

Constitutionalism (Fall, 2016)

Philosophy 4C03/6C03 – DRAFT ONLY

W. Waluchow

Office: University Hall 302

Phone: 23465

Email: Walucho@mcmaster.ca

Webpage: <http://www.humanities.mcmaster.ca/~walucho/>

Office Hour: TBA

COURSE DESCRIPTION

Modern democratic societies are marked by deep disagreement on a wide range of moral issues, such as whether a transgender individual is entitled to use a bathroom of that person’s choice, or whether a criminal code provision that bans physician-assisted suicide violates an individual’s right to life, liberty, or security of the person. Sometimes the law (usually via legislation) settles the relevant moral disagreement in a way that most of us find acceptable. But not always. Sometimes the law’s solution appears (to some) to violate a moral right our constitution purports to protect. When this happens, courts are often called on to settle the constitutional question through a process called *judicial review*. But judicial review of legislation is itself morally controversial. If there are no indisputable moral truths on which judges can draw when they attempt to determine whether a law conforms with a constitutionally protected moral right, on what resources *may* they legitimately draw? In this course, we will examine one possible solution to this puzzle, one that draws on John Rawls’ notion of *public reason*. The basic idea is that a court’s decision in such cases is justified when and only when it is consistent with public reason – i.e., when it is publicly justifiable as consistent with principles and convictions that no reasonable person could reject as unreasonable.

REQUIRED TEXTS

1. Ronald Den Otter, *Judicial Review in an Age of Moral Pluralism* (Cambridge UP, 2009)
2. Miscellaneous readings, all available on *Avenue*.

COURSE REQUIREMENTS

1. Seminar Presentation.....**20%**
2. Take-Home Exam, 3-5 pages in length (posted October 6; due October 20).....**30%**
3. Critical research essay due December 1 (Word Limit: undergraduate, 3000; graduate, 4,000).....**50%**

NOTES

1. Seminar presentations will be judged on the basis of two criteria: 1. success in outlining the main themes and arguments of the readings assigned for that week; 2. success in highlighting one or more philosophically interesting issues worthy of class discussion. It is possible that some seminar presentations will be joint efforts. This will depend on the number of students enrolled in the class.

2. 5 marks (out of 100) will be deducted from Essay grades and Take-Homes for every 100 words in excess of the prescribed limit.

3. 5 marks per day (out of 100) will also be deducted for late Take-Homes and Essays. Exceptions will be made only if you have a legitimate excuse. For undergraduates, a legitimate excuse is whatever your Faculty Office will accept. Take your documentation to your Faculty Office. In due time they will send me a memo. In the case of Graduate Students, see me.

4. Academic dishonesty consists of misrepresentation by deception or by other fraudulent means and can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university. It is your responsibility to understand what constitutes academic dishonesty. For information on the various kinds of academic dishonesty please refer to the Academic Integrity Policy, located at <http://www.mcmaster.ca/policy/Students-AcademicStudies/index.html>

The following illustrates only two forms of academic dishonesty:

(a) Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.

(b) Improper collaboration on essays or critical reflections.

5. Essays must be submitted electronically via *Avenue to Learn*. You are required to keep copies (electronic or hard) of all work submitted.

5. The scale used by the Registrar's Office will be used to convert number grades to final letter grades.

7. Course evaluations will be done at the end of the course.

8. It is the policy of the Philosophy Department that all email communication between students and instructors (including TAs) must originate from their official McMaster University email accounts. This policy protects the confidentiality and sensitivity of information and confirms the identities of both the student and instructor. Philosophy department instructors will delete messages that do not originate from McMaster email account.