

McGill University | Phil 348 | Philosophy of Law**Instructor:** Jordan Walters**Term:** Winter 2023**Email:** jordan.walters@mail.mcgill.ca**Course Schedule:** Mon. & Wed. (11:35-12:25); Thurs. & Fri. conferences (see below)**Location:** Stewart Biology Building, S1/3**Office hours:** 12:45-1:45 (LEA, 443)**Teaching Assistant:** Khaleel Rajwani | khaleel.rajwani@mail.mcgill.ca**Teaching Assistant:** Thomas Minguy | thomas.minguy@mail.mcgill.ca**Course Description:**

This course has four parts. In part one, we will explore and interrogate some of the basic philosophical questions about the nature of law, legal validity, and legal normativity. In part two, we turn to the usage of “dignity” and “rights” in the legal domain. In part three, we turn our attention to the nature and normativity of international human rights law. In part four, we survey critical approaches to the law, e.g., the critical legal studies movement, ideology critique, criticisms of human rights law, and indigenous perspectives on the law. Along the way, we will explore and address questions such as:

- What is law?
- What gives law its authority?
- What is the relationship between law and morality?
- Is there a duty to obey the law?
- What is human dignity?
- What are human rights?
- What is the law doing when it makes reference to “dignity”?
- What (if anything) grounds the authority of international human rights law?
- Do human rights treaties make a difference?
- What is the critical legal studies movement?
- What (if anything) is ideological about (international human rights) law?
- What is an indigenous perspective on the law?

Books, Articles, and Teaching Resources:

All readings will be made available as pdfs on MyCourses. In addition, all announcements and assignments will also be posted here. This site is important. Make sure you familiarize yourself with it.

Conferences:

Conferences begin the week of Jan 9th and will take place on Thurs. or Fri. each week. There will be 4 conference sections:

1. Sect. 002/Fri. 10:35am-11:25am (Thomas Minguy)
2. Sect. 003/Fri. 11:35am-12:25pm (Thomas Minguy)
3. Sect. 004/Fri. 10:35am-11:25am (Khaleel Rajwani)

4. Sect. 005/Fri. 11:35-12:25am (Khaleel Rajwani)

Please note that there will be no conferences held on March 3rd. There will be 13 conferences in total. You must attend at least 9 conferences to pass the course. Exceptions will be granted only in exceptional circumstances (see below). If exceptions are granted, you will be required to submit a 500-word exercise in lieu of attendance. 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. For example, if due to exceptional circumstances, you are allowed to miss one conference (i.e., attend only 8), one exercise will be required; if you are allowed to miss two conferences, two exercises will be required, and so on, up to seven exercises.

Prerequisites:

Phil 348 is intended as an introduction to philosophy of law and students are not expected to have any prior knowledge of the material.

Evaluation and Grading:

- A. *Reading assignments:* Reading assignments will (a) provide a brief summary of a main argument from the reading (max. 150 words) and (b) pose a question that follows from this argument (max. 50 words). Reading assignments are intended to demonstrate your engagement with the written course material. You are expected to submit 4 reading assignments in total for weeks of your choosing. (2.5% each; 10% of final grade.)
- B. *Conference attendance:* You will receive 1% for each conference attended. (Max: 10% of final grade.)
- C. *Mid-term paper:* You will be provided with a selection of 5 questions and will be asked to provide short answers to 2 of these questions (750 words per question). Due March 7. (30% of final grade.)
- D. *Final paper proposal:* You will submit a 1-page single-spaced term paper proposal (through myCourses) that will include a brief introduction to the topic of your paper, an outline of your main argument and what objections you plan to respond to, as well as a reading list. Please come chat about your topic in office hours! You are never bothering me or a TA by asking for help – it's our job! (10% of final grade) Due April 1.
- E. *Final Paper:* You will be expected to write a final essay of approximately 2,500 words. (Word count includes footnotes and references.) The final essay will be treated as a take home exam and will be due at the end of the exam period. (40% of final grade.)

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, exceptions, accommodations, and late penalties:

Extensions and exceptions can be offered on request. To request an extension, exception, or accommodation please contact either the lecturer or one of the teaching assistants *via* email. Assignments that have been submitted late without an extension or exception will be penalized 5% per day.

Email policy:

Please allow 24 hours for a response from me or your TA. If you don't hear back within 48 (business) hours, you can send a short follow up. Make sure to check this syllabus and the course site for answers to your questions before emailing to ask them—and please be professional in your correspondence.

Statement on Sustainability:

In keeping with McGill's Paper Use Policy (which you can consult on the following site <https://mcgill.ca/sustainability/about/policies>), I encourage submitting any assignments for this course double-sided.

Policy statement - Language of submission:

“In accord with McGill University's Charter of Student Rights, students in this course have the right to submit in English or in French written work that is to be graded. This does not apply to courses in which acquiring proficiency in a language is one of the objectives.” (Approved by Senate on 21 January 2009)

« Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté, sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue. » (Énoncé approuvé par le Sénat le 21 janvier 2009)

Policy statement: 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.” (Approved by Senate on 29 January 2003) (See McGill's guide to academic honesty for more information.)

« L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires. » (Énoncé approuvé par le Sénat le 29 janvier 2003) (pour de plus amples renseignements, veuillez consulter le guide pour l'honnêteté académique de McGill.)

Statement of Inclusivity:

“As the instructor of this course I endeavor to provide an inclusive learning environment. However, if you experience barriers to learning in this course, do not hesitate to discuss them with me and the Office for Students with Disabilities, 514-398-6009.” Any behaviour that makes students or instructors feel unsafe or unwelcomed will not be tolerated.

Land Acknowledgement:

“McGill University is on land which has long served as a site of meeting and exchange amongst Indigenous peoples, including the Haudenosaunee and Anishinabeg nations. We acknowledge and thank the diverse Indigenous peoples whose presence marks this territory on which peoples of the world now gather.”

« L’Université McGill est sur un emplacement qui a longtemps servi de lieu de rencontre et d’échange entre les peuples autochtones, y compris les nations Haudenosaunee et Anishinabeg. McGill honore, reconnaît et respecte ces nations à titre d’intendant traditionnel des terres et de l’eau sur lesquelles nous nous réunissons aujourd’hui. »

Recommended: [Truth and Reconciliation at McGill from the Office of Indigenous Initiatives](#)

Academic Freedom:

“Academic freedom is central to McGill University’s mission of advancing learning through teaching, scholarship and service to society. The scholarly members of the university have the freedom to pursue research and artistic creation and to disseminate their results, without being constrained by political or disciplinary orthodoxies, monetary incentives or punitive measures as a result of their academic pursuits. They may exercise this freedom in the service of both the university and the wider society. When scholarly members of the university participate in public forums and debates, they should represent their views as their own. The exercise of academic freedom requires collegial governance with the full participation of scholarly members. They retain the right of free expression, including the freedom to criticize one another, university policies and administration. The university and its officers have a duty to protect the academic freedom of its scholarly community, both individually and collectively, from infringement and undue external influence as well as to maintain the university’s institutional autonomy.”

« La liberté académique est au cœur de la mission de l’Université McGill, laquelle consiste à faire progresser le monde grâce à l’enseignement, à la recherche et aux services qu’elle rend à la société. Les chercheurs de notre institution disposent de la liberté de mener des travaux de recherche, d’en communiquer les résultats et de créer des œuvres artistiques sans être soumis aux contraintes de la rectitude politique ou assujettis à des mesures disciplinaires ou punitives. Leurs travaux ne peuvent par ailleurs être motivés par la perspective d’obtenir des gains de nature financière. Ils peuvent se prévaloir de cette liberté pour la mettre au service de l’Université et de la société en général. Lors de tribunes publiques et de débats, les chercheurs de l’Université présentent leurs opinions personnelles. L’exercice de la liberté académique doit reposer sur des principes de gouvernance collégiale et la participation de tous les chercheurs. Ces derniers conservent le droit à la liberté d’expression, y compris la liberté d’émettre des critiques à l’endroit de leurs pairs, des politiques universitaires et des instances administratives. L’Université et ses dirigeants ont le devoir de protéger la liberté académique des chercheurs, individuellement et collectivement, contre toute violation et influence externe induite et de préserver l’autonomie de l’institution. »

Course Outline and Readings

January 4

- Natalie Stoljar, “What Do We Want Law to Be? Philosophical Analysis and the Concept of Law”
- Recommended: Podcast, Scott Shapiro, “What is Law?”

Law and Morality 1: Positivism and its Critics

January 9

- Joseph Raz, “Legal Positivism and the Sources of Law”
- Robert P. George, “Natural Law and Positive Law”

January 11

- Ronald Dworkin, “Law as Interpretation”
- Recommended: John Gardner, “Legal Positivism: 5 ½ Myths”

Law and Morality 2: The Hart – Fuller Debate

January 16

- H.L.A. Hart, “Positivism and the Separation of Law and Morals”

January 18

- Lon Fuller, “Positivism and Fidelity to Law: A Reply to Professor Hart”

Law and Morality 3: Is there a Duty to Obey the Law?

January 23

- Joseph Raz, “The Obligation to Obey: Revision and Tradition”
- Recommended: John Rawls, “Definition and Justification of Civil Disobedience”

January 25

- Tommie Shelby, “Justice, Deviance, and the Dark Ghetto”
- Recommended: Martin Luther King, Jr, “Letter from a Birmingham Jail”

Law, Dignity, and Equality 1: Kant

January 30

- Immanuel Kant, “Groundwork to the Metaphysics of Morals” Sec. II, pp. 37-51.
- Michael Rosen, “Dignity: its History and Meaning” pp. 19-31 and 77-90.
- Recommended: [“Peter Singer and Michael Sandel on Dignity”](#)

February 1

- Bernard Williams, “The Idea of Equality” pp. 97-105
- Samuel Moyn, “The Secret History of Constitutional Dignity” pp. 95-112.
- Recommended: Lecture, Samuel Moyn, [“The Christian Invention of Human Dignity”](#)

Law, Dignity, and Equality 2: Waldron

February 6

- Jeremy Waldron, “Dignity, Rank, and Rights” Ch. 1
- Recommended: [R. v. Oakes \(§§ 29, 61, 64.\)](#)

February 8

- Jeremy Waldron, “Dignity, Rank, and Rights” Ch. 2
- Recommended: [R. v. Kapp \(§§19, 21, 22, 68, 69\)](#)

Rights

February 13

- H. L. A. Hart, “Are There Any Natural Rights?”
- Robert Nozick, “Anarchy, State, and Utopia” Ch. 3, pp. 26-53.
- Recommended: [Stanford Encyclopedia of Philosophy, Rights, §2.1, The Hohfeldian Analytical System](#)

February 15

- Joseph Raz, “Rights and Individual Well-Being”
- Recommended: J. J. Thomson, “A Defense of Abortion”
- Recommended: Amia Srinivasan, “[Prejudice Rules, in the London Review of Books.](#)”

Philosophy of International Law 1: International Human Rights Law

February 20

- United Nations, “Universal Declaration of Human Rights”
- John Tasioulas “Human Rights”
- Recommended: [ICCPR](#), [CEDAW](#), [CAT](#), [UNDRIP](#).

February 22

- John Tasioulas, “Are Human Rights Essentially Triggers for Intervention?”
- Recommended: Lecture, Samuel Moyn, “[Humane: How the United States Abandoned Peace and Reinvented War.](#)”

Philosophy of International Law 2: International Legality

March 6

- Allen Buchanan & Gopal Sreenivasan, “Taking International Legality Seriously”

March 8

- Erasmus Mayr, “Instrumentalism and Human Rights”
- Onora O’Neill, “The Dark Side of Human Rights”

Philosophy of International Law 3: The Twilight of Human Rights Law

March 13

- Eric Posner, “The Twilight of Human Rights Law” Chs. 1 and 3.
- Recommended: Eric Posner, “The Twilight of Human Rights Law” Ch. 5

Law and the Critical Legal Studies Movement

March 15

- Roberto Unger, “The Critical Legal Studies Movement” pp. 561-576
- Recommended: Richard Delgado, “The Ethereal Scholar”

March 20

- Kimberlé Crenshaw, “Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics.”
- Recommended: Jeannie Suk Gersen, [The Influence of Critical Legal Studies](#) (Film)

Law, Ideology, and Genealogy 1: Ideology Critique

March 22

- Tommie Shelby, “Ideology, Racism, and Critical Social Theory”
- Recommended: Lecture, Sally Haslanger, “[Ideology Beyond Belief](#)”

March 27

- Amia Srinivasan, “Genealogy, Epistemology, and Worldmaking”

Law, Ideology, and Genealogy 2: The Politics of Human Rights Law

March 29

- Samuel Moyn “Not Enough: Human Rights in an Unequal World” Ch. 6
- Recommended: Podcast, Samuel Moyn, “[The Political Origins of Global Justice](#)”

April 3

- Samuel Moyn, “Not Enough: Human Rights in an Unequal World” Ch. 7
- Recommended: Review, Pankaj Mishra, “[The Mask it Wears](#)” in the *London Review of Books*

Indigenous Perspectives on Law

April 5

- John Borrows, “With or Without You: First Nations Law (in Canada)”
- Recommended: [Interview with John Borrows](#)

April 12

- John Borrows, “With or Without You: First Nations Law (in Canada)”
- Recommended: John Borrows: [The Profound Lessons of Indigenous Law](#)