

Poli Sci 380. Jurisprudence: The Philosophy of Law

The College of Charleston

Spring 2017: MWF 12:00 – 12:50

Maybank 207

Instructor: Dr. John Altick altickjr@cofc.edu.

Office Hours: before and after class and by appointment

Welcome to Jurisprudence: the Philosophy of Law. In this course we will explore a myriad of issues relating to the philosophy of law. First and foremost we will be oriented around the conjoined guiding questions of jurisprudence: **1) What is the law?** and **2) what is good law?** There are several schools of thought and approaches to answering these questions, and the entire field of jurisprudence is essentially organized around answering these two guiding inquiries and the concepts, themes, and practices that grow out of these questions. What is the law? Natural Law, positive law, command theory, decisionism, legal formalism, legal realism, critical theory, feminism, Marxism and other schools of thought answer this question somewhat differently, and the themes and practices of constitutionalism, rights, sovereignty, punishment, etcetera are essential elements of legal practice. What is *good* law? This entails such essential themes and concepts of justice, legitimacy, validity, morality, duty, and obligation.

Jurisprudence is incredibly significant to everyday political reality and bears on such weighty questions of constitutional law, punishment, morality, political institutions and structures, economic relations, etcetera. The philosophy of law is not simply some conceptual wonderland that is of interest only to academics and lawyers, rather, **it permeates every single element of political reality**. It is my hope that you will leave this class with a firm grasp of the practical significance of these abstract and highly conceptual issues.

The course will be organized primarily around different schools of thought while bringing up essential themes and concepts throughout. Towards the end of the semester we will focus more explicitly on concepts and themes essential to jurisprudence.

The course will be a combination of lectures occasionally aided by power-point slides, guided and free-form classroom discussions, structured student debates, student presentations, and detailed in-class textual analysis.

Learning Objectives:

1. To have a wide-ranging understanding of the essential questions, concepts, and themes of jurisprudence.
2. To understand the real-world impact of jurisprudence
3. To learn how to read and understand legal philosophical texts

Classroom structure and Course Details: Attendance is mandatory and roll will be taken every class. More than 5 absences will lower your total grade by a 1/2 letter-grade. Computers, phones, and any electronic devices open during class are **strictly prohibited**; note-taking is the one exception, but this had better be all that you are doing

on the device or you will be asked to leave class. There will be lots of classroom discussion and mutual respect is **absolutely imperative**. I encourage students to ask questions **whenever**- feel free to raise your hand and the instructor will acknowledge your inquiry in a timely manner. **There are no stupid questions; if you have a question or don't understand something chances are someone else has the same question.** The instructor is only human and these are very dense and difficult issues. The instructor wants everybody to feel comfortable and confident in the classroom.

Plagiarism is strictly prohibited and you will be reported to school officials and receive an F in the class. Consult CofC's academic integrity policies for further details.

For additional learning assistance consult the Center for Student Learning.

Consult the school website for student rights and responsibilities.

The instructor is **very available and approachable**; please feel free to consult the instructor for any questions or concerns at any time.

Course Readings: The following texts are required.

1. Modern Jurisprudence: A Philosophical Guide. By Coyle (MJ)
2. Law's Empire by Ronald Dworkin (LE)
3. The Morality of Law by Lon Fuller (ML)
4. Genealogy of Morals by Friedrich Nietzsche (GM)

GRADING: The grade will consist of the following components:

1. **2 tests, 1 presentation, and 1 term-paper (6-10 pgs) all EQUALLY WEIGHTED. YOU WILL GET A LETTER GRADE ON EACH ASSIGNMENT AND OVERALL GRADE IS AVG OF 4 components.**

General structure of grade components: **DETAILED INSTRUCTIONS FOR ASSIGNMENTS WILL BE DISCUSSED IN CLASS, VIA EMAIL, AND WILL BE AVAILABLE ON COURSE WEBSITE.**

1. Tests will consist of short answers and essay questions.
2. Presentations will be on a topic of your choice relating to jurisprudence that is **approved by instructor**. Approximately 10-15 min presentation in groups of 1-3.
3. Term paper will be selected from a small range of topics/questions proposed by instructor and made available on course web-site. 6-10 pgs due at the end of the semester on the last day of lecture.

Schedule:

Week One: Introduction: General introduction to course components, structure, and expectations.
Introduction to Jurisprudence.

1. The Case of the Speluncean Explorers by Lon Fuller
<https://pennstatelaw.psu.edu/file/TheCaseOfTheSpelunceanExplorers.pdf>
2. MJ: Chp 1

Weeks 2-4: Foundations of modern liberal-democratic jurisprudence. Natural Law Theory

1. MJ: chp 2-4
2. Thomas Hobbes, Leviathan: chp 13-15, 17-18, 26.
(<http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-contents.html>)
3. John Locke, Second Treatise of Government: chp. 1-3, 7-9.
(<http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke2nd-a.html>)
4. Jean-Jacques Rousseau, The Social Contract: Book One, intro- 3, 5-8. Book Two, 1-4, 6-12. Book 4, 1. (<http://www.constitution.org/jjr/socon.htm>)

Weeks 5-9: Contemporary Approaches in Modern Jurisprudence

1. Positive Law: Hart MJ chp 5
2. Procedural Natural Law: Lon Fuller and the inner morality of law: ML full text & MJ chp 9
3. Constructivism / Interpretivism : Dworkin LE chp:1-3, 6-7, 11. & MJ chp 6
4. Midterm: Week 7
5. Modern Classical Natural Law: Finnis MJ chp 8
6. Modern Classical Liberalism & Justice: Rawls MJ chp 7

Weeks 10-13: Philosophical Concerns & Critiques of the Law

1. Marxism: Benjamin, Critique of Violence
2. Decisionism & The Exception: Schmitt, Political Theology
3. Nietzsche: GM selected readings