



University
of Victoria

Graduate Studies

Notice of the Final Oral Examination
for the Degree of Doctor of Philosophy

of

KATHRYN PLYLEY

MA (Carleton University, 2011)

BA (University of Toronto, 2008)

**“Tolerated Illegality and Intolerable Legality: From Legal Philosophy to
Critique”**

Faculty of Law

Friday, March 9, 2018

2:00 p.m.

Clearihue Building

Room B017

Supervisory Committee:

Dr. Rebecca Johnson, Faculty of Law, University of Victoria (Supervisor)

Dr. Sara Ramshaw, Faculty of Law, UVic (Member)

Dr. Scott Woodcock, Department of Philosophy, UVic (Outside Member)

External Examiner:

Dr. Diana Majury, Department of Law and Legal Studies, Carleton University

Chair of Oral Examination:

Dr. Joan Martin, Department of Educational Psychology and Leadership Studies, UVic

Abstract

This project uses Michel Foucault's underdeveloped notion of "tolerated illegality" as a departure point for two converging inquiries. The first analyzes, and then critiques, dominant legal logics and values. This part argues that traditional legal philosophers exhibit a "disagreement without difference," generally concurring that legal certainty and predictability enhance agency. Subsequently, this section critiques "formal legal" logic by linking it to science envy (specifically the desire for certainty and predictability), and highlighting its agency-*limiting* effects (e.g. the violence of law en-*force*-ment). The second part examines multiple dimensions of tolerated illegality, exploring the permutations of this complex socio-legal phenomenon. Here the implications of tolerated illegality are mapped across different domains, ranging from the dispossession of Indigenous peoples of their lands, to the latent ideologies embedded in superhero shows. This section also examines the idea of liberal "tolerance," as well as the themes of power, domination, politics, bureaucracy, and authority. Ultimately, this project demonstrates that it is illuminating to study legality and (tolerated) illegality in tandem because although analyses of "formal legality" provide helpful analytical texture, the polymorphous and entangled nature of tolerated illegality makes clear just how restricted and artificial strict analyses of legality can be.