

## HUM 3541: PHILOSOPHY OF LAW READINGS

ANDREW ABERDEIN\*

¶Priority!

§In Patterson, *Philosophy of Law and Legal Theory: An Anthology*

### COURSE OUTLINE

#### Introduction.

- ¶Fuller, L. L. (1949). The case of the speluncean explorers. *Harvard Law Review*, 62(4):616–645
- ¶Marmor, A. (2014). *Philosophy of Law*. Princeton University Press, Princeton, NJ, Introduction
- Kozinski, A., Sunstein, C., West, R., Easterbrook, F., Dershowitz, A., and Butler, P. (1999). The case of the speluncean explorers: Revisited. *Harvard Law Review*, 112(8):1876–1923
- Shapiro, D. L. (1999). Foreword: A cave drawing for the ages. *Harvard Law Review*, 112(8):1834–1850

#### The Theory of Law.

- ¶Marmor, A. (2014). *Philosophy of Law*. Princeton University Press, Princeton, NJ, Chapters One & Two
- §Llewellyn, K. N. (1930). A realistic jurisprudence – the next step. *Columbia Law Review*, 30(4):431–465
- §Coleman, J. L. (1982). Negative and positive positivism. *The Journal of Legal Studies*, 11(1):139–164
- §Finnis, J. (2000). On the incoherence of legal positivism. *Notre Dame Law Review*, 75:1597–1611
- Leiter, B. (2001). Legal realism and legal positivism reconsidered. *Ethics*, 111(2):278–301
- Gardner, J. (2001). Legal positivism: 5½ myths. *The American Journal of Jurisprudence*, 46:199–227

#### Law and Morality.

- ¶Marmor, A. (2014). *Philosophy of Law*. Princeton University Press, Princeton, NJ, Chapter Four
- §Hart, H. L. A. (1958). Positivism and the separation of law and morals. *Harvard Law Review*, 71(4):593–629
- §Fuller, L. L. (1958). Positivism and fidelity to law: A reply to Professor Hart. *Harvard Law Review*, 71(4):630–672

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### The Normativity of Law.

- ¶Marmor, A. (2014). *Philosophy of Law*. Princeton University Press, Princeton, NJ, Chapter Three
- §Dworkin, R. M. (1967). The model of rules. *The University of Chicago Law Review*, 35(1):14–46
- §Weinrib, E. J. (1988). Legal formalism: On the immanent rationality of law. *The Yale Law Journal*, 97(6):949–1016
- Leiter, B. (2011). The demarcation problem in jurisprudence: A new case for scepticism. *Oxford Journal of Legal Studies*, 31(4):663–677

### The Language of Law.

- Marmor, A. (2014). *Philosophy of Law*. Princeton University Press, Princeton, NJ, Chapter Six
- §Dworkin, R. (1975). Hard cases. *Harvard Law Review*, 88(6):1057–1109
- §Dworkin, R. (1982). Law as interpretation. *Critical Inquiry*, 9(1):179–200

### Legal Argumentation.

- Goodwin, J. (2000). Wigmore’s chart method. *Informal Logic*, 20(3):223–243
- Godden, D. M. and Walton, D. N. (2006). Argument from expert opinion as legal evidence: Critical questions and admissibility criteria of expert testimony in the American legal system. *Ratio Juris*, 19(3):261–286
- Macagno, F. and Walton, D. N. (2012). Character attacks as complex strategies of legal argumentation. *International Journal of Law, Language & Discourse*, 2(3):59–117
- Haack, S. (2016). Mind the analytical gap: Tracing a fault line in Daubert. *Wayne Law Review*, 61(3):653–690
- d’Almeida, L. D. and Michelon, C. (2017). The structure of arguments by analogy in law. *Argumentation*, 31(2):359–393

### Law and Virtue.

- ¶Solum, L. B. (2003). Virtue jurisprudence: A virtue-centered theory of judging. *Metaphilosophy*, 34(1–2):178–213
- ¶Duff, R. A. (2003). The limits of virtue jurisprudence. *Metaphilosophy*, 34(1–2):214–224
- Gutmann, A. (1993). Can virtue be taught to lawyers? *Stanford Law Review*, 45(6):1759–1771
- Huigens, K. (1998). Virtue and criminal negligence. *Buffalo Criminal Law Review*, 1(2):431–458
- Duff, R. A. (2002). Virtue, vice, and criminal liability: Do we want an Aristotelian criminal law? *Buffalo Criminal Law Review*, 6(1):147–184
- Solum, L. B. (2004). The aretaic turn in constitutional theory. *Brooklyn Law Review*, 70(2):475–532
- Solum, L. B. (2005). A tournament of virtue. *Florida State University Law Review*, 32:1365–1400
- Wendel, W. B. (2013). Virtue and vice in legal advising. *Criminal and Civil Confinement*, 39:25–39

**Punishment.**

- Hart, H. L. A. (1959). Prolegomenon to the principles of punishment. *Proceedings of the Aristotelian Society*, 60:1–26
- Morris, H. (1968). Persons and punishment. *The Monist*, 52(4):475–501
- Hampton, J. (1984). The moral education theory of punishment. *Philosophy & Public Affairs*, 13(3):208–238
- Lewis, D. (1989). The punishment that leaves something to chance. *Philosophy & Public Affairs*, 18(1):53–67

**Speech.**

- Volokh, E. (2005). Speech as conduct: Generally applicable laws, illegal courses of conduct, “situation-altering utterances,” and the uncharted zones. *Cornell Law Review*, 90:1277–1348
- Stevens, J. P. (2012). Should hate speech be outlawed? *The New York Review of Books*
- Sorial, S. (2015). Hate speech, distorted communication and the limits of incitement. *Law and Philosophy*, 34(3):299–324
- Leiter, B. (2016). The case against free speech. *Sydney Law Review*, 38:407–439
- Randazza, M. J. (2016). The freedom to film pornography. *Nevada Law Journal*, 17:99–139
- Langton, R. (2017). Is pornography like the law? In Mikkola, M., editor, *Beyond Speech: Pornography and Analytic Feminist Philosophy*, pages 23–38. Oxford University Press, New York, NY