Jurisprudence: The Study of Legal Philosophy

This course is specifically designed to introduce students to philosophical conceptions of law and the use of those philosophical approaches in legal reasoning. We will examine the way legal philosophers from Aquinas to Finnis, Austin to Hart to Dworkin to Feminist theorists have all confronted and answered fundamental questions about the law, including ‘What is law?’ ‘What connection, if any, is there between our legal duties and morality?’ ‘Can a valid law make us to do something immoral?’ ‘What makes a law binding?’ and ‘How should our understanding of law shape our conception of society and of ourselves as citizens?’

LEARNING OBJECTIVES: Students will learn how to read philosophical works critically. Through reading assignments, discussion and written assignments the student will become familiar with various approaches to problems in ancient political theory and how those attitudes shape our own. The format of the class is lecture and discussion. All discussion and written work in the class is intended to develop students’ critical thinking, reading and writing skills.

As you do the classwork, as you read, write essays, study, and prepare for examinations, you should keep in mind that the assigned work in this class is intended to help you develop your skills in the following ways:

1) Recognizing IDEAS/FACTS, that is, develop the ability to recognize key ideas and facts.
   --key terms and their meanings (including how those meanings differ across periods and thinkers)
   --who wrote what
   --what it says

2) Making CONNECTIONS, that is, develop the ability to see connections between and among ideas and the ability to see how an author says what s/he says:
   --recognition of the structure of the author’s discussion (what steps are involved in the way s/he tries to explain his or her position or persuade the reader?)
   --recognition of the assumptions that inform the development of ideas
   --recognition of the relative weight of ideas (e.g., what is the main idea? what are the supporting ideas?)

3) Using EXTENSIONS, that is, develop the ability to extend the ideas beyond their context, that is, to make use of them in your own thought without distorting them or violating their meaning.
   --what are the implications of the author’s position and the way s/he makes the argument?
   --what did the author leave out?
   --what value may we derive from the author’s discussion?

The development of a critical voice means attending to each of these—IN ORDER. You cannot critique an argument unless and until you can make and defend it on its own terms. A concerted effort at understanding is the minimum requirement of a student of political theory and the mere baseline of what you will be asked to do in this course.

TEXTBOOK: The edition of this text was carefully chosen and is required for the course. Students choosing to use a different or earlier edition are solely responsible for any reconciliation of differences.

--Culver and Guidice, editors, Readings in the Philosophy of Law, third edition (Broadview Press, 2017)

CANVAS: Please note that this syllabus, supplementary handouts, study questions, writing assignments, take-home quizzes, and advance essay questions for the exams WILL be posted on the university’s classroom management system Canvas after the class period in which they are distributed. Actual exams, class notes and grades WILL NOT be posted.
COURSE REQUIREMENTS: Grading is done on a 10-point scale: A = 90-100; B = 80-89; C = 70-79, etc. The formal requirements of the course and their relative impact on your final grade are as follows:

1) Class Attendance/Preparation Quizzes (if necessary) 8%
We meet once a week and exposure to and participation in our class discussions is critical to your success in this course. Attendance will be taken each class period and constitute a percentage of your final grade. Excuses (except for official university-approved events or religious observances) will not be accepted. PLEASE NOTE: In addition, pop quizzes on the assigned readings may be administered at the beginning of the class period, as necessary. In the event a quiz is given, the student’s grade on the quiz will count in lieu of full credit for mere attendance. Quizzes cannot be made up.

2) Class Summary Journal/Participation 7%
After every class, that is, between classes, students will be expected to write a short summary—no more or less than half a page—of the substance of the previous class discussion in a journal kept in a Blue Book to be provided. Think in these terms: what did we talk about? How did we talk about it? How did it relate to what we have already talked about? Your journals will be picked up from time to time in order to gauge student engagement with the material, check attendance, etc. You will also be evaluated on how well and often you participate in class.

3) Reading and Lecture Comprehension Quizzes 3 x 5% = 15%
At scheduled times during the semester, students will be given take-home quizzes to check comprehension of reading materials and in-class discussions. These will consist of text identification exercises (see sample on the next page). These quizzes cannot be made up.

4) Writing Assignment 1 x 15% = 15%
In the first half of the semester, students will be given a take-home essay assignment covering some substantive aspect of the reading material. The assignment requires a 2-page, single-spaced, handwritten essay response to be turned in at the beginning of the class period in which it is due. Students may be asked to present his or her response to the class in order to stimulate or further discussions. Writing assignments are designed to help the student organize the material during the semester and prepare the student for the written portion of the examinations. This assignment cannot be made up and late papers will NOT be accepted.

5) Midterm Exam (25%) and Final Examination (30%) 55%
The examinations in this class are cumulative and comprehensive. The midterm and final exams will consist of textual identification discussion questions (40%) and essay (60%) questions. The textual identification questions will challenge students to recognize and discuss the significance of important passages from the texts. The student’s ability to recognize authors and their critical concepts will be emphasized. The essays will test the student’s ability to link concepts across authors and situations. About a week before each examination, a number of possible essay topics will be distributed to the student. One will appear on the exam. Make-up exams will be allowed ONLY in the event of a verifiable emergency and must be arranged for within a week of the examination date.
**POLS 3321—Jurisprudence**

**ASSESSMENT:** You will encounter the following types of assignments in this class. Your work will be evaluated according to the requirements of each. The assignments and evaluative criteria fit the learning objectives in the following way:

1) **Text Identification Exercises**—quizzes and exams—test your reading of the material, your understanding of FACTS, IDEAS, and the CONNECTIONS among them.

A) Which AUTHOR wrote the text and which particular IDEA/PROBLEM did he or she intend to raise? Authors will raise particular questions owing to their particular concerns. One of your tasks is to keep up with the particular ideas and concerns in each author.

B) What does the text say? An initial and literal reading of the text should bear in mind that authors frequently RANK their concerns (most important, less important, least important, etc.). How they rank their concerns is often critical to an author’s conclusion. Be prepared to identify what an author thinks in most important, etc.

C) How does the idea presented by the author fit within the author’s larger argument? What are the ASSUMPTIONS underlying a particular author’s work? We will discuss some of these in class, but you must learn to recognize them as you read and think about the work.

2) **Essay Questions**—on writing assignments and exams—will test your ability to bring a coherent understanding of the material to bear on a theme or problem posed by the question itself. These are not exercises in regurgitating your notes. The essays are designed to test your ability to make CONNECTIONS and EXTENSIONS in clear, precise language and reasoning. YOU WILL BE HELD ACCOUNTABLE FOR PROPER GRAMMAR, SPELLING, PARAGRAPH USAGE, SENTENCE STRUCTURE, etc. In addition, you must be able to:

A) Demonstrate an UNDERSTANDING of the issues raised by the QUESTION in a THESIS paragraph. This is neither a mere restating of the question nor, worse, a “Once upon a time” opening sentence like “Throughout history human beings have been concerned with justice.” Instead, a thesis involves you demonstrating to the reader that you understand the issues raised by the question and saying how you will approach them using the material required by the question.

B) Demonstrate a mastery of the facts/ideas articulated by the authors the question asks you to use. You will NOT be asked to summarize an author, but you WILL be asked to USE his or her work to answer the question. YOU decide which aspects of the author’s work are most appropriate in solving the problem raised by the question.

C) Demonstrate an ability to make CONNECTIONS across authors and issues. How does one author’s approach complement, supplement, or call into question another’s approach? Think of the works you read this semester as part of an ongoing conversation about the full range of issues that make up the course material. As with conversations, the work of this class will illuminate issues but very rarely resolve them once and for all.

D) Conclude your discussion in an illuminating way, that is, to demonstrate an extended understanding of the ideas in question. Why was it important for your reader to have read your essay? What does the reader now know or is s/he called upon to think about that s/he wasn’t before? DO NOT use phrases like “In conclusion.” The content of your concluding paragraph should be sufficient to let the reader know that your essay has come to a happy ending.

**SAMPLE QUESTIONS:**

**Text Identification Exercise/Take-Home Quizzes:**

On a separate sheet of paper, write a brief paragraph (4 substantial sentences; no more than half a page) on the following passage in which you identify (1) the author and text it comes from, (2) what it means, and (3) its significance, that is, how it fits with the author’s larger argument.

“It is to make the prophecies easier to be remembered and to be understood that the teachings of the decisions of the past are put into general propositions and gathered into textbooks, or that statutes are passed in a general form. The primary rights and duties with which jurisprudence busies itself again are nothing but prophecies.”

**Essay Question:**

Write an essay in which you make an argument for civil disobedience in Fuller’s conception of law. Would he prefer Rawls’ version of civil disobedience or Dworkin’s? Explain why in both instances (Rawls and Dworkin).
# Syllabus

**NOTE:** Reading assignments should be completed for the assigned day’s class. Students will be notified of any changes in the schedule of readings in a timely manner. **DO NOT ASSUME** that a reading will not be covered, e.g., that we appear to be behind and therefore will not get to that reading on time. **YOU ARE RESPONSIBLE FOR ALL READINGS AND ACCOMPANYING MATERIAL WHETHER THEY ARE SPECIFICALLY ADDRESSED IN CLASS OR NOT.** If you have questions regarding this material, **ASK!**

## Aug 26 M  
**Introduction to Jurisprudence**  
Review Syllabus  
Lon Fuller, “The Problem of the Grudge Informer” (handout on Canvas)

## Sep 9 M  
**Classical Natural Law Theory**  
Read: Introductions (pp. 13-20; 21-27)  
Read: Aquinas, “Treatise on Law” selections (pp. 27-41)

## Sep 16 M  
**Contemporary Natural Law Theory**  
Read: Finnis, from *Natural Law and Natural Rights* (pp. 41-61)  
**QUIZ #1 DUE at the beginning of class**

## Sep 23 M  
**Legal Positivism**  
Read: Introduction (pp. 63-68)  
Read: Austin, from *The Province of Jurisprudence Determined* (pp. 68-84)  
**WRITING ASSIGNMENT DUE at the BEGINNING OF CLASS**

## Sep 30 M  
**Reclaiming Legal Positivism**  
Read: Hart, “Positivism and the Separation of Law and Morals” (pp. 84-106)

## Oct 7 M  
**Reclaiming Legal Positivism**  
Read: Hart, “Law as the Union of Primary and Secondary Rules” (pp. 106-118)  
Read: Hart, from “The Foundations of a Legal System” (pp. 118-127)

## Oct 14 M  
**MIDTERM EXAMINATION (6pm-8pm)**

## Oct 21 W  
**Integrity Theory**  
Read: Introduction (pp. 129-133)  
Read: Dworkin, “The Model of Rules I” (pp. 133-155)

## Oct 28 M  
**Integrity Theory**  
Read: Dworkin, “Integrity in Law” (pp. 155-170)  
**QUIZ #2 DUE at the beginning of class**

## Nov 4 M  
**Legal Realism**  
Read: Introduction (pp. 173-177)  
Read: Holmes, “The Path of the Law” (pp. 177-182)  
Read: Leiter, “Rethinking Legal Realism…” (pp. 182-208)
Nov 11 M  
**Feminist Jurisprudence and Intersectionality**
Read: Introduction (pp. 211-218)
Read: Smith, “Feminist Jurisprudence and the Nature of Law” (p. 218-227)
Read: MacKinnon, “Toward a Feminist Jurisprudence” (pp. 227-236)
Read: Crenshaw, “Demarginalizing the Intersection of Race and Sex” (on Canvas)
Read: Delgado, “About Your Masthead…” (pp. 236-246)

Nov 18 M  
**Feminist Jurisprudence and Intersectionality**
Read: Introduction (pp. 211-218)
Read: Smith, “Feminist Jurisprudence and the Nature of Law” (p. 218-227)
Read: MacKinnon, “Toward a Feminist Jurisprudence” (pp. 227-236)
Read: Crenshaw, “Demarginalizing the Intersection of Race and Sex” (on Canvas)
Read: Delgado, “About Your Masthead…” (pp. 236-246)

QUIZ #3 DUE at the beginning of class

Nov 25-30  
**THANKSGIVING HOLIDAY (no class)**

Dec 2 M  
**Conclusion and Review**
Read: *Queen v. Dudley and Stephens*, L.R. 14 Q.B.D. 273 (1884) (on Canvas)
Read: The Trial of Sam Lovejoy (on Canvas)

Dec 9 M  
**FINAL EXAMINATION**

Notes on Classroom Etiquette or THE RULES
--Class starts promptly. Be here on time. After the first week or so of the semester, you WILL be denied entry if you arrive more than 5 minutes late. Late arrival is disruptive to the classroom experience of your classmates and, perhaps even your professor. In any case, it works against the mission of the classroom. To this end, I suggest you not drive from class to class—gas is too expensive and we could all use the exercise.
--The format of the class is lecture and conversation. The classroom is a safe place to ask questions. But they should be questions that derive from work with and in the material and NOT because you did not do the assignment.
--You will not read newspapers, textbooks, or study for other classes while in this class. If you do so, you will be asked to leave—and in no uncertain terms.
--Turn all cellphones and other electronic devices off (or set to vibrate) for the duration of class. You are not to accept calls or engage in text messaging during class. If you do so, I will confiscate your device. If you are awaiting a call or message of extreme importance, I suggest you skip class.
--You may use a laptop, but only for the purpose of taking notes. If I catch you surfing the web, playing games, or engaged in some other activity not related to the work of the class, you will lose your laptop privileges.
--You are responsible for material missed due to absence. I suggest you exchange notes with other responsible students in any case, but particularly if you have to miss. I am happy to answer questions about this material, but will not rehearse my lectures or our class discussions.
--Some semesters, life gets in the way. Should you have one of these semesters, I am more than happy to talk to you about what to do. But if the trauma is too great, I strongly suggest you drop one or all of your courses. Your education is vitally important, but there are things that outrank even education sometimes—and you have to make that call when it is necessary. I cannot grade you on how well or poorly you deal with your life at given moments. Your grades reflect your performance in class—not how well you are dealing with other things. I wish all of us a semester in which these things aren’t issues.
POLS 3321—Jurisprudence

UNIVERSITY POLICIES AND ADDITIONAL INFORMATION THAT MUST APPEAR IN EACH COURSE SYLLABUS

**UT Tyler Honor Code** Every member of the UT Tyler community joins together to embrace: Honor and integrity that will not allow me to lie, cheat, or steal, nor to accept the actions of those who do. Students Rights and Responsibilities To know and understand the policies that affect your rights and responsibilities as a student at UT Tyler, please follow this link: [http://www.uttyler.edu/wellness/rightsresponsibilities.php](http://www.uttyler.edu/wellness/rightsresponsibilities.php)

**Campus Carry** We respect the right and privacy of students 21 and over who are duly licensed to carry concealed weapons in this class. License holders are expected to behave responsibly and keep a handgun secure and concealed. More information is available at [http://www.uttyler.edu/about/campus-carry/index.php](http://www.uttyler.edu/about/campus-carry/index.php)

**UT Tyler a Tobacco-Free University** All forms of tobacco will not be permitted on the UT Tyler main campus, branch campuses, and any property owned by UT Tyler. This applies to all members of the University community, including students, faculty, staff, University affiliates, contractors, and visitors. Forms of tobacco not permitted include cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff, chewing tobacco, and all other tobacco products. There are several cessation programs available to students looking to quit smoking, including counseling, quitlines, and group support. For more information on cessation programs please visit [www.uttyler.edu/tobacco-free](http://www.uttyler.edu/tobacco-free)

**Grade Replacement/Forgiveness and Census Date Policies** Students repeating a course for grade forgiveness (grade replacement) must file a Grade Replacement Contract with the Enrollment Services Center (ADM 230) on or before the Census Date of the semester in which the course will be repeated. (For Fall, the Census Date is Sept. 12.) Grade Replacement Contracts are available in the Enrollment Services Center or at [http://www.uttyler.edu/Registrar](http://www.uttyler.edu/Registrar). Each semester’s Census Date can be found on the Contract itself, on the Academic Calendar, or in the information pamphlets published each semester by the Office of the Registrar. Failure to file a Grade Replacement Contract will result in both the original and repeated grade being used to calculate your overall grade point average. Undergraduates are eligible to exercise grade replacement for only three course repeats during their career at UT Tyler; graduates are eligible for two grade replacements. Full policy details are printed on each Grade Replacement Contract.

The Census Date (Sept. 12th) is the deadline for many forms and enrollment actions of which students need to be aware. These include:
- Submitting Grade Replacement Contracts, Transient Forms, requests to withhold directory information, approvals for taking courses as Audit, Pass/Fail or Credit/No Credit.
- Receiving 100% refunds for partial withdrawals. (There is no refund for these after the Census Date)
- Schedule adjustments (section changes, adding a new class, dropping without a “W” grade)
- Being reinstated or re-enrolled in classes after being dropped for non-payment
- Completing the process for tuition exemptions or waivers through Financial Aid State-Mandated Course

**Drop Policy** Texas law prohibits a student who began college for the first time in Fall 2007 or thereafter from dropping more than six courses during their entire undergraduate career. This includes courses dropped at another 2-year or 4-year Texas public college or university. For purposes of this rule, a dropped course is any course that is dropped after the census date (See Academic Calendar for the specific date). Exceptions to the 6-drop rule may be found in the catalog. Petitions for exemptions must be submitted to the Enrollment Services Center and must be accompanied by documentation of the extenuating circumstance. Please contact the Enrollment Services Center if you have any questions.

**Disability/Accessibility Services** In accordance with Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA) and the ADA Amendments Act (ADAAA) the University of Texas at Tyler offers accommodations to students with learning, physical and/or psychological disabilities. If you have a disability, including a non-visible diagnosis such as a learning disorder, chronic illness, TBI, PTSD, ADHD, or you have a history of modifications or accommodations in a previous educational environment, you are encouraged to visit [https://hood.accessiblelearning.com/UTTyler](https://hood.accessiblelearning.com/UTTyler) and fill out the New Student application. The Student Accessibility and Resources (SAR) office will contact you when your application has been submitted and an appointment with Cynthia Lowery, Assistant Director of Student Services/ADA Coordinator. For more information, including filling out an application for services, please visit the SAR webpage at [http://www.uttyler.edu/disabilityservices](http://www.uttyler.edu/disabilityservices), the SAR office located in the University Center, # 3150 or call 903.566.7079.

**Student Absence due to Religious Observance** Students who anticipate being absent from class due to a religious observance are requested to inform the instructor of such absences by the second class meeting of the semester. (Revised 05/17)

**Student Absence for University-Sponsored Events and Activities** If you intend to be absent for a university-sponsored event or activity, you (or the event sponsor) must notify the instructor at least two weeks prior to the date of the planned absence. At that time the instructor will set a date and time when make-up assignments will be completed.
Social Security and FERPA Statement It is the policy of The University of Texas at Tyler to protect the confidential nature of social security numbers. The University has changed its computer programming so that all students have an identification number. The electronic transmission of grades (e.g., via e-mail) risks violation of the Family Educational Rights and Privacy Act; grades will not be transmitted electronically.

Emergency Exits and Evacuation Everyone is required to exit the building when a fire alarm goes off. Follow your instructor’s directions regarding the appropriate exit. If you require assistance during an evacuation, inform your instructor in the first week of class. Do not re-enter the building unless given permission by University Police, Fire department, or Fire Prevention Services.

Student Standards of Academic Conduct Disciplinary proceedings may be initiated against any student who engages in scholastic dishonesty, including, but not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, any act designed to give unfair advantage to a student or the attempt to commit such acts.

i. “Cheating” includes, but is not limited to:
• copying from another student’s test paper;
• using, during a test, materials not authorized by the person giving the test;
• failure to comply with instructions given by the person administering the test;
• possession during a test of materials which are not authorized by the person giving the test, such as class notes or specifically designed “crib notes”. The presence of textbooks constitutes a violation if they have been specifically prohibited by the person administering the test;
• using, buying, stealing, transporting, or soliciting in whole or part the contents of an unadministered test, test key, homework solution, or computer program;
• collaborating with or seeking aid from another student during a test or other assignment without authority;
• discussing the contents of an examination with another student who will take the examination;
• divulging the contents of an examination, for the purpose of preserving questions for use by another, when the instructors has designated that the examination is not to be removed from the examination room or not to be returned or to be kept by the student;
• substituting for another person, or permitting another person to substitute for oneself to take a course, a test, or any course-related assignment;
• paying or offering money or other valuable thing to, or coercing another person to obtain an unadministered test, test key, homework solution, or computer program or information about an unadministered test, test key, home solution or computer program;
• falsifying research data, laboratory reports, and/or other academic work offered for credit;
• taking, keeping, misplacing, or damaging the property of The University of Texas at Tyler, or of another, if the student knows or reasonably should know that an unfair academic advantage would be gained by such conduct; and
• misrepresenting facts, including providing false grades or resumes, for the purpose of obtaining an academic or financial benefit or injuring another student academically or financially.

ii. “Plagiarism” includes, but is not limited to, the appropriation, buying, receiving as a gift, or obtaining by any means another’s work and the submission of it as one’s own academic work offered for credit.

iii. “Collusion” includes, but is not limited to, the unauthorized collaboration with another person in preparing academic assignments offered for credit or collaboration with another person to commit a violation of any section of the rules on scholastic dishonesty.

iv. All written work that is submitted will be subject to review by plagiarism software.

UT Tyler Resources for Students
• UT Tyler Writing Center (903.565.5995), writingcenter@uttyler.edu
• UT Tyler Tutoring Center (903.565.5964), tutoring@uttyler.edu
• The Mathematics Learning Center, RBN 4021, this is the open access computer lab for math students, with tutors on duty to assist students who are enrolled in early-career courses.
• UT Tyler Counseling Center (903.566.7254)

IMPORTANT: This syllabus reflects the minimum requirements of our professional relationship over the course of this semester. By staying in this class, you signify that you understand the contents of this syllabus and you agree to the terms and conditions stated herein.