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| <b>LAWS 4102</b>       | <b>Controversies in Rights Theory</b>  |
| <b>PREREQUISITES:</b>  | <b>Fourth year honours standing – strictly enforced</b>  |
| <b>TERM:</b>           | <b>Winter 2012</b>   |
| <b>Day &amp; Time:</b> | <b>Fridays 8:35 – 11:25 Please note: In the first seminar, we will establish that in subsequent seminars we will meet at 9am, rather than 8:35 and take no break</b> |
| <b>Room:</b>           | <b>Please check the Carleton website for room</b>  |
| <b>INSTRUCTOR:</b>     | <b>Dr. Amy Bartholomew</b>   |
| <b>CONTACT</b>         |  |
| <b>Office:</b>         | <b>D581 LA (Loeb)</b>  |
| <b>Office Hours:</b>   | <b>Fridays 12:30 to 2:00</b>   |
| <b>Email:</b>          | <b><a href="mailto:Amy_Bartholomew@carleton.ca">Amy Bartholomew@carleton.ca</a></b>  |
| <b>Telephone:</b>      | <b>520-2600 x. 3696</b>  |

The fourth year seminar in controversies in rights theory will focus in the winter term 2012 on challenges to and promises of human rights in 'late' modernity by analyzing recent theoretical literature on their universality, relationship to democracy, and to political (and other) power. In particular, we will ask whether a deliberative democratic approach in the Habermasian tradition to human rights and democracy is capable of addressing objections and critiques of rights raised by Hannah Arendt and by relativism, postcolonialism, and the 'new communists'. This literature is famously challenging and typically pitched at a highly abstract level. So, please be prepared for a demanding seminar that will likely challenge your analytical skills. The 'challenge' will be rewarded, I believe, in the development of a better justified position in relation to human rights.

#### **SEMINAR:**

This is a fourth year honours seminar. As a seminar, there will be virtually no lecture component. I view it as an intensive 'reading seminar' or 'reading group' the success of which is dependent on you, each member of the seminar, as well as upon me. I will attempt to guide the discussion where I think it needs guidance. I will also set the context for debates, where necessary. And, I will debate with you and sometimes (be prepared) suggest you need to rethink matters, or, even, that I think you are wrong. But, this seminar is a *completely collective project* for which we are all responsible and should be embraced as such by each of you. **If you do not wish to be part of a participatory seminar that concentrates on theoretical literature, please don't take this seminar!**

You absolutely must read everything, carefully, for the seminar, before the seminar. The success of a seminar depends on informed, lively and critical student participation. Regular attendance in seminar is necessary, but not sufficient, to constitute participation. The participation mark is a solid 20% of your overall mark so, please make the most of it. The foundation for informed participation (not to mention evaluation and critique) is close study of the readings before the class in which they are assigned.

## **EVALUATION:**

Evaluation will be based on the following combination of seminar participation and written work.

**1. A participation mark of 20% based on weekly seminar participation.**

The participation mark is a *composite mark* evaluating your performance over the entire term and with respect to discussion leadership, weekly seminar participation, and summaries of the literature prepared for seminar each week. You are expected to participate in seminar on the basis of having read and reflected seriously on the literature and issues each week. Please come to seminar **with your readings, your summary** of the readings (see below), **and a question, an objection, or an issue** you would like to discuss and be prepared to discuss it with the seminar. Our discussion will focus on making sense of and evaluating the claims the literature makes.

In the final weeks of the seminar, weeks 9, 10, (and possibly 11), we will likely set up teams to discuss the “theoretical confrontations” in a confrontational way. We will sort this out over the course of the term but expect to be asked to form a team and to prepare an argument for ‘your side’ of the debate.

**2. Weekly summaries of the readings. 10%**

**For weeks 2 through 8, and 10-11** please prepare a summary (not an outline) of each reading that is no longer than 2 pages (single spaced) that includes a list of key words. Also, pose one question (on any of the readings) for the seminar possibly to address. You may use this summary to inform your seminar participation and then hand it in to me at the end of each seminar. I will not mark these summaries except to register that you have handed them in. They are for your preparation and capacity-building. They will also help you in the final seminars when we refer back to the earlier readings in a “contest of theoretical perspectives” and help you prepare for and write the essays and take home examination.

**You may fail to write summaries one week between week 2 and week 8 and weeks 10-11 without losing marks. And, you do not need to write summaries for the weeks you write an essay.**

**Therefore, failure to hand in 6 complete sets of summaries on time** (or submitting summaries that are clearly inept) over the course of seminar will result in a 1.7% loss for each week you do not hand them in.

**3. 2 short essays 5 pages (max) (double-spaced) 10% each for a total of 20%.**

The first short essay must be written for weeks 3 or 4. This is indicated on the syllabus with a “\*1”. The second short essay must be written for weeks 6, 7 or 8. This is indicated with a “\*2”.

The short essay is **due in the class for which it is submitted**. No late essays will be accepted.

The short essays should evaluate some aspect of the literature for the relevant week and raise at least *one question* for discussion in class. Your evaluation must be based on a clear, concise, understanding of the literature but should also go beyond mere description or summary of the literature. The paper and question(s) should be conceptual in nature, not merely empirical. The short essays will be marked on the basis of **demonstrated understanding of the main themes in all of the literature for that week**, the thoughtfulness of the issue(s) chosen for consideration, the evaluation provided and the question posed. Writing style, grammar, proper citation etc. will count in your mark.

Please provide a title page for your essay that includes your name, student number, date, course number and an indication of which essay (first or second) is being submitted. Please number your pages.

I will return your marked essays in seminar within two weeks of their submission. If you are not in seminar that day, I will leave them in the main Law Dept office for you to pick up.

#### **4. Take home examination or research essay 50%. Due Monday April 9 before 4pm**

The take home examination will be distributed in the 11<sup>th</sup> seminar. It is due on Monday April 9 before 4pm. Late exams will result in failure in the course in the absence of a medical excuse that I judge to be adequate. You may submit your exam as an email attachment so long as: (1) you get it to me before 4pm on the due date, and (2) **you** take the responsibility for any technological failures. In other words, late exam answers will not be accepted. The take home examination will pose a question and ask you to integrate and assess the literature we have read and discussed this term. You will not be required to do outside research for the examination. But, you will be expected to have mastered a wide swath of the literature. The exam answer should be approximately 3500 words (about 10 pp double spaced, Times New Roman 12). It may be no longer than 4000 words (about 12 pp double spaced).

You may do a research essay instead of the take home examination. If you choose this option please clear the subject with me by March 2. The research essay must draw on an area of research related to the course. You will be required to do research beyond the readings in the course. The essay must be original to this course. The research essay should be about 5000 words (about 15 pp. double spaced) and no more than 5500 words (about 18 pages double-spaced) not including endnotes. It is due April 9 before 4pm. Late essays will result in failure in the course in the absence of a medical excuse that I judge to be adequate.

#### **Readings:**

Required readings are available in a 4102 Coursepack which can be purchased at Octopus Books (116 Third Avenue, Ottawa, just west of Bank St.) and through online, ejournals that can be accessed through the Carleton University Library website. Coursepack readings are marked with a ! in the syllabus. I advise you to purchase the coursepack as early as possible as the reading for the second seminar is in that compilation. If you do not know how to access journal articles from the library website please consult with the library at the very beginning of the term to learn how to do so. I suggest that you get all of the journal based readings together in the first week of term.

#### **Please bring readings to seminar each week.**

I have included supplementary readings in the syllabus. These are just rather idiosyncratic listings of literature that is associated with each week's theme, for your information.

#### **WebCT:**

Please check webct for this seminar several times a week, and at least on Thursdays for possible discussion questions, revisions to plans etc.

Please email me OFF webct, at my Carleton email address: Amy\_Bartholomew@carleton.ca

### **GENERAL RULES:**

**Failure to complete any aspect of the requirements may result in failure in the course.**

**Plagiarism will not be tolerated. There is a zero tolerance policy on plagiarism which means that any act of plagiarism – whether intentional or inadvertent – will be taken directly to the Dean.**

The OED (Oxford English Dictionary) defines plagiarism as follows: “The action or practice of taking someone else's work, idea, etc., and passing it off as one's own; literary theft.”<sup>1</sup>

Plagiarism includes failing to use quotation marks around quoted material, even if one provides a citation, or providing an inadequate citation such as failing to provide a page number for quoted material.

For more information on how to cite, in order to avoid inadvertent plagiarism, check:  
<http://www1.carleton.ca/studentaffairs/academic-integrity/> Another very useful source is:  
<http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>

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://www2.carleton.ca/pmc/policies-and-regulations/policy/>. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **MARCH 7, 2012**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website:  
[www.carleton.ca/equity](http://www.carleton.ca/equity)

"Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Dean."

Please note: The seminar schedule, readings and the precise tasks for seminar participation are subject to change.

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<sup>1</sup> “Plagiarism, n,” *Oxford English Dictionary*. Third Edition, June 2006.

## **SEMINAR SCHEDULE**

### **1. Introduction and Administrivia**

**January 6**

#### **Part One: The Perplexities of Human Rights and Contemporary Versions of the “Hermeneutic of Suspicion”**

### **2. Arendt: Laying the basis for the “right to have rights” and a critique of the “rights of man”**

**January 13**

Arendt, Hannah. [1966] (New Edition) *The Origins of Totalitarianism*, “The Decline of the Nation State and the End of the Rights of Man,” pp. 267-302, and intro p. ix . San Diego/New York: Harvest/Harcourt. Any edition of the book will do.

#### **Supplementary:**

Menke, Christoph. 2007. "The 'Aporias of Human Rights' and the 'One Human Right': Regarding the Coherence of Hannah Arendt's Argument." *Social Research* 74, no. 3: 739-762.

Isaac, Jeffrey C. 1996. "A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights." *American Political Science Review* 90, no.1.

Fraser, Nancy. 2004. "Hannah Arendt in the 21st Century." *Contemporary Political Theory* 3: 253- 261.

Cohen, Jean. L. 1996. "Rights, Citizenship and the Modern Form of the Social: Dilemmas of Arendtian Republicanism," *Constellations* 3, no.2: 164-189.

Birmingham, Peg. 2006. *Hannah Arendt and Human Rights: The Predicament of Common Responsibility*. Bloomington, Indiana University Press.

Agamben, Giorgio. 2000. “Beyond Human Rights,” in *Means without Ends: Notes on Politics* Minneapolis: University of Minnesota Press, 15-26. Rsv.

Parekh, Serena. (2004). "A Meaningful Place in the World: Hannah Arendt on the Nature of Human Rights." *Journal of Human Rights* 3, no.1: 41-53.

Cohen, Jean. L. and Andrew Arato (1992). *Civil Society and Political Theory*. Cambridge, The MIT Press.

Isaac, Jeffrey C. (2002). "Hannah Arendt on Human Rights and the Limits of Exposure, or Why Noam Chomsky Is Wrong about the Meaning of Kosovo." *Social Research* 69, no. 2: 505-537.

May, Larry and J. Kohn, Eds. (1997). *Hannah Arendt: Twenty Years Later*. Cambridge: The MIT Press.

### **3. Relativism and Postcolonial Critiques of Rights**

**January 20 \*1**

Kapur, Ratna. 2006. “Human Rights in the Twenty-First Century: Take a Walk on the Dark Side.” *Sydney Law Review* 28: 665-687.

Narayan, Uma. 1998. “Essence of a Culture and a Sense of History: A Feminist Critique of Cultural Essentialism.” *Hypatia* 13, no. 2: 86-106.

!Mutua, Makua. 2004. "The Complexity of Universalism in Human Rights," in Ándras Sàjo ed., *Human Rights With Modesty: The Problem with Universalism* (The Netherlands: Brill NV): 51-64.

#### **Supplementary:**

- Asad, Talal. 2000. "What Do Human Rights Do? An Anthropological Enquiry" *Theory & Event*, 4, no. 4.
- Asad, Talal. 1996. "On Torture, or Cruel, Inhuman, and Degrading Treatment." *Social Research* 63: 1081.
- Davis, Michael C. 1998. "Constitutionalism and Political Culture: The Debate Over Human Rights and Asian Values." *Harvard Human Rights Journal* 11: 109-147.
- Benhabib, Seyla. 2002. "'Nous' et les 'Autres' (We and the Others): Is Universalism Ethnocentric?" in Benhabib, Seyla. *The Claims of Culture: Equality and Diversity in the Global Era*, pp.24-48. Princeton: Princeton UP.
- Ingram, James. D. 2005. "Can Universalism Still be Radical? Alain Badiou's Politics of Truth." *Constellations* 12, no. 4: 561-573.
- Kennedy, David. 2001. "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal*, 15.
- Cheah, Pheng. 1997. "Posi(ion)ing Human Rights in the Current Global Conjuncture. *Public Culture* 9:233-66
- Fitzpatrick, Peter. (2004). "Terminal Legality? Human Rights and Critical Being". *Critical Being: Law, Nation and the Global Subject*. Peter Fitzpatrick and Patricia Tuitt eds. Aldershot, Ashgate: 119. K3242 .C75 2004
- Mutua, Makua. "Savages, Victims and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no.1 (2001): 201-254.
- Burke, Roland. 2010. *Decolonization and the Evolution of International Human Philadelphia*, University of Pennsylvania Press.
- Asad, Talal. "On the Limits of Human Rights," <http://www.youtube.com/watch?v=6wyl6L3-BU>
- Sloane, Robert D. 2001. "Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights," *Vanderbilt Journal of Transnational Law*, 34: 560.
- Baxi, Upendra. 1998. "Voices of Suffering and the Future of Human Rights," *Transnational Law and Contemporary Problems* 8: 98.

#### **4. The New Communists and Rights**

**January 27 \*1**

- Ranciere, Jacques. 2004. "Who is the Subject of the Rights of Man?" *South Atlantic Quarterly* 103, no. 2/3: 297-310.
- Ranciere, Jacques. 2006. "Democracy, Republic, Representation." *Constellations* 13, no. 3: 297-307.
- !Douzinas, Costas. 2010. "Adikia: On Communism and Rights," in *The Idea of Communism*, eds. Douzinas, Costas and Slavoj Zizek, pp. 81-100. London and New York: Verso Press.

#### **Supplementary:**

- \*Balfour, I. and E. Cadava (2004). "The Claims of Human Rights: An Introduction." *South Atlantic Quarterly* 103, no. 2/3: 277-297.
- \*Ingram, James D. 2005. "Can Universalism Still be Radical? Alain Badiou's Politics of Truth." *Constellations* 12, no. 4: 561-573.

- Badiou, Alain. 2002. *Ethics: An Essay on the Understanding of Evil*. London and New York, Verso.
- Badiou, Alain. *The Communist Hypothesis*.
- Brown, Wendy. 2004. "Human Rights as the Politics of Fatalism," *South Atlantic Quarterly* 103:451
- Deranty, Jean-Phillipe. 2004. "Agamben's Challenge to Normative Theories of Human Rights" *Borderlands* 3, no.1.
- Zizek, S. (1999). "Against the Double Blackmail." *New Left Review* I/234(March/April): 76-82.
- Fine, Robert. "Cosmopolitanism and Human Rights: Radicalism in a Global Age," *Metaphilosophy* 40, no. 1, 2009: 8-23. Addresses the "negative dialectic" of Douzinas and Zizek.

## **Part Two: Discursive Universalism and Human Rights: Challenges to the 'Hermeneutics of Suspicion'**

### **5. Introduction to Habermas's Critical Theory**

**February 3**

Forst, Rainer. 1996. "Justice, Reason and Critique: Basic Concepts in Critical Theory" in *Handbook of Critical Theory*, ed. David Rasmussen. Oxford Blackwell: 138-162.

Habermas, Jürgen 1999. "Introduction," *Ratio Juris* 12, no.4: 329-335.

Habermas, Jürgen. 1996. "Paradigms of Law," *Cardozo Law Review* 17: 771.

[Also in: Habermas, Jürgen. 1998. "Paradigms of Law." In *Habermas on Law and Democracy: Critical Exchanges*, edited by Michel Rosenfeld and Andrew Arato, 13-25. Berkeley, CA: University of California Press.] Focus on his 'proceduralist paradigm'.

Interview with Jürgen Habermas, Youtube

<http://www.youtube.com/watch?v=jB16ALNh18Q&feature=related>

### **Supplementary:**

Rummens, Stefan. (2007). "Democratic Deliberation as the Open-Ended Construction of Justice." *Ratio Juris* 20, no.3: 335-354.

Habermas, Jürgen. 1996. "Three Normative Models of Democracy," in Benhabib, Seyla, ed. *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press), 21-30.

Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," in Benhabib, ed. *Democracy and Difference*, 67-94.

Habermas, Jürgen 2008. "On the Architectonics of Discursive Differentiation: A Brief Response to a Major Controversy". In *Between Naturalism and Religion: Philosophical Essays*, ed. and trans. Ciaran Cronin, pp. 77-98. Cambridge: Polity.

## 6. Discursive Universalism in Politics, Law, and Constitutional Rights

February 10 \*2

Habermas, Jürgen. 2001. "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" *Political Theory* 29: 766-781.

Habermas, Jürgen. 1994. "The Normative Deficits of Unification," in Jürgen Habermas, *The Past as Future*, trans. and ed. Max Pensky (Lincoln: University of Nebraska), 33-54.

Baynes, Kenneth. 2009. "Discourse Ethics and the Political Conception of Human Rights." *Ethics and Global Politics* 2, no.1: 1-21, just read pp. .

### Supplementary:

Kalyvas, Andreas. 2005. "Popular Sovereignty, Democracy, and the Constituent Power," *Constellations* 12, no. 2: 223-244.

Honig, Bonnie. (2007). "Between Decision and Deliberation: Political Paradox in Democratic Theory." *American Political Science Review* 101, no. 1: 1-17.

Chambers, Samuel. A. (2004). "Giving Up (on) Rights? The Future of Rights and the Project of Radical Democracy." *American Journal of Political Science* 48(2): 185-200.

Brady, John. 2004. "No Contest? Assessing the Agonistic Critiques of Jürgen Habermas's Theory of the Public Sphere." *Philosophy and Social Criticism* 30, no.3: 331-354.

Cronin, Ciaran. 2006. "On the Possibility of a Democratic Constitutional Founding: Habermas and Michelman in Dialogue." *Ratio Juris* 19(3): 343-369.

Habermas, 2003. "On Law and Disagreement," *Ratio Juris*, 16, no. 2: 187-194, esp. 193-194.

Wendy Brown. 2000. "Suffering Rights as Paradoxes," *Constellations* 7, no. 2: 230-241.

Habermas, "Postscript", *Between Facts and Norms*

**NOTE: NO SEMINAR ON FRIDAY FEBRUARY 17 – Catch-up Day.**

**NO SEMINAR ON FRIDAY FEBRUARY 24 READING WEEK**

## 7. Discursive Universalism and Human Rights

March 2

\*2

Habermas, Jürgen. 1998. "Remarks on Legitimation through Human Rights." *Philosophy and Social Criticism* 24:157-171

Habermas, Jürgen. 2010. "The Concept of Human Dignity and the Realistic Utopia of Human Rights." *Metaphilosophy* 4, no.4 : 464-480.

Morgan, Rhiannon. 2004. "Advancing Indigenous Rights at the United Nations: Strategic Framing and its Impact on the Normative Development of International Law." *Social & Legal Studies* 13, no. 4: 481-500. Just read 482-483; 496-497.

### Supplementary:

Habermas, Jürgen. (2008). "The Constitutionalization of International Law and the Legitimation Problems of a Constitution For World Society." *Constellations* 15, no.4: 444-455.



- Flynn, Jeffrey. 2003. "Habermas and Human Rights: Law, Morality, and Intercultural Dialogue." *Social Theory and Practice* 29: 431-457 CUL
- Benhabib, Seyla. 2008. "The Legitimacy of Human Rights," *Daedalus* Summer: 94-104.
- Habermas, Jürgen. 1997. "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight." In *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Mathias Lutz-Bachmann, 113-153. Cambridge, Ma.: The MIT Press.
- Abdel-Nour, Farid. 2004. "Farewell to Justification: Habermas, Human Rights and Universalist
- Paul Healy (2006). "Human Rights and Intercultural Relations" *Philosophy and Social Criticism* 32 (no.4) 513-541.
- Benhabib, Seyla. 2009. "Claiming Rights Across Borders: International Human Rights and Democratic Sovereignty." *American Political Science Review* 103(4): 691-704.
- Benhabib, Seyla. 2008. "The Legitimacy of Human Rights," *Daedalus* Summer: 94-104.
- Moon, Donald J. 2003. "Rawls and Habermas on Public Reason: Human Rights and Global Justice". *Annual Review of Political Science* 6:257-74
- Pogge, Thomas. 2000. "The International Significance of Human Rights," *The Journal of Ethics* 4: 45-69.

## **8. Right to Justification and Anti-Domination**

**March 9**

Forst, Rainer. 1999. "The Basic Right to Justification: Toward a Constructivist Conception of Human Rights," *Constellations* 6, no.1: 35-60.

Forst, Rainer. 2010. "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach." *Ethics* 120(July): 711-740, just read 711-720; 727 very bottom – top 729.

## **Part III. Theoretical Contestations**

## **9. Right to Justification/Discursive Universalism v. Relativism and Post-colonialism**

**March 16**

- a. Forst (week 8) v. Kapur and Mutua (week 3)

In addition to the Forst essays we have already read, please read:

Forst, Rainer. 2011. "The Power of Critique." *Political Theory* 39, 118-123.

- b. Habermas (week 7) v. Kapur and Mutua (week 3)

### **Supplementary:**

Andrew Robinson and Simon Tormey. 2009. "Resisting 'Global Justice': Disrupting the Colonial 'Emancipatory' Logic of the West," *Third World Quarterly* 30, no.8: 1395-1409.

**10. A Proceduralist View of Constitutionalism v. Viewing Proceduralism as about 'Dead Rights' – the Agonal Position**  
**March 23**

a. Habermas (week 6) v. Douzinas (week 4)

b. Habermas (week 6) v. Honig

Honig, Bonnie. 2001. "Dead Rights, Live Futures: A Reply to Habermas's 'Constitutional Democracy'," *Political Theory* 29:792-805

**11. Human Rights, Struggle and Discursive Universalism: Is it political (in the right way)?**  
**March 30**

Ingram, James. D. 2008. "What is A Right to Have Rights? Three Images of the Politics of Human Rights." *American Political Science Review* 102, no. 4: 401-416.

**Supplementary:**

Rostboll, Christian. F. 2009. "Dissent, Criticism, and Transformative Political Action in Deliberative Democracy," *Critical review of international social and political philosophy* 12, no. 1: 19-36.

Brady, John. 2004. "No Contest? Assessing the Agonistic Critiques of Jürgen Habermas's Theory of the Public Sphere." *Philosophy and Social Criticism* 30, no.3: 331-354.