



Figure 1 Untitled, 1981 by Jean Michel Basquiat

Introduction to Philosophy of Law: From Hart and Dworkin to Derrick Bell

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Email	Office Location & Hours	Course Hours & Location
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Course Description

What is a good civil rights lawyer? Does having a philosophical grasp of the concept of law in any way shape the lawyer's understanding of law? If either yes, or no, then why, and what are we doing when we philosophically reflect on law as such? Moreover, does good judging require a strong philosophical grasp of the law? Does that concept of law inform the judge's reasoning in any meaningful way? In either case of good judging and good lawyering, what can we glean from them to enrich our understanding of racism as a founding feature of the American Constitution? Rather than tackle the proposed set of questions primarily with traditional philosophy of law positions such as H. L. A. Hart's legal positivistic social constructivist view of law, Han Kelson's pure legal positivism, or Ronald Dworkin's moral interpretation of law, we will consider Derrick Bell's critical race theory analysis of race and racism in American law. However, we will first closely read Hart's *The Concept of Law*, and Dworkin's *Law's Empire* before turning to Bell's critical race theory. Our goal is to not think of philosophy of law and critical race theory as fundamentally opposed in approaches to understanding law, and therefore as antagonists to each other, but rather our goal is to make sense of ways in which the two field and sub-field inform one another and are mutually capable of making intelligible jurisprudence and racism in the United States of America.

Learning Goals

- **To develop a strong understanding of racism in the American Constitution and American legal institutions in general.**
- **To critically engage the assigned readings**, keeping an open mind to each author's philosophical contributions to our discussion of law.
- **Develop the habit of slow reading.** By slow reading, I mean carefully reading each line, paragraph, and footnote of your assigned reading. To aid you in this very important endeavor, I will only assign roughly 600 pages of reading, averaging about 30-50 pages of reading per class.

- **Actively participate in discussions with your peers.** Because learning is not always had in the classroom, it is important to me that you all have a safe, intellectual space to talk about philosophy of law.
- **Developing your philosophical writing skills.** Some of those skills include comparing and contrasting philosophical concepts in order to elucidate their similarities, and differences. By seeing the differences, for instance, between Hart's social constructivist vision of legal positivism, and Han Kelson's pure legal positivism, one can not only make the finer details of both positions but can also understand their respective limitations in accounting for racism in the American constitution.
- **Learning how to present philosophical ideas to others.** Besides the obvious job of doing stand up philosophy (that is, standing up in front of an audience and discussing the inner mechanics of some philosophical concept or idea), one must also consider how to show one's ideas in some visual way, including in the form of posters. Since poster sessions are an active platform at the American Philosophical Association (APA), I will teach how to make a poster, and how to present it.

Course & Attendance Policies

Classroom etiquette is crucial for a healthy, safe, and thriving intellectual space. In order to facilitate that, it is important that we all uphold the following rules and policies.

1. **No electronics allowed during class.** That includes laptops, cellphones, gaming devices, and anything that can grant internet access. It is important that everyone respect each other's class time by not distracting each other with electronic devices.
2. **No interrupting your fellow classmates when they're speaking.** It is important to allow everyone to articulate their thoughts. Of course, everyone should also keep in mind that a question exceeding 3-5 minutes is pushing it. Remember: everyone wants a chance to share their ideas, ask questions, and discuss the class material.

3. **Attend every class and attend them on time.** Although transportation in NYC is finicky, and indeed, life happens, it is still important to try to be on time to class. Five to ten minutes is fine so long as you're genuinely late, but otherwise do your best to not be late to class.
4. **Bullying, use of racial and sexist slurs, and other forms of antagonism are prohibited in the classroom..** If you're experiencing any of these things please contact me, and we can discuss how to move forward.
5. **Plagiarism of any kind is unacceptable** and will result in an automatic zero on an assignment, and, if done more than once, a zero for the course.

Attendance Policy

Put simply, you are *required to attend every session of this class*. Since you must turn your BWEs, daily questions, and responses to the posted artwork, you have to physically be in class to do so. Unless class is moved online, you're expected to physically be in class. Not attending class will result in a loss of participation points for that session, and if absences pile up your grade will decrease by a whole letter grade.

Disabilities Services: Memo from Baruch's Provost

Baruch College's Student Disability Services (SDS) will meet with any student who has identified as having a disability to determine the need for accommodations or academic adjustments. These accommodations will not conflict with academic standards and are determined on a case by case basis. The student may provide documentation of the disability to Student Disability Services which will determine whether or not accommodation requests are appropriate and reasonable. Students should inform their instructors of their accommodations by sharing their student **Accommodation Card** which has been issued to the student by SDS. The card has the student's photo, their first name, their EMPL, and their accommodations listed on it. (Students who prefer an

accommodation letter instead of a card should share the letter with the instructor.) If the student informs you that s/he has a disability and is not registered please refer the student to Student Disability Services. If the professor or the department provides accommodations in the classroom, Student Disability Services is available to provide guidance. Please note that

students who are pregnant are also entitled to reasonable accommodations: https://provost.baruch.cuny.edu/wp-content/uploads/sites/5/2020/01/Pregnant_Parenting_Students.pdf

Academic Resources at Baruch College

Baruch College offers a wide range of services including tutoring, support for writing and speaking English clearly, general academic advisement. For a more complete list and description, see:

<https://provost.baruch.cuny.edu/facultyhandbook/academicsupportservices/>

***Please sign here to acknowledge that you have read the above course policies:**

Key Questions Investigated in This Course

To help guide your learning about philosophy of law and critical race theory, keep in mind the following questions and themes throughout the semester: **Questions Raised Throughout the Course**

- What can philosophy of law tell us about racism?
- Is judicial reasoning ever informed by racial interests? To what extent are they formed by interests at all, and how can CRT aid in unpacking the underlying values of such interests?
- How, if at all, does Derrick Bell's racial realism shake-up the Hart/Dworkin debate?

- How does racial standing factor into Dworkin's moral reading of the American Constitution?
- Is racial standing the same for all racially subordinated Americans (e.g., African Americans, Asian Americans, Spanish-Americans, Native Americans, etc.) under the American Constitution, and if not, why is there divergence?
- What reading of the law is more likely to understand the moral and economic nature of civil rights rulings like *Brown v. Board of Education* without being blind to interest convergence?
- Should we think of racial standing and interest convergence as critical concepts of philosophy of law?

Assignments & Grading System

Doing philosophy at a high level requires a strong foundation in critical thinking, time management, and self-care. Although discussions about time management and self-care may arise during class discussions or during office hours, your primary assignments will be dedicated to building your critical thinking muscles. To build those muscles, you will be given bi-weekly writing assignments throughout the semester, six total. One important aspect of a philosopher's toolkit is their ability to read, annotate, and comprehend a text while actively reading it.

Participation

Your participation grade is 10%, consisting of two key elements: (1) checking my website the night before each class to see the posted work of art, speech, or song. Since part of the course's method of interrogation is aesthetic, we will start class by reflecting on a piece as a way into our discussion for that day. Thus, you are required to (a) know the name and author of the piece, and (b) offer a thought on the piece during our discussion at the start of class. The other 5% of your participation grade is (2) to bring an index card with a question about a passage from the assigned reading. Your note card should include a reference to the passage, and a question. I will provide you all with notecards each class.

Bi-Weekly Exercises (BWEs)

Your first **bi-weekly exercise (BWE)** will concern **annotation**. The other BWEs, respectively, are **exegesis**, **positive critique**, **negative critique**, and **compare/contrast**. *Note: See Dropbox for documents with detailed instructions on how to complete each BWE. Lastly, each BWE is worth 10 points and cover roughly 25% of your grade. Participation counts for 10%, your final exam for 35%, and a final paper, 2500 words, is worth 30% of your grade. Additionally, you will be given a syllabus quiz on week 2-3 of class which will count as your participation grade for that week.

Final Paper

In addition to your weekly assignments, you will have to complete a final paper of approximately 2500 words. Your final paper is an expanded note on any topic that interested you throughout the seminar. I am happy to provide topics and questions for you to write on, but I do encourage you to be creative! **Your final paper is due on the day of your final exam.**

Final Exam

Your final exam is a traditional open blue book exam. The purpose of the exam is to test your active knowledge and understanding of the course the material after nearly eighteen weeks of thinking about philosophy of law, and critical race theory. You will be asked four questions, two of which are identify and respond questions, and two of which are open response questions. Identify and respond questions will consist of a selected quote from one of the readings and will ask that you:

- **Identify** the author
- **Explain** the context of the quote and the meaning of the text as such, and ○ **Offer a critical response**, positive, negative, or comparative to the quote.

The open response questions will challenge your ability to offer a positive critique, and your ability to offer a response of your own on the spot. And because the exam is open book, you're allowed up to a page of notes to help you during the exam.

Awards

To motivate your interest in philosophy, and the course, I offer up to three awards: **the Alain LeRoy Locke Award**, **the Fredrick Douglass Award**, and **the Socratic**

Award. Each award speaks to your commitment, persistence, and engagement with the course, and your classmates.

- The **Alain Locke Award** is given to the student who has the highest grade in the course, consistently attends office hours, participates in class, and overall makes outstanding contributions to the course.
- The **Fredrick Douglass Award** is given to that student who has one of the highest grades in class, and has earned that grade overtime, demonstrating a thoughtful interest in their intellectual development throughout the semester.
- The **Socratic Award** is given to the student who consistently makes insightful, substantive contributions to class discussions regardless of their grade.

***Note: The specific prizes will be revealed during the final week of class.**



Figure 2 The Wizard of Oz (1939) Dorothy and co. as they begin their journey to Emerald City. Our course readings will have a similar effect...

Texts Read in this Course

Since our main learning goal in the course is to understand what a good civil rights lawyer 'is' (scare quotes to distance ourselves from the metaphysical question of whether or not such a kind of lawyer exists at all), we will dedicate the majority of our attention to three books:

- *The Concept of Law* 2nd Edition by H.L.A. Hart (2012)

- *Law's Empire* by Ronald Dworkin (1986)
- *Faces At the Bottom of the Well: The Permanence of Racism* by Derrick Bell (2018)

Given the 600-pg limit, we can only read so much! Nevertheless, I will offer “DLC readings” for those curious about questions, problems, discussions, and history we won’t cover. Such readings will be provided electronically. **Keep in mind that you must have the three books listed above to fully engage with the subject matter, and have lively, thoughtful, philosophical discussions with your peers.** That said, there will be copies of the books available at the Baruch College library reserves.

Course Schedule

Week	Topic	Reading
Week 1	Course introduction—why philosophy of law and critical race theory? Syllabus reading	Introduction by Leslie Green is recommended, but not required.
Week 2-3	H. L. A. Hart’s <i>The Concept of Law</i>	Chapters 1-3 (44 pgs)
Week 4	H. L. A. Hart’s <i>The Concept of Law</i>	Chapters 4-5 (41 pgs) <u>DLC</u> : Hans Kelson, “The Pure Theory of Law and Analytical Jurisprudence” Harvard Law Review 55, Vol. 1
Week 5	H. L. A. Hart’s <i>The Concept of Law</i>	Chapters 6-7 (47 pgs)
Week 6	H. L. A. Hart’s <i>The Concept of Law</i>	Chapters 8-9 (45 pgs)
Week 7	Ronald Dworkin’s <i>Law’s Empire</i>	Chapters 1 (45 pgs)
Week 8	Ronald Dworkin’s <i>Law’s Empire</i>	Chapter 2 (42 pgs)
Week 9	Ronald Dworkin’s <i>Law’s Empire</i>	Chapter 3 and 5 (51 pgs) DLC: chapter from Dworkin’s <i>Taking Rights Seriously</i> , “Jurisprudence”
Week 10	Ronald Dworkin’s <i>Law’s Empire</i>	Chapter 10 (45 pgs) <u>DLC</u> : two chapters from Dworkin’s <i>Taking Rights Seriously</i> , 4 “Hard Cases”, and 5 “Constitutional Cases”

Week 11

Derrick Bell's *Faces at the Bottom of the Well*: Bell's Introduction to Chapter 3 (59 pgs)
Legal Aesthetics as a Window into The Work of Critical Race Theory

DLC: Oliver Wendall Holmes, "**The Path of the Law**" 10 **Harvard Law Review** 457 (1897)

Kimberlee Crenshaw
"Introduction," **Critical Race Theory: The Key Writings that Formed the Movement** The New Press, New York, 1996 at xiii–xxxii

Derrick Bell, "**Brown v. Board of Education and the Interest-Convergence Dilemma**" **Harvard Law Review** (1980)

Week 12

Derrick Bell's *Faces at the Bottom of the Well*: **A Racial Realist Interpretation of Rule Theory? Racial Realism,** Chapters 4 – 6 (56 pgs)
MacKinnon DLC: Catherine A.

and Racial Standing

Optional: "**Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence**" 8 **Signs: Journal of Women, Culture, and Society** 635 (1983) (pp. 869-886)

Week	Topic	Reading
Week 13	Derrick Bell's <i>Faces at the Bottom of the Well</i> : Chapters 7-9; Special emphasis on The Final Frontier of White Supremacy - Trading the story of the Space <i>Traders</i> (38 Human Beings & the Legal Implications of Interest Convergence	DLC: Brown v. Board of Education and the Interest-Convergence Dilemma
Week 14	Contemporary Issues in Critical Race Theory: Critical Asian Studies, Black Male Studies, and Gender and Queer Trends Worth Considering in Light of Our Investigations in Philosophy of Law	
Week 15	Final Remarks	(513 pgs total)

BWE, Final Paper, and Final Exam Schedule

Date	Exercise Type
Week 2-3	Text Annotation
Week 5	Exegesis
Week 7	Positive Critique
Week 9	Negative Critique
Week 11	Compare/Contrast
Week 13	Pick one of the above
Week 15	<i>Final Exam -- Open Bluebook + Final Paper due</i>

