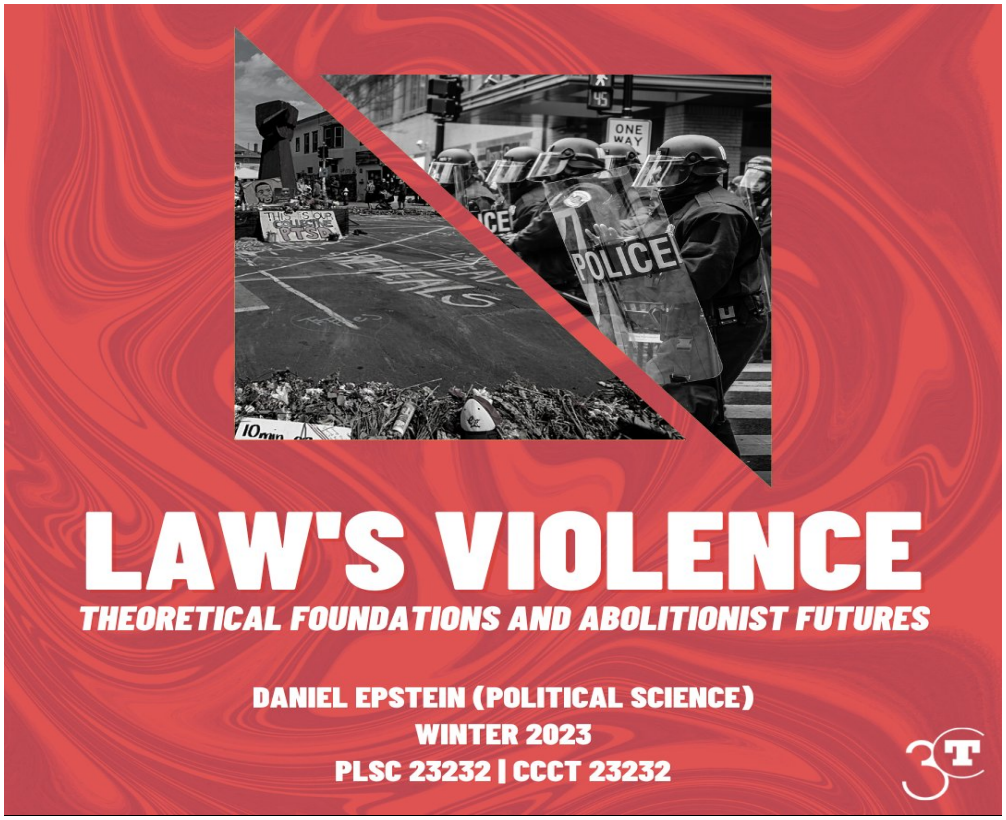
Law's Violence: Theoretical Foundations and Abolitionist Futures

Winter 2023
Tuesday-Thursday, 3:30pm-4:50pm
Pick 118
Office Hours: Monday: 2:00pm-4:00pm or by appointment



Instructor: Daniel Epstein
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Course Description:

What are the justifications for legal violence in modern states? Is violence foundational to law as such? In a time where movements for the abolition of police and prisons are gaining traction, can we imagine non-violent futures for law? This course seeks to introduce students to these questions and consider some possible answers, drawing on an array of writing from scholars and scholar-activists in the fields of political science, philosophy, law, and beyond. We will begin by examining some foundational theoretical issues and arguments related to law, violence, and politics. We will then turn to thinking about the role of legal violence in the making and perpetuation of forms of race, gender, and class oppression. Finally, we will explore the possibility of law without violence, concluding by engaging directly with a theme that will be in the background throughout the course: the politics of prison and police abolition. Students will gain exposure to a wide variety of approaches and methodologies within political and legal theory, and practice using this battery of resources to shed light on present-day political debates

and movements. Authors will include Thomas Hobbes, Walter Benjamin, Angela Y. Davis, Robert M. Cover, Hannah Arendt, Michel Foucault, Ruth Wilson Gilmore, and more.

Course Requirements:
Engagement (30% of final grade): This is a discussion-based seminar. Therefore, your active engagement with the course material and with each other is an important part of making this a worthwhile intellectual experience both for you and for your classmates. Please come to class prepared to participate actively, productively, and respectfully in discussion. This said—while I encourage you to push yourself to participate at least once a week—participation in class discussions is not the only way to demonstrate your engagement with the course material. Conversations with me outside of the classroom, as well as the quality of your weekly questions, can improve your grade here if you are an infrequent participator.

Weekly Questions (10% of final grade): Once each week, by 10am on the day of Tuesday's class or Thursday's class, you will submit one question about the reading for that day. The questions may be about any aspect of the week's reading assignment, and can pertain to narrower interpretive issues about what an author is saying or broader themes the readings surface. The questions will be graded on completion, and no questions are due in Week 1. Each week, I may select some of the submitted questions for us to discuss in our seminar meetings.

Response Papers (20% of final grade): During the first week of class, you will sign up for one day for which you will write a 4-page double-spaced response paper, due at 10pm the night before that day's class. Response papers can be about one text or more, if more than one text is assigned, but should not spend more than a paragraph or so summarizing the reading at maximum. Instead, they should engage with the text at a substantive and critical level, perhaps lodging a critique of a main argument, offering a defense of the text against a counterargument, noting an important omission and exploring its consequences, or speculating about how an author's approach might be useful in illuminating other issues, among other possibilities. In short, your task is to *respond* to the reading: what does it leave you thinking about? You will be asked to summarize your response paper orally for about 5 minutes in class on the day you wrote it for.

Final Paper Proposal (10% of final grade): By Tuesday, February 14, you must submit a 1-2 page description of your plans for the final paper, describing the topic and your tentative argument, if you have one. Though there is no obligation to do so, I encourage you to meet with me in advance of this deadline to discuss your ideas. This assignment will be graded on completion.

Final Paper (30% of final grade): You will be asked to write a 10-12 page paper, due Tuesday, March 7**,** that either (1) engages in a close, critical reading of one of our authors (or two if you wish to make a comparative argument), or (2) explores in greater depth a topic or general theme from the course. Your paper should demonstrate thoughtful engagement with the feedback you received on your initial proposal.

Late Policy/Extensions: Late assignments will be penalized at the rate of one-third of a letter grade for each day late (so a B turns into a B- if the assignment is a day late). That said, my first priority as an instructor is to create the circumstances where you can produce your best work. If a

particular deadline will pose a challenge for you, let me know *as far in advance as possible* and I will be happy to try to find alternative arrangements. If unexpected circumstances arise quite close to a deadline such that you could benefit from an extension, please also reach out to me then; extensions (or mitigated penalties for lateness) will be granted on a case-by-case basis.

Absences: Because the success of the seminar hinges on student engagement, it is very important that you make every effort to attend class. Each unexcused absence will result in losing a half-letter of your engagement grade. Tardiness may also negatively impact your engagement grade. You will not be penalized for an absence due to a religious observance. If a personal emergency arises that will cause you to miss several classes, please get in touch with me, either directly or through your advisor. In such a case, there is no need to inform me of the details of your situation, only the duration of your absence.

Academic Honesty: All work you submit for this course must be your original work. If you are ever unsure what constitutes plagiarism, please get in touch with me. Proven plagiarism will result in a failing grade on the assignment. Further consequences are possible depending on the circumstances. It is always better to submit late work or work that is not your best than to commit plagiarism.

Disability Accommodations: I am committed to doing what I can to make this course as accessible as possible. If you require an accommodation or classroom modification of any kind, please get in touch with me as early in the quarter as possible, so I can ensure it is implemented. For more information on the University's accommodation policies, please visit http://disabilities.uchicago.edu.

Schedule:

Introduction: Violence, Law, and the Modern State

Why do most people assume that legal violence is necessary? What assumptions about social life underlie this belief? What does it mean to say that the state has a "monopoly on legitimate physical violence"? What makes violence "legitimate" or "illegitimate," either objectively speaking or in widespread common sense? Should states, at least under some conditions, have recourse to "legitimate physical violence," and should they monopolize it? Why? What is the relationship of law to this "monopoly on legitimate physical violence"?

Tuesday, January 3: Introduction/Legal Violence in the Common Imagination

- Angela Y. Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003), 9-21
- Max Weber, "Politics as Vocation" in *The Vocation Lectures,* (Hackett, 2004 [1919]), 32-34

Thursday, January 5: Thomas Hobbes's Theory of Sovereignty

- Thomas Hobbes, *Leviathan,* (Hackett 1994 [1651]), Chapters 13-14 (all), Chapter 15 (paragraphs 1-5), Chapter 16 (all), Chapter 27 (paragraphs 1-20), Chapter 28 (1-22); 74-92, 106-110, 190-197, 203-208.

Violence and the Conceptual Analysis of Law

What, exactly, is "law"? What is the point of legal theory? Is violence conceptually necessary to it, and what would it mean to say it is or is not? What should be made of the empirical fact that virtually every recognized legal system today exercises violence? What, if anything, can justify legal violence? What is the relationship, if any, between legal violence and political theology? How can thinking critically about legal violence help us understand contemporary political issues?

Tuesday, January 10: Analytic Jurisprudence: The Possibility of Nonviolent Law

- Scott Shapiro, *Legality,* (Harvard University Press, 2011), 1-33, 51-78, 154-182

Thursday, January 12: Analytic Jurisprudence: Reply to Shapiro

- Fredrick Schauer, *The Force of Law,* (Harvard University Press, 2015), 1-42

Tuesday, January 17: Walter Benjamin's "Critique of Violence"

- Walter Benjamin, "Critique of Violence" in *Reflections: Essays, Aphorisms, Autobiographical Writings,* (Mariner Books, 2019 [1921]), 291-316
- James Martel, "'A More Exact Criterion': Law's Violence and the Possibility of Nonviolence in the Work of Walter Benjamin," *Wake Forest Law Review* 49 (2014): 757-770

Thursday, January 19: Contemporary Applications of Benjamin's "Critique"

- Catherine Kellogg, "Walter Benjamin and the Ethics of Violence," *Law, Culture and the Humanities* 9, no.1 (2011): 71-90
- WATCH: Daniel Loick, "Benjamin and Abolition," Humboldt Universität Berlin, 2/12/2021, https://www.youtube.com/watch?v=HtU1xIdcm1I

Violence, Community, and Commitment

We are used to assuming that law is a project reserved for states, but is this right? What is the relationship between law and communities? Should we think about legal violence only in instrumental terms, or does it have expressive, community-forming stakes as well? Is there, nonetheless, a tension between violence and law, or between these two aspects of legal violence? Does Cover give us any tools for thinking law without violence?

Tuesday, January 24: Robert M. Cover's "Nomos and Narrative": Law and Community

- Robert M. Cover, "Supreme Court Forward 1982 – Nomos and Narrative" *Harvard Law Review* 97, no.4 (1983): 4-68

Thursday, January 26: Robert M. Cover's "Violence and the Word": Law and the Organization of Violence

- Robert M. Cover, "Violence and the Word," *The Yale Law Journal* 95 (1986): 1601-1629
- Austin Sarat and Thomas R. Kearns, "Making Peace with Violence: Robert Cover on Law and Legal Theory" in *Law's Violence,* (University of Michigan Press, 1992), 211-250

Disciplinary Power and the Complexities of Reform

What does it mean to say that penal techniques help shape subjectivity, and how do they do so? Does reducing the physical violence of law always constitute progress? What other means, beyond direct physical force, does law have to discipline subjects? Why is it useful to study the history of penal reform? To what extent are penal techniques reproduced in other spheres of modern life? What cautions and/or lessons does Foucault give us about the prospects for reforming our legal/penal institutions today?

Tuesday, January 31: Foucault I: From the Scaffold to the Timetable

- Michel Foucault, *Discipline and Punish: The Birth of the Prison,* (Vintage Books, 1995 [1975]), 3-103

Thursday, February 2: Foucault II: Discipline and Reform

- Michel Foucault, *Discipline and Punish: The Birth of the Prison,* (Vintage Books, 1995 [1975]), 195-235, 293-308
- PERUSE: "Reformist reforms vs. abolitionist steps to end imprisonment," *Critical Resistance,* 2021, https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf

Gender, Race, Class, and Legal Violence

What does legal violence do in the world? How does it constitute and shape political and social relations, and how do political and social relations constitute and shape it? More specifically, how does it articulate with forms of race, gender, and class oppression? What, if any, is the legitimate role for legal violence in responding to the private violence such oppressed groups are often more liable to experiencing? How can attention to legal violence help us think about the complications that arise as these axes of oppression intersect?

Tuesday, February 7: Intersections of Vulnerability

- Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43 (1990): 1241-1299
- Joe Soss and Vesla Weaver, "Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities," *Annual Review of Political Science* 20 (2017): 565-584
- INCITE-Critical Resistance Statement on Gender Violence and the Prison-Industrial-Complex (2001), https://incite-national.org/incite-critical-resistance-statement/

Thursday, February 9: Masculinity

- Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs: Journal of Women in Culture and Society* 29, no. 1 (2003): 1-25
- Angela P. Harris, "Gender, Violence, Race, and Criminal Justice," *Stanford Law Review* 52 (2000): 777-807

Tuesday, February 14: Whiteness (Final paper proposal due)

- Erin Pineda, "Seeing like a White State," in *Seeing Like an Activist: Civil Disobedience and the Civil Rights Movement*, (Oxford University Press, 2018), 22-52
- Lisa Guenther, "Seeing Like a Cop: A Critical Phenomenology of Whiteness as Property" in *Race as Phenomena: Between Phenomenology and the Philosophy of Race,* (Rowman & Littlefield, 2019), 189-206

Thursday, February 16: Legal Violence and Raced/Gendered Subjectivity

- Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*, (University of North Carolina Press, 2016) 1-58

Glimpses of Non-Violent Law

What is law for? Can it be understood apart from the violence with which we now associate it? Is answering this question a worthwhile theoretical project? A worthwhile political project? What is the relationship between violence and power—need they go hand in hand? Does law require enforcement, and is "enforcement" synonymous with violence? What is to be made of legal systems—both historical and contemporary—which do not enforce their law in the manner that modern states do?

Tuesday, February 21: Hannah Arendt, Law, and the Power/Violence Distinction

- Hannah Arendt, "A Special Supplement: Reflections On Violence" *New York Review of Books,* February 27, 1969,

https://www.nybooks.com/articles/1969/02/27/a-special-supplement-reflections-on-violence/

- Keith Breen, "Law Beyond Command? An Evaluation of Hannah Arendt's Understanding of Law," in *Hannah Arendt and the Law,* (Hart Publishing, 2012), 15-34

Thursday, February 23: Alternative Legalities

- Daniel Loick, "Law Without Violence," in *Law and Violence: Christoph Menke in Dialogue*, (Manchester University Press, 2018), 96-111
- Oona Hathaway and Scott J. Shapiro, "Outcasting: Enforcement in Domestic and International Law," *The Yale Law Journal* 121, no. 2 (2011): 261-302, 344-349

Abolitionist Futures

Does the abolition of the prison-industrial-complex entail the abolition of law as such? Are there forms or uses of law that remain compatible with this political project, and indeed, might be part of advancing it? What kind of responses can abolitionists offer to private violence, and are they sufficient? What is the place, if any, of traditional US legal mechanisms—legislative programs and/or constitutional interpretation—in bringing about abolitionist futures? Might we, in addition or instead, regard the institution-building activities and experiments of abolitionist movements themselves *as exercises of abolitionist "law"? How do the ideas we have studied together in this course illuminate these questions?*

Tuesday, February 28: Abolition and US Law

- Allegra McLeod, "An Abolitionist Critique of Violence," *The University of Chicago Law Review* 89, no. 2 (2022): 525-556
- Allegra McLeod, "Prison Abolition and Grounded Justice," *UCLA Law Review* 62 (2015): 1158-1172, 1207-1218, 1224-1239
- Dorothy Roberts, "Abolition Constitutionalism," *Harvard Law Review* 133, no.1 (2019): 3-11, 105-122

Thursday, March 2: Abolition beyond US Law

- Ruth Wilson Gilmore, "Abolition Geography and the Problem of Innocence" in *Futures of Black Radicalism* (Verso, 2017), 225-240
- Mia Mingus, "Transformative Justice: A Brief Description," January 11, 2019, https://transformharm.org/tj_resource/transformative-justice-a-brief-description/
- LISTEN: "One Million Experiments Part I: The Hypothesis," with Mariame Kaba, *AirGo* podcast, October 15, 2021 [1:17], and/or
    - PERUSE: https://millionexperiments.com/search

Tuesday, March 7: (Final paper due)