

Natural Law  
LJST 29, Spring 2011  
Monday & Wednesday, 2:00-3:20  
Converse Hall, Room 302

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What is meant by “natural law”? This course will explore this strange legal category from the ancient world through the present day. What connection did (or does) natural law have to the will of a God or other deity, and yet how has it also become something separate from “divine law”? What is “natural” about natural law, and does this quality make it somehow more primitive than, or prior to, or better than, positive (government-made) law? In modern secular societies, what are the post-religious understandings of the natural law idea, which is still thought by some to encompass our intuitions about justice or to frame our conceptions of positive law? In exploring the history and present state of this order of law which, in different moments, seems both to found positive law and to go beyond it, we will also ask: how easily does natural law coexist with positive law? If they conflict, which are we bound to follow? Does natural law jurisprudence have a substantial role to play in actual legal proceedings? Can it govern conduct between governments as well as (or instead of) individuals? Can natural law be a justification for disobedience to the laws of governments, or even for revolution?

**Required texts:**

at Amherst Books:

John Finnis, *Natural Law and Natural Rights* (Oxford)  
Lon Fuller, *The Morality of Law* (Yale)  
Thomas Hobbes, *Leviathan* (Hackett, ed. Curley)  
John Locke, *Two Treatises of Government* and *A Letter Concerning Toleration* (Yale, ed. Shapiro)  
Samuel Pufendorf, *On the Duty of Man and Citizen according to Natural Law*  
(ed. Tully, trans. Silverthorne, Cambridge)

*(these texts are also on reserve in Frost)*

e-reserves (please see course site)

course packet (available for purchase from Ms. Megan Estes-Ryan in the LJST department office, beginning Tuesday, Feb.8; before then, please access all packet readings on the e-reserves page)

### **Course requirements:**

(i) On prearranged days, different pairs of students will be responsible for initiating and guiding class discussion — we will pair everyone off, establish a schedule and give guidelines for these exercises during the first few sessions.

(ii) Shorter first paper (5-7 pgs.); this will concentrate on close analysis of an issue of your choice in the primary texts.

(iii) Longer final paper (15-20 pgs.); this will be a larger effort incorporating a research component (i.e., primary and/or secondary sources beyond the syllabus). It may build on the work of the first paper if you wish, or it may address fresh concerns.

**Attendance:** Deriving the greatest benefits from this course involves class participation to some extent — while you are not graded on such participation, you will find that regularly asking questions and becoming a part of the discussions will improve your experience in the class, in writing your papers, etc.. Keeping this in mind, you are allowed miss five sessions without penalty; each subsequent absence will result in a deduction of 2 points (of 100) from your final course grade. (Extraordinary circumstances aside, the five absences are intended to include illness, etc., so you should pace yourself ....)

If you do miss class, please make yourself responsible for catching up through classmates on what we did during that session. Generally, you will have the option of checking this course's web site, where you can read/download most announcements, hand-outs, etc. (please be sure to examine all areas when looking for materials you may have missed). Occasionally, I may also post additional announcements or other items not mentioned in class, so it's a good idea to check the course site once or twice a week even if you have been attending consistently.

### **Grading:**

Partnered discussion-leading: 15%

First paper: 30%

Final paper: 55%

### **Syllabus:**

(p) - in course packet

(e) - on electronic reserve

Jan. 24: Introduction

Jan. 26: from the King James Bible: Genesis, ch. 1-3; Exodus, ch. 19-21; Deuteronomy, ch. 5-6; Leviticus; Gospel of Matthew, ch. 5-7 (e)

Jan. 31: Joseph Albo, *Book of Principles*, vol. 1, ch. 4-7 (p/e)

Feb. 7: M. T. Cicero, *On the Laws*, bks. 1-2 (p/e)

Feb. 9: Saint Thomas Aquinas, *Summa Theologica*, part 1, questions 91, 94-95, 98 (p)

Feb. 14: Hugo Grotius, *On the Law of War and Peace*, bk. 1 (excerpts) (p)

- Feb. 16: Thomas Hobbes, *Leviathan*, ch. 13-30
- Feb. 21: John Locke, *Second Treatise of Government*, ch. 1-11, 16, 19
- Feb. 23: Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, author's preface; bk. 1, ch. 1-17; bk. 2, ch. 1, 11-12, 16-18
- Feb. 28: Andreas Roth, "'Crimen contra naturam'" (p)  
Sir William Blackstone, *Commentaries on the Laws of England*, book 1, sec. 2 (excerpt)
- March 2: Montesquieu (Charles Louis de Secondat, Baron de La Brède et de), *The Spirit of Laws*, bk. 1, secs. 1-3; bk. 26
- March 7: Jean-Jacques Rousseau, *Discourse on the Origin of Inequality* ("Second Discourse") (p)
- March 9: Leo Strauss, "The Crisis of Modern Natural Right: Rousseau," from *Natural Right and History* (p)
- March 11: Oliver Wendell Holmes, "Natural Law" (e)  
H. L. A. Hart, "Positivism and the Separation of Law and Morals" (e)
- SHORTER PAPER DUE**
- (Spring break!)
- March 23: Lon Fuller, "Positivism and Fidelity to Law" (e)
- March 28: Fuller, *The Morality of Law*, Parts I and II
- March 30: Fuller, *The Morality of Law*, Parts III and IV
- April 4: John Finnis, *Natural Law and Natural Rights*, ch. I-IV
- April 6: Finnis, ch. V, VIII, XII
- April 11: *Griswold v. Connecticut* (e)  
Michael Zuckert, "Do Natural Rights Derive from Natural Law?" (e)
- April 13: Ninth Amendment, U.S. Constitution (e)  
Robert George, "Natural Law, the Constitution, and the Theory and Practice of Judicial Review" (e)  
R. H. Helmholz, "The Law of Nature and the Early History of Unenumerated Rights in the United States" (e)
- April 18: *Lochner v. New York* (e)  
*Dred Scott v. Sandford* (selections) (e)
- April 20: Fourteenth Amendment, U.S. Constitution (e)  
Thomas McAfee, "Substance Above All: The Utopian Vision of Modern Natural Law Constitutionalists" (e)
- May 25: *Pavesich v. New England Life Insurance Co.* (e)  
*Brown v. Board of Education of Topeka* (e)
- May 27: Patrick Glen, "Why *Plessy/Brown* and *Bowers/Lawrence* Are Correct: Thomistic Natural Law as the Content of a Moral Constitutional Interpretation" (e)
- May 2: John Baker, Jr., "The Natural Law and Justice Thomas" (e)  
Hadley Arkes, "The 'Reasoning Spirit'," "Moving Beyond the Text," from *Beyond the Constitution* (p)

May 4: Michel Serres, "Natural Contract," from *The Natural Contract* (p)  
Robert Roth, *The Natural Law Party: A Reason to Vote* (excerpts) (p)

**FINAL PAPER DUE**

A note about "electronic texts": The above editions of the required texts for this course are recommended; however, you are free to obtain these texts in any manner you can, whether in other print editions (including library reserve or other copies) or, if necessary, in some digital format. Please note, however, that you should be cautious about casually downloading texts from the internet; this is because an "e-text" is no good to you if it derives from a source which is no good, and any mistakes that an e-text's editor(s) make may also become your mistakes (i.e., if you use that text in preparing a paper, exam, etc.). You should note that while free-of-charge internet texts often present problems, texts downloaded through the proprietary databases to which Frost subscribes are usually very adequate, and indeed, often simply reproduce authoritative print editions; please consult with myself or with Frost's reference librarians if you have doubts about the scholarly integrity of an e-text you wish to use.