

Philosophy 358: Philosophy of Law

Professor John Oberdiek

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Tuesday and Thursday 2:50-4:10pm

Scott Hall room 205

Office Hours: 1:30-2:30pm, Philosophy Department lounge, 106 Somerset St., 5th floor

Course Description

This course is a wide-ranging introduction to philosophy of law. Through readings in general jurisprudence, normative legal theory, and the philosophical foundations of specific areas of law, it will equip students with sharpened analytical skills and acquaint them with some of the most fundamental philosophical debates in and about law. Among the specific topics that may be covered are: the relationship between law and morality; the rule of law; the authority of law, the duty to obey the law, and civil disobedience; the nature of rights; as well as philosophical debates in criminal law, tort law, and constitutional law.

Course Goals

It is the primary goal of this course to acquaint you with various fundamental aspects of law by introducing you to seminal work in legal philosophy. Philosophy in general prizes analytical rigor, and it is a subsidiary goal of this course to hone your analytical skills.

Assessment

All students will take two in-class essay mid-terms and complete a short term paper (5-7 pages). Lists of possible paper topics will be distributed, but students are encouraged to identify their own topics.

Each mid-term will be worth 20% of your final grade; the term paper will be worth 50% of your final grade; and class participation will account for 10% of your final grade.

Course Materials

Arguing About Law, edited by Aileen Kavanagh and John Oberdiek (Routledge 2009)

Reading Assignments

Sept. 3: "General Introduction," pp. 1-5; Introduction to "The Nature of Law: Framing the Debate," pp. 9-11.

Sept. 5: Holmes, "The Path of the Law," pp. 15-23

Sept. 10: Hart, "Positivism and the Separation of Law and Morals," pp. 24-35

Sept. 12: Hart, "Positivism and the Separation of Law and Morals" (cont.), pp. 35-44 (with additional discussion of Dworkin, "The Model of Rules," not assigned)

Sept. 17: Introduction to "Legality and Morality," pp. 93-96 (with additional discussion of Coleman, "Negative and Positive Positivism," not assigned)

Sept. 19: Raz, "Legal Positivism and the Sources of Law," pp. 117-25

Sept. 24: Dworkin, "Law as Interpretation," pp. 127-42

Sept. 26: Gardner, "Legal Positivism: 5^{1/2} Myths," pp. 153-70 (with additional discussion of George, "Natural Law and Positive Law")

Oct. 1: *Review*

Oct. 3: *First In-Class Essay Mid-term*

Oct. 8: Introduction to "The Duty to Obey the Law," pp. 229-31; Raz, "The Obligation to Obey: Revision and Tradition," pp. 233-42

Oct. 10: Rawls, "The Justification of Civil Disobedience," pp. 244-52

Oct. 15: King, "Letter from a Birmingham Jail," pp. 254-64

Oct. 17: Shelby, "Justice, Deviance, and the Dark Ghetto," webpage, pp. 126-28 & 143-51

Oct. 22: Introduction to "The Nature of Rights," pp. 307-9; MacCormick, "Rights in Legislation," pp. 321-33 (with additional discussion of Hart, "Are There Any Natural Rights?")

Oct. 24: Raz, "Rights and Individual Well-Being," pp. 345-52 & 354-55 (with additional discussion of Dworkin, "Rights as Trumps")

Oct. 29: Waldron, "Security and Liberty: The Image of Balance," pp. 363-77

Oct. 31: *Review*

Nov. 5: *Second In-Class Essay Mid-term*

Nov. 7: Introduction to "Constitutional Theory: Interpretation and Authority," pp. 395-97; Marmor, "Constitutional Interpretation," pp. 401-11

Nov. 12: Waldron, "A Right-Based Critique of Constitutional Rights," pp. 432-43

Nov. 14: Waldron, "A Right-Based Critique of Constitutional Rights" (cont.), pp. 443-56

Nov. 19: Fabre, "The Dignity of Rights," pp. 460-67

Nov. 21: Scalia, "Interpreting Constitutional Texts," pp. 426-31

Nov. 26: Marmor, "Constitutional Interpretation" (cont.), pp. 411-21

Nov. 28 : Fallon, "Precedent-Based Constitutional Adjudication, Acceptance, and the Rule of Recognition," webpage

Dec. 3: Fallon, "Precedent-Based Constitutional Adjudication, Acceptance, and the Rule of Recognition" (cont.), webpage

Dec. 5: Alexander & Schauer, "Rules of Recognition, Constitutional Controversies, and the Dizzying Dependence of Law on Acceptance," webpage

Dec. 10: *Review*

Dec. 23: *Final paper due*