

**Antonin Scalia Law School
George Mason University**

Law and Morality

Robert P. George

Description: This course will consider a range of issues in philosophy of law with particular emphasis on various dimensions of the relationship between law and morality. We will explore prominent approaches to understanding law and legal systems associated with the traditions of natural law theory and legal positivism. We will also consider competing classical and contemporary ideas and arguments concerning the role of law in promoting virtue and shaping character.

Materials: Readings are mainly from contemporary legal philosophers working within the tradition of analytic jurisprudence. The following books (available in paperback editions) are worth purchasing. *Library access noted below:*

John Finnis, Natural Law and Natural Rights (2nd edition, 2011). *Online access through Library Catalog: [Natural law and natural rights - by Finnis](#). (via ProQuest)*

Lon L. Fuller, The Morality of Law (1969). *Online access through Library Catalog: [The morality of law - by Fuller](#) (via JStor).*

H.L.A. Hart, The Concept of Law (2nd edition). *Print copy available @ Circulation Desk for in-library use.*

Patrick Devlin, The Enforcement of Morals (1965 orig. ed. and reprints with later dates). *Copy available @ Circulation Desk for in-library use.*

H.L.A. Hart, Law, Liberty, and Morality. *Copy available @ Circulation Desk for in-library use.*

Robert P. George, Making Men Moral: Civil Liberties and Public Morality (1995). *Online access through Library Catalog: [Making Men Moral: Civil Liberties and Public Morality - by George](#) (via Oxford).*

Learning Objectives: By the conclusion of the seminar, students should possess a rich and accurate understanding of the ideas and arguments advanced by leading thinkers in the field of analytical jurisprudence as well as their debates with one another and with important thinkers from other traditions of thought about the nature and functions of law. Moreover, students should develop and be able to articulate and defend their own ideas on debated points.

Grading Policy: In-class presentation: 30%; overall class participation 20%; final

paper 50%. Performance will be assessed on the basis of (1) demonstrated mastery of the ideas and arguments contained in the course materials; (2) depth of insight; originality of thought.

Freedom of Thought, Expression, and Discussion. The rights to freedom of thought, inquiry, and speech are sacrosanct in this seminar and are possessed by faculty and students alike. With the aim of advancing and deepening everyone's understanding of the issues addressed in the course, students are urged to speak their minds, explore ideas and arguments, play devil's advocate, and engage in civil but robust discussions. There is no thought or language policing. I expect students to do business in the proper currency of intellectual discourse—a currency consisting of reasons, evidence, and arguments—but no ideas or positions are out of bounds.

First meeting:

Oliver Wendell Holmes, "The Path of the Law" in Vol. 10 Harvard Law Review 457 (1897) and reprinted elsewhere. (*Available via Hein and other platforms.*)
H.L.A. Hart, The Concept of Law, chs. I-IX
John Finnis, Natural Law and Natural Rights, ch. I and pp. 426-436

Second meeting:

Lon L. Fuller, The Morality of Law
H.L.A. Hart, "Review of Fuller, The Morality of Law," in Vol. 78 Harvard Law Review, Vol. 1281 (1965) (*Available via Hein and other platforms.*)
Joseph Raz, The Authority of Law, ch. 11. *Online access through Library Catalog: [The Authority of Law: Essays on Law and Morality - by Raz](#) (via Oxford Scholarship).*

Third meeting:

John Finnis, "Foundations of Practical Reason Revisited," in Vol. 50 American Journal of Jurisprudence 109 (2005). (*Available via. Hein, Lexis and other services.*)
John Finnis, Natural Law and Natural Rights, chs. II, V-XII and pp. 437-476
Robert P. George, "Natural Law," in Vol. 52 American Journal of Jurisprudence 55 (2007). (*Available via. Hein, Lexis and other services.*)

Fourth meeting:

Patrick Devlin, The Enforcement of Morals
H.L.A. Hart, Law, Liberty, and Morality
Robert P. George, Making Men Moral, chs. 1 and 2

Fifth meeting:

Robert P. George, *Making Men Moral*, chs. 3, 4, and 6

Sixth Meeting:

John Rawls, "The Idea of Public Reason Revisited," in 64 Univ. of Chicago Law Rev. 765 (1997). (*Available via Hein, Lexis, Westlaw, etc.*)

Robert P. George, "Democracy, Law, and the Human Person"

Seventh Meeting:

Robert P. George, *Making Men Moral*, ch. 7