

Introduction to Philosophy of Law: From Natural Law to Critical Legal Studies

Spring 2023



Figure 1 Untitled, 1981 by Jean Michel Basquiat

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Meeting Time & Location: N/A

Office hours: MW 2-4PM by appointment (book on <https://www.coreybeckford.org/office-hours>)

Course Description

In this course we will explore the philosophy of law from a historical perspective, tracing the development of legal thought in Western Philosophy from Plato to Derrick Bell. Our aim is to get a basic grasp of key traditions such as natural law, legal positivism, legal realism and pragmatism, and finally critical legal studies. Our survey will cover key concepts in each of these modes of thought such as the concept of law, justice, moral and legal obligation, authority, legal culpability, blame and agency, and legal punishment. In addition to our historical survey of the philosophy of law and some of its core concepts, we will examine legal cases as a way of making concrete sense of how philosophical theories of law can be useful in understanding concepts like moral and legal obligation in real time. Finally, we will use what we learn about the history of philosophy of law and some of its core concepts to better understand the relationship between legal systems and social institutions. For example, is it just or unjust for a legal system to condone racial or sexual discrimination? Is it just or unjust for a legal system to allow slavery? Readings will include legal cases, literary narratives, and texts by philosophers and legal theorists.

Learning Goals

- **To develop a historical understanding of the Philosophy of Law**
- **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 300-400 pages of reading for the semester, averaging about 15-30 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.
- **Develop 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 Kelsen'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 the relationship between law and social institutions in the American legal system.

- **Learn 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 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. **Aim to attend every class and attend them on time.** Although (1) attendance is not mandatory, transportation in NYC is finicky, and indeed, life happens, it is still important to try to be on time for 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 is not tolerated in my 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. This includes the use of AI tools like ChatGPT.

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/academicssupportservices/>

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

Assignments & Grading System		
Letter Grade	Grade Point Equivalent	Percentage Equivalent
A	4.0	93.0-100.0
A-	3.7	90.0-92.9
B	3.0	83.0-87.0
B+	3.3	87.1-89.9
B-	2.7	80.0-82.9
C	2.0	73.0-77.0
C+	2.3	77.1-79.9
C-	1.7	70.0-72.9
D	1.0	60.0-67.0
D+	1.3	67.1-69.9
F	0.0	below 60.0

Participation: 10%

BWQs: 25%

Final Paper: 30%

Final Exam: 35%

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 (3x5) with a question about a passage from the assigned reading. Your note card should include a reference to the passage, and a question (see Dropbox for example notecard). Additionally, there may not always be an aesthetic puzzler so you will automatically receive the other 5%.

Bi-Weekly Quizzes (BWQs) Every two weeks I will quiz you on the material we've covered. They will be multiple choice quizzes consisting of five questions about material covered from a previous week or class.

Final Paper

In addition to your weekly assignments, you will have to complete a final paper of approximately 800-1000 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.**

Required Texts

- *The Eloquent Peasant*, 2nd Edition by Loren R. Fisher (2015)
 - *Faces at the Bottom of the Well: The Permanence of Racism* by Derrick Bell (2018)
- *Note: All other readings will be provided via Dropbox.***

Course Schedule		
Week	Topic	Reading
First Day	(01/25/2022) Course mechanics	
Week 1	(01/30/2023) Early Origins of Classical Natural Law: First to Fourth Appeal The Eloquent Peasant	Pages 5-32
	(02/01/2023) Early Origins of Classical Natural Law: The Eloquent Peasant	Fifth to Ninth Appeal Pages 33-47
Week 2	(02/06/2023) Classical Natural Law: The Question of Entire dialogue Legal Duty & Obligation in Plato's <i>Crito</i>	
	(02/08/2023) Natural Law in Aquinas' <i>Treatise on Law</i>	Pages 1-30
Week 3	(02/15/2023) Natural Law in Aquinas' <i>Treatise on Law</i> (02/21/2023) The First Signs of Legal Positivism-- The Command Theory of Law: Enter John Austin's <i>The Province of Jurisprudence Determined</i>	Pages 31-69 Pages 9-33 <u>Recommended:</u> pgs.191-210
Week 4	(02/22/2023) Legal Positivism: H.L.A. Hart's <i>The Concept of Law</i> (02/27/2023) Legal Positivism: H.L.A. Hart's <i>The Concept of Law</i>	Chapter 2 Chapter 3

Week 5		Chapter 4 Chapter 5
	(03/06/2023) Hart <i>Continued</i> (03/08/2023) Hart <i>Continued</i>	
Week 6		Nature and Morality Hierarchical Structure of Norms
	(03/13/2023) Hans Kelsen's <i>Introduction to the Problems of Legal Theory</i> (03/15/2023) Hans Kelsen's <i>Introduction to the Problems of Legal Theory</i>	
Week 7	(03/20/2023) Legal Realism: Oliver Wendall Holmes' <i>Law</i> (03/22/2023) Blame & Agency: P.F. Strawson's Freedom and Resentment	Pgs.1-19 Pgs.1-15 <i>The Path of</i>
Week 8	(03/27/2023) CLS & CRT: Derrick Bell, "Brown v. Board of Education and the Interest-Convergence Dilemma" Harvard Law Review (1980) (04/03/2023)	Pages 1-16
Week 9	(04/17/2023) Critical Legal Studies/Critical Race Theory: Derrick Bell's <i>Faces at the Bottom of the Well</i> Chapter 1 (04/17/2023) Critical Legal Studies/Critical Race Theory: Derrick Bell's <i>Faces at the Bottom of the Well</i> Chapter 2	
Week 10	(04/20/2023) Critical Legal Studies/Critical Race Theory: Derrick Bell's <i>Faces at the Bottom of the Well</i> (04/22/2023) Bell's <i>Faces at the Bottom of the Well</i>	Chapter 4 Chapter 6
Week 11	(04/24/2023) Critical Legal Studies/Critical Race Theory: Derrick Bell's <i>Faces at the Bottom of the Well</i> Bell's <i>Faces at the Bottom of the Well</i>	Chapter 8 Chapter 9 (04/26/2023)
Week 12	(05/01/2023) Critical Race Theory: Kimberlee Crenshaw's <i>Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color</i> (05/02/2023) Crenshaw continued	Pages 1-30 Pages 31-60

Week 13

(05/08/2023) Critical Race Theory: Tommy J. Curry's *Shut* Pages 1-15

Your Mouth When You're Talking to Me:

Pages 16-34

Silencing the Idealist School of Critical Race

Theory Through a Culturalogical Turn in

Jurisprudence

(05/10/2023) Curry continued + Review + Closing Remarks

Week 14

Final Exam + Final Paper
