

Course Outline

COURSE: LAWS 2105 C – Social Justice and Human Rights
PREREQUISITES: Second year standing
TERM: Winter 2008
CLASS: Day & Time: Thursday, 11:30 – 2:25
Room: 3165 ME (MacKenzie Engineering)
INSTRUCTOR: Professor R. Rueban Balasubramaniam
CONTACT: Office: D 487 Loeb
Office Hrs: Thursdays, 3:00-5:00pm by appointment.
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Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is March 14, 2008 for April examinations. For further information, please see, http://www.carleton.ca/pmc/students/accm_policy.html

COURSE DESCRIPTION

Considerations grounded in justice motivate the project of trying legally to protect human rights as a moral constraint on state power. But the success of that project depends for its realization upon an aspiration to a moral conception of the rule of law, raising a question about how we should understand the relationship between the rule of law and the idea of justice. In this course, we shall focus on this question. Part I of the course deals with this question primarily through the lens of legal philosophy where the relationship between law and justice is the subject of great debate and Part II examines real-world examples which reveal how that debate informs the way we might think about the question whether the rule of law and human rights are optional for constitutional liberal democracies, like the United States and Canada, in answering the threat of global terrorism post 9/11.

COURSE STRUCTURE

Although this is a lecture-style course, its principal aim is to expose students to a philosophical approach toward the study of law. You are therefore expected to read the materials before coming to class in order to engage in informed discussion about them and to participate in a number of workshops about critical writing and analysis. Note that a failure to participate in these workshops is likely to impair your success in dealing with the assessment requirements for this course.

COURSE MATERIALS

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 ASSESSMENTS

In addition to a mid-term exam and a final exam, you will be required to write two response papers analyzing a specific reading, the first from Part I and the second from Part II of the course. A response paper is a short critical analysis of a reading that sets out a clear account of the position taken in the reading and a logical argument analyzing that position. The first response paper will be 3 double spaced pages in length and the second, 5 double spaced pages.

All components must be completed.

- 1) 20% - Mid-Term Exam – February 14th, 2008.
- 2) 15% - Response Paper from Part I – February 28th, 2008.
- 3) 25% - Response Paper from Part II – April 3rd, 2008.
- 4) 40% - Final Exam.

All response papers are due according to the deadlines stipulated above and are subject to a 2% penalty per day for lateness, including weekends. These response papers must be handed in at the beginning of class. Emailed response papers will not be accepted and no extensions will be given under any circumstances. In addition, a failure to attend either the mid-term exam or the final exam will result in an automatic 0 for the exam without any option for makeup assignments. The ABSOLUTE FINAL date for submitting all coursework is April 9th beyond which you will receive a 0 for that piece of work.

Please ensure that you keep electronic copies of all your assignments.

EMAIL GUIDELINES

You can expect a 48 hour turnaround time reply to your emails except on weekends and holidays. Please ensure that you correspond with me from your official university email address and state your student number in the subject heading of every email.

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

1) January 10 – Introduction

2) January 17 - 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) January 24 - H. L. A. Hart's Legal Positivism

- Hart, H L. A., "Positivism and the Separation between Law and Morals" [1958] 71:4 Harvard Law Review 593-629.

4) January 31 – Response Paper Writing Workshop & 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.

5) February 7 - 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.

6) February 14 – Mid-Term Exam & 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.

7) February 21 – Reading Week**Part II: The Balance between Liberty and Security****8) February 28 – Deadline for Response Paper I**

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

9) March 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.

10) March 13 - David Dyzenhaus's Legality Model

- 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.

11) March 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.

12) March 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 University Press, forthcoming).

13) April 3 – Deadline for Response Paper 2 & Exam Review.