

PHILOSOPHY OF LAW

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Summer Session: 6/30/2008 to 8/07/2008
Monday, Tuesday, Wednesday, Thursday: 11:30am – 1:05pm

I. OVERVIEW: This course is an introduction to the philosophy of law. No background is assumed—either in philosophy or in law. The course is divided into four parts.

The first part will briefly introduce the main substantive areas of US law—including Criminal Law, Constitutional Law, Property Law, Tort Law, Contract Law—and some of the philosophical issues associated with those areas of law. We will read a range of materials in this part of the class, including parts of the US Constitution, criminal statutes, judicial opinions, and philosophical texts.

Having warmed to some of the basics of law (small ‘L’), the second part of the class will focus on philosophical theories of Law (big ‘L’). We will consider four main theories: (1) Natural Law Theory, (2) Legal Positivism, (3) Legal Realism, and (4) Law and Economics. These theories offer different answers to some or all of the following questions: What is law? How do we know whether something is ‘law’ or not? What makes it the case that something is or isn’t law? What are the (actual and/or normatively appropriate) sources of law? What is the connection, if any, between law and morality? How should we evaluate laws and legal systems?

The third part of the class will connect our philosophical study of law with normative political philosophy, addressing three main topics: the Rule of Law, Political Legitimacy, and the relationship between Democracy and Constitutionalism. Our discussion of these topics will be brief (particularly given the vast literature that exists), but should provide some sense of the issues at stake. Questions we will consider: What are rule of law values? Why should we care about them? What conditions must be satisfied in order for the coercive behavior of a political entity to be morally legitimate? What are the reasons for having a constitution? What, if anything, justifies judicial review (the ability of courts to overturn a democratically-enacted statute on the grounds that it is unconstitutional)?

The fourth and final part of the class will consider issues of legal (particularly constitutional) interpretation, focusing on a discussion of two main theories of interpretation—originalism and various forms of non-originalism (pragmatism, certain forms of textualism, doctrinalism, and others)—that will be informed by our earlier discussions of legal theories and normative political philosophy. Our main interest in the topic will be in thinking about the following question: How should judges interpret the U.S. Constitution? This discussion will be framed around the Supreme Court’s decision in *District of Columbia v. Heller*, decided on June 26th, 2008. This case represents the first time in roughly 70 years that the Supreme Court will consider the question of the meaning of the Second Amendment.

II. TEXTS: The course draws on materials from a number of different sources. All readings will be available (in .pdf or .doc format) through the course ‘Blackboard’ site to which all students will have access. There is no assigned text for the class, though several of the readings are excerpted in part from the collection *A Companion to Philosophy of Law and Legal Theory*, published by Blackwell in 1999, and edited by Dennis Patterson (Patterson (1)). If you wish to purchase it, new and used copies are available from Amazon.com. Otherwise, everything is available through Blackboard.

III. COURSE REQUIREMENTS:

●**Class Participation** (20% of grade): Based on quantity and quality of in-class participation. Effort counts. More precisely, *informed* effort counts. It will be evident if you have not done the assigned reading in advance of class. Please do the reading. I leave open the possibility of including ‘pop quizzes’ as part of class participation. Attendance also counts. Any unexcused absence can result in a 20% reduction in your overall class participation grade. Absences are unexcused unless you have contacted me prior to 11am on the day of the class you’ll be missing to let me know both that you will be absent and why.

●**Paper One** (30% of grade): The first paper will be due July 21. Topics will be distributed on July 7. Papers will be returned on July 28.

●**Paper Two** (50% of grade): The second paper will be due August 7. Topics distributed July 24.

Important Note: Plagiarism will result in automatic failure for the course. Please come speak with me if you are having difficulty with a paper.

IV. TOPICS AND READINGS: There are 24 course meetings. Below, there are 24 different numbered topics and associated readings. These numbered topics will correspond *roughly*, though not *perfectly*, with the 24 course meetings, so that Topic 1 falls on the first day of class, Topic 2 on the second day of class, and so on. I will let you know which topic number and reading to prepare for each class. Please pay attention to these announcements. Feel free to email me if you are ever uncertain of the readings for the next class. The readings for a particular topic will be available on the course Blackboard site under the number and name of that topic.

Important Note: The readings are edited (sometimes *heavily*) so that what is posted is just that part of the text that is required reading. Please note this if you are obtaining the texts from other sources.

	Topic	Reading
1	Introduction	No Reading
2	Property Law	<u>Cases:</u> Ghen v. Rich; US v. Causby ●“Property Law,” by Jeremy Waldron, in Patterson (1)
3	Tort Law	<u>Cases:</u> Vosburg v. Putney; Lama v. Borrás; Indiana Harbor Belt R.R. v. American Cyanamid Co. ●“Tort Law,” by Stephen Perry, in Patterson (1)
4	Contract Law	<u>Cases:</u> Lucy v. Zehmer; Leonard v. PepsiCo; Weinberg v. Edelstein ●“Contract Law,” by Peter Benson, in Patterson (1)
5	Criminal Law	<u>Cases:</u> People v. Kevoorkian; People v. Rizzo; People v. Jaffe ●Selections from NY Penal Code ●“Criminal Law,” by Leo Katz, in Patterson (1)
6	International Law	<u>Cases:</u> Roper v. Simmons; Prosecutor v. Slobodan Milosevic ●“Public International Law,” by Philip Bobbitt, in Patterson (1)
7	Constitutional Law	●U.S. Constitution: Preamble, Articles I-V, Amendments 1-15, 17, 19, 22 ●excerpts from the Federalist Papers
8	Natural Law Theory	●“Natural Law Theory,” by Brian Bix, in Patterson (1)
9	Legal Positivism (1)	●“Legal Positivism,” by Jules Coleman and Brian Leiter, in Patterson (1)

10	Legal Positivism (2)	●“Positivism and the Separation of Law and Morals,” by H. L. A. Hart, <i>Harvard Law Review</i> (1958)
11	Legal Realism	●“Legal Realism,” by Brian Leiter, in Patterson (1)
12	Law and Economics	●“Law and Economics,” by Jon Hanson and Melissa Hart, in Patterson (1) ●“The Economic Approach to Law,” by Richard Posner, from his book <i>The Problems of Jurisprudence</i>
13	Political Legitimacy	●“Political Legitimacy and Democracy,” by Allen Buchanan, <i>Ethics</i> (2002)
14	Democracy	●“Democracy,” by Amy Gutmann (1993) ●“What is Special About Democracy?” by Gordon Graham, <i>Mind</i> (1983)
15	The Rule of Law	●“Constitutionalism and the Rule of Law,” by C. L. Ten (1993) ●“Eight Ways to Fail to Make Law,” by Lon Fuller, from his book <i>The Morality of Law</i> (1964)
16	Judicial Review	● “The Core of the Case Against Judicial Review,” by Jeremy Waldron, <i>Yale Law Journal</i> (2006)
17	Constitutionalism	●“On the Authority and Interpretation of Constitutions: Some Preliminaries,” by Joseph Raz
18	Interpretation	●District of Columbia v. Heller (2008) ●briefs for District of Columbia v. Heller
19	Interpretation	●“Constitutional Interpretation,” by Andrei Marmor
20	Interpretation	●“Legitimacy and Interpretation,” by Jed Rubenfeld
21	Interpretation	●excerpts from <i>Law’s Empire</i> , by Ronald Dworkin (1986)
22	Interpretation	●excerpts from <i>A Matter of Interpretation</i> , by Antonin Scalia (1997) ●Dworkin’s response to Scalia ●Scalia’s response to Dworkin
23	Interpretation	●excerpts from “Semantic Originalism,” by Lawrence Solum ● excerpts from “Scalia’s Infidelity: A Critique of Faint-Hearted Originalism,” by Randy Barnett
24	Interpretation	●“Abortion and Original Meaning,” by Jack Balkin