

Syllabus
Department of Philosophy & Religion
Skidmore College

PH 314 Philosophy of Law
WF 12:30-2:10

Reg Lilly
Spring, 2012

COURSE DESCRIPTION

From its beginnings in Greece, the very idea of law indicates a conflict: the idea of ‘having to,’ of ‘necessity,’ of ‘inevitability.’ This conflictual ambivalence means that, with the idea of law, transgression and defiance, or a breaking of what one ‘has to do,’ of ‘necessity,’ of ‘inevitability’ are also an essential part of the law. This means, that the philosophy of law engages in an examination of conflict, one of a special sort. It is the general aim of this seminar to examine the history and nature of this conflict within (primarily) the American cultural context.

This course is organized around a series of readings and exercises that are designed to give students an understanding both of the breadth and the complexity of the issues and problems that the philosophy of law must take into account. While this course assumes no specific knowledge – philosophical or otherwise – it does assume that students are able to be reflective, to read texts that sometimes are difficult, and to examine a given issue from a variety of perspectives.

In terms of jurisprudence, the philosophy of law in America naturally gives pride of place to Constitutional law, and our readings will include a number of landmark constitutional cases that raise various issues for the philosophy of law.

COURSE LEARNING GOALS

There are several goals of this course. **First** and most obviously, the goal of this course is to familiarize students with some of the basic concepts and arguments that comprise the philosophy of law. **Second**, it is to develop students’ ability to use these concepts to help identify, formulate, and analyze arguments that are present in legal and philosophical reasoning. **Third**, to produce arguments that are logical, and fact-driven. The broader learning goals are to help students to think critically, creatively, and independently, and to communicate thoughts and arguments clearly.

REQUIRED TEXTS

The Philosophy of Law, Shauer & Sinnot-Armstrong
Handouts

COURSE REQUIREMENTS

Attendance:

It’s possible (if not advisable) to treat a so-called lecture course as a buffet: you show up when you want and take away what you can. A seminar – *this* seminar – is different: it is a communal, collaborative

project, which means that the functioning of the whole body is impaired by the failure of an individual to prepare to participate and to show up and do so. Your preparation for, and contribution to, the class is indispensable. Two absences will be excused. Every further absence will reduce the participation grade by 10%.

Readings:

All readings should be completed before class. Most of the sections of our text include questions. These are intended to help you orient yourself with regard to the material and to prompt your engagement with it. You should reflect on them and be prepared to discuss them.

Daily Writing Assignments: 20 points

Writing is an essential moment in clear and focused thinking. To this end, students are expected begin 'digging deeper' into a text by selecting some important element (fact, argument, assertion, premise, etc.) and reflecting on it in a focused and creative way.

Class Participation: 25 points

See explanation of grades above.

Précis Presentations (4): 15 points each

A is a short exegetical summary of the most important elements (facts, arguments, assertions, premises. Etc.) of a longer text. A précis, which should be approximately 750 words (3 pages) should be:

- * concise (be as brief and succinct as possible, and certainly remain within the limits of the assignment – three pages)
- * accurate (don't distort or misrepresent the key ideas; try to stick to what is actually said and avoid drawing too many conclusions)
- * focused (present the author's main argument or points without going into any detail)
- * fair and balance (your précis should reproduce the relative emphasis given to each main idea in the original text)

Students will be allowed to drop the lowest of the four grades and resulting in a redistribution of the relative value of the remaining three.

Peer Evaluations:

Each précis will be uploaded to Blackboard. The other seminar participants will write a brief evaluation of the précis and assign it a number grade (see grading rubric herein), which will remain confidential. I will give feedback on these evaluations. A grade will be given to students' evaluations, which will comprise 40% of the participation grade.

Final Exam/Term Paper: 45 points

To foster a deeper engagement with the material, there will be a 'major project' required. A final, comprehensive exam is one option. Selecting a topic in the philosophy of law and writing a paper of 15 pages is another. Constructing web site on a relevant topic is another option.

GRADING – WHAT IT MEANS

A = consistently outstanding work that shows the ability to grasp the material, synthesize it, and draw unprompted conclusions and critical inferences; participation in class discussions that evidences that one has "stayed on top" of the reading and has thought critically and creatively about it;

B = solid, accurate written work that shows the ability to focus on the most important points of a philosopher's work as well as draw these points together into a unified whole; class participation that evidences an analytical engagement in the material;

C = written work that shows one has read the material and can more or less accurately reiterate it -- ability to make accurate lists of points and issues relevant to the given topic; class participation that evidences one is following the discussion but often passively;

D = work that shows one has a limited, random grasp of course materials -- work plagued by inaccuracies, ambiguities, and a general confusion about what was said and why; minimal class participation (eg. bodily presence).

F= 'nuff said.

97-100 = A+

94-96 = A

90-93 = A-

87-89 = B+

84-86 = B

80-83 = B-

77-79 = C+

Etc.

CONTACT INFORMATION

Office: Ladd 218

Office Hours: WF 10:00-11:30; TH 10:00-12:00 and by appointment.

Phone: x5406

ASSIGNMENT SCHEDULE

1/25 *Introduction*

What is Law?

- 1/27 The Theory of Natural Law, pp. 8-27
Aquinas + Finnis+ Fuller
- 2/1 Legal Positivism, pp. 29-49.
Austin + Hart
- 2/3 Legal Realism and Critical Studies, pp, 50-69
Llewellyn + Kennedy
- 2/8 Dworkin and Law as Integrity, pp. 70-100
Taking Rights Seriously + Law's Empire
- 2/10 Shauer, from *Playing By the Rules*, pp. 101-106
Case Study of the Fugitive Slave Laws, pp.107-115
Finkelman+ Shaw+ Cover

Legal Reasoning

- 2/15 Interpretation of Legal Texts, pp. 117-141.
Shauer+ Home Building and Loan Association v Blaisdell+ Berger+ Bork
- 2/17 Interpretation of Legal Texts (cont.), pp. 142-160.
Dworkin+US v. Locke+ Posner+Bray v. Alexandra's Women Health Clinic+NOW v. Scheidler
- 2/22 Web Site: "Exploring Constitutional Law: [Theories of Interpretation](#)"
Coan, "Talking Originalism" (Blackboard)
Lyon, "Constitutional Interpretation and Original Meaning" (Blackboard)
- 2/29 Reasoning from Precedent, pp. 161-188
Sunstein+Alexander+Donoghue v. Stevenson+ Planned Parenthood v. Casey
- 3/2 Critical Perspectives on Legal Reasoning, p. 190-218
Frank+Tushnet+Minow+Posner

Moral Force of Law

- 3/7 Is There a Moral Obligation to Obey the Law, pp. 219-249.

The Structure and Content of Rights

- 3/9 The Structure of Rights, pp. 279-306
Feinberg+Dworkin+Thomson+Craig v. Boren

SPRING BREAK

- 3/21 **Jens Ohlin,**
TBA
- 3/23 The Structure of Liberty, pp. 307-337
Mill+Stephen+Feinberg+NENA v. Larsen+Mill+Dworkin
- 3/28 The Structure of Liberty (cont.), pp. 337-352
Devlin+Hart+[Lawrence v. Texas](#)
- 3/30 A Right to Free Speech, pp. 354-372
Mill+Scanlon+Schauer,
- 4/4 The Right to Privacy pp. 403-434
Griswold v. Connecticut+Richards+Bork+Roe v Wade+MacKinnin

Justice and Equality

- 4/6 What is Justice?/Theories of Justice, pp. 493-517
Westen+D'Amato+Mill
- 4/11 Theories of Justice, pp. 517-540
Rawls+Nozick+Sandel
- 4/13 Discrimination, pp. 542-564
Tussman and tenBroek+Fiss+Brown v. Board of Education
- 4/18 Equality for Homosexuals, pp. 633-655
Mohr+van den Haag+Watkins v. United States

Responsibility

- 4/20 What is Responsibility; Legal Causation, pp. 783-814
H.L.A. Hart+Palsgraf v. Long Island Railroad
- 4/25 Mens Rea and Strict Liability, pp. 846-886
Wassertrom+Tison v. Arizona+Williams+Estrich+Commonwealth v. Sherry
- *4/27 The Insanity Defense, or something else.