Law, state and politics are all deeply implicated in the ‘global war on terror’. In this seminar we will consider the challenges that the ‘global war on terror’ poses to legality and, conversely, the challenges that legality may pose to the ‘global war on terror’. How do important contemporary authors attempt to understand the relationships between the ‘war on terror,’ law and legality? We will explore this subject primarily through two lenses: first, the idea of ‘legitimate legality’ or the rule of law, and, second, the idea of the ‘state of exception’ as conceptualized (initially by the Nazi jurist Carl Schmitt and now) by contemporary interpreters like Giorgio Agamben. We will focus, in particular, on Guantanamo Bay as a contested space and contested set of practices. Is it an imperial space? A “lawless” space? A “legal black hole?” A “space of exception”? Or, is it a space where the rule of law still (or again?) obtains? Are the ‘legal’/lawless practices developed or deployed there likely to infiltrate other spaces such as Bagram, Abu Ghraib, or the new supermax site for American detainees in Thomson, Illinois? In sum: what is the relationship among law, politics, state and legality today – nearly nine years after September 12?

**SEMINAR:** This is a graduate seminar. As a seminar, there will be virtually no lecture component. I view it as a ‘reading course’ or ‘reading seminar’ the success of which is dependent on you, each student, 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 is an entirely collective project for which we are all equally responsible and should be embraced by each of you as such.

You absolutely must read everything, closely, for the seminar, before the seminar. The success of a seminar depends on informed, lively and critical participation. Regular attendance in seminar is necessary, but not sufficient, to constitute participation. The
participation mark evaluates student discussion leadership, weekly participation in discussions and any other exercises, which may include short written summaries (1-2 pages) of the weekly readings if I detect that you are not engaging with the literature seriously or consistently.

**EVALUATION:**

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

1. **A participation mark** of 20% based on discussion leadership and weekly participation. The participation mark is a composite mark, evaluating your performance over the entire term. You are expected to participate on the basis of having read and reflected seriously on the literature and issues each week. Please come to seminar with a question, an objection, or issue you would like to discuss and be prepared to discuss it with the seminar participants.

   Please read the **memo on discussion leadership** posted on Web CT for important information on what I expect of you as a discussion leader.

2. **At least 3 short essays** over the course of the term (each essay to be approximately 5 (max) pages double-spaced) 20%.

   The short essays may generally be written for any of weeks 3-11 of the course with the following exceptions: First, you may not write an essay for weeks 3 and 4 and you must write an essay for week 8 or 9. Second, you may not submit a short essay in the week you are the discussion leader unless you lead the discussion in week 8 or 9.

   You may write more than the minimum 3 essays if you choose. In that case, I will take the top 3 essay marks as your overall short essay mark.

   The short essay is due at the beginning of the class for which it is submitted. No late essays will be accepted. You may submit your essay via email attachment prior to class if (and only if) you will miss class that day.

   The short essays should *evaluate* some aspect of the literature/topic for the relevant week and raise at least *one question* for discussion in class. The evaluation may be tentative but you must go beyond description of the literature. The question(s) should be conceptual rather than primarily empirical in nature. The short essays will be marked on the basis of the thoughtfulness of the issue chosen for consideration, the evaluation provided and the question posed. The essay must address *all* of the literature read for class that week unless otherwise indicated. While short essays need not be as formal as a research essay or the final exam, writing style, grammar etc. will count and citations are required.

   Please provide an indication of which essay you are handing in (your first, second, third etc.) on the title page or at the very beginning of the essay.
   I will return your short essay within 2 weeks of its submission, in the seminar.
3. Take home examination or research essay 60%. You may choose to write a take home examination or write a research essay for this course.

The take home examination will be distributed in the 12th class meeting. It will be based on the required readings for the seminar.

If you choose to write a research essay, you must clear the topic with me by March 11 at the latest.

Both the exam and research essay are due on Monday, April 12, before 4pm. They must be submitted both as a hardcopy to the main Law Dept. office drop box and as an email attachment. Late exams and essays will result in failure in the course in the absence of a solid medical excuse. I determine when the exam has been handed in, not the Law Department stamp.

READINGS:

Almost all of the required readings are on Web CT under LAWS5005 Winter 2010. Readings that are not on Web CT are either provided with an internet address or will be available in class as photocopies that students can share (indicated in the syllabus with ‘pc’ after the citation). The only exception to this is Giorgio Agamben’s book, State of Exception (Chicago: University of Chicago Press, 2005) which you are expected to buy or borrow. We discuss it in class 9 on March 4 so you have plenty of time to find a copy. I suggest you order it from Octopus Books on 3rd Avenue in the Glebe.

GENERAL RULES:

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

Plagiarism will not be tolerated. Please refer to the Departmental Course-Related Policy and Procedure Statement (http://www.carleton.ca/law/policy.htm). Plagiarism means passing off as one’s own ideas or product the work of another, without giving credit to the source. My position is that students who plagiarize should be expelled from university and I will work toward that end should I find you have plagiarized.

NOTE ON ACADEMIC ACCOMMODATIONS:

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary letters of accommodation. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9th 2007. With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/law/accommodations.htm.
SEMINAR SCHEDULE:

1. Introduction January 7

2. Global ‘War on Terror’ and the Practices of Guantanamo January 14
   Obama, Barack. 10 December 2009 “Nobel Peace Prize Acceptance Speech.”
   [http://www.huffingtonpost.com/2009/12/10/obama-nobel-peace-prize- a_n_386837.html](http://www.huffingtonpost.com/2009/12/10/obama-nobel-peace-prize-a_n_386837.html) (If you have trouble with that link, there are many places on the web you can find the speech.)
   You can also listen to the speech, here:
   [http://www.youtube.com/watch?v=rMaTIEKIuRI&feature=related](http://www.youtube.com/watch?v=rMaTIEKIuRI&feature=related)

   Supplementary:

3. Group Preparation for following week Guantanamo Conference Jan. 21

   See the following week for information on how you should prepare.

4. US Supreme Court Decisions on Guantanamo ‘Conference’ January 28

   This week, everyone must read Dworkin’s essay, below. Seminar participants will split up into several groups with each group focusing on one of the Supreme Court decisions, below. Your group should: summarize and evaluate the decision and analysis of the Court and the dissent (if there is one), focusing on the Court’s treatment of ‘enemy combatant’ status, citizenship, territory (does the ‘constitution follow the flag’? and how does international law apply to Guantanamo?), the protections of habeas corpus and the interpretations of the Geneva Conventions (or any other relevant international law).

   Please assume your group has a **maximum** of 30 minutes to discuss the case, the detainee’s fate etc.
Please provide a textual summary of the case and other issues to every member of the seminar (including me) by email by 2pm Wednesday January 27.

Every seminar participant is expected to familiarize him/herself with the summaries distributed before the seminar. This way we can have an informed discussion while pooling our knowledge of the most important Supreme Court decisions on Guantánamo Bay in the ‘war on terror’.


[http://www.supremecourtus.gov/opinions/03pdf/03-6696.pdf](http://www.supremecourtus.gov/opinions/03pdf/03-6696.pdf)

[http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf](http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf)


Recall:

Supplementary:
*Munaf v. Geren* 2008
Just read the headnote (summary) of Munaf

5. ‘Unlawful Enemy Combatants’: Unilaterally Constructed Objects of Empire or Products of International Humanitarian Law? February 4

Danner, Allison M. “Defining Unlawful Enemy Combatants: A Centripetal Story”.


Schueerman, William E. 2006. “Carl Schmitt and the Road to Abu Ghraib”.

In the US District Court for the District of Columbia. Pc
Supplementary:


http://www.newyorker.com/reporting/2009/02/23/090223fa_fact_mayer

6. Torture and Legality February 11


Supplementary:

Guantanamo Interrogation Log, Detainee 063 Just skim.
http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf

7. Reading Week February 18

8. The Rule of Law and the Legitimacy of Law, Domestic and International Contested Concepts February 25


9. Giorgio Agamben on state of exception, bare life and ‘the camp’    March 4


Supplementary:

10. Gregory and Owens on Agamben, Arendt and Schmitt    March 11


12. Rule of Law and Law’s Legitimacy Revisited    March 25

Take home exam will be distributed this day


Recall:

Take Home Exams and Research Essays are due Monday 12 April 2010 before 4pm. No exceptions.