

Course Outline

COURSE:	LAWS 2105 A - Human Rights and Social Justice
TERM:	Fall 2009/10
PREREQUISITES:	Second year standing
CLASS:	Day & Time: Fridays, 11:35 – 2:25pm
	Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor R. Rueban Balasubramaniam
CONTACT:	Office: D487 LA (Loeb Bldg)
	Office Hrs: Wednesdays, 2:00-4:00pm by Appointment.
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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This course is heavily theoretical and focuses on the relationship between the concept of the rule of law and the attempt to secure human rights as a legal constraint on state power. The inquiry focuses on competing theoretical perspectives about the morality of the rule of law and how these perspectives serve or disserve the attempt to protect human rights as a legal constraint on state power. As a context for our examination, we will consider how constitutional liberal democracies, like the United States and Canada, have sought to ground rule-of-law legitimacy for anti-terrorism measures that strain human rights in answering the threat of global terrorism post 9/11. We shall examine the extent to which such claims are justified with a view to illuminating the relationship between the rule of law and the protection of human rights.

The primary mode of assessment in this course involves the writing of Response Papers. Response Papers are short critical papers (no longer than 1000 words) written in essay format. You will be expected to write four such papers about readings in this course. Note that papers are very difficult to write because they require that you offer an analysis of a reading and not a mere summary of the reading; you must build a critical argument. In addition, the readings are challenging. To facilitate your task in writing Response Papers, I will conduct several workshops on how to write Response Papers as well as workshops about how to analyze complex theoretical work. Therefore, it is paramount that you attend all lectures and arrive prepared to participate during lectures where participation entails that you bring a copy of the readings, your notes, as well as questions that you have in mind to ask during lectures.

REQUIRED TEXTS

All readings mentioned in this course outline are required readings and will be posted on Web CT. Supplementary materials will be posted on Web CT as the course progresses.

COURSE REGULATIONS

1) **Assessment deadlines are absolute so there are no late penalties and no extensions; any late work automatically receives a grade of 0.**

As I have indicated, you must write four response papers in this course. However, your final grade will be calculated by combining the marks achieved in your two best papers of the four. All papers are to be submitted to the Law Department Drop Box on the dates stipulated below and are not to be handed in to me personally. I will collect these papers on the following day for marking. If there are doubts about when your paper was handed in, I will treat the Law Department stamp as conclusive evidence of timely submission. If the stamp does not indicate the relevant date required in the outline, I will automatically impose mark of 0. There are no extensions. In addition, the relevant deadlines for submitting essays are as stipulated on this outline and not on the undergraduate calendar. This also means that your final Response Paper must be handed in on November 30 as stated below and not on any later date.

My rationale for this strict approach towards deadlines is that since your final grade ultimately depends upon the two best response papers that you produce, there is a degree of flexibility built into the assessment scheme since if you are unable to get a paper in on time, you will still have at least three or two more opportunities to fulfill the assessment requirements. However, as I have explained above, it is not easy to produce reasonable Response Papers and so practice makes perfect; you should write all four and hand in them in a timely manner to receive my comments. In my experience, students improve drastically over the last two papers after having gone through the first two and so, again, I urge you to write all four papers so that you are in a good position to achieve a reasonable grade.

Please ensure that you keep electronic copies of your Response Papers and note that I **do not accept emailed assignments**. I require physical copies handed in at the Law Department Drop-Box.

2) **Plagiarism**

Please familiarize yourself with Carleton University's policies on plagiarism. Plagiarism is a very serious offence and can lead to a permanent blemish on your record. If you are having difficulties in trying to write response papers, contact me early to deal with this.

3) **Email Etiquette**

Please state your name and student number in the headings of all emails that you send to me and please ensure you use your connect account. Be mindful of your tone and what you say over email since I keep a record of all of our email correspondence. Please use complete sentences and avoid short-forms. Also keep in mind, that when you email Professors, this may be an individual from whom you may ask for a reference so email etiquette matters in shaping how you are perceived. Before you email me, ask yourself whether you have a reasonable and clear question. If your query relates to an administrative issue that can be answered by looking at the course outline, then please confer with the outline. If your query relates to substantive issues about the material, please ask a very specific question rather than something that requires me to repeat something that you can easily figure out with a bit of reading or by asking somebody else. I will usually respond to your emails within 48 hours of receiving it although I do not check emails on weekends and public holidays and not after 4pm on week days, so if you email me after that time with an urgent matter, it will not be read until the next day.

COURSE EVALUATIONS

The course evaluation is built around Response Papers. A Response Paper is a short critical essay of no longer than 1000 words (or about 4-5 double spaced pages) that construct a critical analysis of a particular reading. It must be written in an essay format and attempt to articulate an argument. It is not a mere summary of the reading. Your argument should focus on an aspect of the reading or the argument made in the reading as a whole. It must show evidence of critical thought. Each paper is marked out of 50 marks and your final grade will be tabulated by combining the marks achieved in your two best Response Papers to produce a mark out of 100. Again, I urge you to write all four papers because they are not going to be easy to produce. Therefore, the more practice you have at them, the better your chances of doing well in this course. Below I have stipulated which readings you are to write about and the requisite deadlines for submitting these papers.

- 1) **H. L. A. Hart, “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629 due on September 28.**
- 2) **Ronald Dworkin, “The Elusive Morality of Law” [1965] Villanova Law Review 630-639 due on October 19.**
- 3) **Jeremy Waldron, “Security and Liberty: The Image of Balance” (2003) 11:2 The Journal of Political Philosophy 191- 210 due on October 26.**
- 4) **For your final Response Paper, analyze any of the essays from the last four weeks of class (starting with Oren Gross’s article and ending with my article). The Response Paper is due on November 30.**

SCHEDULE

Part I: Is the Rule of Law as Moral Idea?

1. **Sep 11** **Introductory Class.**
2. **Sep 18** **Gustav Radbruch and the ‘Radbruch Formula.’**

Radbruch, Gustav “Statutory Lawlessness and Supra-Statutory Law” and “Five Minutes of Legal Philosophy” trans. by Bonnie Litschewski Paulson & Stanley L. Paulson (2006) 26:1 Oxford. J. Legal Studies 1-15.
3. **Sep 25** **H. L. A. Hart’s Legal Positivism. [Response Paper Workshop]**

Hart, H L. A., “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629.
4. **Oct 2** **Lon Fuller’s Internal Morality of Law.**

Fuller, Lon L., “Positivism and Fidelity to Law—A Reply to Professor Hart” [1958] 71:4 Harvard Law Review 630-672.
- Oct 9** **No Class due to University Day.**

5. Oct 16 Ronald Dworkin and the Rights Conception of Legality.

Dworkin, Ronald M., "The Elusive Morality of Law" [1965] Villanova Law Review 630-639.

Dworkin, Ronald M., "*Hard Cases*" (1975) 88 Harvard Law Review 1057-1109.

Part II: The Balance between Liberty and Security

6. Oct 23 The Image of Balance

Waldron, Jeremy "Security and Liberty: The Image of Balance" (2003) 11:2 The Journal of Political Philosophy 191- 210.

7. Oct 30 Carl Schmitt's Political Theology.

Scheuerman, William E. "Emergency Powers and the Rule of Law after 9/11," (2006) 14: 1 Journal of Political Philosophy 61-84.

8. Nov 6 Oren Gross and the Extra-Legal Measures Model.

Gross, Oren, "Should Responses to Violent Crises Always be Constitutional?" (2003) 112 Yale Law Journal 1011-1134.

9. Nov 13 David Dyzenhaus's Legality Model. [Response Paper Workshop]

Dyzenhaus, David, "The State of Emergency in Legal Theory" in Victor Ramraj, Michael Hor, and Kent Roach (eds.) *Global Anti-Terrorism Law* (Cambridge University Press, 2005), 66-89.

10. Nov 20 The Prohibition against Torture as a Legal Archetype.

Waldron, Jeremy, "Torture and Positive Law: Jurisprudence for the White House" (2005) 105:6 Columbia Law Review 1681 – 1750.

11. Nov 27 Indefinite Detention: Rule of Law or Rule by Law?

Balasubramaniam, Rueban R., "Indefinite Detention: Rule of Law or Rule by Law" in Victor Ramraj (ed.) *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008)

12. Dec 4 No Class.