Is this course right for you?

This course is designed for any graduate student interested in thinking more deeply about state power, security, rights, and sovereignty. It is thoroughly interdisciplinary, and does not assume either a criminology or a law and society background. However, students have to be willing and able to read scholarly work written by a variety of theorists, even if they do not understand 100% of what they read. Any student who feels anxious about Theory but is interested is encouraged to talk with the instructor beforehand (you can set up a phone call by email).

Theme for the course: the ‘person’ of law

In documents such as the Canadian Charter of Rights, as well as in popular speech, it is taken for granted that 'persons' exist by nature and are rights bearers by nature. The fact that legal systems, supported by liberal political thought, actually bring into being the very ‘person’ who then becomes both subject and object of law is the key story told in this course.

In early modern Europe, philosophers promoting the idea of ‘the social contract’ as the foundation of legitimate state power relied on culturally specific assumptions about human nature. Complete individualism was regarded as the 'natural' condition of humanity, with political organization seen as a horizontal, rational-choice agreement amongst such competitive individuals to give up some of their ‘natural’ liberty to ensure security. This framework --which overthrew centuries-old notions about political order being organized by divine edict and/or built on an analogy with fatherly authority-- still underlies current liberal legal systems such as Canada's.

Social contract thought later evolved into the political discourse of late 18th century reformers, contained in such texts as the French 1789 ‘Declaration of the Rights of Man’ and the US Declaration of Independence. The modern legal ‘person’ was now characterized as a rights holder.

Over the course of the 19th century and into the 20th, the scope of legal personhood expanded, as groups besides property-owning white males claimed the status of legal person: slaves, serfs, women, men who did not own property, colonized peoples, children, prisoners...
The expansion of political personhood was hotly contested. By contrast, a general silence greeted the extension of legal personhood to corporations. This process began in the Middle Ages, as church property came to be invested not in individuals or families but in groups; but the corporate legal form became central to legal systems in the mid-nineteenth century. As a case study we will examine the mixed public and private roles of two early corporations chartered by the British Crown, the Hudson’s Bay Company and the East India Company. The legal powers of such 'persons' of law contrast sharply with the legal disabilities imposed during the same time period on colonized peoples.

From the 1960s onward, Marxists, feminists, postcolonial writers, and, later, poststructuralists challenged the liberal legal notion of ‘person’. Critical legal studies argued that ‘the person’ promoted by liberal thinkers from John Locke to Canadian Prime Ministers is a fiction -- as Foucault put it, a face drawn on the sand at the edge of the seashore. Without going into depth into any one theory, we will cover a few key terms and notions in post-liberal theories of how personhood and identity are constituted.

And from a non-Western perspective, Indigenous legal traditions present starkly different ways of thinking about law and justice. One key point about Indigenous legal systems is that they lack a ‘person’ category. Without attempting to cover Indigenous legal thinking in any depth, readings by Indigenous scholars can be used to shed light on the historical and cultural specificity of the ‘person of law’ that is taken for granted in contemporary Western-style legal systems.

A final point: one can ‘debunk’ the autonomous individual of liberal law all day long; but real-world battles for justice cannot completely dispense with ‘the person, insofar as group rights and environmental justice tools are far weaker, in Western legal systems, than the rights of persons.

**Note regarding the person-screen interface:** Cell phones are to be put away during class, with notification noises turned off. You can check your phone at the break though conversation with fellow students is far more rewarding. Laptops are to be used only to store materials. Unless accessibility is an issue, you will be expected to take notes during class by hand, and look at your screen only when we are taking up passages in the assigned readings. Exam books will be made available for those who have forgotten how to buy a real notebook. Remember this course is a seminar. In class, look at and react to persons and ideas, not screens.

Materials that are helpful, especially for those with a weak theory background, throughout the course:
1. Barry Hindess, Discourses of Power (on reserve in Crim library). This overview of theory from Hobbes to Foucault fits well with our course, and is written fairly accessibly. Students without background in theories of the state are advised to read this book prior to or early in the course.

2. The Stanford Encyclopedia of Philosophy is a very reliable source, open access online, that you should consult and bookmark. For some of the thinkers covered in our course there’s several entries, some very long, so be forewarned. For Hobbes, the entry to read is “Hobbes’ Moral and Political Philosophy”, which has an excellent summary of Leviathan but also provides good context. For Locke, “Locke’s political philosophy” is the relevant entry. The entry on J.S. Mill’s “Moral and political philosophy” could be useful but it may be too complicated for our purposes.

3. Wikipedia entries on some relevant topics are surprisingly good. E.g. the entry on “Declaration of the Rights of Man and the Citizen” in Wikipedia is far more useful than what’s in the Stanford Encyclopedia of Philosophy. But check with the professor before relying on any Wikipedia entry for class discussion or assignments.

Tuesday January 7.

**Introduction: Course overview and organization.** Then, **in-class exercise** (prepare this beforehand!) Each student should bring one substantial story (from media sources) on the question of whether robots or AI’s should be regarded, for legal purposes, as ‘persons’. Students will share their stories and begin a discussion of the ‘person’ category.

**Second half: brief introduction to social contract theory** to help you with your readings for next week.

And bonus mark opportunity! 2% to the student who collects everyone’s email to share PDF’s of the readings that are not available from the library website (Quercus is not useful early on in the term, but even when registration is complete I would like assistance with distributing readings).

January 14. **Social contract theory:** the disembodied, economically rational, a-cultural individual as the foundation of legitimate state power.

Readings: excerpts from Thomas Hobbes’ *Leviathan* (chapters 13 and 17); excerpts from John Locke’s *Second Treatise on Government* [paragraphs 36-37 and 86-101 incl.]; James Tully, *An approach to political philosophy: Locke in contexts* (chapter 5). [Tully book available as e-book from library website]. (Note these 3 texts are the readings about which you’ll have to write in your reading journal; but you may want/need to in addition, or beforehand, consult some of the sources listed above, such as the Stanford Encyclopedia of Philosophy).
Recommended: 1. Carole Pateman, *The sexual contract* (an innovative 1980s effort at re-reading social contract theory from the women's point of view). 2. CB McPherson, *The political theory of possessive individualism* (1964). The most influential work of political science that U of T has ever produced! If you choose this for your supplementary reading, you should skim the whole thing but take notes on two chapters of your choosing.

**January 21. The invention of ‘rights’ – and the invention of the ‘Man’ who has the rights.**

**Readings:** The US 1776 Declaration of Independence; the French 1789 ‘Declaration of the rights of man and of the citizen’ [use the documents available freely online through Avalon Project, so we all have the same text].

Also - John Borrows, *Canada’s indigenous constitution*, chapters 1 and 2 [available as e-book from the library website and also in hard copy in the Crim library reserves, but I recommend you get a second hand paperback copy, it’s not expensive].

Recommended: 1. CLR James, *The Black Jacobins* [on Haitian efforts to enact the Rights of Man to include Black slaves]; 2. Mary Wollstonecraft, *A vindication of the rights of women*

This week we will discuss the Enlightenment and its impact on legal thought and legal practices; then we will proceed to close readings of the two key historical documents. Make sure you read the documents at least twice and that you come to class with at least one question.

The Borrows readings may not be taken up in class until a later time.

**January 28. Alternatives to the Western notion of the rational, rights-bearing individualized person: Canadian aboriginal legal traditions.**

Reading: Borrows, *Canada’s indigenous constitution*, chapter 3.

Student-led discussions on first three chapters of Borrows. (Six volunteers needed).


**February 4. The invention of the legal form of the corporation:** A brief history of the legal form of the corporation, in Western law. The rights and the liabilities of corporations, compared to human persons. From the specific charter to general laws of incorporation: changing legal
technologies of collective personhood. How corporate persons came to be split between ‘private’ and ‘public’, at least in theory.

Case study: the university as a corporation.

*No readings for this class, but start the readings for the Mill class, they’re very long.*


**February 11:** The liberal individual and the harm principle as a limit on criminal law -- for ‘civilized’ persons.


Recommended: 1. Mariana Valverde, “Despotism and ethical liberal governance” (Economy and Society 1996) [a reading of JS Mill focusing on his Eurocentric notion of liberty]; 2. Uday Mehta, Liberalism and Empire, 1999 [one or two chapters]

Coordination, in class, of the presentations for Feb. 25

* * FIRST ASSIGNMENT DUE TUES FEB 11 IN CLASS* *

**FEB 18 – NO CLASS, READING WEEK**

**February 25.** The extension of personhood to different groups of humans in the 19th century and beyond.

*Student presentations on one of:* the women's suffrage movement; the Persons case in Canada; the abolition of slavery in the British Empire (slavery not the slave traffic); the origin and the consequences for indigenous 'personhood' of the 1875 Indian Act (and possibly another topic). For these, choose two scholarly sources and present what you learned from those.

*All students who did not lead class discussions on the Borrows book on Jan. 29 have to participate in this set of presentations.*
Reading [not on this week’s topic, it’s separate]: Borrows, Canada’s indigenous constitution, chapters 4, 5, and 6.


March 4. The evolution of Marxist and other critical thought in the 1970s and 1980s


Recommended: Stuart Hall et al, Policing the Crisis [choose a chapter]. Policing the Crisis was the 1978 work that gave rise to critical criminology. It is in hard copy in the Crim library but is also available (not sure of the quality of the reproduction) online through Google Books.

Also recommended: ‘Structuralism’ entry in Encyclopedia.com

Key terms for this week: subject position; interpellation; ideology. (Will be explained in class).

March 10. From structuralism to post-structuralism: contested meanings and fragmented political subjectivity

** ASSIGNMENT #2 DUE IN CLASS **

A lecture explaining the terms ‘structuralism’ and ‘post-structuralism’, in their historical contexts, will occupy most of this class. There are numerous youtube videos of both Stuart Hall and Judith Butler talking on the topics we cover here – don’t use these as substitutes for reading, but do check out a video or two before you do the readings and before you come to class. The readings are best done after this lecture.

Reading: Stuart Hall, “Thatcherism: a new stage?” (4-page 1980 magazine article, PDF available open access); Judith Butler, 1999 preface to new edition of Gender Trouble (book is available as an open access PDF – make sure it’s the 1999 edition).
Recommended: Stuart Hall et al, Policing the crisis; Wendy Brown, States of Injury [poststructuralist critique of identity-based hate speech law] ; Alison Young, Imagining Crime; Judith Butler, Gender Trouble; Judith Butler, Excitable Speech [theoretical essays on topics relevant to criminal law, such as hate speech, KKK-cross burning, and other forms of political expression]

March 17. Governing through one’s desire for freedom: genealogies of the modern self

Reading: Nikolas Rose, Governing the soul, preface, introduction and chapter 18.

Recommended: If you have never read Foucault, Paul Rabinow’s The Foucault Reader is a good source, with excellent short excerpts from numerous works. If you are more advanced, the following works are most useful for this course: Michel Foucault, The History of Sexuality vol. 1; vol. I of The Essential Works, ed. Paul Rabinow; and Michel Foucault, Wrong-doing, truth-telling: the function of avowal in justice, ed. F. Brion and B. Harcourt (2014).


March 24. The materiality of bodies and the boundaries of personhood: feminist and queer legal thought; Actor-Network Theory in legal studies

Readings TBA.

March 31. Review of course and preparation for take-home test. ASSIGNMENT #3 DUE IN CLASS.

FRIDAY APRIL 17: Final assignment due (course syllabus with explanations of choice of readings). You can email this if turning in a hard copy is a hardship. See below for instructions.

ASSIGNMENTS

The ability to closely and carefully read texts, both explicitly theoretical ones and everyday ones, in order to uncover the philosophical assumptions implicit in any claims about ‘law’ and/or ‘society’, is the key skill perfected in this course. The assignments are designed to develop this skill.
Assignment #1: Reading journal. Between 6 and 8 double spaced pages, due in class Feb 3. Worth 20% of the final grade. Covers Hobbes, Locke, and chapters 1 to 3 of the Borrows book. With Hobbes and Locke, you can discuss them together or separately, as you wish; more time should be spent explaining the logic of their thought than criticizing. For the Borrows book, very brief summaries of each chapter suffice, but also provide a couple of original comments on possible implications of Borrows’ arguments for criminal justice (or other fields of law with which you may be familiar).

Note that 2% will be deducted for each calendar day of lateness – for all 3 assignments.

Assignment #2: Reading journal + reflections. About 6 pages, due March 10 in class. Worth 20% of final grade. Covers readings since the first assignment, including March 3 readings but not the March 10 - plus one additional reading (this could be one you use for a class presentation). Spend 350-400 words explaining Mill, 200 words or so on Harcourt, and then use other readings, other people’s class presentations and any additional readings to discuss liberty and personhood in selected concrete historical and/or legal situations.

Assignment #3. Critical reading journal, with a theme of your own choosing, covering the remainder of the assigned readings plus one or two others, preferably from the recommended list. Length, 7-8 double spaced pages; due date, March 31 in class. Worth 30% of final grade. The need to choose a theme means this cannot be done at the last minute.

Final take-home assignment. COURSE SYLLABUS

Due Friday April 17 before 5 pm. Worth 30% of your final grade. Design a course syllabus for a hypothetical course that would be a follow-up to this one, exploring socio-legal issues that raise personhood questions, such as AI, animal rights, the legal status of fetuses, the legal status of seniors who are legally incompetent, the legal status of frozen human eggs and zygotes, etc. Your course should not focus on just one of these issues – a theme should be chosen that allows for at least two, preferably three, of these issues to be covered.

Along with references to assigned readings, provide a brief rationale for why you chose them over other possible ones. Two readings for each week is usually appropriate. One at least needs to be a scholarly source; the other could be a blog entry, a magazine article, or a document (e.g. a government policy document).

The course syllabus should be about five pages – with an introduction explaining your rationale and a week by week breakdown of topics and readings. Then, the fun part: think of a good assignment to challenge your fictional students! The assignment instructions should be around 150-200 words. You need to design an assignment that is creative but it would not be impossible to grade.