McGill University  
Philosophy of Law 1 PHIL 348 - Winter 2019

Professor: Natalie Stoljar  
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Office Hour: 4.30-5.30 pm Wednesdays or by appointment (or send questions by email)

Objectives
The objectives of this course are to examine contemporary and historical approaches to theories of law and legal interpretation especially to consider the relationship between law and morality. The course contains 4 topics. We start with a survey of the main theories of law: natural law theory and different versions of positivism (topic 1). We then turn to responses to positivism, and the theoretical problems of adjudication and interpretation, especially in relation to constitutional rights such as equality and non-discrimination (topic 2). We spend several weeks discussing the issues of individual liberty, democracy and the rule of law (topic 3). In the final 4-5 weeks, we survey different topics, e.g. freedom of expression, pornography and hate speech (topic 4).

Books and teaching resources

Required Reading Readings will be posted as pdfs on MyCourses. You will need to print out the relevant readings as needed and bring them to conferences and lectures. Course outlines, lecture notes, conference exercises, essay topics, optional and further reading, and any relevant links will also be posted on MyCourses

Lectures and Conferences

Lectures and conferences follow a Monday-Wednesday-Friday schedule. The last lecture will be on Friday, April 12. The last lecture will be used for review and to answer your questions, unless the time is needed to finish up the last topic.

Conferences. One conference per week, which will replace the Friday lecture, starting the week of January 21 and finishing during the week of April 1.

Times and days of conferences: You will need to sign up on Minerva and look on Minerva for locations. For further information about conferences, see ‘Conference Information’ which will be posted on MyCourses.

Teaching Assistants

Thomas Colbourne: thomas.colbourne@mail.mcgill.ca  
Hugo Cossette-Lefebvre: hugo.cossette-lefebvre@mail.mcgill.ca
Evaluation and grading scheme

1. Conference attendance: 10%. There are 10 conferences. You will receive a grade of 1% for attending a conference and completing the requirement (below). The maximum grade for conference attendance is 10%.

Conferences will provide an opportunity to discuss and reinforce what you have learned in lectures. Readings and topics will be assigned. Please come to conferences prepared, having read the required reading, reviewed the conference topic, and prepared to ask questions and participate in discussion.

Conference requirement: it is a requirement for conference attendance that you come to each conference with a written discussion question on the day’s topic. Include your name and student ID on a piece of paper (half page) with your question. It is your responsibility to hand this paper to your TA at the beginning of the conference and by this method inform your TA of your conference attendance. TAs will also keep a sign-up sheet and it is your responsibility to sign the sheet.

Your TA may require your active participation in conferences by requesting e.g. that you take a turn to lead the discussion, take a turn to present the reading, take a turn to report back on small group discussions, etc.

2. First reading/writing exercise, worth 20%, 1000 words. The topics for this exercise will be drawn from the first topic of the course “Natural Law and Positivism” (see below). Deadline: This exercise must be submitted through MyCourses by 11.59 pm on Friday February 15.

3. First (short) essay, worth 30%, 1000 words. The topic for this essay will be drawn from the second topic of the course “Dworkin, Adjudication and Rights” (see below). Deadline: This essay will be submitted to MyCourses by 11.59 pm on Friday March 15.

3. Second essay of 2500 words worth 40%, to be submitted to MyCourses by 11.59 pm Thursday, April 18. The final paper topics will be drawn from topics 4&5 (see below). The topics will give you an opportunity to explore in more depth some of the more ‘applied’ issues to be covered in the second half of the course, such as: democracy and liberty, free speech and pornography, hate speech, etc.

The exercise and both essays must be completed to pass the course.

In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded.
PLEASE INFORM ME IF YOU WISH TO SUBMIT YOUR WORK IN FRENCH.

Additional note: In the event of extraordinary circumstances beyond the University’s control, the content and/or evaluation scheme in this course is subject to change.

Extensions or exceptions for written exercises and final paper.
These will be granted only in exceptional circumstances like serious illness or family emergency and documentation will be required. To apply for an extension, see me in my office hour, contact me by email, or submit a letter with your documentation to my mailbox in the Philosophy Office – Leacock Building Room 414. Extensions will be granted in writing by email.

In the absence of an extension, late penalties will be applied as follows: 3 percentage points will be deducted for each day of lateness. In normal cases, the lateness penalty will apply if the essay is submitted after 11.59 pm on the due date.

Academic Integrity
McGill University values academic integrity. Therefore all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see http://www.mcgill.ca/integrity/ for more information).
Note: these issues will be discussed in class after essay topics are distributed.
Required Weekly Readings

Topic 1 Natural Law and Positivism

1. Law, Morality and Natural Law Theory
   W9, F11, M14 January

   Suggested readings: Plato’s *Crito*; Sophocles’ *Antigone*; Martin Luther King, Jr, ‘Letter from Birmingham Jail’

   **Required reading**: Aquinas, extract ‘Treatise on Law’

2. Historical Positivism: Hobbes, Bentham, Austin
   W16, F18 January

   **Required reading**: Extracts from Hobbes, Bentham and Austin

3. 20th Century: Hart’s positivism and Fuller’s ‘procedural’ natural law
   M21, W23 January

   **Required reading**: Extracts from Hart and Fuller

Topic 2 Dworkin, adjudication and rights

4. Dworkin and the moral aspect of law
   M28, W30 January

   **Required reading**: Extracts from Dworkin, *Riggs v. Palmer, Dudley v. Stephens*

5. Moral principles and adjudication
   M4, W6 February

   **Required reading**: Extracts from Cover, Sebok and fugitive slave cases [*Commonwealth v. Aves, Sims’s Case*]

6. Constitutional rights: equality, discrimination and intersectionality
   M11, W13, M18 February

   **Required reading**: Extracts from *Egan, Halpern, Reference Re Same Sex Marriage*, Frankfurt, Taylor, Iyer, Crenshaw

Topic 3 Autonomy, Democracy and the Rule of Law

8. Mill, liberty and the harm principle
M20, W22 February

Required reading: Extracts from Mill, Berlin, Taylor

9. Life, liberty and the security of person: physician-assisted dying
M25, W27 February

Required reading: Extracts from Benatar and the Carter case

SPRING BREAK

10. Democracy and law: what is a majoritarian moral consensus?
M11, W13 March

Required reading: Extracts from Devlin, Dworkin, Malmo-Levine

11. Law as State Power
M18, W20 March

Required reading: Extracts from MacKinnon, Lavallée, Indian Act, Turner

Topic 4 Freedom of expression, pornography and hate speech

12. The justification of a right to freedom of expression
M25, W27 March

Required reading: Extracts from Schauer, Scanlon

13. The problem of pornography: obscenity or harm?
M1, W3 April

Required reading: Extracts from Feinberg, MacKinnon, Hudnut, R v Butler

14. Hate speech
M8, W10, F12 April

Required reading: Extracts from Keegstra, R.A.V., Lawrence