

Phil 3740 Philosophy of Law

Class Number 0763 Section TR11

T, TH 11:00am – 12:15pm 3305 Boylan

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This seminar-style course explores the intersection of philosophy and law. The course begins with a survey of the major theories of analytic jurisprudence—i.e., answers to the question “what is law?” that allow us to identify what is distinctive about legal systems, as opposed to other forms of rule-governed social activity. How are laws different than moral rules, customary rules, and widely shared behavioral habits? After answering these questions (or at least surveying prominent attempts to answer them) we will move on to pressing questions of normative jurisprudence—i.e., questions about how legal activity should be organized. At the general level, topics will include which how should one conduct oneself when engaging in the activity of legal reasoning, how should we understand the idea of the facts of cases falling under legal rules, and the role and importance of language, speech acts, texts, and pronouncements to the functioning of the law. With this foundation in mind, in the third segment of the course we will examine and discuss more specific debates within the philosophy of law, which we will pick together in the first few weeks of the course to reflect student interest. Possibilities include (but are not limited too):

- debates over the proper form of constitutional interpretation—i.e., originalist theories vs. living constitutionalism
- the role and desirability of constitutions and institutions of judicial review and judicial supremacy
- the scope of judicial discretion and judicial law-making
- the nature of legal rights and their relation to moral rights, including human rights
- the content and value of specific rights such as the right to privacy, property, or free speech
- the legal status of international law
- legal notions of responsibility and their relation to moral responsibility
- the authority of law and legal institutions to punish those who break the law
- the obligation (or lack thereof) on the part of subjects to a legal system to obey the laws of that legal system