WHAT IS LAW?
SYLLABUS FOR JURISPRUDENCE: LAW 7295

[last revised: June 15, 2015]

Prof. Edmundson
Fall 2015
Friday 1:15-4 pm (2 credit hours; 3 with permission)
Room 144
Personal e-mail: wedmundson@gsu.edu
Discussion Group e-mail: TBA

This course in jurisprudence (also known as philosophy of law) explores the nature of law and its role in modern society. Particular attention will be given to the law’s authority to compel obedience; the duty to obey the law; the relationship of law and morality; the justification of punishment; and the concepts of legal and moral responsibility.

There are no prerequisites. This course is designed to enable J.D. students to satisfy the writing requirement. Students in other Colleges may enroll with permission (which is hereby granted).

Texts
Most readings will be from the required texts for the course:

Lloyd’s Introduction to Jurisprudence, 9th ed. (Sweet & Maxwell, 2014) [hereinafter: “LIJ”]
Liam Murphy, What Makes Law (Cambridge UP, 2014)

Other readings will be posted. You may also find it helpful to consult these recommended but not required sources:

Altman, Andrew, Arguing About Law: An Introduction to Legal Philosophy 2nd ed. (Thomson - Wadsworth)
Golding, Martin P., and William A. Edmundson, The Blackwell Guide to the Philosophy of Law and Legal Theory (Blackwell)
Marmor, Andre, ed. the Routledge Companion to Philosophy of Law, (Routledge)
Murphy, Mark C., Philosophy of Law: The Fundamentals (Wiley)

Email Discussion List
There is an online discussion group for this class. You will be enrolled automatically, and you can post by replying to the group to continue a discussion thread, or you may introduce a new topic by emailing: TBA
The Grading System Explained

Your grade will primarily be based on a final paper and your class participation, which includes your preparation for class. There may from time to time be short, unannounced, in-class, short-answer and/or multiple-choice quizzes. These may be used to assist me in assessing your class participation, but their main purpose would be to assist me in evaluating the suitability of the assigned materials. The final paper will be by far the most weighty factor in determining the final grade. Be aware that one factor in grading the final paper will be the degree to which it is responsive to my comments on a preliminary draft (see below).

I encourage you to begin thinking right away about your paper topic. Ask yourself right now whether in ten weeks time you’re likely to be more interested in

(A) the nature of law (legal positivism, natural law, etc.), legal interpretation (originalism, textualism, constructive interpretation, etc.), and the moral duty to obey the law (philosophical anarchism, fair-play duty, associative obligation, etc.);

or in

(B) moral responsibility (free will, moral luck, desert) as it bears upon criminal law and tort doctrines (mens rea, insanity, duress, attempt, etc), and the nature and justification of punishment (retributivism, deterrence, rehabilitation, etc.).

There is some overlap between (A) and (B) but not as much as one might assume. Once you’re able to predict, “I’ll like (A) better,” or “I’m for (B),” you’ll be able to narrow your search considerably. There are other topics outside (A) and (B), but they get little class time. A (non-exclusive) list of possible topics can be found on the InsideLaw group page, for reference if you choose not to formulate a topic of your own.

A first draft of your paper will be due on or before the last class meeting before the Thanksgiving break; and the final paper will be due by 5pm of the last day of the examination period. All drafts including the final draft must be in .pdf format and submitted as an e-mail attachment to wedmundson@gsu.edu. The length guideline for your final paper depends upon whether or not you are seeking to apply it to satisfy the JD upper-division writing requirement.

Upper Level Writing Requirement

If you are a J.D. student and want your paper to satisfy the upper level writing requirement, you should be aware of the following, from the College of Law Bulletin:

UPPER LEVEL LEGAL WRITING REQUIREMENT

Each candidate, as a requirement for the J.D., must complete satisfactorily one substantial legal writing project during his or her upper class period of study. To satisfy this requirement, the student must earn a grade of at least C+ on the written portion of any two- or three-credit course (including an Independent Research Project approved by the associate dean for academic affairs) that qualifies as a legal writing course. To qualify for writing requirement credit, the written work should comport with faculty adopted guidelines for such papers, including the following:
(i) the minimum length shall be 25 pages, unless the professor specifies otherwise [NB: I specify otherwise: 25 pages is a maximum, the minimum is 20 pages, inclusive of references];
(ii) the student shall submit at least one draft [NB: I specify otherwise — see below] before final submission;
(iii) the paper should reflect thorough primary and secondary research, as well as original analysis; and
(iv) the paper shall be well organized and written in conformity with accepted rules of grammar, punctuation and spelling.

To avoid misunderstanding and disappointment, those who wish to satisfy the upper level writing requirement in conjunction with this course must declare their intention of doing so on the cover page of their first draft, and turn in a final paper complying with these guidelines. Those who do not so intend may turn in a final paper of 12-15 pages that emphasizes analysis rather than research, or vice versa. Those who seek to satisfy the upper level writing requirement will be expected to exhibit proficiency in both dimensions: research and analysis. Organization, clarity, and appropriate and consistent citation—it should go without saying—are expected of all papers.

Style and length are less important than substance and intelligibility. The length-obsessed should note that one double-spaced typed page in 12-point Times New Roman font runs to approximately 250 words. Thus, a 12-15 page paper comes to about 3000-3750 words. A 20 page paper comes to about 5000 words. If your word-count is within these ranges or slightly on either side, do not worry about page length. Above all, please do not “pad” to add length. Those who are seeking to satisfy the writing requirement are encouraged to consider beginning their papers with something like an abstract or “executive summary.” Please note that I will not read or credit language running beyond 25 pages — or 6250 words, inclusive of citations, references, and notes — in any paper, whether or not it is intended to satisfy the writing requirement.

In years past, I have agreed to look at serial preliminary drafts of papers. But this policy tended to encourage procrastination. Therefore, I will read only two drafts: the preliminary draft due just before Thanksgiving and the final paper due at the end of the exam period. Feel free to speak to me in person or by email as many times as you like; but please do not expect me to read more than your preliminary and final drafts. Do feel free to submit your preliminary and your final draft as early as you like if you feel you have reached a resting point before a deadline.
<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Topic and reading</th>
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| 1    | 8/21 | Is there a duty to obey the law?  
        |      | Plato, *Crito*; M.B.E. Smith, “Is There a Prima Facie Duty to Obey the Law?”; Martin Luther King, Jr., “Letter from Birmingham Jail”; from John Rawls, from *A Theory of Justice* pp. 308-23; from H.L.A. Hart, “Are There Any Natural Rights?” p. 185 (only this one page, for now); from John Simmons, *Moral Principles and Political Obligations*, pp. TBA |
| 2    | 8/28 | What may the law legitimately require? I.  
| 3    | 9/4  | What are rights?  
| 4    | 9/11 | Torture.  
| 5    | 9/18 | What may the law legitimately require? II.  
| 6    | 9/25 | What is law? Natural Law theories I.  
        |      | *LJ* 124-30 (Aristotle to Aquinas), 138-43 (Fuller); Mark C Murphy, “Natural Law Jurisprudence” |
| 7    | 10/2 | What is law? Legal Positivism I.  
        |      | *LJ* 237-48 (Austin), 269-300 (Kelsen) |
| 8    | 10/9 | What is law? Legal Positivism II.  
        |      | from HLA Hart, *The Concept of Law*, pp. TBA; *LJ* 385-405 (Raz); Liam Murphy, *What Makes Law*, ch 3. |
| 9    | 10/16 | What is law? Natural Law theories II.  
        |      | *LJ* 364-80 (Alexy); Liam Murphy, *What Makes Law*, chs 2, 4. |
| 10   | 10/23 | Settling what the law is: American Legal Realism.  
        |      | *LJ* 840-48 (Holmes, Frank, Llewellyn), 953-78 (Marxism); Mark Tushnet, “Dia-Tribe” |
| 11   | 10/30 | Settling what the law is: Interpretation.  
        |      | *LJ* 636-48 (R Dworkin); from Antonin Scalia, *A Matter of Interpretation*, pp. 3-48, 115-28, 144-49; Liam Murphy, *What Makes Law*, chs 5, 6, 9 |
Deviations from this schedule are bound to occur.

**Attendance policy**
Roll will be taken at each class meeting. The roll is a record of presences and excused absences. If you have been excusably absent from an earlier class, you are to initial yourself in as “present” at that earlier class. Do not ask anyone else to do this for you. Please review the roll as the semester progresses to make sure that it properly reflects your attendance and, if any, your excusable absences.

Two or more unexcused absences will be grounds for the assignment of a failing grade. Remember that class non-participation may influence your final grade. Because absences due to illness or conflicting family, legal, military or business duties are routinely excused, *you are encouraged NOT* to telephone or e-mail me to ask that such an absence be excused. You are specifically asked *not* to come to class when you feel sick or someone with whom you are in close contact seems sick. Please note the following recommendations from the Centers for Disease Control:

1) Cover your nose and mouth with a tissue when you cough or sneeze.
2) Throw the tissue in the trash after you use it.
3) Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.
4) Avoid close contact with sick people.
5) Avoid touching your eyes, nose or mouth. Germs spread this way.
6) If you get influenza-like illness symptoms, stay home from work or school except to seek medical care and limit contact with others to keep from infecting them.

To repeat: because absences due to illness or conflicting family, legal, military or business duties are routinely excused, *you are urged NOT* to telephone or e-mail me to ask that such an absence be excused.
University Policies
The course syllabus provides a general plan for the course: deviations may be necessary. You should be aware of the University Policy on Academic Honesty and the College of Law Honor Code.

Students with Disabilities
Students with disabilities must work directly with the Office of Disability Services (“ODS”) to receive any necessary accommodation pertaining to course requirements. If you have a disability, it is your responsibility to coordinate with the ODS, and to do so at the outset of the semester. If you need accommodations in class (note-taking, for example), you may speak with me about that.

Office Hours
My office hours are individualized to fit your needs. All e-mail pertaining to the course’s subject matter and procedures should be addressed to: TBA, the discussion list.