

Course Outline

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<b>COURSE:</b>	<b>LAWS 5100 Advanced Philosophy of Law</b>
<b>TERM:</b>	<b>WINTER 2021</b>
<b>PREREQUISITES:</b>	<b>LAWS XXXX</b>
<b>CLASS:</b>	<b>Day &amp; Time: Please check Carleton Central for current Class Schedule.</b>
<b>Room:</b>	<b>All Courses in the Winter 2021 term are offered online. Seminars in this course will be delivered synchronously using pre-recorded videos and other relevant materials. Material will be uploaded onto CU Learn on a weekly basis as relevant to the goals of the course.</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Name: Ratna Rueban Balasubramaniam</b>
<b>CONTACT:</b>	<b>Office: D587</b>
	<b>Office Hrs: Tuesdays 3:pppm – 4:30pm by appointment only. Email me to book a time-slot during office hours and I can send you a Zoom link.</b>
	<b>Telephone:</b>
	<b>Email: Rueban_Balasubramaniam@carleton.ca</b>

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**CALENDAR COURSE DESCRIPTION**

***(From the Graduate Calendar)***

**COURSE DESCRIPTION**

Populist ideas that thinly conceal an ethno-nationalist political program threaten the egalitarian promise of liberal democracies in the West. Central to this variant of populist thought is the idea that formal political frameworks fail to represent the authentic will of the People characteristically conceived as an ethically homogeneous group. Such arguments resonate with Carl Schmitt's powerful critiques of liberalism and liberal legality. Schmitt was a conservative legal thinker associated with the Nazi regime that set out to debunk liberal democracy and to pave the way for populist dictatorship. In this seminar, we try to make sense of Schmitt's critiques and consider how far liberal legal philosophy might respond.

**REQUIRED TEXTS**

The Professor will provide all relevant materials to you for the purposes of the seminar.

**SUPPLEMENTARY TEXTS**

N/A

**EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and 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 Department and the Dean.

**20 % -- Informed Participation**

20% -- Response Paper 1 – (Due on February 10) (5-7 pages double spaced)

20% -- Response Paper 2 – (Due on March 10) (5-7 pages double spaced)

40% -- Research Paper – (Due on April 15) (20-25 pages double spaced)

**Participation** – Given that this is a graduate seminar, you will earn marks for informed participation. I need to see evidence that you are doing the reading and critically attempting to engage the materials. Having said that, it is perfectly acceptable to ask interpretive questions about a text in class as a form of participation and critical engagement. Evidence of such engagement will be the quality of your questions and remarks during the seminar in discussion and debate. **Kindly also note you cannot make up for lost participation marks due to absences and that more than three unexcused absences will lead to a failing grade in this course.**

**Response Papers** – These are close and critical responses to a reading, focusing on one or two central arguments. They are not mere summaries. You may choose to be (thoughtfully critical) in your arguments. Think of a Response Paper as something akin to a short critical review article of a book.

**Research Paper** – There is considerable flexibility as to the topic as long as it relates back to the themes discussed in this course. You are free to explore your own interests by drawing on the materials we consider in the seminar. I anticipate working with you from the beginning to help you to shape a research paper for this seminar.

The final grade for this course will be determined by tabulating the combined total of your earned participation mark and the marks received for your Response Papers and Research Paper. Any unsubmitted work will receive the mark of 0.

**Submission of Work: All papers are to be submitted to the Professor by email.**

### **Extension Policy**

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension.

For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. [https://carleton.ca/registrar/wp-content/uploads/COVID-19\\_Self-declaration.pdf](https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf)

**Extensions for longer than 7 days will normally not be granted.** In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

## **Grade Appeals**

Grade appeals are to be made in writing to me directly stating relevant reasons directly related to the justification given for the particular grade you received. If the reasons given are plausible, then your work will be reviewed. Please also note that upon review your grade may get worse, not better.

## **Email Etiquette**

Please note that every email should be professional and state your student number and reasons for the email.

Kindly keep in mind that we are all working under stressful conditions generally from home during the Covid-19 pandemic. It is therefore not reasonable to expect very quick replies to your emails. I urge you to be professional and considerate if you do not receive a quick reply.

## **Schedule**

As noted, we will operate on an a synchronous schedule for our seminars. You will be expected to come prepared to discuss the relevant readings for each seminar.

Note that the dates specified below follow a weekly Monday-Friday dateline.

### **1) January 12 – Introductory Seminar**

Stefan Rummens, “Populism as a Threat to Liberal Democracy” in *Oxford Handbook of Populism* (Oxford: Oxford University Press, 2017), pp. 554-570.

### **2) January 19 – Rawls and Public Reason**

John Rawls, “The Idea of Public Reason Revisited” in John Rawls, *Collected Papers* (Boston, MA: Harvard University Press, 2001), pp. 573-615.

### **3) January 26 – Law, Sovereignty, and Dictatorship**

Carl Schmitt, *Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle* (1921), pp. xxxvii-33, pp. 80-179

Duncan Kelly, “Carl Schmitt’s Political Theory of Dictatorship,” in *Oxford Handbook of Carl Schmitt*

### **4) February 2 – Political Theology**

Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (1922)

Miguel Vatter, “The Political Theology of Carl Schmitt, “ in *Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2016)

**5) February 9 - Constitutionalism and Constituent Power**

Carl Schmitt, *Constitutional Theory* (1928) pp. 125-145; pp. 253-303.

Ernst-Wolfgang Böckenförde, "The Concept of the Political: A Key to Understanding Carl Schmitt's Constitutional Theory," in David Dyzenhaus, ed., *Law as Politics: Carl Schmitt's Critique of Liberalism*, pp. 37-55

**6) February 16 – No Classes. Winter Break****7) February 23 – The Political**

Carl Schmitt, *Constitutional Theory* (1928) pp. 125-145; pp. 253-303.

Ernst-Wolfgang Böckenförde, "The Concept of the Political: A Key to Understanding Carl Schmitt's Constitutional Theory," in David Dyzenhaus, ed., *Law as Politics: Carl Schmitt's Critique of Liberalism*, pp. 37-55

**8) March 2 – Legal Positivism**

H. L. A. Hart, "Legal Positivism and the Separation of Law and Morals" (1958) 71:4 *Harvard Law Review* pp. 593-629.

**9) March 7 - Dworkin – Law as Integrity**

Ronald Dworkin, *Law's Empire* (Harvard: Harvard University Press, 1986), Chapters 5 & 6.

**10) March 14 - Rawls/Dworkin**

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

**11) March 21- Schmitt and Rawls/Dworkin**

David Dyzenhaus, "Liberalism After the Fall" (1996) 22:3 *Philosophy and Social Criticism* pp. 9-37.

**12) March 28 - Dworkin – Wicked Legal Systems**

Ronald Dworkin, *Law's Empire*, Chapter 3.  
Dyzenhaus, "Dworkin on Unjust Law" [draft]

**13) April 5 - Dworkin and Social Compromise**

R. Rueban Balasubramaniam, "The Conceptual Case for Law as Integrity in Malaysia" in Matthew McManus ed. *Liberalism and Socialism* (London: Palgrave Press, forthcoming)

**14) April 11 – Wrap Up Seminar**

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**ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

**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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

**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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

**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](mailto: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>

**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/studentssupport/svpolicy/>

**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://students.carleton.ca/services/accommodation/>

**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. <https://carleton.ca/law/current-students/>

**Diversity Declaration**

I identify as a person of colour and non-citizen of Canada. I bring an inherently different perspective to bear on how I conduct lectures and seminars, especially in the way that I highlight concepts, questions, and problems that tend to inform structural problems of inequality, domination, and subordination of vulnerable groups.