment on assignments that explicitly request comments on the title page. Please indicate one of the following options: No Comments; Comment on Writing; Comment on Understanding; Comment on Both.* Students are neither rewarded nor penalized based upon how they wish to receive feedback.

Academic Offenses - Plagiarism and other academic offenses will not be tolerated and will result in a failing grade in the assignment and, most likely, in the class. All incidents of plagiarism will be referred to the Dean. **Every student I have caught plagiarizing has failed the course.** In order to avoid plagiarism deriving from incorrect citation practices, please consult the Law Department Style Sheet (http://www2.carleton.ca/law/current/Legal_Style_Sheet.pdf). Also "How Do I Avoid Plagiarism?" compiled by the library (<http://www.library.carleton.ca/howdoI/plagiarism.html>). Please consult Section 14 of the Carleton University Undergraduate Calendar for a complete review of the policies governing academic offenses.

Backup Copies - Students must retain a hardcopy of all assignments for at least three months following the conclusion of the class. In the case that an assignment is misplaced, the student is expected to be able to produce another copy on request.

Academic Assistance - Students are encouraged to avail themselves of the resources made available through the Writing Tutorial Service (Learning Support Services, Room 411ML), the Student Academic Success Centre (SASC, 302 Tory) and the Learning Commons (4th Floor, Library, 613-520-2600 ext. 1125).

Other Assorted Guidelines

- Students are expected to have completed the readings prior to attending the lectures as the lectures presume students have arrived prepared.
- Students should be able to answer questions in class, not limited to identifying the important concepts, the arguments underlying the concepts, general questions about the historical circumstances discussed in the readings, and connections between the various concepts and readings.
- All assignments *must be* typed using 12pt Times New Roman or Helvetica fonts. Assignments should be double-spaced and there should be no extra spaces between paragraphs. Margins should be set at 1.25" all around the page.

- Assignments will *not* be accepted via email - so don't bother asking!
- Do not enclose your assignment in a duo-tang or any other sort of cover.
- All email should be sent from an account that clearly identifies your first and last name (e.g., your Connect account). Inappropriate email addresses should *not* be used (e.g., "sexxybunny69@hotmail.com" or "mack-daddy@gmail.com") under any circumstances! **The course code (LAWS 3005) should be indicated in the subject line.** Please use standard spelling and grammar in your correspondence with me.

Schedule

Please do the readings in the order listed on the syllabus!

Note: Readings appear under three headings: (1) Required; (2) Recommended for Less Advanced Students; (3) Recommended for More Advanced Students. Lectures will always discuss the Required readings and they may make reference to Recommended for Less Advanced Students, but the lectures will not discuss the Recommended for More Advanced Students readings. Recommended readings, by definition, are not required, but they do go into the Required readings in greater detail. “Less Advanced” readings are largely contextual and explanatory; “More Advanced” readings are interpretative, argumentative, or apply the concepts. All students regardless of ability may draw upon the recommended readings (if they so desire) for their assignments. Recommended secondary sources (most on reserve in the library) are listed at the end.

07/01/09 Week 1 - Introduction

No assigned readings.

14/01/09 Week 2 - Law and Regulation

Hunt, Alan. “Legal Governance and Social Relations: Empowering Agents and the Limits of Law.” In *Law, Regulation, and Governance*, edited by Michael MacNeil, Neil Sargent, and Peter Swan, 54-77. Toronto: Oxford UP, 2002.

Purvis, Trevor. “Regulation, Governance and the State: Reflections on the Transformation of Regulatory Practices in Late-Modern Liberal Democracies.” In *Law, Regulation and Governance*, edited by Michael MacNeil, Neil Sargent, and Peter Swan, 28-54. Toronto: Oxford UP, 2002.

Recommended for More Advanced Students

Rose, Nikolas, and Valverde, Mariana. “Governed By Law?” *Social & Legal Studies* 7, no. 4 (1998): 541-51.

21/01/09 Week 3 - Governmental Rationality

Foucault, Michel. *Security, Territory, Population: Lectures At the Collège De France*, 87-114. Edited by Michel Senellart, and Arnold I. Davidson. New York: Palgrave Macmillan, 2007.

Foucault, Michel. “‘*Omnes et Singulatim*’: Toward a Critique of Political Reason.” In *Power: Essential Works of Michel Foucault, 1954-1984*, edited by James D. Faubion, 298-325. New York: The New Press, 2000. [First lecture only.]

Recommended for Less Advanced Students

Dean, Mitchell. *Governmentality: Power and Rule in Modern Society*, 9-39, 73-83. London: Sage, 1999.

Recommended for More Advanced Students

Gordon, Colin. “Governmental Rationality: An Introduction.” In *The Foucault Effect: Studies in Governmentality, With Two Lectures By and An Interview With*

Michel Foucault, edited by Graham Burchell, Colin Gordon, and Peter Miller, 1-51. Chicago: University of Chicago, 1991.

Rose, Nikolas, O'Malley, Pat, and Valverde, Mariana. "Governmentality." *Annual Review of Law and Social Science* 2 (2006): 83-104.

Donzelot, Jacques, and Gordon, Colin. "Governing Liberal Societies - the Foucault Effect in the English-Speaking World." *Foucault Studies* 5 (2007): 48-62.

28/01/09 Week 4 - Governmental Rationality Continued

Same as Week 3.

04/02/09 Week 5 - Sovereignty

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*, 15-29. Stanford: Stanford UP, 1998.

Kriegel, Blandine. *The State and the Rule of Law*, 15-32. Princeton: Princeton UP, 1995.

11/02/09 Week 6 - *Polizeiwissenschaft*

Foucault, Michel. "'*Omnes et Singulatim*': Toward a Critique of Political Reason." In *Power: Essential Works of Michel Foucault, 1954-1984*, edited by James D. Faubion, 298-325. New York: The New Press, 2000. [Second lecture only.]

Dean, Mitchell. *Governmentality: Power and Rule in Modern Society*, 83-97. London: Sage, 1999.

Recommended for Less Advanced Students

Raeff, Marc. *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600-1800*, 43-56. New Haven: Yale UP, 1983.

Recommended for More Advanced Students

Pasquino, Pasquale. "Theatrum Politicum: The Genealogy of Capital - Police and the State of Prosperity." In *The Foucault Effect: Studies in Governmentality, With Two Lectures By and An Interview With Michel Foucault*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 105-18. Chicago: University of Chicago Press, 1991.

13/02/09 *First Assignment (Governmentality) Due*

18/02/09 *No Class - Reading Week*

25/02/09 Week 7 - Discipline and the Norm

Foucault, Michel. *Discipline & Punish: The Birth of the Prison*, 170-228. New York: Vintage Books, 1995.

Hacking, Ian. *The Taming of Chance*, 105-14, 160-69. Cambridge: Cambridge UP, 1990.

04/03/09 Week 8 - Biopower

Foucault, Michel. *The History of Sexuality, Volume 1: An Introduction*, 133-59. New York: Vintage Books, 1990.

Foucault, Michel. "The Politics of Health in the Eighteenth Century." In *The Foucault Reader*, edited by Paul Rabinow, 273-89. New York: Pantheon, 1984.

Recommended for More Advanced Students

Foucault, Michel. '*Society Must be Defended*': *Lectures At the Collège De France, 1975-1976*, 239-63. Edited by Mauro Bertani, Alessandro Fontana, and Arnold I. Davidson. New York: Picador, 2003.

06/03/09 *Last day to drop winter semester classes.*

Last day to submit PMC accommodation forms.

11/03/09 **Week 9 - Governing the City and Urbanization**

Hunt, Alan. "Governing the City: Liberalism and Early Modern Modes of Governance." In *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*, edited by Andrew Barry, Thomas Osborne, and Nikolas Rose, 167-88. Chicago: University of Chicago Press, 1996.

Cockayne, Emily. *Hubbub: Filth, Noise & Stench in England, 1600-1770*, 181-205, 230-49. New Haven: Yale UP, 2007.

18/03/09 **Week 10 - Animals and Animal Welfare**

Francione, Gary L. "Introduction: The Abolition of Animal Use Versus the Regulation of Animal Treatment." In *Animals as Persons: Essays on the Abolition of Animal Exploitation*, 1-23. New York: Columbia UP, 2008.

Francione, Gary L. "Reflections on *Animals, Property, and the Law and Rain Without Thunder*." In *Animals as Persons: Essays on the Abolition of Animal Exploitation*, 67-128. New York: Columbia UP, 2008.

25/03/09 **Week 11 -Exceptions and Emergencies**

Agamben, Giorgio. *State of Exception*, 1-31. Chicago: University of Chicago Press, 2005.

or

Butler, Judith. "Indefinite Detention." In *Precarious Life: The Powers of Mourning and Violence*, 50-100. London: Verso, 2004.

Recommended for More Advanced Students

Scheuerman, William E. "Emergency Powers." *Annual Review of Law and Social Science* 2 (2006): 257-77.

01/04/09 **Week 12 - The New Police Science**

Read Two of the Following

Agamben, Giorgio. "Sovereign Police." In *Means Without End: Notes on Politics*, 103-07. Minneapolis: University of Minnesota Press, 2000.

Neocleous, Mark. "Theoretical Foundations of the 'New Police Science'." In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus D. Dubber and Mariana Valverde, 17-41.

Stanford: Stanford UP, 2006.

Dean, Mitchell. "Military Intervention as 'Police' Action?" In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus D. Dubber and Mariana Valverde, 185-206. Stanford: Stanford UP, 2006.

Valverde, Mariana. "Peace, Order, and Good Government': Policelike Powers in Postcolonial Perspective." In *The New Police Science: The Police Power in Domestic and International Governance*, edited by Markus D. Dubber and Mariana Valverde, 73-106. Stanford: Stanford UP, 2006.

07/04/09 *Second Assignment Due*

27/04/09 *Take home exam due by 4:00PM.*

Other Recommended Texts

By Michel Foucault

- Foucault, Michel. "Nietzsche, Genealogy, History." In *The Foucault Reader*, edited by Paul Rabinow, 76-100. New York: Pantheon Books, 1984.
- Foucault, Michel. *The History of Sexuality, Volume 1: An Introduction*. New York: Vintage Books, 1990.
- Foucault, Michel. *Discipline & Punish: The Birth of the Prison*. New York: Vintage Books, 1995.
- Foucault, Michel. *'Society Must be Defended': Lectures At the Collège De France, 1975-1976*. Edited by Mauro Bertani, Alessandro Fontana, and Arnold I. Davidson. New York: Picador, 2003.
- Foucault, Michel. *Security, Territory, Population: Lectures At the Collège De France*. Edited by Michel Senellart, and Arnold I. Davidson. New York: Palgrave Macmillan, 2007.
- Foucault, Michel. *The Birth of Biopolitics: Lectures At the Collège De France, 1978-1979*. Edited by Michel Senellart, and Arnold I. Davidson. New York: Palgrave MacMillan, 2008.

On Michel Foucault's Thought in General

- Dreyfus, Hubert L., and Paul Rabinow. *Michel Foucault, Beyond Structuralism and Hermeneutics*. Chicago: University of Chicago Press, 1982.
- Gutting, Gary. *Michel Foucault's Archaeology of Scientific Reason*. Cambridge: Cambridge UP, 1989.
- Han, Béatrice. *Foucault's Critical Project: Between the Transcendental and the Historical*. Stanford: Stanford UP, 2002.
- Prado, C.G. *Starting With Foucault: An Introduction to Genealogy*. Boulder: Westview Press, 1995.

Other Recommended Texts

- Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford UP, 1998.
- Barry, Andrew, Thomas Osborne, and Nikolas Rose, (eds.) *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*. Chicago: University of Chicago Press, 1996.
- Burchell, Graham, Colin Gordon, and Peter Miller, (eds.) *The Foucault Effect: Studies in Governmentality, With Two Lectures By and an Interview With Michel Foucault*. Chicago: University of Chicago Press, 1991.
- Curtis, Bruce. "Foucault on Governmentality and Population: The Impossible Discovery." *Canadian Journal of Sociology* 27, no. 4 (2002): 505-33.
- Dean, Mitchell. *Critical and Effective Histories: Foucault's Methods and Historical Sociology*. London: Routledge, 1994.
- Dean, Mitchell. *Governmentality: Power and Rule in Modern Society*. London: Sage, 1999.
- Dean, Mitchell. *Governing Societies: Political Perspectives on Domestic and International Rule*. Maidenhead: Open UP, 2007.

- Donzelot, Jacques and Colin Gordon "Governing Liberal Societies - the Foucault Effect in the English-Speaking World." *Foucault Studies* 5 (2007): 48-62.
- Dupont, Danica and Frank Pearce. "Foucault Contra Foucault: Rereading the 'Governmentality' Papers." *Theoretical Criminology* 5, no. 2 (2001): 123-58.
- Gordon, Colin. "Governmental Rationality: An Introduction." In *The Foucault Effect: Studies in Governmentality, With Two Lectures By and An Interview With Michel Foucault*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 1-51. Chicago: University of Chicago, 1991.
- Hunt, Alan and Gary Wickham. *Foucault and Law: Towards a Sociology of Law as Governance*. London: Pluto, 1994.
- Milchman, Alan and Alan Rosenberg. "Marxism and Governmentality Studies: Toward a Critical Encounter." *Rethinking Marxism* 14, no. 1 (2002): 132-42.
- Mbembe, Achille. "Necropolitics." *Public Culture* 15, no. 1 (2003): 11-40.
- O'Malley, Pat, Lorna Weir, and Clifford Shearing. "Governmentality, Criticism, Politics." 26, no. 4 (1999): 501-17.
- Pasquino, Pasquale. "Theatrum Politicum: The Genealogy of Capital - Police and the State of Prosperity." In *The Foucault Effect: Studies in Governmentality, With Two Lectures By and An Interview With Michel Foucault*, edited by Graham Burchell, Colin Gordon, and Peter Miller, 105-18. Chicago: University of Chicago Press, 1991.
- Pearce, Frank, and Steve Tombs. "Foucault, Governmentality, Marxism." *Social & Legal Studies* 7, no. 4 (1998): 567-75.
- Rabinow, Paul and Nikolas Rose. "Biopower Today." *BioSocieties* 1, no. 2 (2006): 195-217.
- Rose, Nikolas. *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge UP, 1999.
- Rose, Nikolas, Pat O'Malley, and Mariana Valverde. "Governmentality." *Annual Review of Law and Social Science* 2 (2006): 83-104.
- Rose, Nikolas and Mariana Valverde. "Governed By Law?" *Social & Legal Studies* 7, no. 4 (1998): 541-51.
- Scheuerman, William E. "Emergency Powers." *Annual Review of Law and Social Science* 2 (2006): 257-77.
- Singer, Brian C.J. and Lorna Weir. "Politics and Sovereign Power: Considerations on Foucault." *European Journal of Social Theory* 9, no. 4 (2006): 443-65.
- Singer, Brian C.J., and Lorna Weir. "Sovereignty, Governance and the Political: The Problematic of Foucault." *Thesis Eleven* 94 (2008): 49-71.
- Taylor, Dianne and Karen Vintges, (eds.) *Feminism and the Final Foucault*. Urbana: University of Illinois Press, 2004.
- Walters, William. "Some Critical Notes on 'Governance'." *Studies in Political Economy* 73 (2004): 27-46.