

PHILOSOPHY OF LAW

DICKINSON COLLEGE
DEPARTMENT OF POLITICAL SCIENCE
SPRING 2015

DOUGLAS E. EDLIN
DENNY HALL 305
OFFICE HOURS: TUE. AND THU. 3:00-5:00 AND BY APPOINTMENT

Course Description

This course studies the theory of law. We will examine the fundamental and recurring questions of the subject. For example, what is the nature of law? Are laws the commands of the powerful, or the rules of self-government, or something else entirely? What is the purpose of law? Does law have any legitimate claim to authority or obedience? Is there any necessary connection between law and morality? Is law the enforcement of social morality? What is the justification for legal punishment? We will read some of the most influential writings by some of the most important thinkers in this field and we will attempt to arrive at our own conclusions about these and other questions.

Required Readings

John Austin, *The Province of Jurisprudence Determined* (Wilfrid E. Rumble, ed.)
(Cambridge University Press, 1995)

John Finnis, *Natural Law and Natural Rights* (2nd ed.) Oxford University Press, 2011)

Robert P. George, ed., *The Autonomy of Law: Essays on Legal Positivism*
(Oxford University Press, 1996)

H.L.A. Hart, *The Concept of Law* (3rd ed.) (Oxford University Press, 2012)

H.L.A. Hart, *Law, Liberty, and Morality* (Stanford University Press, 1972)

Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986)

Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1978)

Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law*
(Harvard University Press, 1987)

Format and Requirements

This is a lecture course, but I do not expect to do all, or even most, of the talking. Students are expected to participate actively in discussions. There will be one paper (8-10 pages) on a topic chosen by the student (and approved by me), an in-class midterm examination, and a take home final examination. Failure to complete all assignments will result in a failing grade for the course. Final grades will be calculated as follows:

Paper	25%
Midterm Exam	25%
Final Examination	40%
Class Participation	10%

Accommodations for Disabilities

Dickinson College makes reasonable academic accommodations for students with disabilities. I am available to discuss academic accommodations for students with documented disabilities. Students requesting accommodations must first register with Disability Services to verify their eligibility. After documentation review, Marni Jones, Director of Learning Skills and Disability Services, will provide eligible students with accommodation letters. Students must obtain a new letter every semester and meet with me prior to any accommodations being implemented. These meetings should occur during the first three weeks of the semester (except for unusual circumstances), and at least one week before any testing accommodations. The Office of Disability Services is located in Biddle House. For appointments call 245-1080. For more information, see the Disability Services website (www.dickinson.edu/student-life/resources/disability-services/) or email disabilityservices@dickinson.edu.

Course Schedule

I. INTRODUCTION

January 19 Introduction (no reading)

II. LEGAL POSITIVISM

The Command Theory of Law

January 21 Austin, *The Province of Jurisprudence Determined*, Lecture I and Lecture V (106-123, 136-147, 157-163)

- January 23 No Class Meeting
- January 26 Austin, *The Province of Jurisprudence Determined*, Lecture VI (164-180,
192-217, 235-239, 242-246)
Hart, *The Concept of Law*, chs. 1-2

Law as a System of Rules

- January 28 Hart, *The Concept of Law*, chs. 3-4
- January 30 Hart, *The Concept of Law*, chs. 5-6
- February 2 Hart, *The Concept of Law*, chs. 7 and 9
- February 4 Hart, "Positivism and the Separation of Law and Morals," in Hart, *Essays in Jurisprudence and Philosophy* (Oxford University Press, 1983) (on reserve and online)

Inclusive and Exclusive Legal Positivism

- February 6 MacCormick, "The Concept of Law and The Concept of Law" in George, *The Autonomy of Law*
- February 9 Raz, "Authority, Law, and Morality" in Raz, *Ethics in the Public Domain* (Oxford University Press, 1994) (on reserve in binder)
- February 11 Coleman, "Authority and Reason" in George, *The Autonomy of Law*

III. NATURAL LAW

- February 13 Postema, "Law's Autonomy and Public Practical Reason" in George, *The Autonomy of Law*
- February 16 Aquinas, *Summa Theologiae*, Questions 94-97 (*The Treatise on Law*) (on reserve)
- February 18 Finnis, *Natural Law and Natural Rights*, chs. 1, 2 and 5
- February 20 Finnis, *Natural Law and Natural Rights*, chs. 8 and 12
- February 23 Fuller, *Positivism and Fidelity to Law: A Reply to Professor Hart*, 71 *Harvard Law Review* 630 (1958) (on reserve in binder)

February 25 Midterm Exam Review

February 27 No Class Meeting

March 2 **Midterm Examination**

IV. LAW AS INTERPRETATION

March 4 Dworkin, *Taking Rights Seriously*, Introduction and chs. 1-2

March 6 Dworkin, *Taking Rights Seriously*, chs. 3-4

March 9 No Class Meeting

March 11 No Class Meeting

March 13 No Class Meeting

March 16 Dworkin, *Law's Empire*, chs. 2-3

March 18 Dworkin, *Law's Empire*, ch. 7

March 20 Hart, *The Concept of Law*, Postscript

March 23 Greenawalt, "Too Thin and Too Rich: Distinguishing Features of Legal Positivism" and Schauer, "Positivism as Pariah" in George, *The Autonomy of Law*

V. FEMINIST JURISPRUDENCE

March 25 MacKinnon, *Feminism Unmodified*, Introduction and chs. 1-5

March 27 West, *Jurisprudence and Gender*, 55 University of Chicago Law Review 1 (1988) (online)

March 30 MacKinnon, *Feminism Unmodified*, chs. 6-7, 13-14

April 1 No Class Meeting

April 3 Alan Wertheimer, *Consent to Sexual Relations* (Cambridge University Press, 2003), chs. 1-2 (on reserve)

- April 6 Wertheimer, *Consent to Sexual Relations*, chs. 6-7 (on reserve)
- April 8 Wertheimer, *Consent to Sexual Relations*, chs. 10-11 (on reserve)
- April 10 **Papers Due**
 Caroline A. Forell and Donna M. Matthews, *A Law of Her Own: The Reasonable Woman as a Measure of Man* (New York University Press, 2000), chs. 1-2 and 4 (on reserve)

VI. THE LEGAL ENFORCEMENT OF MORALITY

- April 13 Hart, *Law, Liberty, and Morality*, Parts I and II
- April 15 Hart, *Law, Liberty, and Morality*, Part III
Bowers v. Hardwick, 478 U.S. 186 (1986) (Justice White's opinion for the Court and Justice Blackmun's dissent) (online)
Lawrence v. Texas, 539 U.S. 558 (2003) (online)
- April 17 *Goodridge v. Department of Public Health*,
 440 Mass. 309, 798 N.E.2d 941 (2003) (online)
- April 20 *Shaw v. Director of Public Prosecutions*, [1962] AC 220 (online)
 Note, *Feminist Legal Analysis and Sexual Autonomy: Using Statutory Rape Laws as an Illustration*, 112 Harvard Law Review 1065 (1999) (online)

VII. PUNISHMENT

- April 22 H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd ed.) (Oxford University Press, 2008), chs. 1, 7 (on reserve)
- April 24 No Class Meeting
- April 27 *Buck v. Bell*, 274 U.S. 200 (1927) (online)
State v. Brown, 284 S.C. 407, 326 S.E.2d 410 (1985) (online)
- April 29 *R. v. Brown*, [1994] 1 AC 212 (online)
R. v. Dudley and Stephens, (1884) 14 QBD 273 (online)

VIII. CONCLUSION

May 1 Final Exam Review
 Final Examinations Handed Out

May 5 **Final Examinations Due No Later Than 5PM**