

Political Science 364/Philosophy 416 Jurisprudence/Philosophy of Law

Fall 2008

Instructor: Professor Noel B. Reynolds (Office—794 SWKT, phone—422-3319)
Class Time: MWF 11:00—11:50am, 324 MARB
Office hours: Monday 9-10am, Wednesday noon (794 SWKT)

Course Overview

This is a course for students interested in the philosophy of law and Western legal theory. It is not restricted to political science or philosophy majors and there are no prerequisites. During the course, we shall discuss the major theoretical paradigms that inform legal decision-making, the assumptions that underlie these perspectives, and the major thinkers who have contributed to the theoretical discussion. The course will systematically cover the theories of law propounded by such major philosophers as Plato, Aristotle, Hobbes, and Michael Oakeshott, analyzing both original source material as well as a modern interpretation of that material. The lectures and class discussions will be parallel to, but not repetitions of, the readings. Students are expected to come to class prepared to discuss the assigned readings for that date.

Course Objectives:

The focus of this course will be to track the development of the idea of law from ancient Greece to the present day. Each student will be able to articulate how the rule of law (the notion that laws, rather than men, rule) has developed and suffered through history and how it figures in the major jurisprudential paradigms of today.

The course objectives listed below will determine both the learning activities and the assessments of the course. It is expected that by the end of the semester, students will be able to:

1. Compare and evaluate key historical and contemporary approaches to the philosophy of law.
2. Articulate, compare, and evaluate the specific ways in which different jurisprudential approaches understand and appreciate the rule of law.
3. Analyze, evaluate, and respond critically to Letwin's assessment of a particular philosopher in a term paper.

Course Requirements and Grading

1. Midterm exam (mostly essay)	20%	40 points
3. Research paper	40%	80 points
4. Final exam (comprehensive, mostly essay)	<u>40%</u>	<u>80 points</u>
	100%	200 points

Readings

There will be a reading assignment for almost every class period. The readings are all available, either in the text sold at the Bookstore or online through the Reserve Library. Quality learning and class participation is heavily dependent on timely reading of assignments.

Exams

There will be a midterm exam and a final exam. The midterm exam will cover material discussed in the first half of the course, and the final exam will be comprehensive over the entire semester. Both exams will feature essay format, although there may be some multiple choice and true/false questions as well.

Research Paper

The purpose of the required research paper is to provide each student with the occasion to engage one particular legal philosopher in depth on the issues raised by Shirley R. Letwin in her book, *On the History of the Idea of Law*. You may choose any theorist addressed by Letwin in chapters 3, 7, 8, 9, or 10. Communicate that choice electronically no later than noon on September 30. Your paper should constitute an evaluation of Letwin's treatment of that philosopher in her book, based on your reading of that author's works and any secondary materials you consult. The length of the paper would ordinarily be 10-15 pages.

The paper will be submitted and graded in stages, all of which together will add up to 40% of the course grade. We will also adhere to a strict set of deadlines—late submissions of any stage assignment will be docked 20% of the possible points: The bibliography and outline each count 5 points, the first complete version 30 points, your comments on others' papers 10 points, and your final paper 30 points.

- September 30:** Your paper topic due. You can choose any author addressed in chapters 2, 7, 8, 9, or 10 of the Letwin volume as your topic. Submit electronically by **noon**.
- October 14:** Your outline and preliminary bibliography due—by **noon** electronically.
- November 4:** Your finished paper (not a rough draft) due by **4:30 pm** (three hard copies), to 745 SWKT.
- November 11:** Your comments on assigned student papers due to be submitted electronically to that student and to the instructor by **midnight**.
- November 26:** **Final version of the paper due by 4:30pm.** Hard copy to be delivered to 745 SWKT.

Lecture and Reading Schedule for Fall 2008

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading/Assignment</u>
SEPTEMBER		
3	Introduction/Syllabus	
5	Course Overview	Letwin, Introduction
8	Reynolds	NBR, Legal Theory and the Rule of Law
10	Plato	Letwin, chapter 1
12	Plato 2	<i>Crito</i>
15	Aristotle	Letwin, chapter 2
17	Aristotle 2	<i>Ethics</i> V, X;
19	Aristotle 3	<i>Politics</i> III-VII
22	Augustine	Letwin, chapter 4
24	Augustine 2	<i>City of God</i> XIX, 5-11, 13-24; <i>Confessions</i> III, 7-10
26	Aquinas	Letwin, chapter 5
29	Aquinas 2	<i>Summa Theologica</i> excerpts
30	<i>One sentence paper topic due electronically by noon.</i>	
OCTOBER		
1	Natural Law	B. Bix, Natural Law Theory
3	Review	
6	MIDTERM EXAM (in class)	
8	Hobbes	Letwin, chapter 6
10	Hobbes 2	<i>Leviathan</i> 13-15
13	Hobbes 3	<i>Leviathan</i> 16-
14	<i>Paper outline and bibliography due electronically by noon.</i>	
15	Historical Jurisprudence	Letwin, chapter 10
17	Legal Positivism	Letwin, chapter 11
20	Legal Positivism 2	Hart, Law as the Union of
	Primary.....Rules	
22	Legal Positivism 3	Coleman, Legal Positivism
24	Marxism	Letwin, chapter 12
27	Marxism 2	Pashukanis, Marxism and Law, 134-65
29	Dworkin	Letwin, chapter 14
31	Rule of Law Theory	NBR, Grounding the Rule of Law
NOVEMBER		
3	F. A. Hayek	Hayek, Safeguards of Individual Liberty
4	<i>Finished paper, three copies, due in 745 SWKT by 4:30 p.m.</i>	
5	Lon L. Fuller	Fuller, Morality of Law
7	Political Jurisprudence	Letwin, chapter 13
10	Critical Legal Studies	Altman, <i>Legal Realism</i>
11	<i>Comments on assigned student papers due electronically by midnight.</i>	
12	Oakeshott	Letwin, chapter 15
14	Oakeshott 2	Rule of Law, 119-14
17	Oakeshott 3	Rule of Law, 148-164

19	Conventionalism 1	NBR, Law as Convention
21	Conventionalism 2	NBR, Constitutionalism and the Rule of Law
24	Conventionalism 3	NBR, The Ethical Foundations of Constitutionalism
25	Individual consultation (no class)	Schedule as needed
26	<i>Final paper hard copy due in 745 SWKT by 4:30 p.m.</i>	

DECEMBER

1	Conventionalism 4	NBR, Pareto Optimality and the Rule of Law
3	Conventionalism 5	NBR, Rule of Law in Legal and Economic Theory
5	Conclusion 1	Letwin, ch. 16
8	Conclusion 2	None
10	Course Review	None
12	Reading Day	
13	Reading Day	
16	FINAL EXAM , 3-6:00pm. Bluebooks will be provided. Exams will not be returned, but may be reviewed after grades are submitted. (Please do not request to take the exam early.)	

Class and University Policies

Because the academic enterprise depends on trust and honesty, any student that engages in plagiarism or other forms of dishonesty in the course will fail the class. See <http://www.byu.edu/honorcode> for definitions and examples of intentional and inadvertent plagiarism and fabrication. Title IX of the Education Amendments of 1972 prohibits sex discrimination against any participant in an educational program or activity that receives federal funds. The act is intended to eliminate sex discrimination in education. Title IX covers discrimination in programs, admissions, activities, and student-to-student sexual harassment. BYU's policy against sexual harassment extends not only to employees of the university but to students as well. If you encounter unlawful sexual harassment or gender based discrimination, please talk to your professor, contact the Equal Employment Office at 378-5895 or 367-5689 (24-hours), or contact the Honor Code Office at 378-2847.

Brigham Young University is committed to providing a working and learning atmosphere which reasonably accommodates qualified persons with disabilities. If you have any disability which may impair your ability to complete this course successfully, please contact the Services for Students with Disabilities Office (378-2767). Reasonable academic accommodations are reviewed for all students who have qualified documented disabilities. Services are coordinated with the student and instructor by the SSD office. If you need assistance or if you feel you have been unlawfully discriminated against on the basis of disability, you may seek resolution through established grievance policy and procedures. You should contact the Equal Employment Office at 378-5895, D-282 ASB.