

PHL 271 H1S: LAW AND MORALITY

COURSE SYLLABUS

Instructor: Jacob Weinrib – jacob.weinrib@utoronto.ca

Time and Place: Winter 2013, MW 10-11, Bahen Center, Room 1160.

Office hours: Thursday from 11-12 AM in room 422 of the Jackman Humanities Building (or by appointment). If you have substantive questions about the course material, please come see me in person. If you have administrative questions, feel free to email me.

COURSE DESCRIPTION

This course explores a series of theoretical and practical questions surrounding the relationship between law and morality. The first part of the course explores the most fundamental questions in legal philosophy: What is law? What does it mean for law to be immoral or unjust? Can an unjust law impose obligations? The second part of the course investigates questions about the relationship between legality and liberty: Is freedom among the values that a legal system should respect and protect? If so, what kind of freedom? May freedom be limited in order to realize other values? The third and final part of the course considers questions about constitutional democracy: Should rights receive constitutional protection? Is the constitutional protection of rights compatible with democratic self-government? What does it mean for a legal system to treat persons equally? These questions will be considered from a variety of theoretical perspectives in reference to concrete examples drawn from history and case law.

EVALUATION

1. In-class essay test on Part I – 25%.
2. In-class essay test on Part II – 30%.
3. Exam on Parts I, II, and III – 35%. To be held during the formal evaluation period.
4. Participation – 10%.

REQUIRED READINGS

Copies of our course reader are available at Image Xpress, 193 College St. (it is East of McCaul on the South side). The cost is \$31. Additional readings may be posted on Blackboard.

TUTORIALS

In addition to the lectures, each student is responsible for attending a weekly tutorial session. The tutorials offer the opportunity for students to raise questions about the readings and to discuss their reactions to the course material. Tutorials will begin Wednesday, January 23, 2013. Please check on ROSI for information about when and where your tutorial meets.

The 10% participation mark will be assigned by your tutorial leader. The first 5% will be given for regular attendance. Each student is permitted to miss up to two tutorials without adversely affecting their participation mark. The remaining 5% will be awarded for making a positive contribution to the tutorial by reading the course material in advance and taking part in the discussions.

COURSE OUTLINE

PART I: THE PROBLEM OF UNJUST LAW

The Moral Limits of Positive Law	Gustav Radbruch, “Statutory Lawlessness and Supra-Statutory Law”
Legal Positivism	H.L.A. Hart, “Positivism and the Separation of Law and Morals” and <i>The Concept of Law</i>
The Internal Morality of Law	Lon L. Fuller, <i>The Morality of Law</i> and “Positivism and Fidelity to Law – A Reply to Professor Hart”
The Interpretive Model of Law	Ronald Dworkin, “Law’s Ambitions for Itself”

PART II: LEGALITY AND LIBERTY

Law and Traditional Morality	Patrick Devlin, “Morals and the Criminal Law” <i>Dudgeon v. United Kingdom</i>
The Harm Principle	John Stuart Mill, <i>On Liberty</i> <i>R. v. Malmo-Levine</i> ; <i>R. v. Caine</i>
Negative and Positive Liberty	Isaiah Berlin, “Two Concepts of Liberty”
Feminism and Law	Catharine MacKinnon, “The Liberal State” <i>Lavallee v. The Queen</i>

PART III: CONSTITUTIONAL DEMOCRACY

Democracy and Rights without Review” Constitutionalism	Jeremy Waldron, “The Core of the Case Against Judicial
Modern Constitutionalism	<i>Minister of Home Affairs and Another v. Fourie and Another</i>
The Meaning of Equality	Charles Taylor, “Multiculturalism and the Politics of Recognition”