

PHILOSOPHY 578: LANGUAGE AND THE LAW
FALL 2020

Professor Eric Swanson, <ericsw@umich.edu>

Office hours at <https://umich.zoom.us/j/4465968858>: Mondays 10–12 and by appointment. I will have lots of students for my other class on Mondays, so I suggest that you make an appointment if possible.

We will discuss questions about the nature of law, about the relationship between legal indeterminacy and the rule of law, and about the expressive force of law, laws, and legal interpretation and practice.

No background in philosophy of law or philosophy of language will be presupposed.

COURSE WEB SITE

<https://umich.instructure.com/courses/427428/>

SEMINAR MEETINGS

<https://umich.zoom.us/j/96825549294>

Mondays 4–6:20

With your consent, I hope to record our seminars, in the event that one of us gets sick or has to care for someone who is sick.

GRADING (FOR ENROLLED STUDENTS ONLY)

- 20%: Short (one page or less) reading responses, due over email to me every Sunday night, raising questions about or making comments on the reading we'll discuss the next day. You can miss one of these without excuse without penalty.
- 20%: *Active* participation in seminar.
- 10%: A brief presentation, consisting of one comment on and two questions about one reading from that week.
- 10%: Final paper workshopping in December *and/or* written progress toward said paper—e.g., draft, outline, notes—due over email to me by December 20.
- 40%: One roughly 15 page final paper, due over email to me by January 29. (This is the default arrangement, but if some other arrangement would work better for you, please talk to me about what you'd like to do in advance.)

August 31	<i>Organizational meeting.</i>
September 21	<i>The nature of law. Are laws commands?</i> Scott Shapiro, <i>Legality</i> , chapters 1–3 Optional: H. L. A. Hart, <i>The Concept of Law</i> , chapters 1 and 2
September 28	<i>H. L. A. Hart’s jurisprudence.</i> Scott Shapiro, <i>Legality</i> , chapter 4 Julie Dickson, “Is the Rule of Recognition Really a Conventional Rule?” Andrei Marmor, interviewed by Richard Marshall (link on Canvas) Optional: H. L. A. Hart, <i>The Concept of Law</i> , Chapters 5 and 6
October 5	<i>The planning theory of law; legal reasoning and decision making; hard cases.</i> Scott Shapiro, <i>Legality</i> chapters 5, 8, and 9 Optional: Ronald Dworkin, “Hard Cases”
October 12	<i>Indigenous Peoples’ Day. Guiding visions and the rule of law.</i> Roberto Mangabeira Unger, “Another Time, A Greater Task” (Part I of <i>The Critical Legal Studies Movement: Another Time, A Greater Task</i>) Gerald Torres and Kathryn Milun, “Translating <i>Yonnonidio</i> by Precedent and Evidence: The Mashpee Indian Case” Optional: Jo Carrillo, “Identity as Idiom: <i>Mashpee</i> Reconsidered”
October 19	<i>The variety of sources of indeterminacy; indeterminacy and the rule of law.</i> Timothy Endicott, “Linguistic Indeterminacy”; “Sources of Indeterminacy” (chapters 2 and 3 of <i>Vagueness in Law</i>) Margaret Radin, “Reconsidering the Rule of Law” Optional: Cora Diamond, “Rules: Looking in the Right Place”
October 26	<i>Some critique of Critical Legal Studies.</i> Kimberlé Williams Crenshaw, “Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law” (Paul presenting) Eric J. Segall, “Justice Scalia, Critical Legal Studies, and the Rule of Law” (Todd presenting) Optional: Mari Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations”
November 2	<i>Semantics and pragmatics in legal interpretation; more on judicial restraint.</i> Andrei Marmor, “What Does the Law Implicate?” (chapter 2 of <i>The Language of Law</i>) Scott Soames, “Interpreting Legal Texts” (Sarah presenting), and “Deferentialism: A Post-Originalist Theory of Legal Interpretation” (Jason presenting) Optional: André LeDuc, “Making the Premises about Constitutional Meaning Express: The New Originalism and Its Critics,” especially pp. 213-232
November 9	<i>Expressive theories of law; reconsidering Gricean approaches.</i> Elizabeth Anderson and Richard Pildes, “Expressive Theories of Law” (Abdul presenting) Eric Swanson, “Omissive Implicature” Optional: Charles Taylor, Critical Notice of <i>Linguistic Behavior</i> by Jonathan Bennett
November 16	<i>What is expressed through the law? More on semantics and pragmatics.</i> Jill Anderson, “Misreading Like a Lawyer: Cognitive Bias in Statutory Interpretation” Robyn Carston, “Legal Texts and Canons of Construction” (Nicky presenting)
November 30	<i>What is expressed through law that governs linguistic expression?</i> Catharine MacKinnon, “Equality and Speech” (chapter 3 of <i>Only Words</i>) Seana Valentine Shiffrin, “Speech, Death, and Double Effect” (Mica presenting) Rae Langton, “The Authority of Hate Speech” (Elizabeth presenting)
December, TBD	Optional workshop sessions