

LEGAL THEORY
PCS 411C
T/R 10:00AM-11:15AM
CBC C-118

Professor J.L. Simich
WRI 218-B
Office Hours T/R
9:00AM-10:00AM &
12:45PM-1:45PM & by
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The Course: This course will focus primarily on the relationship between law and morals. This relationship was a vital concern to the ancients and it remains so in the present. Some schools of legal philosophy or jurisprudence, such as natural law, maintain that morality is the essence of law while others, legal positivism for example, argue for a conceptual separation of law from morals and that law can be identified and understood without having to satisfy moral criteria.

We will begin the course by reading and discussing representatives of the different schools of legal thought. We will also read and discuss court cases dealing with manifold issues of law and morality.

Books to be purchased: None

Materials: Reading material can be found on E-Reserves in two different sets. One is called Legal Theory: Collection , the other is a separate set of readings (B). Please refer to the syllabus “Topics and Readings.”

Course Requirements: Grades will be based on examinations and oral participation in class. There will be two exams, a midterm and a final. The date for the midterm will be announced at least one week in advance. The final exam is not comprehensive.

Topics and Readings: Assignments and dates for the readings will be announced in class the week before.

Natural Law:

Ancient Thinkers: Xenophon, Plato, Aristotle, Sophocles, Demosthenes, Cicero, Gaius.
Collection 1-3

Find points of commonality in the writings.

Natural Law in Various Traditions: Sundaram (Hindu), Shih (Chinese), Freehof (Jewish), Hakim (Islam), Collection 4-7

Find points of agreement.

St. Thomas Aquinas, “Law as an Ordinance of Reason” (B)

John C. Wu, “The Natural and the Positive Elements in Human Law,” and “A Note on Law and Equity,” Collection 8-10 & Wu, “Justice and Relation to Natural Law,” Collection 11-12

William Blackstone, Commentaries, Collection 13

How does Blackstone define the law of nature?

Peter Stanlis on Edmund Burke, Collection 14

How does Stanlis interpret Burke on arbitrary power and natural law?

A.L. Goodhart “English Law and the Moral Law,” Collection 15

Find examples of how law influences morality.

John C. Wu, “The Eclipse of the Natural Law Tradition,” Collection 16

What is Judge Frank’s point?

Gregg Ivers, “Natural Law,” Collection 18

Note the different cases of natural law, accommodation to Ivers, our Constitution is a product of legal positivism. Why?

John Finnis, “Natural Law and Natural Rights,” (B)

Lon Fuller, “The Morality of Law”

Martin Luther King Jr., “Letter from a Birmingham Jail”

Cases on Law and Morals: Collection

Union Pacific Ry v. Cappier (1903) 19-20

DePue v. Flateau (1907) 21

Bird v. Holbrooke (1828) 22

Sipp v. Coleman (1910) 23

Moore v. Strickling(1899) 24-25

Legal Positivism:

Fred Schauer, “Legal Positivism,” (B)
H.L.A. Hart, “Austin, John,” (B)
John Austin, “Law as the Sovereign’s Command,” (B)
Henry Sumner Maine, “The Limits of the Analytical System,” (B)
H.L.A. Hart, “Obligation and Coercion,” (B)

Legal Realism as Legal Positivism:

O.W. Holmes Jr., “The Law as Predictions of What the Courts Will Do,” (B)
John Chipman Gray, “The Judge as Law Giver,” (B)

Recent Legal Positivism:

Hans Kelsen, “The Pure Theory of Law,” (B)
H.L.A. Hart, “Law as the Union of Primary and Secondary Rules”
Tracy McMillan, “Looks Good on Paper”
Leo Kanowitz, “The Place of Sanctions in Professor Hart’s Concept of Law”
C. Gordon Post, “Stare Decisis: The Use of Precedent”
Edward H. Levi, “Statutory Interpretation”
“Interpreting the Mann Act”
Caminetti v. U.S. (1917)
Mortensen v. U.S. (1944)
Cleveland v. U.S. (1946)

Ronald Dworkin’s Critique of Legal Positivism:

Anonymous, Ronald Dworkin and Law as Integrity,” (B)
Ronald Dworkin, “Is Law a System of Rules?” (B)

Personal Rights:

Cases:

<i>Buck v. Bell</i> (1927) <u>Collection</u>	39-40
<i>Griswold v. Connecticut</i> (1965)	(B)
<i>Roe v. Wade</i> (1973)	(B)
<i>Bowers v. Hardwick</i> (1986) <u>Collection</u>	34-38
<i>Lawrence et al v. Texas</i> (2003)	58-60
<i>Boy Scouts of America v. Dale</i> (2000) <u>Collection</u>	41-44

Robert Bork, “The Right of Privacy,” (B)
Patrick Devlin and H.L.A. Hart Debate: “Is Legal Moralism Justified?” (B)

In Re Matters of Race: Cases: Collection

<i>U.S. v. The Schooner La Jeune Eugenie</i> (1822)	45
<i>People v. Hall</i> (1854)	46
<i>Perez v. Lippold</i> (1949)	47-48
<i>Loving v. Virginia</i> (1967)	49
<i>Korematsu v. U.S.</i> (1944)	50-54

Contemporary Perspectives: Critical Legal Studies:

Robert Unger, "The Rule of Law"

Patricia Smith, "Feminist Jurisprudence"

Susan Estrich, "Feminist Jurisprudence"