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, from Feminist to Critical Race theorists have 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 to read, reflect, and write about the law philosophically. Through reading assignments, discussion, examinations, and occasional writing assignments, the student will become comfortable with philosophical approaches to the law. The format of the class is some lecture and very much discussion. All discussion and written work in the class is intended to develop students’ critical thinking, speaking, 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 jurisprudence 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, editor, Readings in the Philosophy of Law, second edition (Broadview Press, 2008)

BLACKBOARD: Please note that this syllabus, supplementary handouts, study questions, writing assignments, and advance essay questions for the exams WILL be posted on Blackboard after the class period in which they are distributed. Exams, quizzes, class notes and grades WILL NOT be posted.
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.

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 Summary Journal/Participation 10%
   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. 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.

2) Weekly Reading and Lecture Comprehension Quizzes 10 x 2% = 20%
   Every week during the semester, students will be given in-class timed quizzes to check comprehension of reading materials and in-class discussions. These will consist of multiple choice and/or matching questions. As these quizzes are designed also to check attendance they cannot be made up.

3) Writing Assignment 15%
   Early in the semester, students will be given a take-home essay assignment covering some substantive aspect of the reading material. This 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.

4) Midterm Exam (20%) and Final Examination (35%)
   The examinations in this class are cumulative and comprehensive. The midterm exam will consist of matching (10%), multiple choice (20%) and essay (70%) questions. The final exam will consist of matching (20%), multiple choice (30%) and essay (50%) questions. The matching and multiple choice questions will test the student’s comprehension of the readings and class discussions. The student’s ability to match authors with concepts and concepts with their definition and applications 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.

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) Matching Questions—quizzes and exams—are the most basic of FACT/IDEA questions. As you complete the reading assignments in this class, make sure to pay attention to:
   A) The AUTHOR and TITLE of the work. The title can be especially helpful in discerning what the author thinks is important about an essay or piece of literature.
   B) DEFINITIONS of key terms may appear here also. We will encounter important terms in class AND in our reading. Note them as you go and be prepared to identify them.
   C) You may be asked to match KEY IDEAS to their authors or works.

2) Multiple Choice Questions—quizzes and exams—test your understanding of FACTS, IDEAS, and the CONNECTIONS among them. In addition to questions regarding AUTHORS, TITLES, and DEFINITIONS or KEY TERMS you will encounter questions that ask you to recognize:
A) Which AUTHOR broached a particular IDEA/PROBLEM? 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) Keep 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) 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.

3) 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 it has come to a happy ending.

SAMPLE QUESTIONS:

--Matching:
A. Dworkin       B. Aquinas       C. H.L.A. Hart
   ___1. Summa Theologica
   ___2. Chain novel

--Multiple Choice:
___ 1. In the Anglo-American (our) tradition, the term jurisprudence refers to
   A. moral philosophy as it relates to law.
   C. political philosophy as it relates to law.
   B. legal philosophy
   D. the collection of decisions of a particular court.

--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!

Jan 13 M  Distribution of Syllabus and Introduction: The Nature of Law
In class exercise (handout): Lon Fuller, “The Problem of the Grudge Informer”

Jan 20 M  Martin Luther King, Jr. Holiday

Jan 27 M  Classical Natural Law Theory
Read: Introductions (pp. 13-31)
Read: Aquinas, “Treatise on Law” selections (pp. 31-46)

Feb 3 M  Contemporary Natural Law Theory
Read: Finnis, from Natural Law and Natural Rights (pp. 46-74)

Feb 10 M  Natural Law in Classical and Contemporary Modes
Read: Finnis, from Natural Law and Natural Rights (pp. 46-74)
Read: Aquinas, “Treatise on Law” selections (pp. 31-46)
WRITING ASSIGNMENT DUE at the BEGINNING OF CLASS

Feb 17 M  Legal Positivism
Read: Introduction (pp. 75-81)
Read: Austin, from The Province of Jurisprudence Determined (pp. 81-96)

Feb 24 M  Reclaiming Legal Positivism
Read: Hart, “Positivism and the Separation of Law and Morals” (pp. 97-120)

Mar 3 M  MIDTERM EXAMINATION

Mar 10 M  Spring Break

Mar 17 M  Reclaiming Legal Positivism
Read: Hart, “Positivism and the Separation of Law and Morals” (pp. 97-120)
Read: Hart, “Law as the Union of Primary and Secondary Rules” (pp. 120-131)

Mar 24 M  Reclaiming Legal Positivism
Read: Hart, “Law as the Union of Primary and Secondary Rules” (pp. 120-131)
Read: Hart, from “The Foundations of a Legal System” (pp. 131-141)

Mar 31 M  Integrity Theory
Read: Introduction (pp. 143-147)
Read: Dworkin, “The Model of Rules I” (pp. 148-169)

Apr 7 M  Integrity Theory
Read: Dworkin, “The Model of Rules I” (pp. 148-169)
Read: Dworkin, “Integrity in Law” (pp. 169-174)
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Apr 14 M  Integrity Theory
Read: Dworkin, “Integrity in Law” (pp. 169-174)
Read: Riggs v. Palmer 22 N.E. 188 (1889) (pp. 185-192)

Apr 21 M  Legal Realism
Read: Introduction (pp. 193-197)
Read: Holmes, “The Path of the Law” (pp. 197-202)
Read: Frank, “Preface to Sixth Printing” from Law and the Modern Mind (pp. 202-205)
Read: Frank, “Legal Realism” (pp. 205-208)
Read: Lochner v. New York 198 US 45 (1905) (pp. 208-210)

Apr 28 M  Feminist Jurisprudence
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)

May 5 M  FINAL EXAMINATION—6pm

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.
UNIVERSITY AND UNIVERSITY OF TEXAS SYSTEM POLICIES

Policy Regarding Academic Dishonesty
Academic dishonesty is against university as well as community standards. Academic dishonesty is defined as: cheating, plagiarism, or otherwise obtaining grades under false pretenses.

Plagiarism is defined as submitting the language, ideas, or thoughts or work of another as one’s own. Examples of plagiarism include, but are not limited to:
--use of direct quotations without quotation marks and without credit to the source;
--paraphrasing or using direct quotations within quotation marks without credit to the source;
--failure to provide adequate citations for material obtained through electronic research;
--downloading and submitting work from electronic databases without citation;
--submitting material created/written by someone else as one’s own, including purchased term/research papers;
--allowing someone to copy or submit one’s work as his/her own;
--participation in a group project which presents plagiarized materials;
--submitting the same paper in more than one course without the knowledge and approval of the instructors involved;
--assisting in the act of plagiarism by allowing one’s work to be used in this fashion;
--aiding and abetting another student’s dishonesty.

Cheating is defined generally as copying from someone else’s exam, homework, or laboratory work. Types of cheating include but are not limited to:
--using notes or other materials during a test or exam without authorization;
--obtaining or providing unauthorized information during an examination through verbal, visual, or unauthorized use of books, notes, texts, or other materials;
--obtaining or providing information concerning all or part of an examination prior to that examination;
--taking an examination for another student or arranging for another person to take an exam in one’s place;
--altering or changing test answers after submitting it for grading, or after grades have been awarded;
--releasing information about an examination to anyone who has yet to take the examination

Disciplinary procedures for incidents of academic dishonesty may result in any of the following:
(1) permanent dismissal from the university; (2) suspension from the university for not less than one semester;
(3) outright failure of the course (an automatic final grade of ‘F’); (4) canceling the student’s enrollment in the class without a grade (‘W’); (5) awarding a failing grade on the exam, test, or assignment in question; (6) requiring the student to take another examination or test on the same material or to resubmit the paper or assignment based on a specific topic.

In all cases of substantiated academic dishonesty, a permanent record of academic discipline will be established in the Office of the Dean of Students. These records are searched regularly by government agencies, licensing authorities, certification authorities, and others. The existence of such a record can bar entry to many occupations.

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.utttyler.edu/wellness/StudentsRightsandResponsibilities.html

Grade Replacement/Forgiveness
If you are repeating this course for a grade replacement, you must file an intent to receive grade forgiveness with the registrar by the 12th day of class. Failure to do so will result in both the original and repeated grade being used to calculate your overall grade point average. Undergraduates will receive grade forgiveness (grade replacement) for only three course repeats; graduates, for two course repeats during his/her career at UT Tyler.
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 12th day of class (See Schedule of Classes for the specific date).

Exceptions to the 6-drop rule may be found in the catalog. Petitions for exemptions must be submitted to the Registrar's Office and must be accompanied by documentation of the extenuating circumstance. Please contact the Registrar's Office if you have any questions.

Disability Services
In accordance with federal law, a student requesting accommodation must provide documentation of his/her disability to the Disability Support Services counselor. If you have a disability, including a learning disability, for which you request an accommodation, please contact Ida MacDonald in the Disability Support Services office in UC 282, 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.

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.

HERE ENDETH THE ENDLESSNESS.

HAVE A GREAT SEMESTER!
NOTE: CREDIT FOR SECTION I. OF THE QUIZ REQUIRES ATTENDANCE FOR THE ENTIRE CLASS PERIOD.

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