Philosophy of Law (Phil 5415)/Jurisprudence Spring 2017 Prof. Brian Bix

Draft Syllabus and Course Summary

Law School (Mondale Hall) Room 7 – Mondays, Wednesdays, Fridays, 1:25 – 2:20 pm

Required Text: Brian Bix, Jurisprudence: Theory and Context (7th ed., 2015);
Other texts will be from (free) Internet-accessible sites

Course Objectives: To gain knowledge and understanding of the major legal theorists and schools of jurisprudence and the issues that concern them. More generally, to gain greater proficiency in making, analyzing, and critiquing theoretical arguments.

Course grade: 50% final examination; 50% term paper.

Jan. 18 Introduction,

Jan. 20 The Nature of Jurisprudence and Conceptual Analysis

Jan. 23 Natural Law Theory (Aquinas)
Aquinas on Law (Summa Theologica, I-II, Questions 90-97)
   http://www.fordham.edu/halsall/source/aquinas2.html
   Bix, pp. 67-74

Jan. 25 Natural Law Theory, cont. (John Finnis)
John Finnis, “Natural Law Theories” (2015), The Stanford Encyclopedia of Philosophy
   Bix, pp. 75-81
Jan. 27  Lon Fuller
Lon L. Fuller, “Positivism and Fidelity to Law -- A Reply to Professor Hart,” 71 Harvard Law Review 630 (1958)
Both are available from Hein Online, The direct link is here: http://www.heinonline.org/HOL/Welcome

Jan. 30  The Obligation to Obey the Law
M.B.E. Smith, “Is There a Prima Facie Obligation to Obey the Law?” 82 Yale Law Journal 950 (1973) (Hein Online)

Feb. 1  Legal Positivism -- Austin

Feb. 3  Legal Positivism -- Hart
Bix, pp. 33-49

Feb. 6  Legal Positivism – Debates Within the Hartian Tradition
Bix, pp. 49-52

Feb. 8  A Hybrid View: The Planning Theory of Law
Scott Shapiro, Summary of Legality
72 Analysis 537-541 (2012), available at http://web.b.ebscohost.com/ehost/detail/detail?sid=767ff98a-3669-4d07-b984-4bc165d4d33b%40sessionmgr112&vid=0&hid=124&bdata=JnNpdGU9ZWhvc3QtcGllZQAQ%3d%3d#db=a2h&AN=77692646
Feb. 10  Hans Kelsen’s Pure Theory of Law
        Hans Kelsen, “What is the Pure Theory of Law?”
            34 Tulane Law Review 269 (1960)
            55 Harvard Law Review 44 (1941) (both Hein Online)
        Bix, 57-66

Feb. 13  Ronald Dworkin
        Ronald M. Dworkin, “The Model of Rules,” 35 University of Chicago
            Law Review 14 (1967) (Hein Online)

Feb. 15  Ronald Dworkin, cont.
        Ronald M. Dworkin, “Law as Interpretation,” 60 Texas Law Review
            527 (1982) (Hein Online)
        Bix, pp. 91-102

[No Class Feb. 17, 20: Law School Winter Break]

Feb. 22  Precedent
            (Hein Online)
        Bix, pp. 153-159

Feb. 24  Legal Rights
        Kenneth Campbell, “Legal Rights” (2013), The Stanford Encyclopedia of
        Leif Wenar, “Rights” (2015), The Stanford Encyclopedia of Philosophy,
            http://plato.stanford.edu/entries/rights/

Feb. 27  Legal Enforcement of Morality
            C. H. Wellman (eds.), A Companion to Applied Ethics
            128-141 (Blackwell, 2003), available at
        Bix, pp. 169-179

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March 1  Justice (Rawls)
John Rawls, “Justice as Fairness: Political not Metaphysical,” 14
*Philosophy and Public Affairs* 223 (1985), available from
JSTOR, linked from
http://www.jstor.org/action/showBasicSearch
Bix, pp. 107-115

March 3  Justice (feminist critique, other critiques)
Susan Moller Okin, “Justice and Gender: An Unfinished Debate,”
Bix, pp. 115-122

March 6  Punishment
Bix, pp. 123-129

March 8  Legal Realism
Oliver W. Holmes, Jr., “The Path of the Law,” 10 *Harvard Law Review*
457 (1897)
Karl Llewellyn, “A Realistic Jurisprudence -- The Next Step,” 30
*Columbia Law Review* 431 (1930)  (both Hein Online)

March 10 Legal Realism, cont.
Lon L. Fuller, “American Legal Realism,” 82 *University of Pennsylvania
Law Review* 429 (1934)  (Hein Online)
Bix, pp. 193-204

[March 13-17  No Classes – Spring Break]

March 20  Scandinavian Legal Realism
Bix, pp. 278-279
March 22  Historical Jurisprudence
Bix, pp. 275-276

March 24  Economic Analysis of Law (Coase)
Bix, pp. 211-216

March 27  Economic Analysis of Law, cont. (overview)
http://plato.stanford.edu/entries/legal-econanalysis/
Bix, pp. 205-211, 216-231

March 29  Economic Analysis of Law, cont. (behavioral critique)

March 31  Critical Legal Studies I
Bix, pp. 235-239

April  3  Critical Legal Studies II
April 5 Feminist Theory I


Bix, pp. 240-247

[April 7 No Class]

April 10 Feminist Theory II


April 12 Feminist Theory/Critical Race Theory


[April 14 No Class]

April 17 Critical Race Theory II


Girardeau A. Spann, “Just Do It,” 67 *Law and Contemporary Problems* 11 (Summer 2004) (all Hein Online)

April 19 Law and Literature I


Bix, pp. 257-263
[April 21] No Class

April 24  Law and Literature II

April 25 (Tues.)  Law and Culture

April 26  Law and Evolutionary Biology, Review Session

Wednesday, May 10, 8:30 – 10:30 am: Final Exam
Paper Topics

The task is to read a legal theory article or a chapter from a book on legal theory, offer a short but precise summary, and evaluate the article’s strengths and weaknesses. Suggested authors include (but are not limited to):

- H.L.A. Hart
- Lon Fuller
- Hans Kelsen
- John Finnis
- Ronald Dworkin
- Oliver Wendell Holmes
- Duncan Kennedy
- Morton Horwitz
- Richard Delgado
- Derrick Bell
- Martha Fineman
- Catharine MacKinnon
- Jules Coleman
- Joseph Raz
- Jerome Frank
- Richard Posner
- Robin West
- Wesley Hohfeld

If you have a question about the appropriateness of an article or an author, ask me about it. (It is probably best to avoid articles that assigned for reading for the class. If you do select an article that was assigned for the class, the paper will be expected to go significantly beyond the descriptive and critical classroom discussion of that article.)

Reference to other authors and other works is not required, but any such references must be adequately documented. Similarly, the paper should also give sufficient documentation to show me the location of quotations reproduced from the article under review and the location of arguments summarized.

Prior to writing the paper, you will need to write up an outline. That outline will not be graded, but you will need to set up an appointment with me to discuss it (briefly).

The finished paper must be word-processed, and at least 5,000 words long (please use double-spacing, reasonable margins, and a 12-point font; insert page numbers). The paper must be submitted to me (by email digital attachment – as a Word or PDF file) by the end of the day, the last day of the course, April 27.

This course qualifies as a “Writing Course” for the purpose of the Law School writing requirement.

Grades

The paper will be worth approximately 50% of your course grade and the final examination is also worth approximately 50%.
Oral Examination
In grading papers, on rare occasions I may request an oral discussion of your paper, in situations where there is doubt about the mark to be given your work (on such occasions, the discussion will be part of the basis on which the paper’s grade will be determined).

Plagiarism
Plagiarism is passing off another person’s ideas as one’s own (not offering proper attribution) or passing off another person’s work as one’s own. In either case, plagiarism is a very serious offense in academic work, and instances of plagiarism can warrant severe penalties, from getting a failing grade on a paper, to getting a failing grade for the course, to further academic discipline.

If you have any question as to whether something would constitute plagiarism, or how an idea can be presented to avoid any claim of plagiarism, please ask me. Also, information about plagiarism and other matters relating to scholastic integrity can be found at the University of Minnesota Office of Student Conduct and Academic Integrity website, www.oscai.umn.edu.