

PHL271 LEC#01 JAN 7, 2013

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

Time and Place: MW 10-11, BA 1160

Office hour: Thursday 11-12 AM, room 422 of the Jackman Humanities Building

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%
- 4.Participation - 10%

Description:

relationship between law and morality.

-PART I 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?

-PART II 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?

-PART III 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?

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 *The Concept of Law*)

The Internal Morality of Law (Lon L. Fuller, *The Morality of Law* 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" *Dudgeon v. United Kingdom*)

The Harm Principle (John Stuart Mill, *On Liberty* *R. v. Malmö-Levine*; *R. v. Caine*)

Negative and Positive Liberty (Isaiah Berlin, "Two Concepts of Liberty")

Feminism and Law (Catherine MacKinnon, "The Liberal State" *Lavallee v. The Queen*)

PART III: CONSTITUTIONAL DEMOCRACY

Democracy and Rights without Constitutionalism (Jeremy Waldron, "The Core of the Case Against Judicial Review")

Modern Constitutionalism (*Minister of Home Affairs and Another v. Fourie and Another*)

The Meaning of Equality (Charles Taylor, "Multiculturalism and the Politics of Recognition")

Idea 1: Ultimate Norm, morality.

Idea 2: Forget about morality, all about Power.

Gonna talk about these two ideas in Part I.

READ the first article. assignment.