McGill University
Philosophy of Law 1 PHIL 348 - Fall 2016

Professor: Natalie Stoljar
Email: natalie.stoljar@mcgill.ca
Office: LEA 925
Office Phone: 514 398 4400 extension 089580
Office Hours: 11.30 am -12.30 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. feminist legal theory, 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 day of class is Monday, 5 December.

Conferences One conference per week, which will replace the Friday lecture, starting on 16 September. Sign up on Minerva.

Note: there will be a lecture on Friday 14 October instead of a conference. There will be no lecture on Wednesday 12 October or Monday 10 October.

Summary:
(1) There are no classes at McGill on Monday, 5 October (Labour Day) or Monday 10 October (Canadian Thanksgiving).
(2) I am cancelling the lecture on Wednesday 12 October. There will no class on that day.
(3) There will be a lecture at the usual time and place on Friday 14 October. There is no conference that day.
(4) The final lecture for the course will take place on Monday, 5 December.

**Teaching Assistants**

Frédérick Armstrong: frederick.armstrong@mail.mcgill.ca
Harprit Singh: harprit.singh@mail.mcgill.ca

**Times of Conferences** (Look on Minerva for locations)
Fridays 9.35-10.25 (2), 10.35-11.25 (1) and 11.35-12.25 (1).
You will need to sign up on Minerva.

**Evaluation and grading scheme**

1. Conference attendance. There will be 11 conferences. The first conference is on Friday 16 September and the last conference is on Friday 2 December. There is no conference on Friday 14 October.

Conferences will provide an opportunity to discuss and reinforce what you have learned in lectures. Readings and discussion questions will be assigned for each topic. Your TA may require that you actively attend 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 raise a question on the reading, etc.

You are encouraged to attend all conferences. **You must attend at least 8 conferences to pass the course.**

**You should only miss conferences in exceptional circumstances.** If you miss more than 3 conferences, will be required to submit a 500 word exercise in lieu of attendance for each conference missed. The mark for the exercise will be Pass/Fail. The topic will be a topic from a conference that you have missed to be decided in consultation with me or your TA. For example, if you miss one conference (i.e. attend only 7), one exercise will be required; if you miss two conferences, two exercises will be required, and so on, up to 8 exercises.

**It is your responsibility, if you miss a fourth (fifth, etc) conference to inform me or your TA and arrange for submission of the exercise for the conference missed.**

2. **First writing exercise, worth 20%, 1000 words.** The topics for this writing exercise will be drawn from the first topic of the course “Natural Law and Positivism” (see below). A hard copy should be submitted to your TA in your conference on Friday, 7 October. If it is not possible to submit to your TA in your conference, it must be submitted to your TA earlier or to my mailbox in the Philosophy Office in Leacock 414 before 1.30 pm on Friday, 7 October.
3. Second writing exercise, worth 35%, 1000 words. The topics for this writing exercise will be drawn from the second topic of the course “Dworkin, Adjudication and Rights” (see below). A hard copy should be submitted to your TA in your conference on Friday, 11 November. If it is not possible to submit to your TA in your conference, it must be submitted to my mailbox in the Philosophy Office in Leacock 414 before 1.30 pm on Friday, 11 November.

3. Final paper of 2500 words worth 45%, to be submitted no later than Monday, 12 December, at 5 pm. The final paper topics will be drawn from topics 4&5 (see below). This paper 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.

Submit the final paper to my office, Leacock 925, between 4 and 5 pm on Monday, 12 December. If you would like to submit earlier, please do so personally to me, to your TA or to my mailbox in the Philosophy Office in Leacock 414.

Both writing exercises and the final paper 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 or contact me by email, or submit a letter with your documentation to the Philosophy Office – Leacock Building Room 414. Extensions will be granted in writing (including by email) and must be attached to your paper when it is submitted.

In the absence of an extension, late penalties will be applied as follows: 3 percentage points will be deducted for each day of lateness.

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
   F2, W7, F9 September
   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
   M12, W14 September
   **Required reading:** Extracts from Hobbes, Bentham and Austin

3. 20th Century: Hart’s positivism and Fuller’s ‘procedural’ natural law
   M19, W21 September
   **Required reading:** Extracts from Hart and Fuller

Topic 2 Dworkin, adjudication and rights

4. Dworkin and the moral aspect of law
   M26, M28 September
   **Required reading:** Extracts from Dworkin, Riggs v. Palmer, Dudley v. Stephens

5. Moral principles and adjudication
   M3, W5 October
   **Required reading:** Extracts from Cover, Sebok and fugitive slave cases [Commonwealth v. Aves, Sims’s Case]

6. Constitutional rights: equality, discrimination and intersectionality
   F14, M17, W19 October
   **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
   M24, W26 October
   **Required reading:** Extracts from Mill, Berlin, Taylor

8. Life, liberty and the security of person: physician-assisted dying
   M31 October
   **Required reading:** Extracts from TBA and the Carter case
9. Democracy and law: what is a majoritarian moral consensus? 
W2, M7 November
**Required reading:** Extracts from Devlin, Dworkin, *Malmo-Levine*

10. Law as State Power 
W9, M14 November
**Required reading:** Extracts from MacKinnon, *Lavallée* and TBA

**Topic 4 Freedom of expression, pornography and hate speech**

11. The justification of a right to freedom of expression 
W16, M21 November
**Required reading:** Extracts from Schauer, Scanlon

12. The problem of pornography: obscenity or harm? 
W23, M28 November
**Required reading:** Extracts from Feinberg, MacKinnon, *Hudnut, R v Butler*

13. Hate speech 
W30 November, M5 December
**Required reading:** Extracts from *Keegstra, R.A.V.*, Matsuda, Crenshaw