

THE FUNDAMENTALS OF ANGLO-AMERICAN LEGAL THEORY

INFORMATION FOR APPLICANTS

Instructor

Anna Lukina is a PhD in Law candidate at the University of Cambridge, having completed a Bachelor of Arts in Jurisprudence (University of Oxford), a Bachelor of Civil Law (University of Oxford), and a Master of Laws (Harvard Law School). Her academic interests include jurisprudence, Soviet law, legal history (Soviet law in particular), and public law. Her PhD project is entitled ‘Towards a Jurisprudence of Evil Law’.

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Course description

What is law? Should we obey unjust laws? Can we talk about law without politics? Are legal means enough to effectuate social change? These – and other – questions will be discussed in this course.

At the end of the course with a specific focus on the main currents of Anglo-American legal theory: natural law theory, legal positivism, legal realism, Ronald Dworkin’s interpretivism, and critical legal studies. Each seminar (with some exceptions) would be based on a paper written by one of the representatives of every current. First, the instructor will introduce the papers by placing them in a historical and an intellectual context. After that, students will explore the central arguments and themes of the paper in the form of an active discussion.

This course is **not** an introduction to the UK and US legal systems.

Applying for the course

All interested in the Anglo-American legal theory are welcome to sign up for the course. However, the course will be of particular interest to those who study law, philosophy, or politics. As the course serves as an introduction to Anglo-American legal theory, it will be a good fit for students who are new to legal theory in general or who only have experience with continental legal theory.

Apart from a brief **letter of motivation** that should include **whether applicants prefer to join the Russian-language or English-language group**, they should read [*Oliver Wendell Holmes – The Path of the Law*](#) and write a **500-word response paper** (in either English or Russian). Some tips on how to write a response paper can be found [here](#).

The course requires deep engagement with legal-theoretical writings in **English**. Knowledge of Russian is not required, as there will be an opportunity to join the English-language group.

INFORMATION FOR STUDENTS

Preparing for seminars

For each seminar, students should read the paper(s) from the relevant part of the syllabus, and be prepared for a detailed discussion of them. The readings can be found in the [Google Drive](#) of the course.

Assessment

The final grade is comprised of:

- **50% - active participation in seminars**
- **40%** - a final **paper** around **2000 words** on one of the suggested topics, or a topic proposed by a student and approved by the instructor; each topic should be explored with reference to **at least two currents** of Anglo-American legal theory
- **10%** - **presentation** of the final paper at a “mini conference” at the end of the course

Accessibility policy

The instructor is committed to creating a learning experience that is as accessible as possible. If you have a disability, or if you think you may have a disability, please contact the instructor to discuss any accommodations you may need.

SYLLABUS

1. Setting the Scene

- *Lon Fuller – The Case of the Speluncean Explorers*
- Using this fictional judgment as a springboard to identify core debates in Anglo-American legal theory and map the rest of the course.

2. Natural Law

- *Justinian’s Digest (excerpted)*
- *St. Thomas Aquinas – Summa Theologica (excerpted)*
- *John Finnis – Natural Law and Natural Rights (excerpted)*
- Looking at the origins of modern legal theory in the classical legal tradition. Comparing classical legal tradition to New Natural Law.
- **Central question:** why do we need law?

3. Legal Positivism

- *H.L.A. Hart – Positivism and the Separation of Law and Morals*
- Surveying the history of legal positivism and discussing place of HLA Hart in it. Looking at Hart’s seminal article as an example of tension between natural lawyers and legal positivists.
- **Central question:** is unjust law law?

4. Legal Realism

- *Felix S. Cohen – Transcendental Nonsense and the Functional Approach*
- Evaluating legal realists’ response to legal formalism.
- **Central question:** are legal concepts ‘transcendental nonsense’?

5. Ronald Dworkin’s Interpretivism

- *Ronald Dworkin – Hard Cases*
- Looking at Ronald Dworkin’s interpretivism in opposition to both legal positivism and legal realism.
- **Central question:** is there more to law than rules?

6. Critical Legal Studies

- ‘*The Crits*’ (movie): <https://today.law.harvard.edu/book-review/the-influence-of-critical-legal-studies/>
- *Duncan Kennedy – Form and Substance in Private Law Adjudication*
- Surveying the history of CLS and its main theses.
- **Central question:** is law politics by other means?

7. Beyond Critical legal Studies

- ***Read at least two:**
 - *Richard Delgado – The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*
 - *Carrie J. Menkel-Meadow – Portia in a Different Voice: Speculations on a Women’s Lawyering Process*
 - *David L. Hosking – Critical Disability Theory*
 - *Carl F. Stychin – Towards a Queer Legal Theory (from Law’s Desire: Sexuality and the Limits of Justice)*
- Looking at limitations of CLS using critical race theory / feminist jurisprudence / disability theory / queer theory as examples.
- **Central question:** do we best achieve social change within or outside the legal system?

8. Final “Mini-Conference”

SUGGESTED FINAL PAPER TOPICS

Each topic should be explored with reference to **at least two currents** of Anglo-American legal theory.

- What is law?
- Which function of law is the most important?
- Can – and should – law be separated from morality?
- Are legal concepts meaningless?
- Do judges make law?
- What is the relationship between law and politics?
- Can law ever be truly neutral?
- How can one reconcile any two rival currents of Anglo-American legal theory?
- Is Anglo-American legal theory viable when applied to continental legal systems?
- Why does legal theory matter?