

Course Outline

COURSE: LAWS 4100A - Modern Legal Theory

TERM: FALL 2019

PREREQUISITES: LAWS 2908 and Fourth-Year Honours standing

CLASS: **Day & Time:** Mondays, 11:35am – 2:25pm
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Dr. Rueban Balasubramaniam

CONTACT: **Office:** Room D587 Loeb Building
 Office Hrs: Monday, 3pm - 4:30pm by appointment only
 Telephone: 613-520-2600 ext. 8809
 Email: Rueban_Balasubramaniam@carleton.ca

CALENDAR COURSE DESCRIPTION

Realist and post-realist legal scholarship; emphasis on Canadian, American and British approaches. Topics include the Canadian treatise tradition, American legal realism, empirical approaches to legal problems, the sociological movement in law, critical and Canadian feminist legal scholarship, Marxian theories of law, normative economic theory.

COURSE DESCRIPTION

In the 21st century, liberal-democratic states are confronted by the challenge of political populism and authoritarianism. Consider the examples of Brexit in the United Kingdom and the rule of President Donald Trump in the United States of America. In both cases, those in power appear to view the ideal of the rule of law or legality not as an ideal that constrains arbitrary state power but as an ideal that should legitimize any exercise of state power, including those that may undermine fundamental rights. Within such a context, an urgent question arises as to whether or not the ideal of the rule of law is an inherently moral ideal connected to cherished ideals of political morality (justice, equality, human rights) or whether the rule of law is a purely instrumental ideal compatible with very great iniquity. In short, is the rule of law meaningfully distinguishable from arbitrary and authoritarian rule or is the rule of law a mere ideology and instrument of oppression? In this course, we consider the views expressed by leading legal philosophers mainly from the Anglo-American tradition relating to this question.

REQUIRED TEXTS

All readings for this course will be made available via CU Learn.

EVALUATION

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

20% Informed Class Participation

You are expected to do the reading before coming to class and be ready to answer questions about the reading as well as to participate in class discussions, debates, and activities. If you do not attend class, you will not receive any participation mark.

20% Response Paper 1 -- Due in class on September 30, 2019

A Response Paper is a short critical essay of about 1000 words (double spaced) designed to test your ability to closely read and analyze a chosen reading. This is not a research paper so you are not required to refer to external sources. Instead, you must develop an argument about a specific aspect of the relevant reading.

20% Response Paper 2 – Due in class on October 28, 2019

A Response Paper is a short critical essay of about 1000 words (double spaced) designed to test your ability to closely read and analyze a chosen reading. This is not a research paper so you are not required to refer to external sources. Instead, you must develop an argument about a specific aspect of the relevant reading.

40% Research Essay – Due in class on December 6, 2019

The Research Paper of about 2500-3000 words (double spaced) should engage some of the readings discussed in the seminar, alongside 4-5 relevant external academic sources. Again, the goal is to develop a critical argument about a question or problem that interests you as it relates to the focus of the seminar.

Submission of Work: All papers are to be submitted to me in class at the beginning of class. All those who take advantage of the extension provision below are to submit work at the Drop Box for the Department of Law and Legal Studies, 4th Floor Loeb Building. For the same day date-stamp you must have it in by 4:00pm.

Lateness, Extensions, and Deadlines: I will grant a one-time no-questions-asked 24 hour extension on the stipulated deadlines after which no papers will be accepted for marking. No other extensions will be granted for late work. I will treat the stamp on the submitted paper as definitive evidence of the time of submission.

Friendly Advice: Please begin work on your Response Papers and Research Essay in a timely manner. To help you succeed, I will make myself available to help you after every class, during designated office hours, and by email. In addition, I will conduct workshops in class to give you meaningful direction. Finally, if you are having serious problems with the course that could affect your ability to complete your work, please inform me as soon as possible.

Grade Appeals: Grade appeals are to be made in writing. You are required to make a case in writing as to why the paper should be re-evaluated taking into account the criteria that apply to the evaluation of the paper. These criteria will be distributed to you in class.

Email Etiquette: To make sure I am of most help to you, please state the subject of your inquiry in the subject heading of all your emails. Please check to make sure that any question you are asking cannot first be answered by consulting the outline or your colleagues.

SCHEDULE

1) September 9

Introductory Class

Part 1 – Authoritarianism and the Rule of Law

2) September 16

HLA Hart, “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593.

3) September 23

HLA Hart, “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593.

4) September 30

Positivism and Fidelity to Law – A Reply to Professor Hart’ [1958] 71:4 Harvard Law Review 630

Part II – Order, Chaos, and the Rise of the Sovereign

5) October 7

Lecture: HLA Hart’s Theory of Legal Positivism – The Model of Rules and Critique of Fuller

Note: There are no classes on October 14 and 21 due to Thanksgiving Holiday and Reading Week.

6) October 28

Jeremy Waldron, “All We Like Sheep” (1999) 21:1 Canadian Journal of Law and Jurisprudence 169.

Part III--The Liberal Response

7) November 4

Ronald Dworkin, “The Model of Rules” (1967) 35:1 University of Chicago Law Review 14.

8) November 11

Lecture: Ronald Dworkin, Law as Integrity

9) November 18

Ronald Dworkin, "Rawls and the Law," (2004) 72 Fordham Law Review 1387

Part IV --Populism, Authoritarianism and the "Flaw" of Liberal Legality**10) November 25**

Dyzenhaus, "Liberalism After the Fall: Schmitt, Rawls and the Problem of Justification," (1996) 22:9 Law and Social Criticism 22.

11) December 2

Final Essay Workshop and Draft Review

12) December 6

Final Essay is due in class.

(Please note the following as it may coincide with the days you are teaching):

September 4 – Fall term begins

October 14 – Statutory holiday

October 21 – 25 - Fall Term Break

December 6 – Last Day of Fall Term Classes

December 6 – Last Day to hand in Fall Term work.

December 6 – Last Day for Take-Home exams to be assigned

December 9 – 21 – Formally Scheduled exams take place

December 21 – Take-Home exams are due

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable). <https://carleton.ca/pmc/students/accommodations/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at:
<https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit:
<https://carleton.ca/equity/accommodation/academic/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>