

# SELECT ISSUES IN JURISPRUDENCE

Prof. Sherif Girgis

Select Thursdays, 12:00pm – 3:30pm

Online and (on select occasions) In Person

Welcome to jurisprudence. This course explores certain general questions regarding the nature of law and legal values, and considers how the answers to those questions should inform the practice of law—whether by judges, lawyers, and ordinary citizens.

All class materials will be made available online. Please use the online files provided since in many cases, I've assigned only excerpt of the cases, articles, or books listed below.

In each class after the first, one or two students will be asked to make a short presentation summarizing the readings and posing questions to launch our discussion. The final grade will be based on class participation (30%), the in-class presentation (20%), and a final exam (50%). The exam will be 3 hours long, and you will be able to consult your notes and course materials in hard copy, but the exam software will block access to the internet and local computer files.

Two of our meetings will take place in person, and the other five will take place by Zoom.

Our conversations may touch on issues about which people have deeply held views. Learning to discuss such topics with courage and civility will make the class more valuable for everyone. (It is also essential for success in almost any legal career.) All this requires an ethos of freedom, respect, and trust. Everyone should feel free to think aloud, lodge objections, play devil's advocate, or experiment with ideas they may ultimately reject (without being pinned to them). Above all, everyone should feel free to defend unpopular positions, including ones that others might find misguided or deeply wrong. Those exercising this freedom, for their part, should do so with respect for others and for their own freedom of expression, and for the purpose of seeking the truth together—a goal that also requires us all to welcome counterarguments to our own views. The goal of all our discussions will be to foster rigor, precision, depth of thought and, with any luck, deeper insight into some of the most basic questions about law.

## Sept. 28 (in person): Formalism

- Larry Alexander, *With Me, It's All er Nuthin: Formalism in Law and Morality*, 66 U. CHI. L. REV. 530 (1999)
- Joel Alicea & John Ohlendorf, *Against the Tiers of Scrutiny*, 41 NAT'L AFF. 72 (2019) (excerpt)
- Antonin Scalia, *The Rule of Law as Law of Rules*, 56 UNIV. CHI. L. REV. 1175 (1989)
- *Torres v. Oakland Scavenger Co.* (1988)
- *McDonald v. Smith* (1985)
- *National Pork Producers Council v. Ross* (2023) (excerpt)

## Oct. 5 (Zoom): Moral Reading

- Ronald Dworkin, *How to Read the Civil Rights Act, in A MATTER OF PRINCIPLE* 316–31 (1985)
- Ronald Dworkin, *The Moral Reading of the Constitution*, N.Y. REVIEW OF BOOKS, Mar. 21, 1996
- *Atkins v. Virginia* (2002) (excerpt)
- *SFFA v. Harvard* (2023) (excerpt)

**Oct. 12 (Zoom): Hybrids?**

- JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (2011) (excerpt)
- Jeffrey Pojanowski, *Why Should Anyone Be an Originalist?*
- Adrian Vermeule, *On “Common Good” Originalism* (excerpt)
- Gerard Bradley, *Moral Truth and Constitutional Conservatism*, 81 *LA. L. REV.* 1317 (2021) (excerpt)

[no class Oct. 19]

**Oct. 26 (Zoom): Traditionalism**

- Marc DeGirolami, *Traditionalism Rising*, *J. CONTEMP. LEGAL ISSUES* (excerpt)
- Sherif Girgis, *Living Traditionalism*, 98 *N.Y.U. L. REV.* (forthcoming) (excerpt)
- *NYSRPA v. Bruen* (2022) (excerpt)
- Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 *DUKE L.J.* (forthcoming) (excerpt)

**Nov. 2 (Zoom): Obedience to Law and the Purposes of Punishment**

- John Finnis, *Law As Coordination*, in *PHILOSOPHY OF LAW: COLLECTED ESSAYS OF JOHN FINNIS, VOLUME IV* 70–73 (2011).
- Joseph Raz, *The Obligation to Obey: Revision and Tradition*, 1 *NOTRE DAME J.L. ETHICS & PUB. POL’Y* 139, 145–49 (1985).
- John Finnis, *The Restoration of Retribution*, 32 *ANALYSIS* 131 (1972)
- James Q. Whitman, *A Plea Against Retributivism*, 7 *BUFF. CRIM. L. REV.* 85 (2003)
- Marah Stith McLeod, *Preventing Undeserved Punishment*, *NOTRE DAME L. REV.* (forthcoming) (excerpt)
- C.S. Lewis, *The Humanitarian Theory of Punishment*

**Nov. 9 (in person): Equality**

- Peter Westen, *The Empty Idea of Equality*, 95 *HARV. L. REV.* 537 (1982) (excerpt)
- Elizabeth Anderson, *What Is the Point of Equality?*, 109 *ETHICS* 287, 312–337?
- *Obergefell v. Hodges* (2015) (excerpt)
- *United States v. Windsor* (2013) (excerpt)
- Katherine Franke, contribution to *WHAT OBERGEFELL SHOULD HAVE SAID* (Jack Balkin, ed., 2020) (excerpt)

**Nov. 16 (Zoom): Public Reason and Morals Laws**

- John Rawls, *The Idea of Public Reason Revisited*, 64 *U. CHI. L. REV.* 765 (1997) (excerpt)
- John Finnis, *On “Public Reason”* (excerpt)
- Ronald Dworkin, *Is There a Right to Pornography?*, 1 *OXFORD J. LEGAL STUDIES* 171 (1981) (excerpt)
- Robert P. George, *The Concept of Public Morality*, 45 *AM. J. JURIS.* 17 (2000) (excerpt)
- *Lawrence v. Texas* (2003) (excerpt)