

Legal Philosophy

Instructor:

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Office Hours:

Wednesdays at 3-4:30 or by appointment.

Seminars:

Thursdays at 2:30-5:20 in Rm 2193 CN – Philosophy Seminar Room

Method of Teaching:

The class is conducted as a seminar supplemented with presentations from students and themes raised by the instructor. The instructor raises the themes at in the form of issues from the readings at the start of each seminar. A student, with her/his consent, will serve as the resident expert of the assigned reading.

General Issues:

The seminar readings will be set out in three Parts. Part 1 will concentrate upon the dominant tradition of Anglo-American jurisprudence, the tradition being called 'conceptual jurisprudence'. Two themes will be studied: legal objectivity and legal obligation.

Part B then focuses upon Kant's Theory of Law and Justice.

Part C then addresses some related themes from the French and post-structuralist critique of the analytic method accepted in Conceptual Jurisprudence as raised in the Part 1 Readings. This Part especially examines three issues: first, the presupposed structuralism of legal reasoning; the exclusion and inaccessibility of justice from inside the structure as recounted in Conceptual Jurisprudence and Kant; and the importance of phenomenology and especially of the excluded experiential acts of meaning, as explained in Phenomenology, in the authoritative origin and identity of a law as raised in Parts B and C. Part C especially draws from Derrida, Husserl, Schutz and Latour in this regard.

Learning Objectives:

1. The primary learning objective is to provide an environment for students to self-reflect about their assumptions and expectations concerning two issues:
 - a. what is the identity of a law?

- b. Why is an identifiable law obligatory?
2. The second learning objective is to develop the introductory themes of the required Jurisprudence course, particularly as those themes draw from French legal theory.
 3. The particular learning objective related to objective 2 concerns whether justice is accessible if a lawyer or judge or law student is preoccupied with rules and tests or with the procedures of legal institutions of the state.

Evaluation

- 20%: 1 written Critical Note on one of the assigned readings of 5-7 typed pages.
- 60%: an essay of 18-24 typed pages on one of the assigned essay topics [the essay may draw from the research and thesis/argument of the short Notes but not lift the latter writing into the Essay.]
- 20% class participation [Dean of Students has advised instructors that if a student is not present at a seminar, s/he is not participating].

Note: pls send the Essay by email. Ensure that I acknowledge receipt. You may also place a hard-copy in the Philosophy Office if you wish.

Note: if you wish to refocus an essay topic, then this must be approved by the Instructor and it will be added to the topics. No topic will be so approved after Feb 26th].

Late Notes/Essays

Late essays will have the final grade of the particular late Note or Essay reduced by 1 category for each 48 hours late, including any part of the first 48 hours.

Due Dates

Critical Note Due (Thursday Feb 26th at start of class) on any reading in the Syllabus in Parts A or B.

Essay Due on Assigned Topic: Monday April 20th at 2 pm by email or hand-deliver to Thuy-Binh Shiu on 2nd floor of Law Bldg.

Highly Recommended Books. The Coyle, S'Ameida and Gardner books have been ordered for the Law Library. A few copies of the 5 books have been ordered for the Book store under the 'Legal Philosophy Section' as well. The Law Library is an excellent source of other up-to-date legal philosophy commentaries]:

Hart, HLA, *Concept of Law with Postscript* [CL] (Oxford: Clarendon, 2012 [Leslie Green Intro]. PB. [cited as CL]. [Hwr, several copies of Hart, *Concept of Law* (2nd ed) are in the Law and Leddy libraries. I shall place on CLEW or photocopy the Introduction by Leslie Green in the 3rd edn).

Kant, John Ladd, trans. with Intro., *Metaphysical Elements of Justice* (Indianapolis: Hackett, 1999; 2nd ed. [1797]). PB. [Cited as EJ]. Several copies of the 1st and 2nd edns of Kant's *Metaphysics of Justice* are in the Leddy and Law Libraries.

Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014). In Law Lib.

D'Almeida, James Edwards & Andrea Dolcetti (eds), *Reading HLA Hart's The Concept of Law* (Oxford: Oxford University Press, 2012). Purchased for Law Lib.

John Gardner, *Law as a Leap of Faith* (Oxford: Oxford U press, 2012).

Method of Teaching

The initial seminars will generally be divided into 2 parts: students will be assigned specific readings to find a specific problem in their assigned reading. On occasion, depending upon the size of the class, the instructor will introduce the reading and then to return to precise passages to re-state and explain the thrust of the passages, drawing from the history of legal thought. Whether a student or the instructor is responsible for the reading's problem(s), (other) students interject with issues, problems, claims, and arguments, drawing from other readings already covered in the seminar or from other areas of philosophy. The seminar usually takes on a life of its own.

Outline of Seminars

[This Outline of seminars sets out desired readings to be competent in Legal Philosophy. Adjustments may be needed during the term. A student, with her/his consent, will serve as a resident expert of a particular reading. Some Readings other than from Hart and Kant, are on CLEW. The balance will be handed out a week in advance. If you are absent, you will have to obtain the hand-out from another student. Extras will be on the filing cabinet outside my office.]

Week 1 (Jan 8th): Overview of Course

Part A: Contemporary Conceptual Jurisprudence

Week 2 (Jan 15th): 1. Does the Rule of Recognition recognize Social Life?

- a) **Overview:** Leslie Green, "Introduction" to *Concept of Law* 3rd edn, xvii-xxiv.
- b) **Modes of Origin**, CL 44-49.
- c) **Habits as Concepts**, CL 12, 50-78, 239-44.
- d) **What Happened to the Habits?**, CL 3-4, 82, 156, 198, 234-236, 241, 254-55, 291
- e) **Rule of Recognition and Legal Validity**
CL 100-07, 124-54, 130

[Background: Coyle, 79-103].

Week 3 (Jan 22nd): The Mythology about the Modern Law

- a) The Foundation of Law, Hart, CL 91-99, 200-212.
 - b) The Analysis of Concepts CL, Preface v, 1-15, 79-91, 152, 239-44
 - c) John Gardner,
 - i) "Why Law Might Emerge" in Luis Duarte D'almeida, James Edwards and Andrea Dolcetti (eds), *Reading HLA Hart's The Concept of Law* (Oxford: Hart, 2013), 81-96.
 - ii) *Law as a Leap of Faith* (Oxford: Oxford Univ Pr, 2012). Excerpts
- [Background: Coyle, 103-109].

Week 4 (Jan 29th): The Mythology Reinforced: Facts vs Values

- a) The Social Experience as a Fact, CL, 85-91, 111-117.
- b) Finnis, "On Hart's Ways: Law as Reason and as Fact" in *The Legacy of H.L.A. Hart*, ed Matthew Kramer, Claire Grant, Ben Colburn and Antony Hatzistavrou, Oxford: Oxford University Press, 2008), 3-27
- c) Dworkin,
 - i) "Foxes and Hedgehogs" in *Justice for Hedgehogs* (Cambridge: Harvard U Pr, 2012), 1-2. [JH].

- ii) “Morals and Causes” in JH 69-87.
- iii) Interpretation as a matter of the Interpretation of Concepts, in *Justice for Hedgehogs* (Cambridge: Harvard U Pr, 2012), 134-139, 157-184. [JH].

[Coyle, 110-134].

Week 5 (Feb 5th): The Tradition’s Paradox of Social Meaning in the Legal Structure

- a) Brian Bercusson, “Juridification and Disorder” in Gunther Teibner (ed), *Juridification of Social Spheres* (Berlin/New York: Walter de Gruyter, 1987)), 49-90.
- b) Nir Kedar, “Political Origins of the Modern Legal Paradoxes” in Oren Perez & Gunther Teubner (eds), *Paradoxes and Inconsistencies in the Law* (Oxford: Hart, 2006), 101-117.

Part B: The Historical *A priori*

Week 6 (Feb 12th):

- a) Michel Foucault, “The Historical *a priori*” in the *Archaeology of Knowledge*, trans by A M Sheridan Smith (NY: Pantheon, 1972), 126-131.
- b) Douglas Hay, “Property, Authority and the Criminal Law” in Hay, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (Harmondsworth: Penguin, 1977), 17-65.

Week 7 (Feb 19th): Study Week

Note Due (Thursday Feb 26th at start of class)

Week 8 (Feb 26th): Kant: Public Justice and Law

- a) Coyle: 56-75
- b) Property, sect 1-10 (Ladd pg 42-57); sect 15-17 (Ladd 68-70).
- c) Contract, sect 36 (Ladd (102-104).
- d) Transition from state of nature to Juridification, 41-49 (pg 113-122)
- e) General Consequences re Juridification, .123-128
- f) The Foundation of the State, 147- 163 (sect 51-62)
 - b) Foundation of Perpetual Peace, 161-163.

Part C: Phenomenology: The Forgotten Experienced Meaning in Conceptualizing about Facts

Week 9 (March 5th): The Paradox of the Stranger outside the Conceptual Structure of Jurisprudence and Kant

- a) Thomas Hobbes, *Leviathan*, ed by Edwin Curley (Indianapolis: Hackett, 1994), para 11-13. Add para 9-10. Pt 1ch xiii, Pg 76-7
- b) Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law* (ed by James Tully; trans by Michael Silverthorne (Cambridge: Cambridge Univ Press, 1991), Excerpt from pg 117-119. Bk 2, Ch 15.

Week 10 (March 12th): Is there Life Before the 'Facts' in the Conceptual Structure?

- a) Kafka, 'The Parable' from "In the Cathedral" in *The Trial* (NY: Schocken Books, definitive edn, 212-222 .
- b) Alfred Schutz, "The Stranger" in *Collected Papers*, vol. 2, 91-105. On CLEW.

Week 11 (March 19th): Is there Life before the Posited Rules and Posited Values of the Legal Structure: Are Pre-Intellectual Acts of Meaning Knowable?

- a) Alfred Schutz & Thomas Luckmann, "The Origin of the Social Stock of Knowledge" in *The Structures of the Life-World*, trans. By Richard M Zaner & H. Tristram Engelhardt (Evanston: Northwestern Univ Press, 1973), vol 1, 261-87.
- b) Alfred Schutz, "Summary: The Essence of Meaning" in *Phenomenology of Social World*, trans by George Walsh & Frederick Lehnert with Intro by George Walsh (Evanston: Northwestern U Pr, 1967 [1932], 69-71.
- c) Alfred Schutz, "Meaningful Lived Experience" in *Phenomenology of Social World*, trans by George Walsh & Frederick Lehnert with Intro by George Walsh (Evanston: Northwestern U Pr, 1967 [1932], 78-95.
- d) Alfred Schutz & Thomas Luckmann, "Routine in the Stock of Knowledge: skills, useful knowledge, knowledge of recipes" in *The*

Structures of the Life-World, trans. By Richard M Zaner & H. Tristram Engelhardt (Evanston: Northwestern Univ Press, 1973), 105-111.

- e) Alfred Schutz & Thomas Luckmann, "Levels of Anonymity" in *The Structures of the Life-World*, trans. By Richard M Zaner & H. Tristram Engelhardt (Evanston: Northwestern Univ Press, 1973), pg 79-87.

Week 12 (March 26th): Pre-intellectual Acts of Meaning in Hart's Social Conventions

- a) Schutz, "Intersubjective Understanding" in *Phenomenology of Social World*, trans by George Walsh & Frederick Lehnert with Intro by George Walsh (Evanston: Northwestern U Pr, 1967 [1932], 113-115, 116-136.
- b) Schutz, "The Structure of the Social World" in *Phenomenology of Social World*, trans by George Walsh & Frederick Lehnert with Intro by George Walsh (Evanston: Northwestern U Pr, 1967 [1932], 163-76, 176-194, 207-214.
- c) Schutz, "Objective and Subjective Meaning in Social Sciences" in *Phenomenology of Social World*, trans by George Walsh & Frederick Lehnert with Intro by George Walsh (Evanston: Northwestern U Pr, 1967 [1932], 241-230.
- d) Schutz, "The Frame of Unquestioned Constructs" in *Collected Papers: I. The Problem of Social Reality*, ed. by Helmut Wagner & George Psathas (Dordrecht: Kluwer, 1996), 13-14, 33, 61-62. As reprinted in *Mary Collected Works vol 4 (Rules and Meanings: The Anthropology of Everyday Knowledge)*, New York: Routledge, 2003), 18-20.

Week 13 (April 2nd): The Pre-intellectual Acts of Meaning read into Dworkin's Facts and Texts

- a) Signification vs Expressive Acts of Meaning
Edmund Husserl, *Logical Investigations* (J.N. Findlay trans with new Preface by Michael Dummett and edited with new Intro by Dermot Moran (London & NY: Routledge, 2001), vol 1, sect 3-15, pp 184-205.
- b) Husserl, "Investigation 1" in *Logical Investigations* (J.N. Findlay trans with new Preface by Michael Dummett and edited with new Intro by Dermot Moran (London & NY: Routledge, 2001), vol 1, 191-196, 206-208, 228-233

- c) Husserl, "Investigation 6" in *Logical Investigations* (J.N. Findlay trans with new Preface by Michael Dummett and edited with new Intro by Dermot Moran (London & NY: Routledge, 2001), vol 2, 201-211.

Week 14 (April 9th): Do the Legal Structures of Hart and Dworkin have Certainty?

- a) Alfred Schutz, "Multiple Realities" in *Collected Papers: I. The Problem of Social Reality*, ed. by Helmut Wagner & George Psathas (Dordrecht: Kluwer, 1996), 207, 229-233. As reprinted in Mary *Collected Works vol 4 (Rules and Meanings: The Anthropology of Everyday Knowledge)*, New York: Routledge, 2003), 227-231.
- b) Alfred Schutz, "The Problem of Social Reality" in *Collected Papers*, ed. by Helmut Wagner & George Psathas (Dordrecht: Kluwer, 1996), vol 4, pg 71-72.
- c) Alfred Schutz & Thomas Luckmann, "The Acquisition of Knowledge" in *The Structures of the Life-World*, trans. By Richard M Zaner & H. Tristram Engelhardt (Evanston: Northwestern Univ Press, 1973), vol 2, 119-126.
- d) Schutz, "The Structure of the Social World" in *Phenomenology of Social World* (Evanston: Northwestern U Pr, 1967 [1932], 194-225.

Essay Topics

1. What does Hart leave out of his legal theory for it to be a theory of legal phenomenology in the light of our assigned readings?
2. Hart claims that the rule of recognition recognizes the regularities of behaviour of "educated persons" such as lawyers, judges, law professors, law students and other officials. Do the regularities of behaviour represent social relationships in the light of phenomenology as elaborated in our readings?
3. Derrida claims that violence underlies the foundation of law. Critically examine whether and, if so, why the social alienation of the 'man from the country' dissolves in the light of either
 - a. The readings by Schutz'
 - b. Or, the readings by Husserl.
4. In the light of the assigned readings, is the "regularity of behavior" which the rule of recognition is said to recognize really a 'fact'?

5. Does Derrida presuppose Kant's legal formalism as representative of 'the Law'?
6. If Derrida presupposes Kant's legal formalism as representative of 'the Law', what is the implication for his theory of law as presupposed in his "Before the Law"?
7. Hart claims that we must "step' from the pre-legal to the legal world in order to gain a concept of law. Does Kant make the same claim? And do you see any problems with the claim?
8. To what extent does Hart presuppose Kant's theory of legal formalism?
9. Drawing from Kant's *Metaphysics of Justice*, does the identity of a law exclude a consideration of the social presuppositions about the content of a particular law?
10. To what extent does Kant presuppose a sense of the pre-legality as elaborated by Hart? What is the nature of that pre-legality?
11. Does Hart's theory of legal obligation exclude a consideration of objectivity as meant?
12. Does Dworkin's theory of legal obligation exclude a consideration of objectivity as meant?
13. Drawing from our assigned readings, is it possible for one to adopt Husserl's theory of meaning in legal reasoning? If so, how?
14. Can a Lawyer or Judge Know the Stranger's Acts of Meaning before the Facts and Rules of the Legal Structure?
15. In the light of the assigned readings, is justice accessible?

Major Essay Due: Monday April 20th at 2 pm by email or hand-deliver to Thuy-Binh Shiu on 2nd floor of Law Bldg.

Appendix A: Supplementary Readings

[For additional reading in legal philosophy or for useful commentaries on the primary texts]:

Authorizing Origin of Law

- Anscombe, "On the Source of the Authority of the State" in Raz ed., *Authority* (NY 1990)
- Buchanan, "Political Legitimacy and democracy" in *Ethics* 4 (112) 689-719.
- Conklin, "The Invisible Author of Legal Authority" in *Law and Critique* 7 (1996): 173-92.
- *Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001). PB.
- Fitzpatrick, Peter, *Law as Resistance: modernism, Imperialism, Legalism* (Ashgate, 2008).
- Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014), ch 10.
- John Gardner, *Law as a Leap of Faith* (Oxford: Oxford U press, 2012).

- Hart, "Commands and Authoritative Legal Reasons" in Raz ed, *Authority* (NY 1990).
- Simmons, "Justification and legitimacy" in *Ethics* 109 (1999), 739-71.
- Raz, - "Legitimate Authority" in *The Authority of Law* (Oxford, 1979), ch 1.
Ed. *Authority* (NY: NY University Press, 1990). PB.

Conceptual Jurisprudence Generally

- Alexander, Larry & Emily Sherwin, *Demystifying Legal Reasoning* (Cambridge: Cambridge University Press, 2008).
- Coleman, Jules & Scott Shapiro, eds., *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford, 2002).
- Conklin, *Invisible Origins of Legal Positivism: a re-reading of a tradition* (Dordrecht: Kluwer, 2001), ch 3. See references & Biblio.
- Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014).
- Dworkin, *Justice for Hedgehogs* (Cambridge Mass: Harvard U Press, 2012).
- Golding, Martin & William Edmundson eds., *The Blackwell Guide to Philosophy of Law and Legal Theory* (Blackwell, 2005).
- Hart, HLA, *The Concept of Law* 3rd edn (ed Leslie Green (Oxford: Clarendon, 2012).
- Coleman, Jules & Scott Shapiro, eds., *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford, 2002).
- Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014).
- D'Almeida, James Edwards & Andrea Dolcetti (eds), *Reading HLA Hart's The Concept of Law* (Oxford: Oxford University press, 2012).
- Gardner, John. "Law as a Leap of Faith" (Oxford: Oxford U press, 2012).
- Golding, Martin & William Edmundson eds., *The Blackwell Guide to Philosophy of Law and Legal Theory* (Blackwell, 2005).
- Leiter ed., *Objectivity in Law and Morals* (Cambridge: Cambridge University Press, 2001)
- Leiter, Brian, *Naturalizing Jurisprudence: Essays on American Legal Realism & Naturalism in Legal Philosophy* (Oxford: Oxford University Press, 2007).
- Simmonds, Nigel, *Law as a Moral Idea* (Oxford: Oxford University Press, 2007).
- *Stanford Encyclopedia of Philosophy* at <http://plato.stanford.edu/contents.html>

Dworkin

- Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014), ch 6..
- Conklin, William. *In Defence of Fundamental Rights* (Alphen aan den Rijn: Sijthoff and Noordhof, 1979).
- Dworkin, *Justice for Hedgehogs* (Cambridge Mass: Harvard U Press, 2012).
- *Law's Empire* (Cambridge Mass: Harvard U Press, 1986).

Experiential Legal World

- Banakar, Reza & Max Travers (eds), *Law and Social Theory* 2nd edn, (Oxford: Hart, 2013).
- Conklin, William E
 - "Statelessness and Bernhard Waldenfels' Phenomenology of the Alien" in *British J Phenomenology* 38 (2007): 280-96; and "A Phenomenological Theory of the Human Rights of the Alien" in *Ethical Perspectives* 13 (2006): 245-301.
 - "Derrida's Territorial Knowledge of Justice". In *Reading Modern Law: Critical Methodologies and Sovereign Formations*. Ed. by Ruth Buchanan, Stewart Motha & Sundhya Pahja (London: Routledge, 2012) 102-29, 27 pages.
 - "The Trace of Legal Idealism in Derrida's Grammatology of Law" in *Philosophy and Social Criticism* 22 (1996): 17-42.
 - *Statelessness: the enigma of an international community* (Oxford: Hart, 2014), 88-95, 186-219, 271-320
 - *The Phenomenology of Modern Legal Discourse* (Aldershot UK/ Brookfield, USA/ Singapore/ Sydney, Australia: Dartmouth/Ashgate, 1998 Applied Legal Philosophy Series) - See Biblio.

- Douglas, Mary, *Collected Works vol 4 (Rules and Meanings: The Anthropology of Everyday Knowledge)*, New York: Routledge, 2003).
 - EE Evans-Pritchard, "For example, Witchcraft", 24-25. From Evans-Pritchard, *Witchcraft, Oracles and Magic among the Azande* (Oxford: Clarendon Press, 1937), 64-7.
 - "The Social Genesis of Logical Operations", 32-37. From E Durkhem & M Mauss, *Primitive Classifications* (NY: Routledge & Kegan Paul, 1963 [1903]), 81-8.
 - "The Essence of Redness", 60-64. From E Husserl, *The Paris Lecture* The Hague:: Martinus Nijhoff, 1970), 8-10 & 14-15; E Husserl, *The Idea of Phenomenology* (lectures given in 1907), The Hague: Martinus Nijhoff, 1964 [1950]), 44-6.
 - "Time is not a Continuum", 75-81. From Evans-Pritchard, *The Nuer* (Oxford: Clarendon Press, 1940), 100-108.
 - "Social Principles of Selection", 232-34. From Evans-Pritchard, *Witchcraft, oracles & Magic among the Azande* (Oxford: Clarendon Press, 1937), 74-75, 80, 114.
- Husserl, E, *Logical Investigations* trans. by J. N. Finley (London: Routledge, 1970), vol. 1, "Introduction" (sect 1-7), ch 1 (sect 1-16), ch 4 (sect 30-35, vol. 2, ch 1 (sect 1-4, 8).
 - *Crisis of the European Sciences and Transcendental Phenomenology* (trans. David Carr; Evanston: Northwestern U. Pr., 1970).
- Latour, B, *The Making of Law* (Cambridge: Polity, 2002)
 - *We have never Been Modern* (Cambridge Mass: Harvard U Pr, 1993).- Nancy, J-L, *The Sense of the World*, trans. by J S Liret (Minneapolis: University of Minnesota Press, 1997 [1993]).
- Oakeshott, M, "Three Essays on History" in *On History and other Essays* Indianapolis: Liberty Fund, 1999).
- Schutz, A.,
 - *The Phenomenology of the Social World* (Evanston: Northwestern University Press, 1967 [1932]), 79-95, 113-118, 126-36.
 - "The Stranger" in *Collected Papers*, vol 2, pg 91-105.
 - "Multiple Realities", 227 -231. From A Schutz, *Collected Papers: 1. The Problem of Social Reality* (The Hague: Martinus Nijhoff, 1967 [1953, 1954, 1945]), 229-233.
- Schutz, A & Thomas Luckmann, *The Structures of the Life-World*, trans. By Richard M Zaner & H. Tristram Engelhardt (Evanston: Northwestern Univ Press, 1973), PB. 105-111, 299-331.
- Waldenfels, B, *The Question of the Other* (Albany NY: State University of New York Press, 2007).
- Walsh, G, "Introduction" to Alfred Schutz, *Phenomenology of Social World* (Evanston: Northwestern U Pr, 1972), pg. xxi-xxix.

Hart

- Coleman, Jules, ed., *The Postscript: Essays on Hart's Postscript to The Concept of Law* (Oxford, 2001). PB.
- Coleman, *Practice of Principle: in Defence of a Pragmatist Approach to Legal Theory* (Oxford: Oxford University Press, 2001).
- Conklin, *Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001), ch 8. PB.
- Coyle, Sean, *Modern Jurisprudence: A Philosophical Guide* (Oxford: Hart, 2014), ch 5.
- Lacey, Nicola, *A Life of HLA Hart: the Nightmare and the Noble Dream* (Oxford: Oxford University Press, 2006). PB.
- D'Almeida, James Edwards & Andrea Dolcetti (eds), *Reading HLA Hart's The Concept of Law* (Oxford: Oxford University Press, 2012). Purchased for Law Lib.
- John Gardner, *Law as a Leap of Faith* (Oxford: Oxford U press, 2012).

Hegel

Conklin, William E

- Conklin, *Hegel's Laws: the legitimacy of a modern legal order* (Stanford: Stanford University Press, 2008).

- "The Preface", Hegel's Legal Philosophy, and the Critics of His Time" in Jonathan Lavery et al, *Ideas under Fire* (Madison: Fairleigh Dickinson University Press, 2013), 161-90;
 - "The Legal Culture of European Civilization: Hegel and the Indigenous Americans" in *Europe in its own Eyes, Europe in the Eyes of the Other*, ed by David B MacDonald and Mary-Michelle De Coste (Waterloo: University of Waterloo Press, 2014), 55-79;
- Hegel, *Introduction to the Philosophy of History* (with an Appendix from the Philosophy of Right (trans Leo Rauch; Indianapolis: Hackett, 1988).
Philosophy of Right, trans Alan White (Newburyport: Focus, 2002). [Although Camb U Press translation is usually cited, this is the most accessible translation with notes.]

Kant

- Conklin, *Hegel's Laws: the legitimacy of a modern legal order* (Stanford: Stanford University Press, 2008).
- Harvey, David, "Cosmopolitanism and the Banality of Geographical Evils" in 12 *Public Culture* 529-36 (2000).
- Ladd, "Introduction" to Kant's *Metaphysical Elements of Justice* (Indianapolis: Hackett, 1999; 2nd ed. [1797]).
- Kant, *Metaphysical Elements of Justice* (Indianapolis: Hackett, 1999; 2nd ed. [1797]).
 - Kant, *Kant's Political Writings*, H. S. Reiss ed., H.B. Nisbet trans. (Cambridge: Cambridge University Press, 1991). PB.
- Reiss, "Introduction" to *Kant's Political Writings*, H. S. Reiss ed., H.B. Nisbet trans. (Cambridge: Cambridge University Press, 1991).

Legal Objectivity and Legal Obligation

- Anscombe, "On the Source of the Authority of the State" in Raz ed., *Authority* (NY 1990)
- Buchanan, "Political Legitimacy and democracy" in *Ethics* 4 (112) 689-719.
- Coleman, Jules, ed., *The Postscript: Essays on Hart's Postscript to The Concept of Law* (Oxford, 2001).
- Conklin, *Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001), PB.
- Dworkin, Ronald., *Justice for Hedgehogs* (Cambridge: Harvard U Pr, 2012).
- Hart, "Commands and Authoritative Legal Reasons" in Raz ed, *Authority* (NY 1990).
- Lacey, Nicola, *A Life of HLA Hart: the Nightmare and the Noble Dream* (Oxford: Oxford University Press, 2006). PB.
- Simmons, "Justification and legitimacy" in *Ethics* 109 (1999), 739-71.
- Raz, - "Legitimate Authority" in *The Authority of Law* (Oxford, 1979), ch 1.
 Ed. *Authority* (NY: NY University Press, 1990). PB.
 - Raz, "Authority and Justification" in Raz ed., *Authority* (NY: NY University Press, 1990), 115-41]
 - "Can There be a Theory of Law?" in Martin P. Golding & William A. Edmundson ed., *Blackwell Guide to the Philosophy of Law and Legal Theory* (Oxford: Blackwell, 2005), 324-41
 - "Authority, Law and Morality" in Raz, *Ethics in the Public Domain: essays in the Morality of Law and Politics* (Oxford: Clarendon, 1994), 210-37

Natural Law Theory

- Conklin, *Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001), Intro, ch 1, 2. See references & Biblio. PB.
- Finnis, John, *Natural Law and Natural Right* (Oxford: Clarendon, 1980). PB.
 - *Collected Works* (2012).
- George, Robert, ed., *Natural Law Theory: Contemporary Essays* (Oxford, 1992).
- Murphy, Mark, *Philosophy of Law: The Fundamentals* (Blackwell, 2006).
- Garnsey, Peter, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: 2007).

Phenomenology of Law

- Ben-Dor, Oren, *Thinking about Law: in silence with Heidegger* (Oxford: Hart, 2007). PB.
- Conklin, William E.,
 - Book review re Oren Ben-Dor, *Thinking about Law: in silence with Heidegger* (Oxford: Hart, 2007) in *Windsor Yearb. Access to Justice* (vol. 26, 2008);
 - "Statelessness and Bernhard Waldenfels' Phenomenology of the Alien" in *British J Phenomenology* 38 (2007): 280-96.
 - "A Phenomenological Theory of the Human Rights of the Alien" in *Ethical Perspectives* 13 (2006): 245-301.
 - "Lon Fuller's Phenomenology of Language" in *International J for Semiotics of Law* 19 (2006): 93-125.
 - "Kelsen on Norms and Language" in *Ratio Juris* 19 (2006): 101-26.
 - "The Trap" in *Law and Critique* 13 (2002): 1-28. .
 - "Introduction: Some Problems concerning Human Rights" in *Windsor Yearb. Access to Justice* 26 (2006): v-vii.
 - *The Phenomenology of Modern Legal Discourse* (Aldershot UK/ Brookfield, USA/ Singapore/ Sydney, Australia: Dartmouth/Ashgate, 1998 Applied Legal Philosophy Series) - See Biblio.
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Appendix B: Guide to Writing Essay

Purpose of Guide

This Guide is a tool to help you in the task of *critical and careful reading*.

A good piece of legal philosophy/jurisprudence should *give reasons for believing a thesis or for adopting an attitude* (i.e. to see things in a new way). The essay should do two things:

1. *Analyze the problem which the student faces, offer an argument and exhibit the structure of the argument in 2-3 paragraphs in the Introduction.*
2. *Give a critical argument, drawing from all the readings and class discussions.*

1. Analyze the Argument

a) The purpose of the essay is *not* to summarize what is obvious in what the author says. The aim is to discover and explain what is not obvious, to get the author's deeper and fuller implications, and to begin to carry out the train of thinking which the author wishes to engage with the reader.

b) To express the structure of the text's argument, note:

- i) premises (the propositions that the argument requires you to accept at the start).
 - ii) conclusion (the thesis that the author is using to get you to agree with)
- c) Usually, the argument is vague or non-deductive. Sometimes, the premises do not come first. Sometimes, the author will say, “B, therefore A” when s/he should say “A, therefore B.” Sometimes there will be no formal argument and you will have to glean it from other writings by the author or from implicit claims and arguments in the text.
- d) Uncover *hidden or unexpressed or unargued assumptions* on which the author relies. You can always find some assumption.
- e) Identify only the main points of the author’s argument – this is usually a question of your judgement:
 - i) What is the point of the *whole passage*?
 - ii) Go to *each* principal part of the text’s argument and repeat the process until you have a detailed summary
 - mastery of the text requires you to summarize it to the desired length.
 - usually, you should write the summary of the author’s argument in 1-3 paragraphs at the most.
 - pick out any difficulty of interpretation, and why it is difficult – sharpen the difficulty by raising *alternative interpretations*.
 - iii) One does this by *asking revealing related questions* which the text prompts, and then by trying to give answers which the author may point to.

2. The Critical Assessment of the Reading

- a) Make sure when you are stating what *you* are arguing and not what the author of the text is arguing.
- b) Identify the premises and question their social, moral, political, anthropological merit.
- c) If the author’s assumption is (in)valid from within her/his argument, is it acceptable by specialists in the field for which the author is making the assumption (often, lawyers and jurists articulate assumptions, which are “non-legal” even when they claim to be legal positivists).
 - If the assumption is not acceptable, why not? Give evidence from other specialists who have dealt with the assumption as to why the assumption is not acceptable.
- d) Look at the consequences of the author’s assumptions(s) esp. as re access to justice.
- e) If you agree with the assumption, try hard to construct an argument, supported with empirical and or normative argument as to why it is acceptable.
- f) It is a good idea to assume that a judge or jurist is wrong, tho’ not a moron.

3. Write down the Critical Part (your contribution) of the Essay

- a) Are one or more of the (social, psychological, economic, anthropological, moral, religious, or political premises false? (this makes the author’s argument *unsound*).
- b) Does the conclusion *not follow*? (this is what makes the argument *invalid*).

c) Does the argument rely on assumptions that are unacceptable? (arbitrary? Debateable? Factually wrong? Not accepted by specialists in the field (not necessarily law), not accepted in democratic theory, etc.)

d) Is the argument inconsistent with insights or arguments made by other assigned readings?

e) Is there a theme from our class discussions/lectures that brings insight into the assumption?

4. Write an Outline

a) Prepare to write by *first* studying and thinking about the text with a view to figuring out what it is you wish to explain, what questions you wish to raise and answer, *and* in what *order* the questions ought to be addressed and the explanations given. i.e. which question should you begin with; then the 2nd question will emerge – perhaps as a result of answering the first, or perhaps because an incomplete answer to the first leads one to raise a deeper or larger or related question; then, the 3rd question etc. Often the order will give you guidance as to the order of your questions and explanations.

b) Write down your questions, in order, together with rough, brief versions of the responses or explanations. Give the evidence from the text with quotes etc. As you write, you will probably realize that you need to shift the order of your questions.

c) Re-write what you have as *an outline*, organizing your thoughts into a sequence of sections and subsections. You may still need to rearrange and reformulate. The *Intro* should give the reader some idea of what is your problem, the thesis and, tho' not necessarily, how you wish to go about arguing the thesis. In the major paper, you should explain why the questions or problem is significant overall in the course and/or the jurisprude's texts.

5. Write the First Draft

a) In the first draft, focus on the flow of your argument. One point should follow from the next. Again, you may have to depart from your outline.

b) Read the draft carefully and critically. Always ask yourself if you assume something that the reader should know. Ask whether the reader will be able to understand the problem, thesis and argument.

- Don't be vague: be precise, specific, and clear.

- Check grammar. It does not help if you write in incomplete sentences, without verbs or subjects, write in long paragraphs so that it is hard for the reader to identify your specific points, or write in long sentences.

- Write your main points in separate paragraphs for the separate parts of your argument.

- Ensure that there is a verb and a subject, and that they correlate in tense and plurality.

c) Does the sequence of sentences and then paragraphs make sense?

- Use connective words e.g. "but, yet, still, now, on the one hand, however (but do not use "however" at the start of sentence.)

- If you use additional support for your argument, use "moreover, more, besides, in addition, what is more, to be sure."

- If drawing a conclusion, use words like, "in sum, it follows that, we may conclude that."

- If making the most important point in your paragraph or argument, say, "above all, most importantly, allow me to emphasize."

6. Write a 2nd Draft

a) Revise the 1st draft – cut out sentences – shift quotes – render a clear, coherent argument, and set it aside for a few days. Make tighter and more rigorous, with tighter sentences, cutting out all unnecessary words, phrases, etc. – unnecessary, that is, to your argument. It is a temptation to add something because of your research time: but you are evaluated for your argument as written down and some research may be irrelevant to your final product.

- a) Re-read the 2nd version – *aloud*. Ensure that it is clear and coherent – good English.
- b) Keep revising and re-writing your paper until you are confident that any intelligent reader could follow it. Ask a friend to read it. Often, students assume that the reader (the prof) understands the problem, thesis, and argument. But the reader must evaluate what you write, not what the reader her/himself knows. If you leave something unexpressed, the reader may conclude that you are unclear or that you have missed something.

7. Re-write

Re-write your draft again and again, leaving 2-3 days between each re-writing to allow your ideas to gestate.