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Faculty of Law

**LAWF 3780: Rule of Law in the 21<sup>st</sup> Century**

**Winter 2018**

Class Time: Mondays, 6pm-8:50pm

Instructor: Dr. Jeffrey B. Meyers

Office: OM 4753

Contact: (778) 471-8449

Email: [jmeyers@tru.ca](mailto:jmeyers@tru.ca)

Office Hours: After class when possible or by appointment. Happy to speak by phone, FaceTime or Skype if not on campus. If you contact me to setup a meeting I will set one up within a week.

## **COURSE SYLLABUS AND OUTLINE**

### **I. Course Description**

Students are introduced to the intellectual history of the rule of law as a concept in western modernity in order to consider its changing nature in the context of a series of contemporary case studies.

### **II. Course Objectives**

At the conclusion of this course, students will be able to make cogent arguments about what the rule of law is and its relevance to thinking about law and political life in the contemporary state.

### **III. Course Materials**

Required readings, such as journal articles and excerpts from other texts, will either be on Moodle or Course Reserve in the Law Library. Readings will include any materials drawn equally from political and legal theory, foreign and domestic case law and media reportage.

### **IV. Course Methodology**

#### **a. Class Time and Class Expectations**

Classes are once a week on Monday evenings from 6:00 pm to 8:50 pm.

This small class will be run in the form of a seminar. Each class will begin by addressing the central themes in the assigned readings. The purpose of each class will be to clarify, focus, and

extend student understanding of the assigned readings. PowerPoint slides and other materials that are used during seminar will be uploaded to Moodle following the class, but are not substitutes for class notes.

Class discussions with frequent and enthusiastic participation are necessary to explore key concepts from the course materials. In order to develop essential skills in legal analysis, political critique and the verbal presentation of arguments, students are expected to attend each class having read and given thought to the assigned readings. Students may be called upon during class and therefore should be prepared to discuss topics based on the assigned readings from the course materials.

Through in-depth discussion and an exchange of views, seminars will provide opportunities for students to reinforce knowledge acquired from the assigned readings and lectures, and to think critically about the rule of law. During seminars, all students will be expected to engage with ideas and perspectives from the course materials and participate as directed by the discussion leader. While a discussion leader will be assigned for each seminar, all students are expected to contribute regularly and robustly.

Note – As a general guideline, the first part of the class will be on an intimate lecture/fireside chat format. The second half of the class will be more of a graduate school roundtable format.

**Classroom etiquette.** Classroom discussions may occasionally grapple with contentious and difficult topics where a range of different views and perspectives are expressed. As is expected of a legal professional, students should be prepared to introduce, explain, and defend their conclusions in the face of probing questions and challenges. While a lively and spirited discussion is encouraged, students are expected to respect different views and perspectives to ensure that the classroom environment is one where all students feel comfortable to participate. In order to maintain this environment, it is important that discussions are carried out in the appropriately respectful language, tone, and manner.

#### **b. Course Moodle Site**

LAWF 3780\_05 – Rule of Law 21<sup>st</sup> Century (Winter 18 Meyers)

#### **c. Email Policy and Office Hours**

Email is an excellent way to reach me for simple questions and administrative concerns, such as setting appointments, letting me know about a problem with Moodle, or other simple concerns. Please do not expect me to address substantive questions by email. In general, bring substantive questions about the subject matter to class, or make an appointment with me to discuss the issue one-on-one. Although I do not keep strict office hours, I make myself available after class. I am also happy to meet with you prior to class or by appointment at some other time. Where convenient or helpful I can also be reached by phone, Facetime or Skype.

#### d. Required and Supplementary Reading

You must thoroughly read, digest and consider all the required readings before class. You may wish to consult the supplementary readings if you have a particular interest in the subject matter or wish to write your paper in a related area.

### V. Evaluation

The course evaluation provides an opportunity for students to demonstrate their knowledge and understanding of the topics and materials covered in the course, and their competency in having achieved the course objectives.

Three components will be used to calculate the final grade of each student as follows:

1. Reflection on the assigned readings (20%)
2. Podcast, presentation and discussion leader (30%)
3. Paper (50%)

The final grade for each student will be calculated by combining the weighted results for each evaluation component as set out above. The instructor may adjust final grades in order to comply with the grading policy adopted by the Faculty of Law and to promote a normal grade distribution.

#### 1. Reflection on the Assigned Readings (20%)

It is important for students to attend lectures prepared to engage with course materials. Each of the two students in the class is therefore required to hand in a **maximum one page** personal reflection on any aspect of the assigned readings on alternative weeks (to a maximum of 5 weeks). Electronic copies before class should accompany hardcopies in class wherever possible. Each weekly reflection submitted on time will count for up to 4% of a student's grade to a maximum of 5 weeks (4% x 10 weeks = 20% total). As the mark for reflections includes an evaluation of the student's on-time attendance in the lecture, there will be *no opportunity* to make up grades for any week late or missed unless arrangements are made in advance through the Associate or Assistant Dean's office. Given that there are 10 weeks during term in which to hand in a reflection (excluding the introductory and final week), students can expect to write a response paper for every second seminar.

#### 2. Podcast, Presentation and Discussion Leader (30%)

Each student will be required to sign up to lead one half seminar class during the term. This seminar week should correspond to one of the five weeks in which the student is submitting a reflection paper (as outlined above) and should build significantly on that document. Once student discussion leaders are identified for each week, students will need to develop a presentation and prepare for the seminar discussion. As part of their participation marks, they

will also be asked to produce a brief podcast for posting to the class website. This will involve recording their presentation and then editing it. All members of the class, including myself, will enjoy the support of TRU Media Production Services in so doing. If you have specific technical questions please contact Brian Lamb: [Blamb@TRU.ca](mailto:Blamb@TRU.ca). Brian will set up a basic podcasting workshop for all of us to attend, see e.g. <https://podcast123.trubox.ca/>

Each student led podcast seminar should begin with an introductory 15-20 minute presentation by the discussion leader. In terms of its content, the presentation should extend or elaborate the topic for that week by introducing new research ideas. A student can focus on a particular issue of interest from the readings or engage with a broader aspect of the topic. Students are encouraged to reach into the supplementary materials for inspiration. While students are free to engage in independent research, probing engagement with the assigned and supplementary materials will normally suffice. All of these materials are available on the course website or on reserve in the Law Library. Although summary is an important part of student presentations, it is only a part. Presentations should be critical and reflective more than merely summary.

Following the presentation, the discussion leader will lead the group in a discussion for the remainder of the class. Discussion leaders may wish to distribute a series of discussion questions or other materials to the class. They may also wish to engage with me in an interview or other format designed to probe areas which are particularly challenging or apt to misunderstanding. Students are also welcome to pre-tape an interview with another faculty member or some outside expert on the Rule of Law.

### **3. Major Paper (50%)**

#### **Assessment & Evaluation**

Due Date: **April 16, 2018** at 9:30 am (via e-mail) Length: 4,500 words – 5,000 words (you may do a 7,500 word paper to fulfil the major writing requirement – although this will not affect how the paper is graded or weighed). The paper will be graded on the basis of:

- 1) Quality and sophistication of legal philosophical argument
- 2) Structure
- 3) Originality of approach to the subject matter
- 4) Spelling/grammar/punctuation/style
- 5) Use of sources

### Major Paper Outline and Bibliography

Due Date: **BEFORE class Monday February 12, 2018** (via e-mail) Length: Maximum of 500 words, not inclusive of bibliography.

\*Note: Students are encouraged to start thinking about their papers and consulting with me as early as possible. No student should submit their paper outline and bibliography without having had an appointment with me during office hours to discuss their proposed paper. The purpose of this annotated syllabus and course roadmap is to enable you to see possible paper ideas from materials not yet covered in class before the outline and bibliography are due.

KEY POINT: Students are encouraged to write on the part of the course which they are most interested in, passionate or curious about. There is no reason to play it safe by choosing only paper topics related to the materials I have already taught by the mid-February deadline.

The outline and bibliography will be graded on the basis of:

- 1) Quality and sophistication of legal philosophical argument
- 2) Structure
- 3) Originality of approach to the subject matter
- 4) Spelling/grammar/punctuation/style
- 5) Use of sources

After I have reviewed the paper outlines and bibliographies the students should meet with me during office hours at least one more time to discuss my feedback before they go ahead and start drafting their final paper.

#### **a. Grading Scales and Methodology**

Each evaluation component will be graded in accordance with the Faculty of Law Regulations grading system. The final grade for the course will be calculated by combining weighted results for each evaluation component. I reserve the right to adjust the grades in order to comply with the grading policy adopted by the Faculty of Law.

## **VI. Other Policies and Regulations**

I acknowledge the Secwepemc Nation, upon whose traditional and unceded land Thompson Rivers University is located (ne Secwepemcúl'ecw). I am grateful for the Secwepemc Nation's generosity and hospitality while we live, learn, and work in their territory.

### *A. Accommodations: Illness, Disability, Religious Observance, Other*

The Faculty of Law will provide reasonable accommodation to students on the basis of factors such as illness, disability, religious observances, family or personal emergencies or affliction, or other similar special needs, when such factors interfere with the ability of a student to attend or to complete assignments or examinations at regularly scheduled dates or in other circumstances. Students should contact the Associate Dean regarding such matters as soon as possible. In appropriate circumstances, you may be referred to the Disability Services Office. For more information on disability services and reasonable accommodation at Thompson Rivers University, please consult:

[https://www.tru.ca/\\_shared/assets/Services for Students with Disabilities5619.pdf](https://www.tru.ca/_shared/assets/Services_for_Students_with_Disabilities5619.pdf)

### *B. Recording of Classes*

Students should be aware that the unauthorized use of any form of device to audiotape, photograph, video-record or otherwise reproduce lectures, course notes or teaching materials provided by instructors is covered by the *Canadian Copyright Act*, RSC 1985 and is prohibited. Students must obtain prior written consent before undertaking such recording. Given a variety of pedagogic, privacy, intellectual property concerns associated with the recording of classes, such written consent will only be granted in instances of disability or accommodation or extraordinary circumstances.

### *C. Academic Integrity*

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please review the Faculty of Law's Regulations on Plagiarism, Cheating and Other Academic Misconduct (online: [https://www.tru.ca/\\_shared/assets/TRU\\_Law\\_Regulations24309.pdf](https://www.tru.ca/_shared/assets/TRU_Law_Regulations24309.pdf)) and review the Thompson Rivers University policy on Academic Integrity (online: [https://www.tru.ca/\\_shared/assets/ED\\_5-035456.pdf](https://www.tru.ca/_shared/assets/ED_5-035456.pdf)). It is important to note in particular Article 15 in the Faculty of Law's regulations and Article VI (Forms of Academic Dishonesty) in TRU's policy. If you have any concerns or questions, or require clarification about any matters related to academic integrity, please do not hesitate to discuss them with me.

#### D. Classroom Climate

I consider it my obligation and yours to foster a free, frank, and open discussion of legal topics, which can often be challenging. Classroom discussions can and should be searching, lively and sometimes contentious; just as in court, we should be prepared to assert, explain, and defend our views in the face of probing questions and challenges. However, this process must exist in an environment in which all students may feel able to participate, and comfort levels can be expected to vary widely by the individual and by the topic of discussion. In order to ensure maximum opportunity for participation, it is especially important that the classroom discussions are respectful in language, tone, and manner. This dignity of discourse is itself training for the courtroom and the practice of law generally; I consider it to be an essential aspect of your legal education, and I encourage you to value it similarly.

These same observations apply with equal force to discussion on the Moodle forum.

#### VII. Winter Topical Outline and Reading Schedule

Students are strongly recommended to read Timothy Snyder's *On Tyranny*. This short book will provide a basis for practical reflection throughout the course.

Week	Topic
<b>UNIT A – Introduction</b>	
1. Jan. 8 <sup>th</sup>	What is the 'Rule of Law'?
2. Jan. 15 <sup>th</sup>	What is the 'Rule of Law'?
<b>UNIT B – Historical Origins of the Rule of Law</b>	
3. Jan. 22 <sup>nd</sup>	Ancient, Classical, and Medieval Origins of the Rule of Law
4. Jan. 29 <sup>th</sup>	Social Contract, Liberalism, and the Modern Concept of the Rule of Law
<b>UNIT C – Democracy, the Rule of Law and the Liberal Theory of the State</b>	
5. Feb. 5 <sup>th</sup>	Social Contract Theory and the Liberal State in the Critical Crosshairs
6. Feb. 12 <sup>th</sup>	Institutionalism, the State, and the Constitution
<b>Mid-Semester Break – No Classes</b>	
<b>UNIT D – The Suspension of Legal Norms: Whither the Rule of Law?</b>	
7. Feb. 26 <sup>th</sup>	The State of Exception
8. Mar. 5 <sup>th</sup>	The State of Exception (cont.)
<b>UNIT E – The Rule of Law in Contemporary Canada</b>	
9. Mar. 12 <sup>th</sup>	The Rule of Law in Canada I
10. Mar. 19 <sup>th</sup>	The Rule of Law in Canada II

**UNIT F - Is Rule of Law as an Ideology: Is the Rule of Law a moral theory? Does it support neoliberal capitalism? Is it a western or universalist discourse?**

<b>11. Mar. 26<sup>th</sup></b>	(Neo) Colonialism and the Rule of Law
<b>12. April 2<sup>nd</sup>-6<sup>th</sup> (potential make-up class since it's Easter April 3<sup>rd</sup>)</b>	The Rule of Law, Globalization, and Neoliberal Capitalism
<b>13. April 9<sup>th</sup></b>	Reflections



## **UNIT A – Introduction**

### **What is the ‘Rule of Law’?**

#### **Week 1 – January 8<sup>th</sup>-12<sup>th</sup>**

##### Primary Readings:

C.M. Flood & M. Liston, *Administrative Law in Context* (Toronto: Emond Montgomery, 2<sup>nd</sup> Ed., 2013) 40-51.

David Dyzenhaus, *The Constitution of Law* (Cambridge: Cambridge University Press) pp. 1-16.

Martin Laughlin, *Swords & Scales* (Oxford: Hart, 2007) (orig. pub. 2000) pp. 69-75, 183-185.

M.J. Harowitz, “the Rule of Law: an Unqualified Human Good?” (1977) 86 *The Yale Law Journal* 3, pp. 561-566.

E. Luce, *The Retreat of Western Liberalism* (New York: Atlantic Monthly Press, 2017) 1-16.

Fernández-Villaverde, Jesús. (2016). “Magna Carta, the rule of law, and the limits on government.” *International Review of Law and Economics*, 22-28.

##### Case Study:

*British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 (CanLII) at paras 57-77.

##### Secondary Readings:

C. Forces, P. Bryden et al (eds) *Public Law* (Toronto: Emond Montgomery, 3<sup>rd</sup> Ed., 2015) p. 113-154.

G. Tardi, *The Law of Democratic Governing* (Toronto: Carswell, 2004) pp. 165-178.

Tuvalu Noah Harari, *Sapiens: A Brief History of Humankind* (London: Signal Press, 2016) (orig. pub. 2014) 350-375.

## What is the 'Rule of Law'?

Week 2 – January 15<sup>th</sup>-19<sup>th</sup>

### Primary Readings:

Brian Z. Tamanah, *On the Rule of Law* (Cambridge: Cambridge University Press, 2004) pp. 1-6.

F.C. DeCoste, *On Coming to Law* (Toronto: LexisNexis, 3<sup>rd</sup> ed., 2011) pp. 205-247.

Ryan Alford, *Permanent State of Emergency* (Montreal: McGill-Queens Press, 2017), Chapter 1.

### Secondary Readings:

Tom Bingham, *The Rule of Law* (London: Penguin, 2011) Part I: Chapters 1-2.

### Case studies:

*Marbury v. Madison* 5 US (1 Cranch) 137 (1803) as excerpted in E. Chemerinsky, *Constitutional Law* (New York: Wolters Kluwer, 2015) pp. 37-45.

*Reference re Secession of Quebec* [1998] 2 SCR 217 as excerpted in C. Forces, P. Bryden et al (eds) *Public Law* (Toronto: Emond Montgomery, 3<sup>rd</sup> Ed., 2015) p. 122-142.

## UNIT B – Historical Origins of the Rule of Law

### Ancient, Classical and Medieval Origins of the Rule of Law

#### Week 3 – January 22<sup>nd</sup>-26<sup>th</sup>

##### Primary Readings:

Michael Walzer, "The Legal Codes of Ancient Israel" in *The Rule of Law*, I. Shapiro (ed) (New York: NYU Press, 1994), Chapter 5.

P. Verne ed. & A. Goldhammer trans., *A History of Private Life: From Pagan Rome to Byzantium* (Cambridge Mass: Harvard Belknap Press, 1987) 163-169, 175-179.

Tamanah, chapters 1-2.

Raphael Sealey, *The Athenian Republic*, (Pennsylvania State University: 1987) Ch 1-2.

##### Secondary Readings:

Lawrence B. Solid, "Equity & the Rule of Law" in *The Rule of Law*, I. Shapiro (ed) (New York: NYU Press, 1994) (*Nomos XXXVI*, Yearbook of the American Society for Political and Legal Philosophy), Chapter 6.

P.D. Halliday, *Habeus Corpus: From England to Empire* (Cambridge: Harvard Belknap Press, 2010) pp. 64-95.

Raphael Sealey, *The Athenian Republic*, (Pennsylvania State University: 1987), Ch 7.

## Social Contract, Liberalism and the Modern Concept of the Rule of Law

Week 4 – January 29<sup>th</sup>-February 2<sup>nd</sup>

### Primary Reading:

Tamanah, chapter 3.

Quentin Skinner, “The State” in R.E. Goodin & P. Pettit (eds) *Contemporary Political Philosophy* (London: Blackwell Press, 2006) (orig. pub. 1989) pp. 3-25.

Baruch Spinoza (1632-1677), *Political Treatise* (Indiana: Hackett, 2000) (posthumous pub. 1992) pp. 57-60.

Thomas Paine from *The Rights of Man* (1791) in *The Communist Manifesto & Other Revolutionary Writings* (New York: Dover, 2003) 85-89.

Norberto Bobbio, *Liberalism & Democracy* (London: Verso, 2005) (orig. pub. 1988) pp. 5-9.

Martin Laughlin, *Swords & Scales* (Oxford: Hart, 2007) (orig. pub. 2000) pp. 208-213.

Jeremy Waldron, “Locke” in D. Boucher & Paul Kelly eds. *Political Thinkers* (Oxford: Oxford University Press, 2006) (orig. pub. 2003) 192-196.

Michael P. Zuckert, “Hobbes, Locke, and the Problem of the Rule of Law” in *The Rule of Law*, I. Shapiro (ed.) (New York: NYU Press, 1994), Chapter 3.

## UNIT C – Democracy, the Rule of Law and the Liberal Theory of the State

### Social Contract Theory and the Liberal State in the Critical Crosshairs

#### Week 5 – February 5<sup>th</sup>-9<sup>th</sup>

##### Primary Readings:

H.D. Thoreau, excerpt from *Civil Disobedience* (orig. pub. 1849) in T. Rosenbaum (ed.) *Law Lit* (New York: The New Press, 2007) at pp.53-54.

Mark V. Tushnet, “Interpretivism & Neutral Principles” republished in A.C. Hutchinson, *Critical Legal Studies* (Toronto: Rowman & Littlefield, 1989) (orig. pub. 1983).

Catherine A. Mackinnon “The Liberal State” (orig. pub. 1989) as reprinted in D. Dyzenhaus, S.R. Moreau & A. Ripstein (eds) *Law & Morality* (Toronto: University of Toronto Press, 3<sup>rd</sup> Ed., 2014) pp. 257-270.

E. Luce, *The Retreat of Western Liberalism* (New York: Atlantic Monthly Press, 2017) 185-204.

Fegen, Nicholas. (2012). “Thick or Thin? Defining Rule Law: Why the ‘Arab Spring’ Calls for a Thin Rule of Law Theory.” *UMKC Law Review*, Vol. 80, Issue 4, 1187-1210.

##### Secondary Readings:

Leckey, Robert. (2009). “Thick Instrumentalism and Comparative Constitutionalism: The Case of Gay Rights.” *Columbia Human Rights Law Review*, Vol. 40, Issue 2, p. 425-478.

J. R. Saul, *Voltaire’s Bastards* (Toronto: Penguin, 1992) Chapter 14 pp. 318-346.

## Institutionalism, the State, and the Constitution

Week 6 – February 12<sup>th</sup>-16<sup>th</sup>

### Primary Readings:

Tamanah, chapter 4.

Richard Flathman, "Liberalism & The Suspect Enterprise of Political Institutionalization: the Case of the Rule of Law" in *The Rule of Law*, I. Shapiro (ed.) (New York: NYU Press, 1994) Chapter 13.

### Trump Case Study:

Bert E. Park, "Resuscitating the 25<sup>th</sup> Amendment: A Second Opinion Regarding Presidential Disability" 16 *Political Psychology* 4 (Dec., 1995) pp. 821-839.

M. Marien, "The Trump Scenarios" *Journal of Future Studies* 2017 available online: [insert]

JM. Greabe, "Norms, Law and the Impeachment Power", *Concorde Monitor*, Sept. 10, 2017 at D1, D3 available online: [https://scholars.unh.edu/law\\_facpub/297/](https://scholars.unh.edu/law_facpub/297/).

Woolley, Alice & Darling, Elysa. (2017). "Nasty Women and the Rule of Law." *University of San Francisco Law Review*, Vol 51, Issue 3, p. 507-544.

### Secondary Readings:

Gregory Tardi, "The Rule of Law and Elections" (2015) *Journal of Parliamentary & Political Law* 1-15.

Juergen Habermas, *Between Facts & Norms* (London: Polity Press, 1996) (orig. pub.1992, W. Rehg trans.) Pp. 89-94 (3.1.2-3.1.3), 267-274 (6.3.1-6.3.2)

## UNIT D – The Suspension of Legal Norms: Whither the Rule of Law?

### The State of Exception

Week 7 – February 26<sup>th</sup>-March 2<sup>nd</sup>

#### Primary Readings:

David Dyzenhaus, *The Constitution of Law* (Cambridge: Cambridge University Press) 35-65.

Ryan Alford, *Permanent State of Emergency* (Montreal: McGill-Queens Press, 2017) Chapter 3.

#### Case Studies:

*Public Commission Against Torture in Israel v. Gov't of Israel's* (1999) in D. Dyzenhaus, S.R. Moreau & A. Ripstein (eds) *Law & Morality* (Toronto: University of Toronto Press, 3<sup>rd</sup> ed., 2014) same at 729-761.

*Hamdi v. Rumsfeld* in same at 762-800.

#### Secondary Readings:

Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005) (K. Attell trans., orig. pub. 2003) 1-31.

## The State of Exception (cont.)

Week 8 – March 5<sup>th</sup>-9<sup>th</sup>

### Primary Readings:

Tom Bingham, *The Rule of Law* (London: Penguin Books, 2011) Chapter 11.

David Cole, “Judging The Next Emergency: Judicial Review & Individual Rights in Times of Crisis” (orig. pub. 2002) in D. Dyzenhaus, S.R. Moreau & A. Ripstein (eds) *Law & Morality* (Toronto: University of Toronto Press, 3<sup>rd</sup> ed., 2014) 694-729.

### Case Studies:

*A and Others v. Secretary of State for the Home Dep’t* [2005] 2 AC 68 in same at 800-827.

*Authorization to shoot down aircraft in the Aviation Security Act void*” (2006) in same at 827-831.

Krishnadev Calamur, (2017). “The Spanish Court Decision That Sparked the Modern Catalan Independence Movement”, *The Atlantic*.  
<https://www.theatlantic.com/international/archive/2017/10/catalonia-referendum/541611/>



## **UNIT E – The Rule of Law in Contemporary Canada**

### **The Rule of Law in Canada I**

#### **Week 9 – March 12<sup>th</sup>-16<sup>th</sup>**

##### Primary Readings:

*The Monarchy and the Constitution*. Ch 1 p 1-41.

C.M. Flood & M. Liston, *Administrative Law in Context* (Toronto: Emond Montgomery, 2<sup>nd</sup> Ed., 2013) 51-82.

##### Case Studies:

*Singh v. Canada (Attorney General)*, [1999] 4 FCR 583.

*Reference re Secession of Quebec*, [1998] 2 SCR 217 (paras 70-78).

*Canada (PM) v. Khadar*, [2010] 1 SCR 44.

## The Rule of Law in Canada II

Week 10 – March 19<sup>th</sup>-23<sup>rd</sup>

### Case Studies:

#### October Crisis (1970):

William Tetley, *The October Crisis 1970* (Montreal: McGill-Queens University Press, 2010) (orig. pub. 2007) 102-116.

Pierre E. Trudeau, “A Letter from London: Reflections on a Democracy & its Variant” (orig. pub. 1948) and reprinted in G. Bouthillier & E. Cloutier (eds) *Trudeau’s Darkest Hours* (Montreal: Baraka Books, 2010) pp. 44-45.

Tommy Douglas, “This is overkill on a gargantuan scale” in G. Bouthillier & E. Cloutier (eds) *Trudeau’s Darkest Hours* (Montreal: Baraka Books, 2010) pp. 139-148.

Thomas R. Burger, “It was not just Pierre Trudeau. It was all of us” in G. Bouthillier & E. Cloutier (eds) *Trudeau’s Darkest Hours* (Montreal: Baraka Books, 2010) pp. 177-180.

#### APEC Affair (1997):

Margot Young, ‘Relax a Bit in the Nation’: Constitutional Law 101 and the APEC Affair” in W. Pue ed., *Pepper in Our Eyes* (Vancouver: UBC Press, 2000) pp. 41-56.

**UNIT F - Is Rule of Law as an Ideology: Is the Rule of Law a moral theory? Does it support neoliberal capitalism? Is it a western or universalist discourse?**

**(Neo) Colonialism and the Rule of Law**

**Week 11 – March 26<sup>th</sup>-29<sup>th</sup>**

Primary Readings:

Rebecca B. Chavez, “the Rule of Law in Democratizing Regimes” in K. E. Whittington, R.D. Elementary & G.A. Caldera Eds, *The Oxford Handbook of Law & Politics* (Oxford: Oxford University Press, 2008) 63-80.

Kerry Coast, *The Colonial Present: the rule of ignorance and the role of law in BC* (Clarity Press: Atlanta, 2013) Chapter 19 (“The Role of Law”).

Arundhati Roy, “Confronting Empire” in A. Roy, *The End of Imagination* (Chicago: Haymarket Books, 2016) pp. 277-282 (based on 2003 speech at World Social Forum in Porto Alegre, Brazil).

Naomi Klein, *No Is Not Enough* (Chicago: Haymarket Press, 2017) 222-230.

Case Study:

*Ktunaxa Nation v. British Columbia* (Forests, Lands and Natural Resource Operations), 2017 SCC 54 (CanLII).

## **The Rule of Law, Globalization and Neoliberal Capitalism**

**Week 12 – April 2<sup>nd</sup>-6<sup>th</sup>**

### Primary Readings:

S. Sassen, *Territory, Authority, Rights* (Princeton: Princeton University Press, 2008) pp. 13-18.

Tom Bingham, *The Rule of Law* (London: Penguin, 2011), Chapter 10 ("The Rule of Law in the In'l Legal Order).

Sue Goss, *Open Tribe* (London: Lawrence & Wishart, 2014) at pp. 131-152.

E. Luce, *The Retreat of Western Liberalism* (New York: Atlantic Monthly Press) 17-74.

T. Piketty, *Capital in the Twenty-First Century* (Cambridge Mass: Belknap Harvard Press, 2014) 471-492.

M. Hardt & N. Negri, *Empire* (Cambridge Mass: Harvard University Press, 2000) pgs 1-21 and 370-382.

### Secondary Readings:

E. Luce, *The Retreat of Western Liberalism* (New York: AtlanticMonthly Press) 75-141.

Inigo Errejon and Chantal Mouffe, *Podemos* (London: Soundings, 2016) (S.D. Donnay, trans.) 93-130.

## Reflections

### Week 13 – April 9<sup>th</sup>-13<sup>th</sup>

#### Primary Readings:

Brian Klass, *The Despot's Accomplice* (New York: Oxford University Press, 2016) 1-20.

Naomi Klein, *No is Not Enough* (Chicago: Haymarket Books, 2017) 121-127.

#### Brexit Case Study:

Chris Nineham, *how the establishment lost control* (winchester:zerobooks, 2017) 44-59.

Simon Winslow, Steve Hall and James Treadwell, *The Rise of The Right* (Bristol: Policy Press, 2017) 1-15 and 197-208.