

Course Outline

COURSE: LAWS 2105 C - Social Justice and Human Rights

TERM: Winter 2008/09

PREREQUISITES: Second-year standing

CLASS: Day & Time: Thursdays - 11:35am – 2:25pm

Room: C164 LA – (Loeb Building)

INSTRUCTOR: Professor R. Rueban Balasubramaniam

CONTACT: Office: D487
Office Hrs: Thursdays, 3-5pm
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“Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams.” Also available at http://www.carleton.ca/pmc/faculty/acom_statement.html . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: www.carleton.ca/equity

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 that reveal how the 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.

The primary mode of assessment in this course is the Response Paper. Response Papers are short critical papers that analyze particular readings as a whole, or that deal with a specific aspect of readings. Response Papers force you to articulate an argument in a compressed space. Therefore, you must argue in a way that is clear and compelling using an economy of expression. The workshops zone in on various skills necessary to do this. Your informed participation in these workshops will be crucial to your success in this course so you must come to class having read the materials. Make sure to bring a copy of the required readings to class, along with any and all notes and questions you have made while completing the readings. This course aims to teach both what the course readings cover AND how to think and write about these topics.

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.

EVALUATION

(All components must be completed in order to get a passing grade)

- 1) **25% Response Paper 1** – A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that construct a critical analysis of a particular reading. A Response Paper is not a mere summary of the reading. You must make a critical argument about an aspect of the reading or the reading as a whole. For your first paper, **analyze the essay by Hart, H L. A., “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629 and submit it on January 29.**
- 2) **25% Response Paper 2** - A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that construct a critical analysis of a particular reading. A Response Paper is not a mere summary of the reading. You must make a critical argument about an aspect of the reading or the reading as a whole. For your second paper, **analyze the essay by Dworkin, Ronald M., “Hard Cases” (1975) 88 Harvard Law Review 1057-1109 and submit it on February 12.**
- 3) **25% Response Paper 3** - A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that construct a critical analysis of a particular reading. A Response Paper is not a mere summary of the reading. You must make a critical argument about an aspect of the reading or the reading as a whole. For your third paper, **analyze the essay by Waldron, Jeremy “Security and Liberty: The Image of Balance” (2003) 11:2 The Journal of Political Philosophy 191- 210 and submit on March 5.**
- 4) **25% Response Paper 4** - A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that construct a critical analysis of a particular reading. A Response Paper is not a mere summary of the reading. You must make a critical argument about an aspect of the reading or the reading as a whole. **For your fourth and final paper, analyze any of the essays from the last four weeks of class and submit it on April 2.**

RULES GOVERNING ASSIGNMENTS AND EMAIL – PLEASE READ CAREFULLY

- a) No extensions will be granted. All late work will be penalized by 5 % per day.
- b) Each Response Paper must be handed in to me at the beginning of class on the day that it is due. You will not receive any written feedback or comments from me for Response Papers handed in after the beginning of class, whether handed in later in the class, later in the day by being dropped in the Law Department Drop Box, or at any subsequent time in addition to the late penalty which will begin adding up if you do not hand in your Response Paper at the start of class on the day that it is due.
- c) The Final Research Essay should be handed in to the Law Department Drop-Box on the day that it is due.

- d) Plagiarism is an academic offence and can lead to very serious consequences. Please familiarize yourself with Carleton's policies on plagiarism.
- e) You must keep an electronic copy as backup of all assignments.
- f) I do not accept emailed assignments. You must hand in a physical copy.
- g) You can reasonably expect a 48 hour turnaround time on emails except over weekends or public holidays. Email communication should be reserved *only* for matters relating to the substantive aspects of the course materials, that is, course content. For communication on all other matters, you must make an appointment to see me in person or come to my office during office hours.

SCHEDULE

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

- 1) **January 8 Introduction ['Critical Questions' Workshop]**
- 2) **January 15 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 22 H. L. A. Hart's Legal Positivism. ['Response Paper I' Workshop]**
Hart, H L. A., "Positivism and the Separation between Law and Morals" [1958] 71:4 Harvard Law Review 593-629.
- 4) **January 29 Lon Fuller's Internal Morality of Law. ['Scholarly Accounts' Workshop]**
Fuller, Lon L., "Positivism and Fidelity to Law—A Reply to Professor Hart" [1958] 71:4 Harvard Law Review 630-672.
- 5) **February 5 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 12 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 19 No Class due to Winter Break.**

Part II: The Balance between Liberty and Security**8) February 27 The Image of Balance [‘Unearthing Underlying Assumptions’ Workshop]**

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

9) March 5 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 12 David Dyzenhaus’s Legality Model. [‘Response Paper II’ 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.

11) March 19 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 26 Indefinite Detentions: 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)

13) April 2 No Class. Final Response Paper is due.