

**Princeton University
Department of Politics**

POL 5 – Philosophy of Law, Reading Course
Fall 2014**

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An introduction to general jurisprudence and philosophy of law.

Requirements: 5 short papers

Items marked with * are also on the public law field reading list.

Schedule:

1. Starting Points

Required:

- *John Austin, *The Province of Jurisprudence Determined*, analysis and lectures I-II
- *Oliver Wendell Holmes, "The Path of the Law," *Harvard Law Review* (1897)
- *Karl Llewellyn, "A Realistic Jurisprudence – The Next Step," *Columbia Law Review* (1930)

Suggested:

- *Thomas Aquinas, *Summa Theologica*, I-II Questions 90-97
- *Thomas Hobbes, *Leviathan*, ch. 14, 17-18, 21, 26
- *John Locke, *The Second Treatise of Government*, ch. 8-13
- William Blackston, *Commentaries on the Laws of England*
- Jeremy Bentham, *Of Laws in General*
- *Benjamin Cardozo, *The Nature of the Judicial Process*
- *Roberto Unger, *The Critical Legal Studies Movement*
- *Frederick Schauer, *Playing by the Rules*
- *Friedrich Hayek, *The Constitution of Liberty*, ch. 10
- Oliver Wendell Holmes, *The Common Law*
- Hugo Grotius, *On the Law of War and Peace*
- Hans Kelsen, *The Pure Theory of Law*
- Karl Llewellyn, *The Bramble Bush*
- Karl Llewellyn, "Remarks on the Theory of Appellate Decision" *Vanderbilt Law Review* (1950)
- Karl Llewellyn, "Some Realism about Realism," *Harvard Law Review* (1931)
- Max Radin, "The Theory of Judicial Decision" *American Bar Association Journal* (1925)
- Max Radin, "Statutory Interpretation," *Harvard Law Review* (1930)
- Jerome Frank, *Law and the Modern Mind*
- Felix Cohen, "Transcendental Nonsense and the Functional Approach," *Columbia L. Rev.* (1935)
- Roscoe Pound, "Mechanical Jurisprudence," *Columbia Law Review* (1908)
- Roscoe Pound, "The Call for a Realist Jurisprudence," *Harvard Law Review* (1931)
- *Neil McCormick, *Legal Reasoning and Legal Theory*
- Frederick Schauer, "Formalism" *Yale Law Journal* (1988)

Duncan Kennedy, "Form and Substance in Private Law Adjudication" *Harvard Law Review* (1976)
 Antonin Scalia, "The Rule of Law as the Law of Rules," *University of Chicago Law Review* (1989)
 Larry Alexander, "Constrained by Precedent," *Southern California Law Review* (1989)
 Brian Leiter, "Rethinking Legal Realism: Toward a Naturalized Jurisprudence," *Texas Law Review* (1997)
 Jules Coleman and Brian Leiter, "Determinacy, Objectivity, and Authority," *University of Pennsylvania Law Review* (1993)
 K. Kress, "Legal Indeterminacy," *California Law Review* (1989)
 Heidi M. Hurd, "Challenging Authority," *Yale Law Journal* (1991)
 Kent Greenawalt, *Law and Objectivity*
 Max Weber, *Max Weber on Law in Economy and Society*
 Carl J. Friedrich, *The Philosophy of Law in Historical Perspective*
 Brian Bix, "John Austin," *Stanford Encyclopedia of Philosophy* (<http://plato.stanford.edu/entries>)
 Gerald J. Postema, *Bentham and the Common Law Tradition*
 Lawrence B. Solum, "On the Indeterminacy Crisis: Critiquing Critical Dogma," *University of Chicago Law Review* (1987)
 Andrew Altman, *Critical Legal Studies: A Liberal Critique*

2. Hart's Concept of Law

Required:

*H.L.A. Hart, *The Concept of Law* (2nd edition)

Suggested:

H.L.A. Hart, "Are There Any Natural Rights?" *Philosophical Review* (1955)
 H.L.A. Hart, *Essays on Bentham*
 Brian Bix, "H.L.A. Hart and the Hermeneutic Turn in Legal Theory," *SMU Law Review* (1999)
 Brian Bix, "H.L.A. Hart and the "Open Texture" of Language" *Law and Philosophy* (1991)
 Scott J. Shapiro, "On Hart's Way Out," *Legal Theory* (1998)
 Scott J. Shapiro, "Law, Morality, and the Guidance of Conduct," *Legal Theory* (2000)
 Neil MacCormick, *H.L.A. Hart*
 Neil MacCormick, "The Concept of Law and 'The Concept of Law'," *Oxford Journal of Legal Studies* (1994)
 Jules Coleman, ed., *Hart's Postscript: Essays on the Postscript to "The Concept of Law"*
 Jules Coleman, "Incorporationism, Conventionality, and the Practical Difference Thesis," *Legal Theory* (1998)
 Joseph Raz, "Hart on Moral Rights and Legal Duties," *Oxford Journal of Legal Studies* (1984)
 Stephen R. Perry, "Hart's Methodological Positivism," *Legal Theory* (1998)
 Leslie Green and Brian Leiter, eds., *Oxford Studies in Philosophy of Law I*

3. Hart-Fuller Debate

Required:

*Lon Fuller, *The Morality of Law*, ch. 1-4

H.L.A. Hart, Review of *The Morality of Law*, *Harvard Law Review* (1965)

Suggested:

H.L.A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review* (1958)
 Lon Fuller, "Positivism and Fidelity to Law – A Reply to Professor Hart," *Harvard L. Rev.* (1958)
 Lon Fuller, "The Forms and Limits of Adjudication," *Harvard Law Review* (1978)
 Lon Fuller, "Consideration and Form," *Columbia Law Review* (1941)
 Lon Fuller, "American Legal Realism," *Proceedings of the American Philosophical Society* (1936)

Joseph Raz, *The Authority of Law* (chapter on Fuller and the Rule of Law)
Gerald J. Postema, "Implicit Law," *Law and Philosophy* (1994)
Margaret Jane Radin, "Reconsidering the Rule of Law," *Boston University Law Review* (1989)

4. Hart-Dworkin Debate

Required:

*Ronald Dworkin, *Taking Rights Seriously*, ch. 2-3
H.L.A. Hart, *The Concept of Law*, 2nd edition, Postscript

Suggested:

H.L.A. Hart, "American Jurisprudence through English Eyes: The Nightmare and the Noble Dream," *Georgia Law Review* (1977)
H.L.A. Hart, "Between Utility and Rights," *Columbia Law Review* (1979)
H.L.A. Hart, "Rawls on Liberty and its Priority," *University of Chicago Law Review* (1973)
Ronald Dworkin, *A Matter of Principle*, ch. 5, 7
Ronald Dworkin, "Objectivity and Truth: You'd Better Believe It," *Philosophy and Public Affairs* (1996)
Ronald Dworkin, "Thirty Years On," *Harvard Law Review* (2002)
Ronald Dworkin, "Hart's Postscript and the Character of Political Philosophy," *Oxford Journal of Legal Studies* (2004)
Scott Shapiro, "The Hart-Dworkin Debate: A Short Guide for the Perplexed" working paper (2007)
E.P. Soper, "Legal Theory and the Obligation of a Judge," *Michigan Law Review* (1977)
Brian Leiter, "Beyond the Hart/Dworkin Debate: The Methodology Problem in Jurisprudence," *American Journal of Jurisprudence* (2003)
Michael S. Moore, "The Semantics of Judging," *S. California Law Review* (1980)
Brian Bix, *Law, Language and Legal Determinacy*
John Gardner, "The Legality of Law," *Ratio Juris* (2004)
Joseph Raz, "Legal Principles and the Limits of the Law" *Yale Law Journal* (1972)

5. Legal Positivism (Raz)

Required:

*Joseph Raz, *Practical Reason and Norms*, intro-ch. 3, ch. 5
Joseph Raz, *The Morality of Freedom*, ch. 2-4

Suggested:

*Joseph Raz, *The Authority of Law*, ch. 1, 4
Joseph Raz, *Ethics in the Public Domain*
Edna Ullman-Margalit, *The Emergence of Norms*
Matthew H. Kramer, "Requirements, Reasons and Raz," *Ethics* (1999)
Gerald J. Postema, "Coordination and Convention at the Foundations of Law," *Journal of Legal Studies* (1982)
Michael S. Moore, "Authority, Law, and Razian Reasons," *S. California Law Review* (1988)
Stephen R. Perry, "Second-Order Reasons, Uncertainty and Legal Theory," *S. California Law Review* (1988)
Kenneith Himma, "Just 'Cause You're Smarter than Me Doesn't Give You a Right to Tell Me What to Do: Legitimate Authority and the Normal Justification Thesis," *Oxford Journal of Legal Studies* (2007)

6. Natural Law Theory (Finnis)

Required:

*John Finnis, *Natural Law and Natural Rights*, ch. I-II, V-XII

Suggested:

John Finnis, "On the Incoherence of Legal Positivism," *Notre Dame Law Review* (1999)

John Finnis, "On the Critical Legal Studies Movement," *American Journal of Jurisprudence* (1985)

Robert George, *In Defense of Natural Law*

Robert George, *Making Men Moral*

*Robert George, ed., *Natural Law Theory*

Robert George, ed., *Law, Liberalism and Morality*

Robert George, "Natural Law," in *Oxford Handbook of Law and Politics*

Grisez, Germain G., Joseph Boyle, and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *American Journal of Jurisprudence* (1987)

Brian Bix, "On the Dividing Line between Natural Law Theory and Legal Positivism," *Notre Dame Law Review* (1999)

Neil MacCormick, "A Moralistic Case for A-Moralistic Law?" *Valparaiso University Law Review* (1985)

Russell A. Hittinger, *A Critique of the New Natural Law Theory*

David Lyons, *Moral Aspects of Legal Theory*

Jacques Maritain, *The Rights of Man and Natural Law*

Michael S. Moore, "Moral Reality Revisited," *Michigan Law Review* (1992)

Michael S. Moore, "A Natural Law Theory of Interpretation," *S. California Law Review* (1985)

Philip Soper, "Some Natural Confusions about Natural Law," *Michigan Law Review* (1992)

Lloyd Weinreb, *Natural Law and Justice*

7. Legal Positivism II

Required:

Jules Coleman, "Negative and Positive Positivism," *Journal of Legal Studies* (1982)

Scott J. Shapiro, *Legality*

Neil MacCormick, *An Institutional Theory of Law*, ch. 6

Suggested:

James Coleman, "On the Relationship between Law and Morality," *Ratio Juris* (1989)

David Lyons, "Principles, Positivism, and Legal Theory" *Yale Law Journal* (1977)

Robert P. George, ed. *The Autonomy of Law*

Matthew H. Kramer, *In Defense of Legal Positivism: Law without Trimmings*

Matthew H. Kramer, *Where Law and Morality Meet*

James Gardner, "Legal Positivism: 5 ½ Myths," *American Journal of Jurisprudence* (2001)

Stephen R. Perry, "The Varieties of Legal Positivism," *Canadian Journal of Law and Jurisprudence* (1996)

W.J. Waluchow, *Inclusive Legal Positivism*

Scott Shapiro, "Law, Morality, and the Guidance of Conduct," *Legal Theory* (2000)

8. Dworkin's Moral Philosophy

Required:

*Ronald Dworkin, *Taking Rights Seriously*, ch. 4-5

Ronald Dworkin, *A Matter of Principle*, ch. 2-3

Mark C. Murphy, "Natural Law Jurisprudence" *Legal Theory* (2003)

*Richard Posner, *The Problematics of Moral and Legal Theory*

Suggested:

Ronald Dworkin, *Freedom's Law*, introduction
Richard Posner, *The Problems of Jurisprudence*, ch. 14-15
Jeremy Waldron, *Law and Disagreement*
Marshall Cohen, ed., *Ronald Dworkin and Contemporary Jurisprudence*
Andrei Marmor, *Positive Law and Objective Values*

9. Dworkin's Constructive Interpretation

Required:

*Ronald Dworkin, *Law's Empire*, ch. 1-3, 6-7, 11

Suggested:

Frederick Schauer, "The Jurisprudence of Reasons," *Michigan Law Review* (1987)
John Finnis, "On Reason and Authority in Law's Empire," *Law and Philosophy* (1987)
Gerald J. Postema, "Integrity: Justice in Workclothes," *Iowa Law Review* (1996)
Philip Soper, "Dworkin's Domain," *Harvard Law Review* (1987)
Michael S. Moore, "The Interpretive Turn in Modern Theory: A Turn for the Worse?" *Stanford Law Review* (1989)
Andrei Marmor, *Interpretation and Legal Theory*
Scott Hershovitz, ed., *Exploring Law's Empire*
Alan Hunt, ed., *Reading Dworkin Critically*

10. Obligation to Obey the Law

Required:

Leslie Green, *The Authority of the State*
John Finnis, "Authority of Law in the Predicament of Contemporary Social Theory," *Journal of Law, Ethics and Public Policy* (1984)
Joseph Raz, "Obligation to Obey: Revision and Tradition," *Journal of Law, Ethics and Public Policy* (1984)

Suggested:

Leslie Green, "Authority and Convention," *Philosophical Quarterly* (1985)
Leslie Green, "Law and Obligation," in *Oxford Handbook of Jurisprudence*
John Finnis, "Law as Co-Ordination," *Ratio Juris* (1989)
M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *Yale Law Journal* (1973)
Rolf Sartorius, "Political Authority and Political Obligation," *Virginia Law Review* (1981)
Michael Walzer, *Obligations*
A. John Simmons, *Moral Principles and Political Obligation*
John Rawls, "Legal Obligation and the Duty of Fair Play," In Sidney Hook, ed., *Law and Philosophy*
P. Markwick, "Law and Content-Independent Reasons," *Oxford Journal of Legal Studies* (2000)
Richard A. Wasserstrom, "The Obligation to Obey the Law" *UCLA Law Review* (1962)
Ronald Dworkin, *Taking Rights Seriously*, ch. 7-8

General Overviews:

Dennis Patterson, ed., *A Companion to Philosophy of Law and Legal Theory*
Jules L. Coleman, Kenneth E. Himma, and Scott J. Shapiro, *The Oxford Handbook of Jurisprudence and Philosophy of Law*
Brian Bix, *Jurisprudence: Theory and Context*
Jules Coleman and Jeffrie Murphy, *Philosophy of Law*
John Finnis, *Philosophy of Law, Chapter 5 ("A Grand Tour of Legal Theory")*

Andrei Marmor, ed., *Law and Interpretation: Essays in Legal Philosophy*

Martin Golding and William Edmundson, eds., *The Blackwell Guide to Philosophy of Law and
Legal Theory*

Mark Murphy, *Philosophy of Law: The Fundamentals*