

Topics in the Philosophy of Law

QUARTER YEAR

Instructor information

Instructor: Laurenz Ramsauer
Email: lramsau@uchicago.edu
Office hours: TBA

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? Law drastically shapes the way we live together in a society – yet what kind of thing law is, how it relates to justice and morality, and what its practical authority over our lives should be are topics of considerably controversy. In this course, we will discuss some of the key texts in philosophy of law that have shaped the discipline over the last decades. These debates center around the relation between law, justice 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, Catharine MacKinnon, Angela Harris, Martha Nussbaum, and many others. In considering the relation between law and morality, we will also consider such questions as: what is necessary for a rule to be action-guiding? what is legal ‘validity’? does the rule of law have any intrinsic value? And can the law always be used for a good cause?

Texts

All texts will be made available online.

Course requirements

- Thoughtful participation in discussion: 20%
- A 10-15 minute in-class presentation of one assigned reading: 30%
- Final 10–15-pages essay: 50% (due Month/Day)

Assessment

Thoughtful participation in discussion means that you regularly attend class and come prepared to each meeting ready to discuss the material. This not merely involves articulating your own point of view but also the ability to take in what others are saying and to genuinely engage with it. An excellent in-class presentation conveys the content of the reading concisely without overly simplifying, is presented clearly, raises interesting questions and/or criticism, and connects the reading with previous course material. You can find a short guide on how to write a good philosophy paper [here](#), and you can find the rubrics for the assessment of your oral presentation and essay [here](#) and [here](#) respectively.

Accommodation for Students with Disabilities

If you need accommodation, please inform me as soon as possible. All discussions will remain confidential.

Schedule

Week 1: Introduction

Month/Day. Morality or violence?

Xenophon (excerpt)

Month/Day. Law and force

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

Week 2: Law as a system of rules

Month/Day. Hart's criticism of Austin

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

Month/Day. Hart's legal positivism

H.L.A. Hart, *The Concept of Law*, chapters 5, 6, and 9
Scott Shapiro, 'On Hart's Way Out,' 469-472

Week 3: Law and morality

Month/Day. Dworkin's criticism of Hart

Riggs v. Palmer 115 NY 506
Ronald Dworkin, 'The Model of Rules'

Month/Day. Can law incorporate moral norms?

Scott Shapiro, 'The Hart-Dworkin Debate' 22-35
Joseph Raz, 'Authority, Law and Morality'

Week 4: Methodology in (legal) philosophy

Month/Day. Description without evaluation?

John Finnis, *Natural Law and Natural Rights*, chapter 1
Walter Wippersberg: *Das Fest des Hubnes* (film excerpt)

Month/Day. Epistemic and moral values

Brian Leiter, 'The Methodology Problem in Jurisprudence'

Week 5: Legality and the Rule of Law

Month/Day. 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'

Month/Day. The rule of law and human dignity

Nigel Simmonds, *Law as a Moral Idea* (excerpts)

Hannah Arendt, 'The Perplexities of the Rights of Man'

Optional: Kristen Rundle, *Forms Liberate* (excerpts)

Week 6: Critical Legal Studies

Month/Day. The 'Critical Legal Studies' movement

Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (excerpt)

Month/Day. Criticism left and right

John Finnis, 'On "The Critical Legal Studies Movement"'

Brian Leiter, 'Is There an 'American' Jurisprudence?' (excerpt)

Week 7: Feminist legal theory

Month/Day. Law and equality

Catharine MacKinnon, 'Reflections on Sex Equality Under Law'

Month/Day. Law, justice, and essentialism

Angela Harris, 'Race and Essentialism in Feminist Legal Theory'

Optional: Martha Nussbaum, 'Human Functioning and Social Justice: In Defense of Aristotelian Essentialism'

Week 8: Specifically legal problems: intention and evidence

Month/Day. Criminal law and intention

Dana Nelkin and S. Rickless, 'The Relevance of Intention to Criminal Wrongdoing'

Month/Day. Law and evidence

Judith Jarvis Thomson, 'Liability and Individualized Evidence'

Week 9: Law and consent

Month/Day. What is 'consent' in law?

Roseanna Sommers, 'Commonsense Consent'

Month/Day. Feminist perspectives on consent

Catharine MacKinnon, 'Rape Redefined'

Janet Halley, 'The Move to Affirmative Consent'

Week 10: The administration of justice; summary

Month/Day. The administration of justice

Adriano Prospero, *Justice Blindfolded* (excerpt)

Jennifer Hunt, 'Injustice in the Courtroom: How Race and Ethnicity Affect Legal Outcomes'

Month/Day. Summary

No required reading

Academic Integrity

Academic work is an author's original contribution and properly cites all sources used (such as articles, books, interviews, films, podcasts etc.). This matters for both epistemic and moral reasons. For epistemic reasons, it is crucial that academic work can be double-checked by academic peers, so readers must be able to easily identify all sources an author relied on. For moral reasons, it is crucial that other authors receive the credit they deserve. * Feel free to consult with me before completing your assignments if you should have any concerns about the correct way to reference the work of others. The consequence of plagiarism will be a failing grade. In the unfortunate event that a student is suspected of plagiarism, I also have to follow the university's official guidelines for responding to academic misconduct.

Climate and Inclusion

Philosophy involves the ability to formulate your own and carefully attending to others' arguments, both in writing and in conversation. Even when philosophers disagree, this is not an adversarial activity: philosophy can only be done well as a collective activity with the shared end of furthering our mutual understanding. This requires that all of us be prepared to listen carefully and seriously to what others have to say, no matter how strongly we may disagree. Creating such an inclusive environment matters not merely for moral reasons, but for epistemic reasons too. If some groups are left feeling unwelcome and their perspectives left unheard, we seriously impair our collective ability to make progress in knowledge. It is therefore my goal as an instructor to create an environment where everyone feels respected and welcome. I encourage you to reach out to me if you have suggestions for promoting a welcoming and open academic environment, and I will give them serious consideration. If there are any circumstances that make you feel uncomfortable in our classroom, please let me know. All discussion will remain confidential.

* For instance, these academic integrity and climate statements are modelled after Tyler Zimmer's syllabus on Philosophy of Economics (2022).