

Course Outline

COURSE: LAWS 5100W Advanced Problems in Legal Philosophy

TERM: Winter 2010-11

PREREQUISITES:

CLASS: **Day & Time:** Wednesdays, 8:35am – 11:25am
 Room: Please check Carleton Central for room location

INSTRUCTOR: Ratna Rueban Balasubramaniam
(CONTRACT)

CONTACT: **Office:** D487
 Office Hrs: Mondays 1:30-3:30pm 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 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This is a graduate seminar in advanced legal philosophy. It will focus on the Hart-Dworkin debate about whether the law is a moral idea. Their dispute continues to define the terrain of debate in contemporary legal philosophy and concerns a variety of related issues including the nature and limits of the rule of law, the nature of legal reasoning, and the question of methodology in legal philosophy. The aim of the course is to delve in depth into the disagreement between Hart and Dworkin through a close reading of the primary texts that set out their competing positions. Therefore, each class will involve 3 hour period of intense discussion and debate about the texts.

The two required texts are: H. L. A. Hart, *The Concept of Law*, 2nd ed, (Oxford, Oxford University Press, 1994) and Ronald Dworkin, *Law's Empire* (Oxford, Hart Publishing, 2004). Both texts are available at Octopus Books located at 3rd Avenue in the Glebe. I will supplement readings if necessary as the course progresses, depending on the nature of the discussion in class and depending on your interests.

Course Evaluation

The principal assessment for this course will be a 25 – 30 page double spaced research paper engaging the Hart-Dworkin debate. My expectation is that the paper should be modeled after a scholarly article so it should aspire to be of a publishable quality. I will not prescribe a precise topic for the paper. The only requirement is that your paper engages the Hart-Dworkin debate. Such engagement may take a variety of forms, for example: a) you might choose to engage the debate

on its own terms in deciding which view you prefer or you may introduce a different jurisprudential view that you think superior to theirs; b) you might use the Hart-Dworkin debate as analytic framework to analyze the limits of the rule of law in a state of exception or in wicked legal systems; c) you might choose to analyze a practical problem about the law with a using the Hart-Dworkin debate as an analytic framework with a view to arriving at a position within that debate. There are other possibilities. As you will see, the Hart-Dworkin debate has generated a vast body of literature.

The onus is on you to figure out what interests you and to locate materials salient to your concerns. My expectation is that you will provisionally settle on an issue and provide me with a brief abstract of about 300-500 words alongside an appropriate bibliography of relevant academic sources that you will hand in to me immediately following the Reading Week break. This means that you must do independent research that goes beyond the purview of the materials we engage in class. Come to me as early as possible to talk about your interests, and I can help you to locate suitable sources. A good rule of thumb is to try to link the Hart-Dworkin debate to something that already interests you and that you may already be researching.

In addition to the research essay, you will have to produce two Response Papers, short critical essays of no more than 4-5 double spaced pages. The aim of these papers is to get you to critically engage the material. I will warn you now that these papers are not easy to write; you have to be clear, concise, and analytical in a compressed space. These papers will allow me to gauge what to do in class in terms of pushing you to read the text closely and to construct coherent arguments. Importantly, these papers will also signal to you my expectations about the quality of work expected at the graduate level.

Lastly, there is a sizable participation mark. Participation means informed participation so you must come to class having read the materials, with your questions in mind, and be able to engage in discussion and debate; it is unlikely that you will be able to follow the discussion if you do not read before coming to class. In this regard, you should suppose that both Hart and Dworkin are right and that any problem you detect in their views is resolvable by a close reading of the text. I do not say this because I believe you should blindly defer to their views or that they are never wrong. You are more likely to construct a reflective stance if you take the text seriously. And that will contribute to you developing a sound perspective about this debate.

Below is a breakdown of the course evaluations. Please take note of due dates and avoid unnecessary late penalties. You should also keep in mind that there are good reasons for such deadlines and your failure to meet them generates difficulties and inconveniences for others so that you are bound by a duty of reciprocity in respecting these deadlines. In this regard, you should know that tardiness does not speak well to your professionalism as a scholar and at this stage; you should strive to develop a reputation as a professionally minded individual as you progress towards further graduate work or a job.

- 1) Response Paper 1 – 15% (due February 8) – Any aspect of our discussion about Hart’s theory up to and including February 2.
- 2) Abstract and Bibliography for Final Essay – 15 % (due March 1).
- 3) Response Paper 2 – 10 % (due March 22) – Any aspect of our discussion of Dworkin’s work up to and including March 16.
- 4) Final Essay – 40 % (due April 5).
- 5) Informed Participation – 20 %.

RULES GOVERNING ASSIGNMENTS AND EMAIL – PLEASE READ CAREFULLY

- a) All late work will be penalized by 10 % per late day.
- b) All written work should be handed in at the Law Department Drop-Box on the relevant due date. I will take the date-stamp as conclusive evidence of the appropriate date of submission.
- c) Plagiarism is an academic offence and can lead to very serious consequences. Please familiarize yourself with Carleton's policies on plagiarism.
- d) You must keep an electronic copy of all assignments. I do not accept emailed assignments.
- e) You can reasonably expect a 48-hour turnaround time on emails except over weekends or public holidays. Please exercise common sense when emailing me. Keep in mind that etiquette counts and please ask only questions you're sure you cannot find an answer to for yourself without taking reasonable steps.

SCHEDULE

- 1) January 5 **Introductory Class**

- 2) January 12 **Hart's Methodology.**

Hart, H L. A., "Positivism and the Separation between Law and Morals"
[1958] 71:4 Harvard Law Review 593-629.
Concept of Law, Preface, Chapter 1.

- 3) January 19 **The Command Theory and Hart's Critique.**

Concept of Law, Chapters 2, 3, and 4.

- 4) January 26 **Primary and Secondary Rules and the Foundations of Legal Order.**

Concept of Law, Chapter 5, and 6.
Lon Fuller, "The Ideal of Fidelity to Law – A Reply to Professor Hart" [1958]
71:4 Harvard Law Review 630.

- 5) February 2 **Rule Scepticism, Law and Morality.**

Concept of Law, Chapters 7, 8, and 9.

Lon Fuller, "The Ideal of Fidelity to Law – A Reply to Professor Hart" [1958] 71:4 Harvard Law Review 630.

6) February 9 **Dworkin's Critique - The Model of Rules.**

Ronald Dworkin, "Model of Rules 1" reprinted as Chapter 1 of Ronald Dworkin, *Taking Rights Seriously* (1977).

Optional Reading: Ronald Dworkin, "Model of Rules 2" reprinted as Chapters 2 of Ronald Dworkin, *Taking Rights Seriously* (1977).

7) February 16 **Hard Cases.**

Ronald Dworkin, "Hard Cases," reprinted as Chapter 3 of *Taking Rights Seriously* (1977).

8) February 23 **No Class - Reading Week Break**

9) March 2 **Law as an Interpretive Concept.**

Law's Empire, Chapters 1, 2, and 3.

10) March 9 **Conventionalism/Pragmatism.**

Law's Empire, Chapters 4, and 5

11) March 16 **Law as Integrity.**

Law's Empire, Chapters 6, 7, and 10.

Optional Reading: *Law's Empire*, Chapters 8, and 9.

12) March 23 **Inclusive Legal Positivism.**

Jules Coleman, "Negative and Positive Positivism" (1982) 11:1 Journal of Legal Studies 139-164

Ronald Dworkin, "Thirty Years On" (2002) 115 Harvard Law Review 1679.

13) March 30 **The Postscript.**

Hart's Postscript

Ronald Dworkin, "Hart's Postscript and the Character of Political Philosophy" (2004) 14: 1 Oxford Journal of Legal Studies 1.

