

Course Syllabus

Philosophy 123: Philosophy of Law

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Spring Semester 2018

F+TTh noon-1:15pm
Office: Miner Hall 002
Office Hours: Th 1:30-2:30

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Office hours: Fridays 10:30-11:30, in Miner 002

What is law? How do its principles differ from the principles of morality? Are we ever morally obligated to obey the law? If so, why? Are we ever morally obligated to disobey it?

This course begins by addressing some analytical questions about the nature of law and legal reasoning. We will read positivists, who stress the potential separation of law and morality, and critics of positivism, who reject that separation for various reasons that concern, for example, the standards of correct reasoning and the role of judges in a legal system.

Next, we will evaluate some moral claims about the legitimacy of law and the nature our obligation, if any, to obey it. We examine the relationship between legitimate law and justice, consider whether legitimate law must be democratically authorized, and explore the limits of law's legitimacy under conditions of injustice.

Finally, we will consider civil disobedience and conscientious objection as responses to unjust law. We will consider several perspectives on the aims of political protest and the dilemmas it involves.

Readings:

All readings are available on the course Trunk site: <https://trunk.tufts.edu/xsl-portal>

Jan. 18 Lon Fuller, "The Morality of Law"

Legal Positivism: Austin and Hart

Jan. 23 John Austin, "The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence," (pp. 1-33)

Jan. 25 Austin, "The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence," (pp. 191-200, 228-233, 253-264)

Jan. 30 H. L. A. Hart, *The Concept of Law*, Ch. I (pp.1-13), Ch. II (pp.18-25), Ch. IV (pp. 50-61, 66-71).

Feb. 1 Hart, *The Concept of Law*, Ch. V (pp. 79-99), VI (pp. 100-117)

Feb. 6 Hart, *The Concept of Law*, Ch. VII (pp. 124-147)

Finnis on Natural Law

Feb. 8 John Finnis, *Natural Law and Natural Rights*, 147-56, Ch. X, 266-281.

Dworkin on Law as Integrity

Feb. 13 Ronald Dworkin, *Law's Empire*, Ch. 1 (pp. 15-30), Ch. 4 (pp. 114-124)
Recommended: Dworkin, "Model of Rules I" (pp. 14-45)

Feb. 15 *Plessy v. Ferguson*
Brown v. Board of Education

Feb. 20 Dworkin, *Law's Empire*, Ch. 4 (pp. 139-150), Ch. 5 (pp. 151-53, 160-168)

Feb. 22 no class (Tufts Monday)
First paper due: 5 pages

Inclusive Positivism

Feb. 27 Finnis, *Natural Law and Natural Rights*, Ch. VI, 147-56, Ch. X, 266-81.

Legal Revolutions

Mar. 1 Akhil Amar, "Amending the Constitution outside Article V"
Michael Green, "Legal Revolutions: Six Mistakes," Intro-II, V-Conclusion

Political Legitimacy and its Limits

Mar. 6 Simmons, "Political Legitimacy"

Mar. 8 Dworkin, *Law's Empire*, Ch. 6 (pp. 176-202, 214-216)

Mar. 13 no class (snowstorm)

Mar. 15 John Rawls, *A Theory of Justice* (pp. 93-101, 293-312)

Mar. 27 Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform*, Ch. 7,
"Crime." Recommended: Ch. 1, "Injustice"

Mar. 29 Shelby, *Dark Ghettos*, Ch. 8, "Punishment"

Apr. 3 Gary Watson, "A Moral Predicament in the Criminal Law"

Civil Disobedience and Conscientious Objection

Apr. 5 Martin Luther King, "Letter from a Birmingham Jail"
Bernard Boxill, "The Roots of Civil Disobedience in Republicanism and
Slavery"
Second paper due: 8-10 pages

- Apr. 10 Rawls, *A Theory of Justice*, 319-343
- Apr. 12 Joseph Raz, “The Obligation to Obey the Law,”
“Raz, A Right to Dissent? I. Civil Disobedience”
- Apr. 17 *Guest speaker*: Alex Gourevitch, “Radical Disobedience: From King to Debs and
Back”
- Apr. 19 Raz, “A Right to Dissent? II. Conscientious Objection”
- April 24 Kimberley Brownlee, “Conscientious Objection and Civil Disobedience”
- April 26 Andrew Sable, “Looking Forward to Justice: Rawlsian Civil Disobedience and its
Non-Rawlsian Lessons”
- May 8 Third paper due (8-10 pages)**

Course Requirements

- Class attendance and participation
- One shorter paper (5-6 pages) 20%
- Two longer papers (8-10 pages) 40% each

Course Structure

Discussion groups will be arranged during class time each week on Thursdays.

Course Policies

No computers or tablets allowed during class.

Late papers may be marked down if the lateness is unexcused.

Incompletes will be granted only in special circumstances and provided that you make your request before the last paper is due.

Learning Objectives

Students completing this course will have learned:

1. How to think abstractly and concretely about the nature of law and the relationship between law and morality.
2. How to produce a cogent argument and how to express it clearly, both in writing and orally.
3. How to identify the substance and structure of an argument and evaluate it for soundness and validity.
4. How to anticipate and even welcome objections to one’s views, how to apply the principle of charity to others’ opinions, and how to address objections and competing views effectively and respectfully in one’s writing.
5. How to read, analyze, and articulate arguments and viewpoints in primary philosophical texts and the writings of legal theorists.
6. How to develop and defend one’s own position with respect to problems that have occupied both historical and contemporary philosophers of law.