

Philosophy of Law and Public Policy¹

Much contemporary philosophical work in applied ethics is relevant to public policy. For example, philosophical work which considers: the nature of rights, what grounds legal authority, how we should think about medical mandates like vaccinations, what constitutes consent, whether or not governments can regulate harmful speech or the spread of technological misinformation, etc. This course will be structured around two important groups of topics in the philosophy of public policy:

First, what role philosophy should play in the development of policy? On the one hand, you might think philosophers have some responsibility to speak directly to contemporary policy (perhaps working directly alongside policy makers). However, on the other hand, you might think philosophers should do their best to separate themselves from contemporary political and legal debates, focusing on the ethical issues independent of any particular political context (perhaps to preserve research integrity).

The second grouping of research involves approaching foundational commitments in public policy and legal theory from a philosophical perspective, considering the plausibility of certain metaphysical, ethical, and epistemic commitments that particular laws and policies are committed to. As we'll see in this course, adopting this foundational approach can shed novel light on many contemporary debates in applied ethics.

Readings

Week 1: Methodology in Public Policy

Jonathan Wolff "Method in Philosophy and Public Policy"

John Harris & David Lawrence "Ethical Expertise and Public Policy"

Adam Oliver "The Origins of Behavioral Public Policy"

Week 2: Connecting Legal Theory and Public Policy

Michelle Dempsey & Matthew Lister "Applied Political and Legal Philosophy"

Nortbert Paulo excerpts from "The Confluence of Philosophy and Law in Applied Ethics"

Farshad Ghodoosi "The Concept of Public Policy in Law: Revisiting the Role of the Public Policy Doctrine in the Enforcement of Private Legal Arrangements"

Week 3: Defining Rights

Joseph Raz "On the Nature of Rights"

Jeremy Waldron "The Role of Rights in Practical Reasoning: "Rights" Versus "Needs""

Mario Ricciardi's interview with Hillel Steiner: "Liberty, Rights and Justice: A Conversation with Hillel Steiner"

¹ Optional readings in italics

Week 4: Foundations: Nature Law Theory vs. Legal Positivism

Scott Schapiro “The “Hart-Dworkin” Debate”

Ronald Dworkin “Law as Interpretation”

H. L. Hart “Positivism and the Separation of Law and Morals”

Week 5: Human Rights

UN Universal Declaration of Human Rights

James Nickel “Assigning Functions to Human Rights: Methodological Issues in Human Rights Theory”

Joe Hoover, Chapter 1 of “Reconstruction Human Rights: A Pragmatist and Pluralist Inquiry in Global Ethics”

Week 6: Empirical Methodologies

Sanne Taekema “Methodologies of Rule of Law Research: Why Legal Scholarship Needs Empirical Doctrinal Scholarship”

Kevin Tobia “Experimental Jurisprudence”

Susan Orr & James Johnson “Models, Mechanism, Metrics: The Entanglement of Methods of Policy Inquiry with Democratic Possibilities”

Week 7: Metaphysical Commitments: Understanding ‘Causation’ in Law and Policy

Michael Zimmerman “Intervening Agents and Moral Responsibility”

Jane Stapleton “Choosing What We Mean by “Causation” in the Law”

Michael Moore “Causation in the Law”

Week 8: Epistemology & Jurisprudence

Allen Buchanan “Philosophy of Public Policy: A Role for Social Moral Epistemology”

Georgi Gardiner “Legal Epistemology”

Jennifer Lackey “False Confessions and Testimonial Injustice”

Bartosz Brożek Chapter 1 “The Legal Mind: A New Introduction to Legal Epistemology”

Week 9: Health Policy

Paul D. Jorgensen “Pharmaceuticals, Political Money, and Public Policy: A Theoretical and Empirical Agenda”

Matthew McCoy & Ezekiel Emanuel “Public engagement in health policy: Mapping aims and approaches

Julian Savulescu “Good reasons to vaccinate: mandatory or payment for risk?”

Week 10: Nudging

Cass Sunstein “A Very Short Introduction to Nudging”

Shlomo Benartzi “Should Governments Invest More in Nudging?”

Jonathan Gingerich “The Political Morality of Nudges in Healthcare”

Thomas Douglas “*If Nudges Treat Their Targets as Rational Agents, Nonconsensual Neurointerventions Can Too*”

Week 11: Anti-Discrimination Law

Mary Hawesworth “Feminism, Gender Inequality, and Public Policy”

José Jorge Mendoza “Discrimination and the Presumptive Rights of Immigrants”

Adam Hosein “*Freedom, Sex Roles, and Anti-Discrimination Law*”

Austin A. Baker & J. Remy Green “*The Right to Transgender Identity*”

Albert Atkin “*Race, Racism, and Social Policy*”

Week 12: Free Speech

Andrei Marmor “Two Rights of Free Speech”

Scott F. Aikin & John Casey “Free Speech Fallacies as Meta-Argumentative Errors”

Maleiha Malik “*Religious Freedom, Free Speech and Equality: Conflict or Cohesion?*”

Neil Levy “*No-Platforming and Higher-Order Evidence, or Anti-Anti-No-Platforming*”

Week 13: Technology Algorithms & Regulation

Stephanie Wystra “Philosopher’s Corner: What is “Fair”? Algorithms in Criminal Justice”,

Rima Basu “The Specter of Normative Conflict: Does Fairness Require Inaccuracy?”

Hanna Gunn & Michael Lynch “*The Internet and Epistemic Agency*”

Erin Simpson & Adam Conner (with the Center for American Progress) “*How To Regulate Tech: A Technology Policy Framework for Online Services*”