

LAW AS A SOCIAL SCIENCE

Class activities*

Class 1 Sep. 8: Introduction

Bio and Picture

Write a short bibliographical note about yourself, including your interests, future plans, major concerns about university. Is this your first year? Do you come straight from High School? Did you do other studies? Do you work? If so, what do you do? What are your hobbies? What TV shows do you like the best? Films? Music groups? What are your objectives for this course? Have you studied Law before? Email this note to me and include your picture if you want.

Class 4: Sep. 20 Notions of Law

Discuss the following questions

- What is Law?
- What does it mean that there are many competing perspectives on Law?
- In your own words, what does it mean that the nature of law is normative?
- Have social media transformed the concept of law?
- Where does Law come from? Who makes the Law?

Class 6: Sep. 27: Legal Anthropology & Sociology of Law

Malinowski's Legal Anthropology

- Following Malinowski's argument, identify the rules of custom as they function in actual life in this clip available at:
https://www.youtube.com/watch?v=5LneDc89jv4&ab_channel=BRoaDSCaLeKNowLedGE

Class 8 Oct. 4: Notions of Law. Scenarios

Analyze whether the following scenario constitutes law or not. If so, identify the theory or discipline behind that conception of law, e.g., Positivism, Legal Anthropology, etc. and, where appropriate, identify the legal rule/s, the structure of the rule/s, the elements, function/s, and any other relevant aspects discussed in class. If the scenario does not explicitly state the legal rule, where appropriate, please infer it but don't make it up.

1. The Canadian Criminal Code punishes murder with life in prison. According to Statistics Canada, the country's homicide rate fell last year to 1.44 victims for every 100,000 people, its lowest level since 1966.
2. Even though, piracy is prevalent in American society, the US Copyright Act and other laws punish online piracy with severe fines and lengthy prison terms.
3. According to the Canadian Criminal Code, nudity in a public place is punished as a summary conviction (fine and prison time). So according to the law, women are permitted to wear a bra and panties to school and work. No woman in Canada wears only a bra and panties to work or school.
4. Last Monday evening, a middle-aged man sat next to the one person alone in an empty movie theater (Sault Galaxy). Visibly upset, this person moved to another row.
5. It's illegal to chew gum in Singapore. According to Singapore's law, illegal chewing gum attracts a fine of \$500. This ban is strictly enforced and highly adhered to.
6. All school boards in North America sanction cheating and plagiarism with severe penalties, including expulsion. The Josephson Institute Center for Youth Ethics surveyed 43,000 high school students in public and private schools and found that: (i) 59% of high school students admitted cheating on a test during the last year (34% self-reported doing it more than two times); and (ii) one out of three high school students admitted that they used the Internet to plagiarize an assignment.
7. In a friendly soccer match between Argentina and Honduras, a Honduras defender fouled DiMaria inside the penalty area. The referee awarded a penalty kick for Argentina. Lionel Messi scored the penalty.

8. In soccer, the act of charging a player is a challenge for space using physical contact within playing distance of the ball without using arms or elbows. It is an offence to charge an opponent in a careless manner, in a reckless manner, and using excessive force. Sanctions go from a free direct kick to send off.
9. Michael Gunn, an English undergraduate, was expelled from the University of Kent at Canterbury after a routine review of his work "revealed extensive plagiarism from internet sources". Michael Gunn, 21, claims he had no idea that his methods –cutting and pasting material from the internet without attribution- constituted plagiarism.
10. In the Bee Movie, bees are not allowed to talk to human beings. Barry gets lost in the rain and ends up on the balcony of a human florist named Vanessa. Upon noticing Barry, Vanessa's boyfriend attempts to squash him, but Vanessa gently catches and releases Barry outside the window, saving his life. Barry later returns to express his gratitude to Vanessa, breaking the sacred rule that bees are not to communicate with humans.

Class 8 Oct. 4: Functions of law

Answer the function/s of law in the following scenarios. Identify dysfunctions of law, if any.

- 1) A proposed bill sets forth that a biological father does not have automatic Parental Responsibility unless he was married or in a civil partnership with the mother at the time of birth, they subsequently married or if he is named as the father on the birth certificate.
- 2) California bans new gas car sales by 2035 in order to protect the environment amid pressing requests from environmentalists.
- 3) FBI agents raided Donald Trump's Mar-a-Lago residence in Florida, apparently looking for evidence of whether the former president took home secret and confidential documents.
- 4) If a fully vaccinated Canadian citizen fails to complete ArriveCan when coming from abroad, they are required to quarantine for 10 days even if they have test negative for Covid-19.

- 5) In 2005, following requests from many NGO and interest groups, Canada legalized same-sex marriage.
- 6) In September 2022, the Canadian government still requires people to quarantine for 10 days if they come from abroad and test positive for Covid-19, even if they are fully vaccinated and may not transmit the virus.
- 7) In *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, the Ontario Court of Appeal established the proper method for determining whether a termination clause in an employment agreement is enforceable.
- 8) Massachusetts Institute of Technology expelled a student over sexual assault allegations.
- 9) The court gave a birth mother parental responsibility for a child, regardless of whether the child is biologically hers e.g. if she is a surrogate.
- 10) The referee awarded PSG a penalty kick following a VAR review where he consulted a pitch side monitor before making a final decision.

Class 12, Oct. 25: Branches of Law

Scenarios

Identify the branch/es in the following scenarios

1. Josh and Jenna have been dating for over three years. Josh proposed to Jenna, and she agreed. They will be getting married soon.
2. Nelly sold her iPhone X on eBay to a buyer in Detroit, Michigan.
3. Paul works for IBM in Toronto. He was fired. He wants to sue IBM for wrongful termination.
4. Calvin wants to open a bar in the Sault. He needs to apply for a permit from the City to serve alcohol.
5. Laura did not shovel the snow that blocked her sidewalk after a storm. Vanessa, a pedestrian, fell down and broke her leg. Vanessa wants to sue Laura.
6. Metro bought 100 pounds of mango from a company in Dominican Republic.
7. Jack raped Jill, and then stabbed her with a knife.

8. Paul was speeding along Queen St. and ran over Peter, who was crossing the street. Peter broke two ribs and twisted his leg.
9. A police officer searched Marissa's house without a warrant.
10. Rachel and Ross are getting married. Rachel lives in Toronto; and Ross, who is originally from Sault Ste. Marie, is in New York finishing a Ph.D. in Paleontology. He will come to the Sault for his wedding. He will work on his thesis at Algoma University and return to New York for the oral defence.
11. John and Julia separated. Julia is seeking full custody of their children.
12. Edward bought a ticket to fly from Toronto to New York. The flight was cancelled. Edward demands a full refund from Air Canada.
13. Essar Steel's local shareholders decided to challenge a decision of the Board of Directors.
14. Rueben advertised a room to rent. Paola, a South American recent immigrant to Canada, wanted to rent the room. Rueben turned her down because she is not white.
15. Nicholas broke his right arm. His physician operated Nicholas' left arm, which had no problem.
16. Quebec wants to secede from the rest of Canada. The Prime Minister consults the Supreme Court to determine if this is legal.
17. Payton, a single, 80-year old man from Sudbury, wrote a holographic testament leaving all his estate to his nurse.
18. The United States declared war against Irak.
19. Gaston sold his condo and bought a house in Montreal.
20. Lauren appealed a decision from the court, which had denied her a request involving her pension.

Classes 14 Nov. 1: Sources of Law

Identify the type of source

1) Source 1

PERSONS

TITLE ONE

ENJOYMENT AND EXERCISE OF CIVIL RIGHTS

1. Every human being possesses juridical personality and has the full enjoyment of civil rights.
2. Every person has a patrimony. The patrimony may be divided or appropriated to a purpose, but only to the extent provided by law.
3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable.
4. Every person is fully able to exercise his civil rights. In certain cases, the law provides for representation or assistance.
5. Every person exercises his civil rights under the name assigned to him and stated in his act of birth.
6. Every person is bound to exercise his civil rights in good faith.

2) Source 2

LEGISLATIVE POWER

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

3) Source 3

Definitions

1. In this Act,

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“Review Council” means the Justices of the Peace Review Council continued by section 8. (“Conseil d’évaluation”) R.S.O. 1990, c. J.4, s. 1; 1994, c. 12, s. 50; 2006, c. 21, Sched. B, s. 1.

Appointment of justices

2. (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint full-time justices of the peace. 2006, c. 21, Sched. B, s. 2.

Part-time justices

(2) A person appointed as a part-time justice of the peace before subsection (1) came into force continues in office as a part-time justice of the peace. 2006, c. 21, Sched. B, s. 2.

Change to full-time

(3) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may change a person’s appointment as a part-time justice of the peace to an appointment as a full-time justice of the peace. 2006, c. 21, Sched. B, s. 2.

Consultation

(4) Before making a recommendation under subsection (3), the Attorney General must obtain the recommendation of the Chief Justice of the Ontario Court of Justice on the matter. 2006, c. 21, Sched. B, s. 2.

Justices of the Peace Appointments Advisory Committee

2.1 (1) A committee known as the Justices of the Peace Appointments Advisory Committee in English and Comité consultatif sur la nomination des juges de paix in French is established. 2006, c. 21, Sched. B, s. 3.

Function

(2) The function of the Advisory Committee is to classify candidates for appointment as justices of the peace and to report on the classifications to the Attorney General. 2006, c. 21, Sched. B, s. 3.

Composition

(3) The Advisory Committee is composed of seven core members as follows:

1. A judge of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice.

2. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice.

3. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice who is either the Senior Justice of the Peace Responsible for the Ontario Native Justice of the Peace Program or another justice of the peace familiar with aboriginal issues or, when the justice of the peace so appointed is not available to act as a member of the Advisory Committee, another justice of the peace familiar with aboriginal issues who is designated by the Chief Justice of the Ontario Court of Justice.

4. Four persons appointed by the Attorney General. 2006, c. 21, Sched. B, s. 3.

Regional members

(4) In addition to the core members appointed under subsection (3), the Advisory Committee shall include the following regional members in respect of its functions in a particular region:

1. The regional senior judge of the Ontario Court of Justice for the region or another judge of the Ontario Court of Justice from the same region designated by the regional senior judge.

2. The regional senior justice of the peace for the region or, when he or she is not available to act as a member of the Advisory Committee, another justice of the peace from the same region who is designated by the regional senior judge.

3. Not more than five other persons appointed by the Attorney General.

4. A member of the bar in the region appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada. 2006, c. 21, Sched. B, s. 3.

4) Source 4

Concerning the only ground in its second limb:

Considering Article 623 of the Commercial Code,

Given that the judgement of dismissal under attack declared the Commercial Court incompetent and the Civil Court (“Tribunal de Grande Instance”) competent to hear a claim for reimbursement of sums paid into savings account and for damages brought by Khafi against the Caisse Régionale de Crédit Agricole Mutuel de la Gironde (“C.R.C.A.M.”) on the grounds that

(i) even if the opening and management of a savings account may be carried out in the course of banking activities, such a transaction cannot be considered to be a commercial act (“acte de commerce”) within the meaning of Article 632 of the Commercial Code and is entirely of a civil nature when it is carried out, as in the present case, by a not-for-profit organisation, which is not a trader (“commerçant”); and (ii) since it did not involve the making of profit by speculation on money and credit, such a transaction did not fall into the business of banking;

Given that the Court of Appeal has not given a legal basis to its decision since it came to this conclusion without enquiring whether, pursuant to the provisions of Article 645 of the Rural Code, which empowers the Caisses de Crédit Agricole Mutuel to receive by way of deposit from any person deposits of funds and securities, and to those of Article 1 of the Law of 13 June 1941 relating to the banking profession, the opening and management of the savings account of Khafi by C.R.C.A.M. was not a banking transaction within the meaning of Article 632 of the Commercial Code;

FOR THESE REASONS....

QUASHES AND ANNULS.....

5) Source 5

Per Dickson C.J. and Lamer, La Forest, L'Heureux-Dubé, Gonthier, Cory and McLachlin JJ.: Section 7 of the *Charter* accords a detained person a pre-trial right to remain silent, and the scope of that right extends beyond the narrow formulation of the confessions rule. The rules relating to the right to remain silent adopted by our legal system, such as the common law confessions rule and the privilege against self-incrimination, suggest that the scope of the right in the pre-trial detention period must be based on the fundamental concept of the suspect's right to freely choose whether to speak to the authorities or remain silent. This concept, which is accompanied by a correlative concern with the repute and integrity of the judicial process, is consistent with the right to counsel and the right against self-incrimination affirmed by the *Charter*. It is also consistent with the *Charter's* approach to the question of improperly obtained evidence under s. 24(2) and with the underlying philosophy and purpose of the procedural guarantees the *Charter* enshrines -- in particular in s. 7. That section imposes limits on the power of the state over the detained person and seeks to effect a balance between their respective interests. Under s. 7, the state is not entitled to use its superior power to override the suspect's will and negate his choice to speak to the authority or to remain silent. The courts, therefore, must adopt an approach to pre-trial interrogation which emphasizes the right of a detained person to make a meaningful choice and which permits the rejection of statements which have been obtained unfairly in circumstances that violate that right of choice. The test to determine whether the suspect's choice has been violated is essentially objective. The focus of the inquiry under the *Charter* will be on the conduct of the authorities *vis-à-vis* the suspect. Further, since the right to remain silent under s. 7 is not an absolute right but must be qualified by considerations of the state interest and the repute of the judicial system, the *Clarkson* standard relating to waiver of a *Charter* right does not apply to the right to silence.

The scope of the right to silence, however, does not go as far as to prohibit police from obtaining confessions in all circumstances. The proposed approach to the s. 7 right to silence retains the objective approach to the confessions rule and would permit the rule to be subject to the following limits. First, there is nothing that prohibits the police from questioning an accused or a suspect in the absence of counsel after he has retained counsel. Police persuasion, short of denying the suspect the right to choose or of depriving him of an operating mind, does not breach the right to silence. Second, the right applies only after detention. Third, the right does not affect voluntary statements made to fellow cell mates. The violation of the suspect's rights occurs only when the Crown acts to subvert the suspect's constitutional right to choose not to make a statement to the authorities. Fourth, a distinction must be made between the use of undercover agents to observe the suspect, and the use of undercover agents to actively elicit information in violation of the suspect's choice to remain silent. Finally, even where a violation of the suspect's right is established, the evidence may, where appropriate, be admitted. Only if the court is satisfied that its reception would be likely to bring the administration of justice into disrepute can the evidence be rejected under s. 24(2) of the *Charter*. Where the police have acted with due care for the suspect's rights, it is unlikely that the statements they obtain will be held inadmissible.

Here, the accused exercised his choice not to speak to the police and the police violated his right to remain silent under s. 7 of the *Charter* by using a trick to negate his decision. Section 1 of the *Charter* was inapplicable because the police conduct was not a limit "prescribed by law" within the meaning of that section.

6) Source 6

322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent: (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it; (b) to pledge it or deposit it as security; (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

7) Source 7

AIRCRAFT AND EQUIPMENT AT AIRPORTS

PART I

OPERATION OF MOTOR VEHICLES

PROHIBITION

5. (1) No person shall operate a motor vehicle on an airport unless

(a) he holds all licences and permits that he is, by the laws of the province and the municipality in which the airport is situated, required to hold in order to operate the motor vehicle in that province and municipality; and

(b) the motor vehicle is registered and equipped as required by the laws of the province and the municipality in which the airport is situated.

(2) For the purpose of these Regulations, a provincial certificate of motor vehicle registration shall be *prima facie* proof of ownership of the motor vehicle.

TRAFFIC SIGNS AND DEVICES

7. (1) The Minister may mark or erect or cause to be marked or erected on any airport traffic signs or devices

(a) prescribing the rate of speed;

(b) regulating or prohibiting parking and designating parking, loading or restricted areas;

(c) prescribing load limits for any motor vehicle or class of motor vehicles;

(d) prohibiting or regulating the use of any road or place by any motor vehicle or class of motor vehicles, or by persons or animals;

(e) designating any road as a one-way road;

(f) stopping motor vehicles;

(g) regulating pedestrian traffic; and

(h) directing or controlling in any other manner traffic on the airport.

(2) Except as authorized by subsection (1), no person shall mark or erect any traffic sign or device on any airport.

8) Source 8

Dubois v. The Queen, [1985] 2 S.C.R. 350

Daniel Dubois *Appellant*; and

Her Majesty The Queen *Respondent*.

File No.: 18608.

1984: October 25; 1985: November 21.

Present: Dickson C.J. and Estey, McIntyre, Chouinard, Lamer, Wilson and Le Dain JJ.

on appeal from the court of appeal for Alberta

Constitutional law -- Charter of Rights -- Self-incrimination -- Retrial -- First trial taking place prior to proclamation of Charter -- Incriminating evidence given by accused at first trial not admissible against him at second trial -- Protection against self-incrimination guaranteed by s. [13](#) of the Canadian Charter of Rights and Freedoms.

Criminal law -- Evidence -- Admissibility -- Self-incrimination -- Retrial -- Accused's evidence at first trial not admissible against him at second trial -- Canadian Charter of Rights and Freedoms, s. [13](#).

Appellant was convicted by a jury of second degree murder but the Court of Appeal granted a new trial on grounds of misdirection to the jury. At the second trial, held after the proclamation of the [Canadian Charter of Rights and Freedoms](#), the Crown introduced as evidence appellant's testimony given voluntarily at his first trial. Defence counsel objected arguing that it was contrary to s. 13 of the *Charter* which provided that "A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings...." The trial judge ruled that the protection against self-incrimination guaranteed by s. 13 did not apply as the *Charter* came into force after appellant had testified in his first trial. Appellant was again convicted. His appeal, on the sole ground that his first trial testimony should have been excluded, was dismissed. The Court of Appeal held that the second trial was not "any other proceedings" within the meaning of the section and therefore appellant could not invoke s. 13 under these circumstances.

Held (McIntyre J. dissenting): The appeal should be allowed and a new trial ordered.

Per Dickson C.J. and Estey, Chouinard, Lamer, Wilson and Le Dain JJ.: Section 13 of the *Charter* precludes the admission at the second trial of the evidence given by the appellant at his first trial. The purpose of s. 13, when the section is viewed in the context of s. 11(c) and (d) -- the right of non-compellability and the presumption of innocence -- is to protect individuals from being indirectly compelled to incriminate themselves. This protection inures to an individual at the moment an attempt is made to utilize previous testimony to incriminate him. The time at which the previous testimony is given is irrelevant. Thus, no issue of retrospectivity arises in this case since the attempt to use appellant's testimony occurred after the coming into force of the *Charter*.

9) Source 9

WHEREAS: 1.THE COMPANY desires to secure the services of a Brand Manager.

2. CONSULTANT represents to THE COMPANY that it has the technical competence necessary for carrying out all the services, duties and obligations specified in this contract on the part of CONSULTANT to be and has agreed to carry out the same in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1: SCOPE OF SERVICES:

Develop and manage brand team (where applicable) to support strategic direction; Establish and drive brand volume, share, and profit objectives; Anticipate situations and develop approaches that maximise the business opportunities; Integrate all marketing efforts (advertising, promotions, experiential, marketing assets) within a consistent overall brand plan, including Division and SBU Specialist Support teams; Define marketing DME requirements and proper allocation across the Marketing mix elements; Ensure all brand strategies and plans are consistent with SBU deliverables and business objectives; Actively observe and ensure adherence to quality standards across all brand initiatives across the Franchise; Ensure advertising executions meet agreed success criteria across Division/SBU; Provide support to countries/territories/clusters (where applicable) in planning and implementation; apply all agreed KO Marketing Process and Procedures; tactical plans are developed and monitored for delivery against strategy; marketing plans implemented, monitored and evaluated in line with Brand Plan; Tracks and analyses brand performance and initiative

10) Source 10

CONVERGENCE OF CIVIL LAW AND COMMON LAW CONTRACTS IN THE SPACE FIELD

■
Julian Hermida*

This article explores the evolution of civil law and common law towards convergence, briefly addressing the history of the theoretical and philosophical perspectives that contributed to shape evolution and change within these two systems. The article analyses general features of the central aspects of contract theory in civil law and common law jurisdictions. As an example of convergence in the commercial contract realm, the article focuses on the analysis of the structure, characteristics and main clauses of the commercial space launch services agreements in both systems, stressing their similarities in structure, treatment and consequences.

Introduction

Common law and civil law contracts have been traditionally seen as distinctive and fairly diverse.¹ Each belongs to a tradition that has been regarded as quite different.² However, in several areas common law and civil law have been increasingly marching towards convergence.³ The purpose of this article is to show that commercial space agreements constitute an area where there is a clear convergence between these two systems. Underlying this premise is our conception that despite the view of the majority of authors, common law – especially as applied in the United States – and civil law should be considered as one legal tradition, ie the so called western legal tradition.⁴ In other words, the similarities of civil law and US common law vis-à-vis other legal traditions outweigh their differences.⁵ This is especially visible in

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¹ Glenn, P.H., "Are Legal Traditions Incommensurable?" (2001) 49 *Am J Comp L* 133; Merryman, J.H., *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, 1985), p 1.

² Rua, C. and Cesar, J., "The Future of the Civil Law" (1977) 37 *La L Rev* 645.

³ Gordley, J., *The Philosophical Origins of Modern Contract* (Oxford: Clarendon Press, 1991), p 1.

⁴ Rene, D. and Brierley, J.E.C., *Major Legal Systems in the World Today* (London: Stevens & Sons, 3rd edn, 1985), p 25.

⁵ Rene, D., "Existe-t-il un droit occidental?" in Nadelmann K.H., von Mehren, A.T. and Hazard J.N. (eds), *XXth Century Comparative and Conflicts Law: Legal Essays in Honor of Hessel E. Yntema* (Leiden: A.W. Sijthoff, 1961), p 56.

Class 16, Nov. 8: Constitutional law and Charter rights

Identify all violations of Charter rights in the following passage.

Paul has had a huge crush on actress Sarah Jessica Parker ever since he was a teenager. Last weekend, Paul travelled to Winnipeg, where Sarah Jessica Parker was shooting some scenes on the street for a new TV series. When she had a break, Paul jumped over a gate and shouted that he loved her. A police officer came and arrested Paul. Visibly mad, Paul asked why he was arrested and the police officer said to him: “Shut the f* up and come with me. I am the only one who asks questions here.” Paul, who knows his Charter legal rights, replied that he wanted to see a lawyer. The police officer ignored him and asked him why he shouted at Ms. Parker. Paul replied “because she’s hot.” The police officer did not like his reply and thought that Paul was trying to be smart. So, the officer arrested and booked him.

A few days later, Paul was formally charged with an indictable offence by a judge who was a good friend of the police officer’s. In his bail hearing, the presiding judge denied bail. Paul complained and asked why. The judge simply replied: “because it is obvious that you are guilty.” While still detained, Paul received a notification to testify as a witness in R. v. Paul. The trial was scheduled for August 9, 2032.

Class 18 Nov. 15 Law and literature

Read the Thomas Wolfe’s short story Justice is Blind and discuss the following questions

- 1) What is the story about?
- 2) What is/are the notion/s of Law that is/are present in the story?
- 3) What is/are the function/s of Law that is/are present in the story?
- 4) The story takes place in Manhattan. What is the significance of this for the story? Why is this important in the story?
- 5) Discuss Mr. Page’s statement: “This problem of yours is not a matter that involves Justice. It is a matter of the Law. What does Mr. Page mean? Do you agree with this statement? Why or why not?
- 6) Why does Spangler insist that the case against him is not just? What, if any, is the connection between Law and Justice?

- 7) Discuss Spangler's statement: "I've done nothing to be sued about".
- 8) Discuss Mr. Page's statement: "Anybody can sue anybody about anything". What does it mean? Is it true? Do you agree with this statement? Why or why not?
- 9) Imagine what the lawsuit against Spangler is about. Take clues from the story.
- 10) Explain the end of the story. What does the reference to Minotaur mean?

Justice Is Blind

Thomas Wolfe

There used to be-perhaps there still exists-a purveyor of belles lettres in the older, gentler vein who wrote a weekly essay in one of the nation's genteeler literary publications, under the whimsical nom de plume of Old Sir Kenelm. Old Sir Kenelm, who had quite a devoted literary following that esteemed him as a perfect master of delightful letters, was a leisurely essayist of the Lambsonian school. He was always prowling around in out-of-the-way corners and turning up with something quaint and unexpected that made his readers gasp and say, "Why, I've passed that place a thousand times and I never dreamed of anything like that!"

In the rush, the glare, the fury of modern life many curious things, alas, get overlooked by most of us; but leave it to Old Sir Kenelm, he would always smell them out. He had a nose for it. He was a kind of enthusiastic rubber-up of tarnished brasses, and assiduous ferretter-out of grinning cornerstones. The elevated might roar above him, and the subway underneath him, and a hurricane of machinery all about him, while ten thousand strident tones passed and swarmed and dinned in his ears-above all this raucous tumult Old Sir Kenelm rose serene: if there was a battered inscription anywhere about, caked over with some fifty years of city dirt, he would be sure to find it, and no amount of paint or scaly rust could deceive his falcon eye for Revolutionary brick.

The result of it was, Old Sir Kenelm wandered all around through the highways and byways of Manhattan, Brooklyn, and the Bronx discovering Dickens everywhere; moreover, as he assured his readers constantly, anyone

with half an eye could do the same. Whimsical characters in the vein of Pickwick simply abounded in the most unexpected places—in filling stations, automats, and the corner stores of the United Cigar Company. More than this, seen properly, the automat was just as delightful and quaint a place as an old inn, and a corner cigar store as delightfully musty and redolent of good cheer as a tavern in Cheapside. Old Sir Kenelm was at his best when describing the customs and whimsical waterfront life of Hoboken, which he immortalized in a delightful little essay as "Old Hobie"; but he really reached the heights when he applied his talents to the noontime rush hour at the soda counter of the corner pharmacy. His description

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The Complete Short Stories of Thomas Wolfe I 590

of the quaint shopgirls who foregathered at the counter, the swift repartee and the Elizabethan jesting of the soda jerkers, together with his mouthwatering descriptions of such Lucullan delicacies as steamed spaghetti and sandwiches of pimento cheese, were enough to make the ghosts of the late William Hazlitt and Charles Lamb roll over in their shrouds and weep for joy.

It is therefore a great pity that Old Sir Kenelm never got a chance to apply his elfin talent to a description of the celebrated partnership that bore the name of Paget and Page. Here, assuredly if ever, was grist for his mill, or in somewhat more modern phrase, here was a subject right down his alley. Since this yearning subject has somehow escaped the Master's hand, we are left to supply the lack as best we can by the exercise of our own modest talents.

The offices of the celebrated firm of Paget and Page were on the thirtyseventh floor of one of the loftier skyscrapers, a building that differed in no considerable respect from a hundred others: unpromising enough, it would seem, for purposes of Dickensian exploration and discovery. But one who has been brought up in the hardy disciplines of Old Sir Kenelm's school is not easily dismayed. If one can find Charles Lamb at soda fountains, why

should one not find Charles Dickens on the thirty-seventh floor?

One's introduction to this celebrated firm was swift, and from an eighteenth century point of view perhaps a bit unpromising. One entered the great marble corridor of the building from Manhattan's swarming streets, advanced through marble halls and passed the newspaper and tobacco stand, and halted before a double row of shining elevators. As one entered and to the charioteer spoke the magic syllables, "Paget and Page;" the doors slid to and one was imprisoned in a cage of shining splendor; a lever was pulled back, there was a rushing sound, punctuated now and then by small clicking noises-the whole thing was done quite hermetically, and with no sense of movement save for a slight numbness in the ears, very much, no doubt, as a trip to the moon in a projectile would be-until at length, with the same magic instancy, the cage halted, the doors slid open, and one stepped out upon the polished marble of the thirty-seventh floor feeling dazed, bewildered, and very much alone, and wondering how one got there. One turned right along the corridor, and then left, past rows of glazed-glass offices, formidable names, and the clattering cachinnations of a regiment of typewriters, and almost before one knew it, there squarely to the front, at the very dead end of the hall, one stood before another glazedglass door in all respects identical with the others except for these words:

PAGET AND PAGE

Counselors at Law

This was all-these simple functions of the alphabet in orderly arrangement-but to anyone who has ever broached that portal, what memories they convey!

Within, the immediate signs of things to come were also unremarkable.

There was an outer office, some filing cases, a safe, a desk, a small telephone switchboard, and two reasonably young ladies seated busily at typewriters.

Opening from this general vestibule were the other offices of the suite. First one passed a rather small office with a flat desk, behind which sat a quiet

and timid-looking little gentleman of some sixty years, with a white mustache, and a habit of peering shyly and quickly at each new visitor over the edges of the papers with which he was usually involved, and a general facial resemblance to the little man who has become well known in the drawings of a newspaper cartoonist as Caspar Milquetoast. This was the senior clerk, a sort of good man Friday to this celebrated firm. Beyond his cubicle a corridor led to the private offices of the senior members of the firm.

As one went down this corridor in the direction of Mr. Page—for it is with him that we shall be principally concerned—one passed the office of Mr. Paget. Lucius Page Paget, as he had been christened, could generally be seen sitting at his desk as one went by. He, too, was an elderly gentleman with silvery hair, a fine white mustache, and gentle patrician features. Beyond was the office of Mr. Page.

Leonidas Paget Page was a few years younger than his partner, and in appearance considerably more robust. As he was sometimes fond of saying, for Mr. Page enjoyed his little joke as well as any man, he was "the kid member of the firm." He was a man of average height and of somewhat stocky build. He was bald, save for a surrounding fringe of iron-gray hair, he wore a short-cropped mustache, and his features, which were round and solid and fresh-colored, still had something of the chunky plumpness of a boy. At any rate, one got a very clear impression of what Mr. Page must have looked like as a child. His solid, healthy-looking face, and a kind of animal drive and quickness in his stocky figure, suggested that he was a man who liked sports and out-of-doors.

This was true. Upon the walls were several remarkable photographs portraying Mr. Page in pursuit of his favorite hobby, which was ballooning.

One saw him, for example, in a splendid exhibit marked "Milwaukee, 1908:" helmeted and begoggled, peering somewhat roguishly over the edges of the wicker basket of an enormous balloon which was apparently just about to take off. There were other pictures showing Mr. Page in similar attitudes, marked "St. Louis," or "Chicago," or "New Orleans." There

was even one showing him in the proud possession of an enormous silver cup: this was marked "Snodgrass Trophy, 1916."

Elsewhere on the walls, framed and hung, were various other evidences of Mr. Page's profession and his tastes. There was his diploma from the Harvard Law School, his license to practice, and most interesting of all, in The Complete Short Stories of Thomas Wolfe I 592

a small frame, a rather faded and ancient-looking photograph of a lawyer's shingle upon which, in almost indecipherable letters, was the inscription: "Paget and Page." Below, Mr. Page's own small, fine handwriting informed one that this was evidence of the original partnership, which had been formed in 1838.

Since then, fortunately, there had always been a Paget to carry on partnership with Page, and always a Page so to combine in legal union with

Paget. The great tradition had continued in a line of unbroken succession from the time of the original Paget and the original Page, who had been great-grandfathers of the present ones. Now, for the first time in almost one hundred years, that hereditary succession was in danger of extinction; for the present Mr. Page was a bachelor, and there were no others of his name and kin who could carry on. But come!-that prospect is a gloomy one and not to be thought of any longer here.

There exist in modern life, as Spangler was to find out, certain types of identities or people who, except for contemporary manifestations of dress, of domicile, or of furniture, seem to have stepped into the present straight out of the life of a vanished period. This archaism is particularly noticeable among the considerable group of people who follow the curious profession known as the practice of the law. Indeed, as Spangler "as now to discover, the archaism is true of that curious profession itself. Justice, he had heard, is blind. Of this he was unable to judge, because in all his varied doings with legal gentlemen he never once had the opportunity of meeting the Lady. If she was related to the law, as he observed it in majestic operation, the relationship was so distant that no one, certainly no lawyer, ever spoke

of it.

In his first professional encounter with a member of this learned craft, Spangler was naive enough to mention the Lady right away. He had just finished explaining to Mr. Leonidas Paget Page the reason for his visit, and in the heat of outraged innocence and embattled indignation he had concluded:

"But good Lord! They can't do a thing like this! There's no Justice in it!"

"Ah, now;" replied Mr. Page. "Now you're talking about Justice!"

Spangler, after a somewhat startled pause, admitted that he was.

"Ah, now! Justice-" said Mr. Page, nodding his head reflectively as if somewhere he had heard the word before-"Justice. Hm, now, yes. But my dear boy, that's quite another matter. This problem of yours," said Mr. Page, "is not a matter that involves Justice. It is a matter of the Law." And, having delivered himself of these portentous words, his voice sinking to a note of unctuous piety as he pronounced the holy name of Law, Mr. Page settled back in his chair with a relaxed movement, as if to say: "There you have it in a nutshell. I hope this makes it clear to you.'

Unhappily it didn't. Spangler, still persisting in his error, struck his hand sharply against the great mass of letters and documents he had brought with him and deposited on Mr. Page's desk-the whole accumulation of the damning evidence that left no doubt whatever about the character and conduct of his antagonist-and burst out excitedly:

"But good God, Mr. Page, the whole thing's here! As soon as I found out what was going on, I simply had to write her as I did, the letter I told you about, the one that brought all this to a head."

"And quite properly," said Mr. Page with an approving nod. "Quite properly. It was the only thing to do. I hope you kept a copy of the letter;" he added thriftily.

"Yes;" said Spangler. "But see here. Do you understand this thing? The woman's suing me! Suing me!" the victim went on in an outraged and exasperated tone of voice, as of one who could find no words to express the full enormity of the situation.

"But of course she's suing you;" said Mr. Page. "That's just the point.

That's why you're here. That's why you've come to see me, isn't it?"

"Yes, sir. But good God, she can't do this!" the client cried in a baffled and exasperated tone. "She's in the wrong and she knows it! The whole thing's here, don't you see that, Mr. Page?" Again Spangler struck the mass of papers with an impatient hand. "It's here, I tell you, and she can't deny it. She can't sue me!"

"But she is;" said Mr. Page tranquilly.

"Yes-but dammit!-" in an outraged yell of indignation -"this woman can't sue me. I've done nothing to be sued about."

"Ah, now!" Mr. Page, who had been listening intently but with a kind of imperturbable, unrevealing detachment which said plainly, "I hear you but I grant you nothing;" now straightened with a jerk and with an air of recognition, and said: "Ah, now I follow you. I get your point. I see what you're driving at. You can't be sued, you say, because you've done nothing to be sued about. My dear boy!" For the first time Mr. Page allowed himself a smile, a smile tinged with a shade of good humor and forgiving tolerance, as one who is able to understand and overlook the fond delusions of youth and immaturity. "My dear boy," Mr. Page repeated, "that has nothing in the world to do with it. Oh, absolutely nothing!" His manner had changed instantly as he spoke these words: he shook his round and solid face quickly, grimly, with a kind of bulldog tenacity that characterized his utterance when he stated an established fact, one that allowed no further discussion or debate. "Absolutely nothing!" cried Mr. Page, and shook his bulldog jaw again. "You say you can't be sued unless you've done something to be sued about. My dear sir!"-here Mr. Page turned in his chair and looked grimly at his client with a kind of bulldog earnestness, pronouncing his words now deliberately and gravely, with the emphasis of a slowly wagging finger, as if he wanted to rivet every syllable and atom of his meaning into his client's brain and memory-"My dear sir;" said Mr. Page grimly, "you are laboring under a grave misapprehension if you think you have to do something to

be sued about. Do not delude yourself. That has nothing on earth to do

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with it! Oh, absolutely nothing!" Again he shook his bulldog jaws. "From this time on;" as he spoke, his words became more slow and positive, and he hammered each word home with the emphasis of his authoritative finger-"from this time on, sir, I want you to bear this fact in mind and never to forget it for a moment, because it may save you much useless astonishment and chagrin as you go on through life. Anybod]J Mr. Spangler;' Mr.

Page's voice rose strong and solid, "anybody-can sue-anybody-about anything!" He paused a full moment after he had uttered these words, in order to let their full significance sink in; then he said: "Now have you got that straight? Can you remember it?"

The younger man stared at the attorney with a look of dazed and baffled stupefaction. Presently he moistened his dry lips, and as if he still hoped he had not heard correctly, said: "You-you mean-even if I have not done anything?"

"That has nothing on earth to do with it;" said Mr. Page as before. "Absolutely nothing."

"But suppose-suppose, then, that you do not even know the person who is suing you-that you never even heard of such a person-do you mean to tell me-?"

"Absolutely!" cried Mr. Page before his visitor could finish. "It doesn't matter in the slightest whether you've heard of the person or not! That has nothing to do with it!"

"Good Lord, then;" the client cried, as the enormous possibilities of legal action were revealed to him, "if what you say is true, then anybody at all-" he exclaimed as the concept burst upon him in its full power, "why you could be sued, then, by a one-eyed boy in Bethlehem, Pennsylvania, Even if you'd never seen him!"

"Oh, absolutely!" Mr. Page responded instantly. "He could claim;" Mr. Page paused a moment and became almost mystically reflective as the juicy possibilities suggested themselves to his legally fertile mind, "he could

claim, for example, that-that, er, one of your books-hm, no, v, yes!"- briefly and absently he licked his lips with an air of relish, as if he himself were now becoming professionally interested in the case-"he could claim that one of your books was printed in such small type that-that-that the sight of the other eye had been permanently impaired!" cried Mr. Page triumphantly. He settled back in his swivel chair and rocked back and forth a moment with a look of such satisfaction that it almost seemed as if he were contemplating the possibility of taking a hand in the case himself. "Yes! By all means!" cried Mr. Page, nodding his head in vigorous affirmation. "He might make a very good case against you on those grounds. While I haven't considered carefully all the merits of such a case, I can see how it might have its points. Hm, now, yes." He cleared his throat reflectively. "It might be very interesting to see what one could do with a case like that." For a moment the younger man could not speak. He just sat there looking at the lawyer with an air of baffled incredulity. "But-but-" he managed presently to say-"why, there's no Justice in the thing!" he burst out indignantly, in his excitement making use of the discredited word again. "Ah, Justice:" said Mr. Page, nodding. "Yes, I see now what you mean. That's quite another matter. But we're not talking of Justice. We're talking of the Law-which brings us to this case of yours." And, reaching out a pudgy hand, he pulled the mass of papers toward him and began to read them. Such was our pilgrim's introduction to that strange, fantastic world of twist and weave, that labyrinthine cave at the end of which waits the Minotaur, the Law.

Class 19 Nov. 17 Law and current events

Do an online search of two news articles dealing with legal issues discussed in class. Summarize the articles and critically analyze them.

Class 20: Nov. 22: Legal research

1. Find the name of a case decided by the Supreme Court of Canada on Criminal Law in 2018 and cite it.
2. Find the complete citation of the Owens case.
3. Find and cite a 2014 case that cites R. v. Sault Ste. Marie, [1978] 2 SCR 1299, 1978 CanLII 11 (SCC).
4. Find and cite a Supreme Court of Canada case that deals with mens rea.
5. Find and cite a federal case dealing with “satellites”.
6. Find and cite an Ontario case dealing with stalking.
7. Find the decision, i.e., whether the appeal was dismissed or not, in Perez v Canada (Public Safety and Emergency Preparedness), 2018 CanLII 61862 (CA IRB).
8. Find and cite a 2018 decision from the Competition Tribunal, which is a federal tribunal.
9. Find the correct citation for Armand de Mestral’s paper “Investor-State Arbitration between Developed Democratic Countries”.
10. Find the complete citation of Sault Ste. Marie Airport Zoning Regulations.

Class 22: Nov. 29 Academic Reading

Differences between reading a High School text and an academic text

	High School text	Academic text
Information	You read to find information.	The information is not always found in the text. Information is implicit, it is presupposed, it is taken for granted.
Meaning	The text means what it says.	You need to recreate or co-create the meaning of the text, together with the author. Reading an academic text does not simply involve finding

		information on the text itself. You need to work with the text. You can only achieve this if you can use a series of categories of analysis.
Working with the text	Pay attention to the information given in the text.	Working with a text and recreating its meaning entails finding the main claims of the text, the different positions used by the author, the arguments used to hold these positions, and the counter-arguments.
Connections to other texts	Minimal to nonexistent.	Reading an academic text means making connections to other texts, and figuring out non-immediate consequences of the arguments used by the author.
Evaluating and challenging the author of the text	This is not usually done. Nor is it always necessary.	Additionally, critically reading an academic text involves evaluating the effectiveness of the text.

Strategies to read an academic text

- Understand why you read the text.
 - o Why do you read the text? What is the purpose of your reading?
 - o What do you need this text for? Try to formulate the purpose in the form of questions.
 - o What information are you looking for in the text?
- Understand the context of the text.
 - o Who is the author? Is she a critical author? Does the author's opinion reflect the mainstream school of thought?

- o When was the text written?
- o Where was it published? US? Canada? Europe?
- o Who is the audience?
- Find the thesis of the text and the main claims of the text.
 - o What are the main claims dealing with the issues you are interested in?
 - o What does the author intend to do? Does she intend to challenge an existing position? Does he want to consider a variable that previous researchers have missed? Apply a theory or a concept in a new way?
- Find the arguments used to support these claims.
 - o What are the different positions used by the author?
 - o What are the arguments used to hold these positions?
- Find any –explicit or implicit- counter-arguments.
 - o What are the counter-arguments?
- Deconstruct the assumptions hidden in the text.
 - o Are there any assumptions hidden in the text?
 - o Are there any concepts taken for granted? If so, look for these concepts in the textbook, an encyclopedia, or other reference book.
 - o Are there some debates that are taken for granted?
 - o Is the author responding to another article or book? If so, briefly read that other article or book.
- Assess the strength or validity of the author’s argument.
 - o What is the strength or validity of the author’s argument?
 - o Don’t take the author's argument at face value. Try to evaluate the argument’s effectiveness in making its claims.
 - o What evidence does the author offer in support of her claim? How convincing is the evidence?
 - o What logical reasoning, if any, does the author use?
 - o Is there consistency of thought?
 - o Are the examples and evidence relevant?
- Analyze the policy implications and social consequences of the author’s thesis and claims. Figure out the non-immediate consequences of the arguments used by the author.

- o What are the non-immediate consequences of the arguments used by the author?
- o What are the implications of the author's thesis?
- o What are the applications of the author's thesis?
- Make connections to other texts.
 - o What connections can you make to other texts?
 - o How does this relate to other topics you learned about?
 - o Can you relate the author's thesis or arguments to your own experience?

Categories of analysis for academic legal texts

- Determine the approach to the legal argument (e.g., positivism, socio-legal, etc.).
- If positivist, determine the validity (e.g., look at the jurisdiction) and currency of the argument (e.g., law repealed).
- Evaluate the structure or rationality of the reasoning behind the legal argument (e.g., authority, logical, none).
- Identify the legal theory underlying the argument.
- Legal tradition (e.g., common law, civil law, Islamic law, etc.).
- Contrast the thesis to the solutions in Comparative law.
- Analyze the policy implications and social consequences of the author's thesis and claims.

Read the article entitled “Key Objections to the Moon Treaty” and discuss the following questions

- How did you find the article? Was it easy to understand? Useful?
- Who is the author? What is the context of the text?
- What is the main thesis of the text?
- What is the common heritage of mankind principle? Why is this important?
- Suppose Canada wanted to extract mineral resources from the Moon, would this be legal? Or should it ask the International Regime to do so? What steps do you need to take to make sure that you read this text academically?

Key Objections to the Moon Treaty

by *Glenn Harlan Reynolds*, Professor of Law, University of Tennessee-Knoxville

“Common Heritage of Mankind” Language: Article XI of the Moon Treaty provides that “the Moon and its natural resources are the common heritage of mankind, which finds its expression in the provisions of this Agreement, in particular Paragraph 5 of this Article.”

Like the identical language contained in the Law of the Sea Treaty, the “common heritage” language of the Moon Treaty constitutes a finding that all nations of the world - whether or not they expend any effort or risk any capital - have rights to Lunar resources. This means that any effort to develop resources would require the consent of all nations, a process that would be slow, cumbersome and prone to blackmail.

Ban on Property Rights:

That this is the goal is made clear by Paragraph 3 of Article XI, which provides that: “neither the surface nor the subsurface of the Moon, nor any part thereof or natural resources in place, shall become the property of any state, international intergovernmental or non-governmental organization, national organization or nongovernmental entity or of any natural person.”

Without property rights, economic development of the Moon would be frustrated - unless it were conducted by the special monopolistic regime that the treaty contemplates in Article XI, Paragraphs 5 & 7.

The International Regime:

According to Paragraph 5 of the Treaty, there will be established “an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible.”

Paragraph 7 provides (among other things) that the regime shall promote “orderly and safe development [of lunar resources], rational management [of them and the] equitable sharing by all states parties in the benefits derived from those resources.”

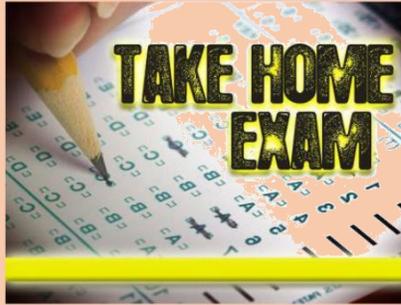
Although the Moon Treaty itself provides little guidance on what these terms mean, the very similar Law of the Sea Treaty interprets them to involve the creation of an international authority to govern or conduct all resource extraction, with a hefty share of the proceeds going to less-developed countries regardless of whether they have any investment in the activity or not. That would discourage - if not outright prevent - the development of Lunar resources any time soon.

Other Problems:

Although styled the “Moon Treaty,” this agreement by its terms also extends to other celestial bodies, including near-Earth asteroids and Mars (Article I). The Moon Treaty is silent on the question of human rights in space, except to deny them in the case of property rights (see above) and privacy rights (Article XV). And it limits use of the Moon to “scientific purposes” until an international regime is established pursuant to Article XI (Article IV). This might even prohibit space tourism or space power systems, or other beneficial but non-scientific uses of the Moon and other celestial bodies.

In short, the Moon Treaty could pose a serious barrier to space development. It’s up to us to keep that from happening.

Class 21, Nov. 24: Distribution of final take-home



Class 23 Dec. 1: Submission of final take-home

*** TRIGGER WARNINGS**



Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content.

Disclaimers

Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course, as well as those expressed in videos shown in class, are those of the authors or the individuals who made those opinions and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the

opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.