

Jurisprudence
 Government 372
 Wesleyan University
 Spring 06

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Syllabus

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I Introduction

Jurisprudence is not a course on law, but rather an exploration into the philosophy and nature of law. As the semester proceeds, we shall wander through a wide variety of theories and topics, all the while concerned to ask (knowing that the questions are more important than the answers): what is law, from where and how it is pedigreed, and what functions does it serve.

We shall begin by reviewing classic works in two distinct jurisprudential traditions--those of legal positivism and natural law. As we explore these materials, try to understand the ways in which these three approaches to law conceptualize the relationship between "law in theory" and "law in practice." This course shall assume, but only provisionally, that political, social, and legal theory matter to "law in practice," although the ways in which they matter are not always clear. We will also consider a number of other theories of law, including American legal realism and feminist theories of law. We conclude with a series of inquiries into more discrete topics, such as the relationship between law and morality, the nature of rights, and the problems of punishment

II Books to Purchase

Copies of all required and some recommended readings are on reserve at Olin Library.

Required:

Our primary source will be:

Wacks, *Understanding Jurisprudence*.

In addition, we will read from:

Fuller, *The Morality of Law*

Hart, *The Concept of Law*

Nussbaum, *Hiding From Humanity*

Posner, *Problems of Jurisprudence*

III Schedule of Papers

1. Weekly Essays.

There are substantive readings for approximately ten weeks in this course. Over the course of the semester, you must prepare three papers of three to four pages, related in some (more or less direct) way to those readings. You may choose to spread the three papers across the semester in any way you like.

2. Film Essays.

There are two films assigned in this course. In addition to the weekly essays, you must prepare one essay on one of the films. These essays are due in class the week following the film.

3. Class Presentations.

Every student will be responsible for presenting, in class, a summary and analysis of one of the readings for at least two weeks. I shall provide details on this assignment in the first seminar.

4. Final Papers.

Every student must prepare a final analytical paper of approximately ten or more pages. You must get my approval for your topic.

IV Grades and Examinations

There are no examinations in this course.

The weekly essays are worth 30% of the final grade.

The class presentation is worth 20% of the final grade.

The film essay is worth 10% of the final grade.

The final paper is worth 2% of the final grade.

Class participation is worth 20% of the final grade.

V Seminar Topics & Assignments

January 31: Introduction

Assigned: Wacks, Introduction
Posner, Introduction
Nussbaum, chapter 1
“Grudge Informer,” Fuller, pp. 245-55

February 7: Natural Law & Naturalism

Assigned: Wacks, chapter 2
Fuller, chapters 1-4

Recommended: Aquinas, *Summa Theologica*
Augustine, *Confessions*
Finnis, John, *Moral, Political, and Legal Theory*
George, *In Defense of Natural Law*

February 14: Legal Positivism & the Command Theory of Law

Assigned: Wacks, chapters 3-4
Hart, chapters 1-4

Recommended: Kramer, *In Defense of Legal Positivism*
Raz, *The Authority of Law*
George, ed., *The Autonomy of Law*
Austin, *The Province of Jurisprudence Determined*

February 21: FILM #1--"Judgment at Nuremberg"

Assigned: Jackson, "Closing Address in the Nuremberg Trial,"
<http://www.derechos.org/nizkor/nuremberg/jackson2.html>

February 28: American Legal Realism & Critical Legal Studies

Assigned: Wacks, chapters 7 & 12
Posner, chapters 6-7
Fuller, pp. 226-27

Recommended: Frank, *Courts on Trial*
Frank, *Law and the Modern Mind*
Llewellyn, "Some Realism About Realism"

Rumble, *American Legal Realism*
Holmes, "The Path of the Law"
Kairys, *The Politics of Law*
Unger, *Knowledge and Politics*
Kelman, *A Guide to Critical Legal Studies*

March 7: Jurisprudence as Political Ideology

Assigned: Wacks, chapter 8
Posner, chapter 2

Recommended: Collins, *Marxism and Law*
Hirst, *On Law and Ideology*
Foucault, *Discipline and Punish*
Habermas, *Between Facts and Norm*

March 28: Feminist Legal Theories & Critical Race Theory

Assigned: Wacks, chapters 11
Posner, chapter 13

Recommended: MacKinnon, *Toward a Feminist Theory of the State*
Bartlett, "Feminist Legal Method"
Crenshaw, "Demarginalizing the Intersection of Race & Sex"
Delgado, *Critical White Studies*
Lacey, *Unspeakable Subjects*
Smart, *Feminist Jurisprudence*
West, *Jurisprudence and Gender*
Bell, *And We Are Not Saved*
Crenshaw, *Critical Race Theory: The Key Writings that Formed the Movement*

April 4: Jurisprudence as Interpretation

Assigned: Wacks, chapter 5
Posner, chapters 9-10
Hart, chapters 6-7

Recommended: Dworkin, *Law's Empire*
Dworkin, *Taking Rights Seriously*
Fish, "Working on the Chain Gang,"
Marmor, *Interpretation and Legal Theory*

April 11: The Problem of Rights

Assigned: Wacks, chapter 10

Recommended: Dworkin, *Taking Rights Seriously*
Gewirth, *Human Rights*
MacCormick, *Legal Rights and Social Democracy*
Nino, *The Ethics of Human Rights*
Waldron, *Theories of Rights*

April 18: Responsibility, Crime, & Punishment

Assigned: Hart, chapter 8
Nussbaum, chapter 8

Recommended: J.S. Mill, *On Liberty*.
Thoreau, "Civil Disobedience,"
Camus, *The Stranger*
Bentham, *An Introduction to the Principles of Morals and Legislation*
Feinberg, *Offense to Others*
Kant, "On the Right to Punish"

April 25: FILM #2—"Snow Falling on Cedars"

Recommended: Melville, *Billy Budd*

May 2: Law & Morality

Assigned: Wacks, chapter 6
Nussbaum, chapters 2-3
Fuller, chapter 4
Hart, chapter 9

Recommended: Devlin, *The Enforcement of Morality*
Moore, *Placing Blame*

May 9: Conclusion

Assigned: Fuller, *Speluncean Explorers*
Nussbaum, chapter 7
Auden, "Law Like Love,"
<http://www.poemhunter.com/p/m/poem.asp?poet=8272&poem=61504>