

PHIL 340 PHILOSOPHY OF LAW
Spring 2010
M/W/F 1030-1130
Rangeview 244

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COURSE DESCRIPTION

Philosophy of law is the study of the nature, principles, and justification of legal systems. This course focuses exclusively on the legal system found in broadly democratic and constitutional states, and covers basic topics in analytical and constitutional jurisprudence respectively. Analytical jurisprudence defines the objectivity of law, its justification within the legal system, and considers alternative frameworks for legal reasoning and interpretation. In constitutional jurisprudence, the complex relationship between morality, law and constitutional principles is considered through close examination of court cases on individual liberty, civil rights, and criminal sanction. The course is designed for undergraduate students to have a broad, working knowledge of legal theory regardless of whether they pursue formal legal training in law school.

REQUIRED TEXTS

Eds. Joel Feinberg and Jules Coleman, *Philosophy of Law*, 8th edition (Wadsworth, 2007).
J.S. Mill, *On Liberty* (Hackett, 1978; originally published 1859).

COURSE REQUIREMENTS

The course requires *minimally* completing the following. No email submissions of work done in this course will be accepted. No unstapled papers will be accepted. No exceptions. If a student needs an extension for a given deadline, ask at least 3-4 days ahead of the deadline, not at the last minute by email.

1. (2) midterms	50 percent	2/22, 4/5
2. (3) legal briefs (2-3 pp.)	15 percent	See below
3. (1) final exam	35 percent	TBD

1. (2) midterms will be given at intervals. The first will likely cover the topics in analytical jurisprudence like natural law theory, legal positivism, and alternative frameworks for justifying and interpreting the law. The second will likely cover topics in constitutional jurisprudence. They will be in-class exams; laptops encouraged. **25 percent each.**

2. (3) legal briefs (2-3 pp.) concisely summarizing the Court's decisions on several important cases in constitutional law. You may choose which cases to write on, but the brief must be handed in on the day that case is covered in class. **5 percent each.**

3. (1) final exam. Take-home OR during the final exam period. Your participation and hard work during the semester will justify the former rather than the latter. **30 percent.**

Class attendance and participation is expected. There are five basic rules in this classroom: (1) read all assigned material before class, (2) ask questions if you don't understand, (3) participate in the discussion if you have something to say, (4) respect others by directing comments as arguments relating to the text rather than at other students, and (5) turn off your wireless devices.

It is the policy of Occidental College to make reasonable accommodations for qualified individuals with disabilities. If you require these accommodations, please see me no later than the second week of class. For information on documentation requirements for these requests, contact the Center for Academic Excellence (x2849).

This syllabus represents a contract. As students you are expected to fulfill your duties in this course, just as the administration, faculty, and students of Occidental College expect me to fulfill my duties as instructor.

ACADEMIC HONESTY

Plagiarism, which is misrepresenting the work of others as your own, or academic misconduct more generally, will be turned over to the Judicial Examiner. It is standard to receive an "F" for the course, as well as additional punitive measures, for students who commit academic misconduct. There is an Academic Code at Occidental College that can be found at the following link:

<http://departments.oxy.edu/studentlife/studenthandbook/academic.policies/academic.ethics.html>

SCHEDULE

Weeks 1-2 The Nature of Law, I: Natural Law Theory

Aquinas "Law, Morality, and Politics" (PL), pp. 8-13

Fuller, "Eight Ways to Fail to Make Law" (PL), pp. 13-17

Week 3 The Nature of Law, II: Legal Positivism

Austin, "A Positivist Conception of Law" (PL), pp. 55-68

Hart, "The Union of Primary and Secondary Rules" (PL), pp. 68-84

Weeks 4-5 The Nature of Law, III: Legal Realism

Holmes, "The Path of the Law" (PL), pp. 120-26

Frank, "Legal Realism" (PL), pp. 117-20

Posner, "Law and Economics" (ER)
Taiwo, *Legal Naturalism* (ER)

R, 2/22 MIDTERM 1 ON ANALYTICAL JURISPRUDENCE

Weeks 6-7 Morality, Rights, and the Limits of Law
Plato, *Crito* (PL), pp. 206-14
King, "Letter from Birmingham Jail" (PL), pp. 231-40
Feinberg, *Offensive Nuisances* (PL), pp. 347-57
Mill, 1-53
Mill, 53-113

Week 8 SPRING BREAK!

Week 9 Judicial Review
Madison, *Federalist Nos. 10, 51* (ER)
Marbury v. Madison (ER)

Week 10 Constitutional Interpretation
Gore v. Bush (ER)
Scalia, "Common-Law Courts in a Civil-Law System" (PL), pp. 151-61
Dworkin, "Comment on Scalia" (PL), pp. 161-69
John Hart Ely, "Discovering Fundamental Values" (ER)

Week 11 First Amendment and Free Speech
Cohen v. California (PL), pp. 395-98
Skokie v. National Socialist Party (PL), pp. 399-403
Texas v. Johnson (ER)
Chaplinsky v. New Hampshire (ER)
RAV v. St. Paul (ER)

M, 4/5 MIDTERM 2 ON CONSTITUTIONAL JURISPRUDENCE

Week 12 Second Amendment and Firearms Policy
DC v. Heller (ER)
LaFollette, "Gun Control" (ER)

Week 13 Fourth Amendment, Search and Seizure, and the Drug War
Illinois v. Cabales (ER)
Husak, "Liberal Neutrality, Autonomy, and Drug Prohibitions" (ER)

Week 14 Eighth Amendment, the Death Penalty, and International Law
Furman v. Georgia (PL), pp. 854-61
Gregg v. Georgia (ER)
Steiker, "Capital Punishment and American Exceptionalism" (ER)

Week 15

Fourteenth Amendment, Equal Protection, and Civil Rights

Romer v. Evans (ER)

Lawrence v. Texas (ER)

Schaff, "Equal Protection and Same-Sex Marriage" (ER)