

The Nature of Law

SPRING 2022

Instructor information

Instructor: Laurenz Ramsauer

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Office hours: Friday 11am-2pm (by appointment)

Course description

Why should we think legal rules have any authority in the first place? And if so, what kind of practical authority do they have? In this course, we will cover the key debates in philosophy of law that have shaped the discipline since the second half of the 20th century. These debates center around the relation between positive law and morality and the authority of legal rules. We will read some of the most influential works contemporary legal theory, including work by H.L.A. Hart, Ronald Dworkin, Joseph Raz, Julie Dickson as well as recent responses to their arguments. In considering the relation between law and morality, we will also consider such questions as: what is necessary for a social rule to be action-guiding? is it sensible to speak of several types of normativity? what is the nature of legal 'validity'? and does the rule of law (or 'legality') have any intrinsic value? This course would be of interest to students who want a grasp of contemporary issues in philosophy of law as a background to advanced work in moral, social and political philosophy, as well as to students interested in graduate work in legal philosophy. The course will also provide helpful background knowledge to students considering law school.

Learning objectives

By the end of this course, students will be familiar with the major philosophical puzzles about law. Students will also have developed a more nuanced understanding of law as a social practice and institution, and they will have acquired the background knowledge and philosophical vocabulary to follow contemporary and advanced work in philosophy of law.

Texts

All readings will be available online via canvas.

We will read several chapters of Hart's *The Concept of Law*, which will be available at the seminary coop for those who want to purchase a print copy.

Course requirements

- Thoughtful participation in discussion (including canvas discussion posts)
- A 10-15-minute presentation of your essay topic. Students will revise their final essay topic based on the feedback (from both the instructor and their peers) from their in-class presentation.
- Final 10-15-page essay, due June 4th (May 26th for graduating students)

Assessment

Assessment will be based on a brief one-on-one conversation between instructor and student. After handing in your final paper, we will meet and I will ask you to give me a brief elevator-pitch about how your understanding of law has become more nuanced over the course of the quarter, and what you have contributed to the course. You will then suggest a grade based on your own estimation of both your learning and your contribution to our discussions. In optional, upper-level courses, self-evaluations tend to be honest and accurate. But in order to prevent students from undervaluing their effort and contribution along e.g., gendered lines, I keep a veto-power over suggested grades, and may raise suggested grades if I believe suggestions to be overly modest. Because assessment will be conversation rather than a top-down judgment, I encourage you to keep reflecting about both your contribution to our discussion and your own learning-process – as well as to your peers' learning – throughout the course.

Accommodation for Students with Disabilities

University policy is that students needing academic adjustments or accommodations because of a disability must present documentation from the Coordinator for Student Disabilities Services by the end of the second week of the term. If you need accommodation, please inform me as soon as possible. All discussions will remain confidential.

Schedule

Week 1: Austin's command theory of law

29.03. Austin's command theory of law

John Austin, *The Province of Jurisprudence Determined*, lecture 1, 157-60, 164-70, 211-18

31.03. Hart's criticism of Austin's command theory

H.L.A. Hart, *The Concept of Law*, chapters 2-4

Week 2: H.L.A. Hart's concept of law

05.04. Law as a system of rules

H.L.A. Hart, *The Concept of Law*, chapters 5-6

Scott Shapiro, "On Hart's Way Out," 469-472

07.04. Hart's legal positivism

H.L.A. Hart, *The Concept of Law*, chapters 8-9

Week 3: Legal principles and adjudication

12.04. Hart on rules, principles, and adjudication

H.L.A. Hart, *The Concept of Law*, chapter 7

14.04. Dworkin on legal principles

Riggs v. Palmer 115 NY 506

Ronald Dworkin, "The Model of Rules"

Week 4: 'Inclusive' vs. 'exclusive' legal positivism

19.04. Inclusive vs exclusive legal positivism

Scott Shapiro, "The Hart-Dworkin Debate" 22-35

Joseph Raz, "Authority, Law and Morality"

21.04. Guiding conduct and exclusive legal positivism

Scott Shapiro, "On Hart's Way Out"

Week 5: Theoretical disagreement in law

26.04. 'Interpretivism' about theoretical disagreement

Ronald Dworkin, *Law's Empire*, 1-15, 23-29, 225-250, 254-66, 407-13

Scott Shapiro, "The Hart-Dworkin Debate" 35-50

28.04. Realism about theoretical disagreement
Brian Leiter, "Explaining Theoretical Disagreement"

Week 6: Methodology in legal philosophy

03.05. Description without evaluation?
John Finnis, *Natural Law and Natural Rights*, chapter 1
Optional: Walter Wippersberg, *Das Fest des Hunes* (film)
Optional: John Gardner, "Why Law Might Emerge: Hart's Problematic Fable"

05.05. Positivist methodology
Julie Dickson, *Evaluation and Legal Theory*, chapter 3
Optional: Brian Leiter, "The Methodology Problem in Jurisprudence"

Week 7: Modern Natural Law theory

10.05. The 'weak' natural law thesis
Mark Murphy, *Natural Law in Jurisprudence and Politics*, 8-36, 57-60

12.05. Artefacts and functions
Brian Leiter, "Legal Positivism about the Artifact Law," 7-15
Optional: Leslie Green, "The Functions of Law"

Week 8: The value of legality

17.05. Lon Fuller's anti-positivism
Lon Fuller, *The Morality of Law*, chapter 2
H.L.A. Hart, "Review: The Morality of Law by Lon Fuller"
Optional: Colleen Murphy, "Lon Fuller and the Moral Value of the Rule of Law"

Week 9: Radbruch on statutory injustice; and Kletzer on law as interpretation

24.05. Radbruch's formula
Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law"
H.L.A. Hart, "Positivism and the Separation of Law and Morals" 615-621
§27 DDR Grenzgesetz
BGHSt 39, 1 [excerpt]

26.05. Law as a scheme of interpretation
Christoph Kletzer, "Primitive Law"
Christoph Kletzer, *The Idea of a Pure Theory of Law* [excerpts]