

School of Law, Governance and Citizenship

Ambedkar University, Delhi

Course Outline: Speech, Crime and Law

Course Code: SLG2FC002

Title: Jurisprudence and Legal Philosophy

Cohort for which it is compulsory: All students of M.A. in Law Politics and Society

Cohort for which it is elective:

No of Credits: 4

Semester and Year Offered: 1st Semester course for M.A 1st Year students (Monsoon Sem 2018)

Course Coordinator and Team: Lawrence Liang

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Pre-requisites: None

Course Aim:

- To introduce students to the key debates within legal philosophy through an intellectual history of jurisprudence
- To provide an in depth examination of one of the defining legal debates of the 20th century namely positivism versus normative jurisprudence
- To introduce students to critiques of classical jurisprudence that will serve as the necessary base for future elective courses focusing on these critiques

A brief description of the Course:

Some of the most abiding conceptual questions in law have constituted the subject matter of jurisprudence. These include the nature of law, its relationship to sovereignty, do we have an obligation to obey the law, do laws have a moral content? Often regarded as the philosophical backbone of the law, jurisprudence has evolved over many centuries via the emergence of different schools of thought and the stakes in

jurisprudence debates are very high as it is not just the crucial terrain on which the conceptual battles in the law take place, but these debates also substantively determine the design of legal systems and how laws are interpreted. For instance the question of the extent to which the state can regulate the dietary preferences of individuals is not just a matter of politics but also of jurisprudence as it goes into the heart of jurisprudential debates.

One of the abiding concerns of jurisprudence is the very nature of law itself, but what exactly is at stake in the question and why do we need a general theory of what law is, and what does it have to do with legal practice? One of the aims of this course will be to examine the conceptual and practical implications of jurisprudence for the practice of law. Jurisprudence has often thought of as the province of “dead white men”, and in this course we will try to study the classics of jurisprudence but with a keen eye towards their lively, vital relevance to contemporary debates. While the domain of jurisprudence is vast, in this course we will be looking at some of the foundational debates and focus on one strand of analytical jurisprudence namely the debate between legal positivism and normative jurisprudence while other topics including sociological jurisprudence etc. will be covered in other courses. In particular we will focus on the works of two thinkers H L A Hart and Ronald Dworkin along with their interlocutors.

Jurisprudence and Legal Philosophy

Background Books

The following books provide useful overviews of the field

Morrison, Wayne. *Jurisprudence: From The Greeks To Post-Modernity*. 1 edition. London: Routledge-Cavendish, 1995.

Ratnapala, Suri. *Jurisprudence*. 2 edition. Cambridge University Press, 2013.

Shapiro, Scott J. *Legality*. Belknap Press: Harvard University Press, 2013.

Syllabus with List of Readings

Module 1: Introduction and Key Questions

Topics to be Covered:

Why is jurisprudence obsessed with the question “What is Law”

	<p>What are the sources of law? Where does our obligation to obey the law come from? Is there anything distinct about legal reasoning? What is the province of jurisprudence? Are laws necessarily good, in the sense of having a moral basis? What is the relation between law and morality? Is it possible for law and morality to be in conflict, so that we may sometimes be morally obliged to disobey the law?</p>
<p>Week 1</p>	<p>Introduction :</p> <p>Posing philosophical problems in law</p> <p>For the second class please read Chapter 1 of Shapiro, Scott J. <i>Legality</i>. Belknap Press: Harvard University Press, 2013</p> <p>Additional Reading</p> <p>John Gardner and Timothy Macklem, Reasons from The Oxford Handbook of Jurisprudence and Philosophy of Law</p>
<p>Week 2: Why must we Obey Laws? Antigone and the legitimacy of sovereign orders</p>	<p>Essential Readings</p> <p>Key Excerpts from Antigone (Translated by Reginald Gibbons) (Students are encouraged to read the entire play)</p> <p>Martha Nussbaum, Sophocles' Antigone: conflict, vision, and simplification from <i>The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy</i>. Cambridge University Press, 2001.</p>

	<p>Additional readings</p> <p>Costas Douzinas, Antigone's Dike from <i>Justice Miscarried: Ethics and Aesthetics in Law</i></p> <p>Erin B. Mee, <i>The Fight for Regional Autonomy through Regional Culture: Antigone in Manipur, North- East India</i> from Erin Mee and Helen Foley, <i>Antigone on the Contemporary World Stage</i></p> <p>For anyone interested in exploring Antigone further, a particularly poignant modern version was written by Jean Anouilh and performed for the first time in France under Nazi occupation accentuating the key themes and conflicts in Antigone</p>
<p>Week 3 : The Speluncean Explorer's Case</p>	<p>Essential Readings</p> <p>Lon Fuller, The Case of the Speluncean Explorers". <i>Harvard Law Review</i>. The Harvard Law Review Association. 62 (4): 616–645</p> <p>Additional readings:</p> <p><i>Suber, Peter (1998). The Case of the Speluncean Explorers: Nine New Opinions. London: Routledge</i></p>
<p>Module 2: Positivism</p>	<p>Topics to be Covered:</p> <p>Are laws no more than commands made by a sovereign that have to be obeyed?</p> <p>What are the intellectual and philosophical foundations of positivism</p> <p>Why has positivism been such an influential approach and what accounts for HLA Hart's preeminence in legal philosophy</p> <p>The relationship between law and morality</p>

<p>Week 4: Intellectual Foundations and Antecedents</p>	<p>Utilitarianism and Command Theory of Law Bentham and John Austin</p> <p>Essential Readings</p> <p>Jeremy Bentham, Extracts from Principles of morals and legislation</p> <p>John Austin, Lecture 1 of “The Province of Jurisprudence Determined, pp.58-77 “ in The Philosophy of Law, eds. F. Schauer, W. Sinnott-Armstrong, pp. 32-39</p> <p>Upendra Baxi, Introduction to Principles of morals and legislation</p> <p>Additional readings</p> <p><i>John Deigh, Emotion and the Authority of Law Variation on Themes in Bentham and Austin from The Passions of Law</i></p> <p>Roger Cotterrel, Austin and Bentham from the Politics of Jurisprudence</p> <p>Milirrpum v Nabalco Pty Ltd (the Gove Land Rights case) (1971)</p>
<p>Week 5 & 6: The Concept of Law</p> <p>Week 5</p>	<p>HLA Hart’s The Concept of Law is widely regarded as the most important contribution to jurisprudence in the 20th century and it is a text that has been severely debated and critiqued. Following Brian Simpson’s suggestion, we will read this text as though it were a fresh text attempting to pay attention via a close reading to its claims and internal logic before we proceed to engage with critical responses to the work.</p> <p>HLA Hart, The Concept of law, pp. 1-78,</p>

Week 6

Additional Readings:

For anyone interested in a substantive commentary on Hart's Concept of Law, you may consider reading the following texts

Background on Law and Language

Timothy A. O. Endicott, Law and Language from The Oxford Handbook of Jurisprudence and Philosophy of Law

Jules L. Coleman and Brian Leiter, Legal Positivism from Dennis Patterson, Ed., A Companion to Philosophy of Law and Legal Theory

Leslie Green, The Concept of law, Michigan Law Review Vol.94 (1987)

Extracts from Jules Coleman, Hart's Postscript: Essays on the Postscript to the Concept of Law

Luís Duarte D'Almeida & James Edwards & Andrea Dolcetti, Reading HLA Hart's 'The Concept of Law'

A. W. Brian Simpson, Reflections on 'The Concept of Law'

Positivism and Morality

HLA Hart, The Concept of law, pp. 79-123

Additional Readings:

Hart, H. L. A. (1958). "Positivism and the Separation of Law and Morals". *71 Harvard Law Review* 593. 71

Fuller, Lon L. (1958). "Positivism and Fidelity to Law — A Reply to Professor Hart". *71 Harvard Law Review* 630. 71

Kent Greenwall, Legal Enforcement of Moral Norms against Causing Harm in Dennis Patterson, A Companion to Philosophy of Law and Legal Theory

<p>Module 3</p> <p>Normative Jurisprudence</p>	<p>Topics to be Discussed</p> <p>The critique of positivism by normative philosophy What is the moral content of law and why is it desirable? How are 'hard cases' settled in law What is the role of judicial interpretation in fleshing out the substantive content of law How is new law made</p>
<p>Week 7: Dworkin and the critique of Positivism</p>	<p>Ronald Dworkin, Taking Rights seriously , pp. 1-80</p>
<p>Week 8:</p>	<p>Ronald Dworkin, Law's Empire, Chapters 1-7 (pp.1-225)</p> <p>Additional Readings:</p> <p>Upendra Baxi, A known but an indifferent judge”: Situating Ronald Dworkin in contemporary Indian jurisprudence, I.CON, Volume 1, Number 4, 2003, pp. 557–589</p> <p><i>Abhishek Sudhir</i>, DISCOVERING DWORKIN IN THE SUPREME COURT OF INDIA - A COMPARATIVE EXCURSUS, NUJS Law Review</p>
<p>Module 4</p> <p>Critical Jurisprudence</p>	<p>Topics to be covered</p> <p>Does classical jurisprudence give us a dogmatic image of law</p> <p>What is the ideological content of law</p>
<p>Week 9 : The critique of Dogmatic image of law</p>	<p>Allan C Hutchinson, Province of Jurisprudence Compromised from The Province of Jurisprudence Democratized¹</p>

	<p>Costas Douzinas, Chapter 1 of Critical Jurisprudence: The Political Philosophy of Justice, Hart Publishing, 2005, pp.3-42</p> <p>Alexander Lefebvre, The Image of Law</p>
<p>Week 10</p>	<p>Critical Legal Theory</p> <p>Mark V. Tushnet, Critical Legal Theory from The Blackwell Guide to the Philosophy of Law and Legal Theory</p> <p>Roberto Unger, The Critical Legal Studies Movement: Another Time, a Greater Task, pp 1-42</p>
<p>Week 11</p>	<p>Feminist Jurisprudence & Critical Race Theory</p> <p>For an overview see Keith Charles Culver, Readings in the Philosophy of Law</p> <p>Patricia Smith, Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial from The Blackwell Guide to the Philosophy of Law and Legal Theory</p> <p>Judith Baer, Is the law male? From Our Lives before the Law Constructing a Feminist Jurisprudence</p> <p>Angela Harris, Critical race Theory from law and social theory</p> <p>Cheryl Harris, Whiteness as property</p>
<p>Week 12</p>	<p>Brian Z. Tamanaha, Law and Society from A Companion to Philosophy of Law and Legal Theory, pp. 368-80</p> <p>Patricia Ewick and Susan Silbey, Chapter 1: Millie Simpson from The Common Place of Law: Stories From Everyday Life</p>

Costas Douzinas, Chapter 11 Postcolonial Jurisprudence from Critical Jurisprudence: The Political Philosophy of Justice, Hart Publishing, 2005

Drucilla Cornell & Nyoko Muvangua, Introduction from *UBuntu and the Law: African Ideals and Postapartheid Jurisprudence*, Fordham Univ. Press, 2012

Extracts from Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide*