

Princeton University
Politics 563/Philosophy 526
Spring 2014

Philosophy of Law

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This seminar will consider a range of issues in philosophy of law with particular emphasis on various dimensions of the relationship between law and morality.

Requirements: Students are required to read each week's assignments carefully and participate regularly in seminar discussions. Each student must make a presentation to the seminar. Two written work options are available: (1) a long (7000 word) paper on any topic addressed in the seminar or (2) two shorter (3500), critical essays on issues we have explored. These may, but need not, be related to the topic of one's presentation.

Those readings marked with an asterisk (*) are on e-reserve. The following books (all available in paperback editions) are worth purchasing:

Ronald Dworkin, Law's Empire
John Finnis, Natural Law and Natural Rights, 2nd edition
Lon L. Fuller, The Morality of Law
H.L.A. Hart, The Concept of Law, 2nd edition
Joseph Raz, Practical Reason and Norms

Week 1: Organizational Meeting

*O. W. Holmes, "The Path of the Law," in The Essential Holmes, ed. Richard Posner, pp. 160-77

*John Austin, "The Province of Jurisprudence Determined," in The Philosophy of Law, eds. F. Schauer, W. Sinnott-Armstrong, pp. 32-39

*Carl Llewellyn, "The Bramble Bush, a Realistic Jurisprudence, and the common Law Tradition," in The Philosophy of Law, eds. F. Schauer, W. Sinnott-Armstrong, pp. 53-62

Week 2: Hart's Concept of Law

H.L.A. Hart, The Concept of Law, chs. I-VI

*Jonathan Cohen, "Critical Notice of Hart's The Concept of Law," in Mind, Vol. 71 (1962)

Week 3: Hart's Legal and Political Philosophy

H.L.A. Hart, The Concept of Law, chs. VII-IX

*John Finnis, "On Hart's Ways: Law as Reason and as Fact," in Collected Works, Vol. IV, Philosophy of Law, ch. 10.

Week 4: Dworkin vs. Hart

*Ronald Dworkin, Taking Rights Seriously, chs. 2-4

H.L.A. Hart, The Concept of Law, Postscript

*H.L.A. Hart, Essays on Bentham, ch. 10

Week 5: Raz's Legal Positivism

Joseph Raz, Practical Reason and Norms

Week 6: Finnis's Natural Law Theory

John Finnis, Natural Law and Natural Rights, ch. I and pp. 426-436

*John Finnis, "Foundations of Practical Reason Revisited," in Collected Works, Vol. 1, ch. 1

John Finnis, Natural Law and Natural Rights, chs. II, V-XII and pp. 437-476

*Robert P. George, "Natural Law," in American Journal of Jurisprudence, Vol. 52 (2007)

Week 7: Dworkin's "Law as Integrity"

Ronald Dworkin, Law's Empire

Week 8: Fuller's "Inner Morality of Law"

Lon L. Fuller, The Morality of Law

*H.L.A. Hart, "Review of Fuller, The Morality of Law," in Harvard Law Review, Vol. 78 (1965)

*Joseph Raz, The Authority of Law, ch. 11

Week 9: Is There an Obligation to Obey the Law?

*M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?," in Yale Law Journal, Vol. 82 (1973)

*John Finnis, "Law's Authority and Social Theory's Predicament," in Collected Works, Vol. IV, Philosophy of Law, ch. 2

*Joseph Raz, "The Obligation to Obey: Revision and Tradition," in Notre Dame Journal of Law, Ethics & Public Policy, Vol. 1 (1984)

*John Finnis, "Law as Coordination," in Collected Works, Vol. IV, Philosophy of Law, ch. 3

Week 10: Equality in Legal and Moral Philosophy

*Peter Westen, "The Empty Idea of Equality," in Harvard Law Journal, Vol. 95 (1982)

Week 11: Moral Philosophy in Legal Interpretation

*Ronald Dworkin, "Introduction: The Moral Reading and the Majoritarian Premise," in Freedom's Law

*Jeremy Waldron, "The Constitutional Conception of Democracy," in Law and Disagreement

*Robert P. George, "Natural Law and Positive Law," in The Autonomy of Law: Essays on Legal Positivism

Week 12: Punishment

Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, ch. 1, sections I and II, and chs. 13 and 14

Immanuel Kant, The Metaphysics of Morals (Cambridge U. Press edition, 1991), pp. 140-144

Michael S. Moore, "Justifying Retributivism," Israel Law Review, Vol. 27 (1993) pp. 15-49

David Dolinko, "Retributivism, Consequentialism, and the Intrinsic Goodness of Punishment," Law and Philosophy. Vol. 16 (1997), pp. 507-528