

LAWS 3104 A – Critical Theory for Legal Studies: An Introduction
Department of Law and Legal Studies

Course description

Introduction to the general contours of critical theory as it pertains to law and legal studies. The course will introduce key concepts and controversies in the field, identify specific theoretical debates, and consider what conceptual consequences follow from the elaboration of specific positions or arguments.

This course is intended as an introduction to the project of reading critical theory for legal studies. The core objectives of critical theory are to analyze the ways in which our present society falls short of being a just and liberated society and to consider new possibilities by which universal justice and liberation might be attained.

Lectures and readings will impinge upon such topics as rights, colonization, power, resistance, social transformation, race, class, gender, indigeneity, morality, and progress. The core objective of the course is the development of competence in the field of critical theory as it pertains to law and legal studies. ‘Competence’ in this context will take the form of an ability to situate specific ideas, methods, schools, and theorists accurately within the wider theoretical field, and to discern what is at stake in specific debates.

Supplementary Text

Gerald Graff and Cathy Birkenstein, *They Say/I Say: The Moves that Matter in Academic Writing*, (5th ed. Norton, 2021).

Schedule

Week 1: Introduction: What is ‘Theory’? What is ‘Critical Theory’?

Required reading:

The course outline

Stephen Eric Bonner, “Introduction: what is critical theory?” *Critical Theory: A Very Short Introduction*, 2nd ed., Oxford University Press, 2017: 1–6.

Week 2: Kant and Hegel: Law, Enlightenment, Dialectics

Required reading:

Immanuel Kant, “What Is Enlightenment?” [1784] *Practical Philosophy: The Cambridge Edition of the Works of Immanuel Kant*, ed. M. Gregor, Cambridge University Press, 1996: 11–22.

Michel Foucault, “What Is Enlightenment?” *The Foucault Reader*, ed. Paul Rabinow, trans. Catherine Porter, Pantheon Books, 1984: 32–50.

G. W. F. Hegel, “Master-Slave Dialectic” in *The Phenomenology of Spirit* [1807], Oxford

University Press, 1979: 113–119, paras. 186–196

Further reading:

Hannah Arendt, *Lectures on Kant's Political Philosophy*, University of Chicago Press, 1982: 7–77

Susan Buck-Morss, “Hegel and Haiti”, *Critical Inquiry*, 26, 2000: 821–865.

Pau Gilroy, “Slavery and the Enlightenment Project,” *The Black Atlantic: Modernity and Double Consciousness*, Harvard University Press, 1993: 46–58

Jürgen Habermas, “Taking Aim At The Heart of the Present: On Foucault’s Lecture on Kant’s *What is Enlightenment?*” in Jürgen Habermas, *The New Conservatism: Cultural Criticism and the Historians’ Debate*, ed. and trans. Shierry Weber Nicholson, MIT Press, 1989: 173-179.

Dorinda Outram, *The Enlightenment* (4th ed.) Cambridge University Press, 2019.

Week 3: Karl Marx and Law

Required reading:

Karl Marx, *Capital: A Critique of Political Economy, Vol. 1* [1867], trans. Ben Fowkes, Penguin, 1990: 340–416.

Daniel McLachlin and Talina Hürzeler, “Marx on the Factory Acts: Law, exploitation, and class struggle,” *Research Handbook on Law and Marxism*, eds. Paul O’Connell and Umut Özsu, Edward Elgar, 2021: 21–34.

Further reading:

David Harvey, *A Companion to Marx’s Capital*, Verso, 2010: 1–53.

Evgeny Pashukanis, *Law and Marxism: A General Theory*, Pluto Press, 1987.

Raymond Williams, “Base and Superstructure in Marxist Cultural Theory,” *New Left Review*, Vol. 1, No. 82, (Nov/Dec, 1973), 3–16.

Week 4: Critical Theory and Indigeneity

Required reading:

Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, University of Minnesota Press, 2014: 25–49, 131–149.

Week 5: The Frankfurt School

Required reading:

Theodor Adorno et al., *The Authoritarian Personality*, [1950], Verso, 2019: 1–27, 971–976.

Walter Benjamin, "Critique of Violence", *Reflections: Essays, Aphorisms, and Autobiographical Writings*, Schocken Books, 1986: 277–300.

Peter E. Gordon, "The Authoritarian Personality Revisited: Reading Adorno in the Age of Trump," *boundary 2*, Vol. 44, No. 2 (2017): 31–56.

Further reading (secondary):

Amy Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory*, Columbia University Press, 2016.

Susan Buck-Morss, *The Origin of Negative Dialectics: Theodor W. Adorno, Walter Benjamin, and the Frankfurt Institute*, Free Press, 1977.

Jurgen Habermas, "A Philosophico-Political Profile," *New Left Review*, I/151 May–June 1985: 75–105.

Week 6: Althusser and Law

Required reading:

Louis Althusser, "Ideology and Ideological State Apparatuses," [1971] *Cultural Theory and Popular Culture: A Reader*, 3rd ed., ed. John Sturley, Pearson International Limited, 2006: 336–346.

Week 7: Bourdieu and Law

Required reading:

Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" 38 *Hastings L.J.* 1987: 814–853.

Week 8: Postcolonialism: The Question of Violence in Fanon's work

Required reading:

Frantz Fanon, *The Wretched of the Earth* [1963] trans. Richard Philcox, Grove Press, 2004: 1–62.

Further reading:

Amy Allen, "Adorno, Foucault, and the End of Progress: Critical Theory in Postcolonial Times," in: *Critical Theory in Critical Times: Transforming the Global Political and Economic Order*, eds. Penelope Deutscher and Cristina Lafont, Columbia University Press, 2017: 183–206.

Neil Lazarus, *The Postcolonial Unconscious*, Cambridge University Press, 2011: 1–20; 161–182.

Nick Nesbitt, "Revolutionary Inhumanism: Fanon's 'On Violence,'" *Caribbean Critique: Antillean Critical Theory from Toussaint to Glissant*, University of Liverpool Press,

2013: 192–216.

Week 9: Feminist Critical Theory and Law

Required reading:

Toril Moi, “What is a Woman? Sex, Gender, and the Body in Feminist Theory”, *What is a Woman? And Other Essays*, Oxford University Press, 2001: 3–120.

Further reading:

Simone de Beauvoir, “Introduction” and Chapter 14: “The Independent Woman”, *The Second Sex* [1949] trans. Constance Borde & Sheila Malovany-Chevallier, Vintage, 2009: 3–17, 721–751.

Judith Butler, “Sex and Gender in Simone de Beauvoir’s *Second Sex*,” *Yale French Studies*, No. 72, (1986): 35-49.

Angela Davis, “The Meaning of Emancipation According to Black Women,” *Women, Race, & Class*, Vintage, 1983: 87–98.

Week 10: Psychoanalysis and Law

Required reading:

Sigmund Freud, *Civilization and Its Discontents*, [1930] trans. J. Strachey, Norton, 1961: 11–32.

Sigmund Freud, *New Lectures on Psychoanalysis*, translated by J. Sprott, New York, Norton, 1961 [1933]: 104–112.

Further reading:

Jacques Lacan, “The Mirror-phase as formative of the function of the I.” *New Left Review*, Vol. 51, Sept.-Oct. 1968: 63–77.

Week 11: Foucault, Modernity, and the Disciplinary Society

Required reading:

Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, Vintage, 1979: 3-31; 135-69; 170-94; 195-228.

Further reading:

Anne Schwan and Stephen Shapiro, *How to Read Foucault’s Discipline and Punish*, Pluto Press, 2011.

Week 12: Revision Lecture