

Course Outline

COURSE: LAWS 3602A International Protection of Human Rights

TERM: Fall 2012

PREREQUISITES: LAWS

CLASS: **Day & Time:** Fridays at 835am-11:35am
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Rueban Balasubramaniam
(CONTRACT)

CONTACT: **Office:** Loeb Building, Room D487
 Office Hrs: Fridays 1-2:30pm by appointment only
 Telephone: 613-520-2600 ext 8809
 Email: Rueban_Balasubramaniam@carleton.ca

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at **613-520-6608** or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable). For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

The attempt to secure the international protection of human rights can be viewed as an attempt to internationalize a liberal model of the rule of law that takes rights seriously on the basis that the duty to take rights seriously is immanent in that model. However, post 9/11, liberal democracies like the United States and Canada have sought to claw back their commitment to protecting international human rights. This behavior raises pivotal questions about the extent to which liberal democracies and the liberal rule of law possess the conceptual resources with which to further the project of affirming international human rights norms. We will explore these questions principally through an examination of a debate between Oren Gross and David Dyzenhaus about the limits of the rule of law in states of emergencies (especially in liberal democracies).

REQUIRED TEXTS

All readings for this course will be posted on Web CT.

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.**

The primary mode of assessment in this course involves the writing of Critical Response Papers. Response Papers are short critical essays (no longer than 1000 words). You will be expected to write four such papers about readings in this course. Your final grade will be calculated by combining the marks achieved in your two best papers of the four.

A Response Paper is not a mere summary of a particular reading. Rather, you must build a critical argument that sets out and develops a thesis while simultaneously engaging the text of that reading. This is challenging because the readings are complex and because you must achieve all this in a very compressed space. To write a good Response Paper, you must show that you can closely read text, advance a clearly formulated thesis, set out a systematic account of a thinker's argument, and justify your thesis through a set of logically connected reasons.

Do not underestimate the difficulty of writing Response Papers. Some students think that it is easy to write Response Papers because a Response Paper is short. This belief leads them to write papers in the last minute. Some make the worse mistake of thinking that since the final grade for this course is tabulated by reference to your two best papers, it suffices to write two papers. I would strongly advise against this approach. However, it is not unusual to spend a lot of time drafting Response Papers to properly distill your thesis and to set out it out in a clear manner. In this spirit, strongly urge you to write all four Response Papers and hand in them in a timely manner to receive my comments. In my experience, students tend to find the first two very difficult but they improve quite dramatically over the last two papers if they have taken the comments I have made about their earlier Response Papers seriously. In short, it is in your interests to practice writing as many of these papers as possible.

In addition, I will I run several workshops about how to write such papers that focus on developing the skill-set that you need to utilize. It is therefore imperative 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. In this regard, classes will not be run in a typical lecture style. Rather, we will engage in small group discussion and wide class discussion more along the lines of a seminar as we work through the readings. Although I will not take attendance because of the size of the class, my counsel is that you regularly attend class and meaningfully participate in these discussions and workshops. Students who usually do well are usually regular in attending class.

All papers are to be submitted to me at the beginning of class on the relevant due date. Papers cannot be handed in at the Law Department Drop Box. 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 to me in class on November 30 as stated below and not at any later time.

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. Therefore, you can attain a final grade if you only submit two papers. However, again, I advise you to write all four so that you are able to produce response papers that are of a sufficiently high quality. And, let me once more emphasize that these papers will not be easy to write so practice makes perfect!

Note that I **do not accept emailed assignments**. I require physical copies. However, ensure you keep an electronic copy as a precaution.

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.

Do not send me unnecessary emails. 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.

Note that I do not check emails on weekends and public holidays and not after 4pm on week days.

EVALUATION

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

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) Response Paper 1: Oren Gross, "Should Responses to Violent Crises Always be Constitutional?" (2003) 112 Yale Law Journal 1011-1134 **due on September 28 in class.**

2) Response Paper 2: David Dyzenhaus, "The State of Emergency in Legal Theory" in Victor Ramraj, Michael Hor, and Kent Roach (eds.) *Global Anti-Terrorism Law* (Cambridge: Cambridge University Press, 2005), 66-89 **due on October 19 in class.**

3) Response Paper 3: Oren Gross, “Extra-Legality and the Ethic of Political Responsibility” in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 60 - 94 **due on November 2 in class.**

4) Response Paper 4: Analyze any of the essays from the last four weeks of class (starting with Terry Nardin’s article and ending with C. L. Lim’s article) **due on November 30 in class.**

SCHEDULE

1) September 7 – Introductory Class

2) September 14 – Oren Gross’ Critique of the Business as Usual and Accommodation Models for Emergencies

Required reading: Gross, Oren, “Should Responses to Violent Crises Always be Constitutional?” (2003) 112 Yale Law Journal 1011-1134.

3) September 21 – Gross’ Extra-Legal Measures Model

Required reading: Oren Gross, “Should Responses to Violent Crises Always be Constitutional?” (2003) 112 Yale Law Journal 1011-1134.

4) September 28 – David Dyzenhaus’ Legality Model

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

4) October 5 – University Day – No Class.

5) October 12- Gross’ Reply Round 1

Required reading: Oren Gross, “Stability and Flexibility: A Dicey Business” in Victor Ramraj, Michael Hor, and Kent Roach (eds.) *Global Anti-Terrorism Law* (Cambridge: Cambridge University Press, 2005), 90 – 107.

6) October 19 – Dyzenhaus' Counter Attack

Required reading: David Dyzenhaus, "The Compulsion of Legality" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 33 – 59.

7) October 26 – Gross' Reply Round 2

Required reading: Oren Gross, "Extra-Legality and the Ethic of Political Responsibility" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 60 – 94.

8) November 2 – Emergency Logic

Required reading: Terry Nardin, "Emergency Logic: prudence, morality, and the rule of law" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 97-117.

9) November 9 – The Political Constitution

Required reading: Mark Tushnet, "The political constitution of emergency powers: some conceptual issues" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 145 - 155.

10) November 16 – International Emergencies and Jurisdictional Politics

Required reading: Kanishka Jayasuriya, "Struggle over legality in the midnight hour: governing the international state of emergency" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 360-384.

11) November 23 – Legal "Black Holes" in International Law

Required reading: C. L. Lim, "Inter arma silent leges? Black hole theories of the laws of war" in Victor Ramraj ed. *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 385 – 407.

12) November 30 – Course Evaluations and Final Response Paper is due in Class