

Course LAWS 3005 Law and Regulation
Term Fall 2011
Instructor Craig McFarlane
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Office Hours Friday 1:00–2:00PM
Email craig_mcfarlane@carleton.ca
Course Meets Friday 2:35–5:25PM
Prerequisites 1.0 Credit from: LAWS 2003 [1.0] (no longer offered), LAWS 2005 [1.0] (no longer offered), LAWS 2201, LAWS 2202, LAWS 2501, or LAWS 2502

ACCOMMODATIONS

Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see http://www.carleton.ca/pmc/students/accom_policy.html. For religious and pregnancy accommodations, please contact Equity Services, ext. 5622.

COURSE OVERVIEW

This course is concerned with the relation between law and regulation, broadly construed. More specifically, we will examine the role that power and violence plays in constructing a social, legal and political order. As a result, we will study general strategies for structuring legal and political power in relation to and by the modern state. The course begins with an overview of the historical sociology of the state and some theoretical reflections on the general relation between state power and violence. The remainder of the courses studies how violence, power and the law are used to organize and structure societies, by both the state and organizations beyond the state. We will discuss concepts such as sovereignty, government, biopolitics, and the state of exception. The course is both reading and writing intensive and the material is intentionally difficult: students should keep this in mind when enrolling in the course.

REQUIRED TEXTS

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Stanford: Stanford UP, 1998.

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

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.

Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated

by George Schwab. Chicago: University of Chicago Press, 2005.

EVALUATION

Unless otherwise specified, assignments are due at the start of class the date they are due. Any assignments submitted after the start of class or to the drop box will be deemed late. Late assignments are penalized one grade point per day late (e.g., an assignment two days late which merits a grade of A- will be given a grade of B). Extensions will not be granted under any circumstance. Please note that the two short papers and the take-home exam must be completed in order to pass this course; i.e., failure to submit all three assignments will result in a mark of FND. Plagiarism will not be tolerated and will result in the matter being referred to the Dean of the Faculty of Public Affairs and will most likely result in a failure on the assignment, if not also the course. There are no exceptions to any of these policies. While all grades are subject to approval by the Chair of the Department of Law and the Dean of the Faculty of Public Affairs, provisional marks will be posted to WebCT as they become available.

SHORT PAPERS (2X25%) OCTOBER 14, NOVEMBER 4, & DECEMBER 2

Students are required to complete three short papers (about 1500-2000 words each). These short assignments are intended to be exercises wherein the student enquires into the logic of a particular concept, argument or passage, discussing its strengths and weaknesses, its meaning, its implications and potential applications. It is expected that papers will extend beyond mere summaries of the readings and will attempt to critically engage with the concepts. Papers must be written in standard English, with proper citations and a bibliography. Any recognized style (APA, MLA, Chicago, etc) is acceptable. It is expected that students will focus on the assigned texts—i.e., those which are discussed in class—rather than relying upon secondary sources.

First assignment Analyze the following passage from Carl Schmitt's *Political Theology*:

Therein resides the essence of the state's sovereignty, which must be juristically defined correctly, not as the monopoly to coerce or to rule, but as the monopoly to decide.

Second assignment Answer the following question:

What does Michel Foucault understand to be the specific differences between the liberalism of eighteenth century England and the neo-liberalism of twentieth century United States?

Third assignment Discuss the following passage from Giorgio Agamben's *Homo Sacer*:

Along with the emergence of biopolitics, we can observe a displacement and gradual expansion beyond the limits of the decision on bare life, in the state of exception, in which sovereignty consisted. If there is a line in every modern state marking the point at which the decision on life

becomes a decision on death, and biopolitics can turn into thanatopolitics, this line no longer appears today as a stable border dividing two clearly distinct zones. This line is now in motion and gradually moving into areas other than that of political life, areas in which the sovereign is entering into an ever more intimate symbiosis not only with the jurist but also with the doctor, the scientist, the expert, and the priest.

TAKE HOME EXAM (25%) DECEMBER 21 AT 4:00PM

In effect, the take-home exam is another short papers (1500-2000 words). Question(s) will be posted to WebCT and discussed in class on the final class of the semester. The take-home exam will address the material discussed from Giorgio Agamben's *State of Exception*. Take home exams must be written in standard English, with proper citations and a bibliography. Any recognized style (APA, MLA, Chicago, etc) is acceptable. Late assignments will not be accepted and cannot be marked per university regulations. Exams will not be returned, but will be made available for viewing at the Department of Law in January.

COURSE SCHEDULE

September 9 Introduction

No assigned readings.

September 16 State Formation

Tilly, Charles. *Coercion, Capital, and European States, AD 990-1990*. Cambridge, Mass: Blackwell, 1990. [Chapter 1]

September 23 Reflections on Violence

Clastres, Pierre. *Society Against the State*. Translated by Robert Hurley. New York: Zone Books, 1989. [189-218]

Benjamin, Walter. "Critique of Violence." In *Selected Writings, Volume 1, 1913-1926*, edited by Marcus Bullock and Michael W. Jennings, translated by Edmund Jephcott, 236-52. Cambridge: The Belknap Press, 1996.

September 30 Sovereignty

Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press, 2005.

October 7 Government I: The Pastoral, Police and Reason of State

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.

Foucault, Michel. *Security, Territory, Population: Lectures At the Collège de France*. Edited by Michel Senellart and Arnold I. Davidson. New York: Palgrave Macmillan, 2007. [Chapter 4]

Knemeyer, F-L. "Polizei." *Economy & Society* 9, no. 2 (1980): 172–96.

October 14 Government II: Liberalism and Neo-Liberalism

First assignment due.

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. [Required chapters 2, 3, 9, 10; Recommended chapters 4, 5, 6]

October 21 Discipline

Foucault, Michel. *Discipline & Punish: The Birth of the Prison*. New York: Vintage Books, 1995. [170–228, 293–308]

October 28 Biopower and Biopolitics

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

Foucault, Michel. *The History of Sexuality: An Introduction*. Translated by Robert Hurley. New York: Vintage, 1990. [133–59]

November 4 Sovereignty and Biopolitics I

Second assignment due.

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Stanford: Stanford UP, 1998. [Parts 1 and 2]

November 11 Sovereignty and Biopolitics II

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Stanford: Stanford UP, 1998. [Part 3]

November 18 State of Emergency/State of Exception I

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

November 25 State of Emergency/State of Exception II

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

December 2

Third assignment due.

December 21 Take-home exam due (submit to Department of Law drop box before 4:00PM)