

St. Jerome's University in the University of Waterloo
Department of Sociology and Legal Studies
LS 402-002 (3353)
PERSPECTIVES on LEGAL AUTHORITY and SUBJECTIVITY
Winter 2020 (January 9 – April 2, 2020)
Thursday 12:30 p.m. – 2:20 p.m., SJU 3012

Instructor Information (no T.A)

Instructor: Kevin Burrows, B.A., LL.B., LL.M., Barrister & Solicitor

Office: TBD

Office Hours: TBD by appointment

Email: kburrows@hotmail.com (preferred method of communication)

Course Description

This senior seminar explores the relation between those who make or administer law and select legal subjects whose lives and identities are shaped by law. As we study specific perspectives, students will debate and assess topics spanning such disciplines as psychology, sociology, history, humanities, cultural studies, political science, and criminology.

Course Goals and Learning Outcomes

Given that this is a senior seminar, the first objective is to encourage students to take ownership of the course. Other than a few opening remarks and guiding questions from the course instructor, the students themselves are responsible for setting the tone and tempo of the in-class experience. The second objective, related to the first, is to foster an environment of respectful and knowledgeable critique, which is essential to effective scholarly debate. This means that students must be exceptionally well-prepared on a weekly basis to answer questions that demonstrate their critical reading and thinking skills.

Required Text

Course Reserves: All readings listed in this outline can be accessed through the Library Course Reserves, or LEARN

Blackwell Companion to Law and Society is available to purchase through the Bookstore but is very expensive.

Waterloo LEARN

LS 402 has an online course page that is accessible via learn.uwaterloo.ca. Students should visit this page for the latest course announcements, assignment instructions, course policies, and links to readings not found in the Library Course Reserves.

Students will be fully responsible for reading and responding appropriately to all information distributed through the Waterloo LEARN Course Page. Information provided on this page will be considered to have

been provided to all registered students within 24 hours of posting. Please check regularly. **This should be your first stop if you have any questions about the course and prior to emailing the Instructor.**

Correspondence Etiquette

Please use email sensibly. When emailing, please type the course, section number, regular day & time of class, into the subject heading; also include your First and Last name and use a salutation and closing for all emails. An attempt will be made to respond to all emails within 48 business hours. If you have not received a response in that timeframe, please re-send your email. Do not expect a reply on weekends. IN addition, please do not email asking for information that can be found in the course outline or on the Waterloo LEARN course page.

Course Requirements and Assessment

(Additional details to be posted on LEARN)

Requirement	Description	Value	Schedule
Attendance First Class	Attending the first class is very important; expectations will be discussed and presentation dates will be chosen.	3 marks toward 40 participation grade	No preparation required.
Seminar Leader(s)	All Seminar Leaders must, by 11:59 pm on the Saturday before class: <ul style="list-style-type: none"> - post reading questions on LEARN, or send an email to class (cc Instructor on all) - post 1 additional <i>scholarly</i> reading (7 pages min, 30 pages max) - post 1 additional news item related to topic (1 year old max) - prepare a brief introduction to the topic of the week and lead the class discussion 	7 marks toward 40 participation grade	Schedule to be decided on the first day of class.
Participation	Students will be required to come to class prepared to participate in every class including the Essay Writing Workshop. Your grade will be based on participation in each class and demonstrated knowledge of the assigned readings.	30 marks toward 40 participation grade	Continuous
Term Essay <i>Selected Topic</i>	Topics and instructions on LEARN <ul style="list-style-type: none"> - Analysis and argument - 15 pages double spaced 	60%	To be submitted by email on or before April 9, 2020 by 11:59 p.m.

Submission of Assignments

Assignments must be submitted to the Instructor's email address (krburrows@hotmail.com) by the deadline specified in the assignment instructions.

Missed Classes

Attendance at all seminar classes is required. If a student misses a single class, a 5 page review of the materials answering the questions for that day may be submitted by email once so that some grades in lieu of participation can be assigned. If more than one class is missed, then official documentation must be provided to the Instructor, before the next class, setting out the reason for the missed class and a request made, if appropriate, asking for authorization to submit a further 5 page review for that class in lieu of attendance. If no official documentation is received, the student can expect their absence to be reflected in their participation grade as a 0 for that class. Attending but not participating in discussions will also net a 0 grade for that class.

Late and Missed Course Requirements

Submitting the final essay after the date AND/OR the time that it is due will be subjected to a 3 marks per day late penalty; this is equivalent to 5%. The essay is marked out of 60, so an assignment that is assessed at 51/60 (85%), would fall to 48/60 (80%) if submitted one day late, 75% for two days, 70% for three... If an assignment is due at prior to midnight is submitted after midnight instead, it will still be considered to be a day late. Please note that assignments will NOT be accepted if they are more than five (5) days late, unless an exception has been provided for medical or compassionate reasons.

For all assignments and exams, accommodations will only be considered if:

- (a) you are ill and submit a University of Waterloo Verification of Illness Form to the Instructor **within 48 hours**;
- (b) there was a death of a family member, which you can prove through official documentation (travel receipts will not suffice) submitted to the Instructor;
- (c) due dates conflict with important dates on your religious calendar, and you have informed the professor of this fact within two weeks of learning about this conflict;
- (d) you are registered with [AccessAbility Services](#) and can provide the professor with the relevant documentation;
- (e) you inform the Instructor within two weeks of learning that you have an exam conflict, meaning a scheduled LS 101 exam is at the same time as, or is within two hours of another scheduled exam.

Familiarize yourself with the University of Waterloo's policies on what your responsibilities are in the event of a late or missed course requirement: <https://uwaterloo.ca/registrar/final-examinations/academic-regulations-related-assignments-tests-and-final-1>

Keep in mind the following regulations:

Students in on-campus courses who are ill and unable to meet assignment due dates or write a term test or final examination should seek medical treatment and provide confirmation of the illness to the instructor(s) within 48 hours by submitting a completed *University of Waterloo Verification of Illness Form* to support requests for accommodation due to illness.

The *University of Waterloo Verification of Illness Form* is normally the only acceptable medical documentation and is available on line at <https://uwaterloo.ca/health-services/student-medical-clinic/services/verification-illness>. Students who consult their physician or use the services of an off-campus walk-in clinic must provide this form to the attending physician for completion; doctors' notes and forms created by the physician or clinic are normally not acceptable.

Electronic Device Policy

In the spirit of creating a classroom conducive to listening and learning, I would ask all students to restrict their laptop use during class to note-taking and to silence their cellphones and forgo texting. Research has shown that inappropriate computer usage not only affects your own grade, but impacts those around you as well. Your respectful consideration of others is very much appreciated. Your rights end where the rights of others begin.

Class Schedule

Everyone should do *all* of the readings however, you must at very least complete the **required readings for each class and ONE of the additional readings**. Seminar Leaders should be familiar with all of the readings for that week in order to lead their assigned session in a knowledgeable and effective manner.

Seminar Leaders should locate **one additional scholarly reading (min 7 pages, max 30 pages) and one additional news item**, and post these works to the relevant LEARN discussion group by **11:59 pm on the Saturday before class**. This content must illuminate some aspect of their assigned subject area and help focus the discussion for that session. The additional reading can be from a scholarly journal or book, while the additional news item can be from a news source, reputable blog or website, magazine; focus on finding timely sources that speak to a current event.

Jan 9 WEEK 1	OVERVIEW & INTRODUCTION This is a very important class to attend; there are marks for showing up.
Jan 16 WEEK 2	Theme: AUTHORITY AND SUBJECTIVITY Objectives: - aim for a general understanding of authority and subjectivity - clarify what is meant by “social theory” - situate discussion in earlier Law and Society scholarship - understand the fluidity of both authority and subjectivity - uncover the constitutive components of both
Blackwell Reader	* Roger Cotterrell, ‘Law in Social Theory and Social Theory in the Study of Law’, pp. 15-29.
<i>LEADERS' ADDITION(S)</i>	* <i>Also read the additional material provided by this week's Seminar Leader(s). FOR THIS WEEK ALONE, only two related news items need to be provided – no scholarly source.</i>
Journal(s) or Chapter(s)	* John Finnis (1984) ‘Authority of Law in the Predicament of Contemporary Social Theory’ <i>Notre Dame journal of Law, Ethics & Public Policy</i> 1(1), 115-137. * Jack M. Balkin (1993) ‘Understanding Legal Understanding: The Legal

	Subject and the Problem of Legal Coherence' <i>Yale Law Journal</i> 103(105), 1-38
UNIT I: AUTHORITY	
Jan 23 WEEK 3	<p>Theme: POLICE</p> <p>Objectives:</p> <ul style="list-style-type: none"> - debate purposes of police, past and present - discuss sources of police authority - sketch-out limits of police authority - understand the relation between perception and legitimacy - raise idea of police officers as legal subjects
Blackwell Reader	* Jeannine Bell, 'The Police and Policing', pp. 131-145.
LEADERS' ADDITION(S)	* Also read the additional material provided by this week's Seminar Leader(s).
Journal(s) or Chapter(s)	<p>Emma Antrobus, et al. (2015) 'Community Norms, Procedural Justice, and the Public's Perceptions of Police Legitimacy' <i>Journal of Contemporary Criminal Justice</i> 31(2), 151-170.</p> <p>James Stribopoulos (2015) 'The Rule of Law on Trial: Police Powers, Public Protest, and the G20' in <i>Putting the State on Trial: The Policing of Protest During the G20 Summit</i>, pp. 105-126.</p>
Jan 30 WEEK 4	<p>Theme: LAWYERS</p> <p>Objectives:</p> <ul style="list-style-type: none"> - establish understanding of the evolution of professional lawyers - discuss power of lawyers as authorities on law - debate professional standards - discuss the social responsibility of lawyers arising from their authority - consider different types of lawyers
Blackwell Reader	* Tanina Rostain, 'Professional Power: Lawyers and the Constitution of Professional Authority', pp. 146-169.
LEADERS' ADDITION(S)	* Also read the additional material provided by this week's Seminar Leader(s).
Journal(s) or Chapter(s)	<p>Austin Sarat & Stuart Scheingold (1998) 'Cause Lawyering and the Reproduction of Professional Authority' in <i>Cause Lawyering</i>, pp. 3-28.</p> <p>James F. Gill (2011) 'Lawyer's Obligation to Correct Social Injustice!' <i>Fordham Urban Law Journal</i> 39, 229-244.</p>
Feb 6 WEEK 5	<p>Theme: JUDGES</p> <p>Objectives:</p> <ul style="list-style-type: none"> - consider different levels of judges - discuss professional standards and ethics - debate different powers associated with law-making or law-preserving - establish understanding of relation to government at different levels

	- entertain whether “cause judging” (like cause lawyering) is desirable
Blackwell Reader	* Lee Epstein & Jack Knight, ‘Courts and Judges’, pp. 170-194.
LEADERS’ ADDITION(S)	* Also read the additional material provided by this week’s Seminar Leader(s).
Journal(s) or Chapter(s)	David Dyzenhaus (2010) ‘The Very Idea of a Judge’ <i>University of Toronto Law Journal</i> 60(1), 61-80 Ian Bushnell (2010) ‘Justice Ivan Rand and the Role of a Judge in the Nation’s Highest Court’ <i>Manitoba Law Journal</i> 34(1-2), 101-142.
Feb 13 WEEK 6	Theme: REGULATORS Objectives: - develop a working understanding of administrative law - understand the role of agencies and their authority - explore the growth of regulatory capitalism - sketch-out the relative independence of regulatory agencies - debate the problem of capture between agencies and government
Blackwell Reader	* Robert A. Kagan, ‘Regulators and Regulatory Processes’, pp. 212-230.
LEADERS’ ADDITION(S)	* Also read the additional material provided by this week’s Seminar Leader(s).
Journal(s) or Chapter(s)	David Levi-Faur (2005) ‘The Global Diffusion of Regulatory Capitalism’ <i>Annals of the American Academy of Political and Social Science</i> 598(1), 12-32. Chris Hanretty & Christel Koop (2013) ‘Shall the Law Set them Free? The Formal and Actual Independence of Regulatory Agencies’ <i>Regulation & Governance</i> 7(2), 195-214.
Feb 20 WEEK 7	Reading Week
Feb 27 WEEK 8	ESSAY WRITING WORKSHOP – will be done in portions during term
March 5 WEEK 9	Theme: COLONIAL Objectives: - establish a foundational understanding of colonial histories - clarify law’s role in colonialism - introduce the concept of “legal pluralism” - debate the legacy of colonialism in relation - prepare for Unit II; discuss legal subjectivity in colonial context
Blackwell Reader	* Sally Engle Merry, ‘Colonial and Postcolonial Law’, pp. 569-583.
LEADERS’ ADDITION(S)	* Also read the additional material provided by this week’s Seminar Leader(s).

Journal(s) or Chapter(s)	<p>✳ Aimé Césaire (2000/1950) <i>Discourse on Colonialism</i>, transl. Joan Pinkham, Monthly Review Press, pp. 31-46.</p> <p>Eric Lewis Beverley (2013) 'Frontier as Resource: Law, Crime, and Sovereignty on the Margins of Empire' <i>Comparative Studies in Society and History</i> 55(2), 241-272.</p>
UNIT II: SUBJECTIVITY	
March 12 WEEK 10	<p>Theme: WORKING POOR/UNEMPLOYED</p> <p>Objectives:</p> <ul style="list-style-type: none"> - understand the relation between class and legal subjectivity - explore how labour and law intersect - discuss law as empowering/disempowering from class perspective - clarify the connection between marginality and subjectivity - place the link between criminality and class in historical context
Blackwell Reader	✳ Frank Munger, 'Rights in the Shadow of Class: Poverty, Welfare, and the Law', pp. 330-353.
LEADERS' ADDITION(S)	✳ <i>Also read the additional material provided by this week's Seminar Leader(s).</i>
Journal(s) or Chapter(s)	<p>✳ Todd Gordon (2006) 'Panhandling Bylaws and the Safe Streets Act: The Return of Vagrancy Law' in <i>Cops, Crime and Capitalism</i>, Fernwood Publishing, pp. 74-107.</p> <p>Ben Cousins (2009) 'Capitalism Obscured: The Limits of Law and Rights-Based Approaches to Poverty Reduction and Development' <i>The Journal of Peasant Studies</i> 36(4), 893-908.</p> <p>Tayyab Mahmud (2010) "'Surplus Humanity' and the Margins of Legality: Slums, Slumdogs, and Accumulation by Dispossession' <i>Chapman Law Review</i> 14(1), p.1-73.</p>
March 19 WEEK 11	<p>Theme: RACIALIZED</p> <p>Objectives:</p> <ul style="list-style-type: none"> - revisit from past courses race and legal subjectivity - explore how Law and Society scholars approach race - explore how Critical Race Theorists approach law - place racial legal subjectivity in historical context - discuss race in light of contemporary concerns, i.e. Black Lives Matter
Blackwell Reader	✳ Laura E. Gómez, 'A Tale of Two Genres: On the Real and Ideal Links Between Law and Society and Critical Race Theory', pp. 435-452.
LEADERS' ADDITION(S)	✳ <i>Also read the additional material provided by this week's Seminar Leader(s).</i>

Journal(s) or Chapter(s)	<p>✳ James, C.L.R. (1963 [1938]) <i>The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution</i>.</p> <ul style="list-style-type: none"> - Preface to the First Edition - Prologue - The Property <p>Himani Bannerji (2000) <i>Geography Lessons: On Being an Insider/Outsider to the Canadian Nation. The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender</i>, Toronto: Canadian Scholars' Press, pp. 63-86.</p>
March 26 WEEK 12	<p>Theme: GENDER</p> <p>Objectives:</p> <ul style="list-style-type: none"> - revisit from past courses gender and legal subjectivity - debate the intersection of race and gender with regard to law - explore how Law and Society scholars approach gender - place gendered legal subjectivity in historical context - discuss in light of contemporary concerns, i.e. transgender rights
Blackwell Reader	<p>✳ Nicola Lacey, 'The Constitution of Identity: Gender, Feminist Legal Theory, and the Law and Society Movement', pp. 471-486.</p>
LEADERS' ADDITION(S)	<p>✳ <i>Also read the additional material provided by this week's Seminar Leader(s).</i></p>
Journal(s) or Chapter(s)	<p>Federici, S. (2004) <i>Caliban and the Witch: Women, the Body and primitive Accumulation - The Accumulation of Labor and the Degradation of Women: Constructing 'Difference' in the 'Transition to Capitalism'</i>. New York: Autonomedia, pp. 61-115.</p>
April 2 WEEK 13	<p>Theme: SEXUALITY</p> <p>Objectives:</p> <ul style="list-style-type: none"> - explore how Law and Society scholars approach sexuality - place sexuality and legal subjectivity in historical context - discuss in light of contemporary concerns, i.e.
Blackwell Reader	<p>✳ Leslie J. Moran, 'Sexuality in Law and Society Scholarship', pp. 487-505.</p>
LEADERS' ADDITION(S)	<p>✳ <i>Also read the additional material provided by this week's Seminar Leader(s).</i></p>
Journal(s) or Chapter(s)	<p>Alan Young (2008). 'The State is Still in the Bedrooms of the Nation: The Control and Regulation of Sexuality in Canadian Criminal Law' <i>Canadian Journal of Human Sexuality</i> 17(4), 203-220.</p> <p>Mary Bunch (2013) 'The Unbecoming Subject of Sex: Performativity, Interpellation, and the Politics of Queer Theory' <i>Feminist Theory</i> 14(1), 39-55.</p> <p>Lara Karaian (2012) 'Lolita Speaks: "'Sexting," Teenage Girls and the Law' <i>Crime, Media, Culture</i> 8(1), 57-73.</p> <p>Sexuality, Poverty, and Law Programme. "Sexuality and Social Justice", Institute of Development Studies.</p>

Important Information

Academic Integrity: To maintain a culture of academic integrity, members of the University of Waterloo and its Affiliated and Federated Institutions of Waterloo (AFIW) are expected to promote honesty, trust, fairness, respect, and responsibility. See the [UWaterloo Academic Integrity webpage and the Arts Academic Integrity webpage for more information](#).

Discipline: A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for their actions. A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course professor, academic advisor, or the Associate Dean. When misconduct has been found to have occurred, disciplinary penalties will be imposed under the [St. Jerome’s University Policy on Student Discipline](#). For information on categories of offenses and types of penalties, students should refer to [University of Waterloo Policy 71 - Student Discipline](#). For typical penalties check [Guidelines for the Assessment of Penalties](#).

Grievance: A student who believes that a decision affecting some aspect of their university life has been unfair or unreasonable may have grounds for initiating a grievance. Read the [St. Jerome’s University Policy on Student Petitions and Grievances](#).

Appeals: A decision made or penalty imposed under the St. Jerome’s University Policy on Student Petitions and Grievances (other than a petition) or the St. Jerome’s University Policy on Student Discipline may be appealed if there is a ground. A student who believes they have a ground for an appeal should refer to the [St. Jerome’s University Policy on Student Appeals](#).

Note for Students with Disabilities: The [AccessAbility Services](#) office, located on the first floor of the Needles Hall extension (1401), collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with the AS office at the beginning of each academic term.

Appendix:

Grading Criteria

A+ (90 to 100) Exceptional

One could scarcely expect better from a student at this level

A (80 and up) Superior work that is clearly above average

- Challenging and specific thesis that is clearly developed, provision of strong analysis
- Sophisticated writing style with correct and interesting sentence structure
- Appropriate and thorough research and documentation/citations

- Quotations well integrated into the text, with proper documentation
- Evidence of originality or independence of thought
- Complexity and subtlety in approach to subject
- Well-organized with a logical development of the argument
- Highly accurate use of APA both in-text and in references

B (70 to 79) Good work, meeting all requirements, and eminently satisfactory

- Clear development of a specific thesis, with proper paragraphs
- Provision of some analysis
- Correct sentence structure, paragraph development
- Adequate documentation from research evidence
- Mostly accurate use of APA both in-text and in references
- Allowance for some (minor) problems such as:
 - Errors in factual content or interpretation
 - Some minor errors in terminology or general writing skills
 - Occasional lapses in clarity, including vagueness, incompleteness, flaws in structure
- Note: A grade in the range of 75-79 indicates an essay that borders on an A but has some significant flaw that prevents giving out the higher grade.

C (60 to 69) Competent work, meeting requirements

- Generally correct but tends to provide more description than analytical
- Tends to be too general or superficial in the handling of research/material
- Weaknesses in argument including a descriptive thesis, a mechanical approach, lack of adequate evidence, documentation, or support
- Problems with grammar or matters of writing style
- Simplicity of thought, structure, or expression

D (50 to 59) Fair work, minimally acceptable

- Does not provide an argument or a clear line of thought
- Major difficulties with logical structure, and expression of ideas
- Topic has not been thought through
- Errors of grammar and diction interfere with understanding
- Over-generalization with inadequate support, evidence, or documentation
- Identified issues with APA in-text and/or references

F (49 <) Fail

- Failure to participate as expected and sub-par term paper
- Assignment submitted does not apply to course
- Basic requirements of the assignment are not met
- Plagiarism with intent to deceive (to be handled by the Associate Dean)