JURISPRUDENCE

Jurisprudence—the study of legal philosophies, theories and perspectives—plays an important role in intellectual life of the Law Center. The word “jurisprudence” derives from jurisprudentia, a Latin term meaning the science or knowledge of law. The Georgetown jurisprudence curriculum encompasses at least three broad areas of study.

One area consists of studies of natural law, positivism, realism, and other centuries-old secular and religious legal philosophies, including the legal philosophies of major world religions and cultures. A second area consists of studies of modern American legal thought, including studies of legal realism, and law and literature, along with recent theories of law emphasizing the interests and perspectives of individual social groups, especially feminist legal theory, critical race theory, and gay legal studies. A third area consists of studies of legal, social, political, ethical, and bioethical concepts pertinent to an understanding of judicial process and public policy. In some instances a single jurisprudence course or seminar may include materials touching on all three areas of study.

Jurisprudence is not a required course at the Law Center. First-year students enrolled in Curriculum A may elect to take one of several jurisprudence courses that may be offered as first year electives. These relate to such topics as comparative legal philosophies, theories of economic reasoning, modern legal thought, and the concept of subordination. Two of the first year courses in Curriculum B have a substantial jurisprudential content: the Legal Justice Seminar and Democracy and Coercion. Democracy and Coercion looks at themes of consensual participation and collective force suggested by constitutional principles and case law. The Legal Justice Seminar provides an overview of major nineteenth and twentieth century American legal theories, highlighting scholarly expositions and judicial application of formalism, realism, legal process theory, law and economics, critical legal studies, critical race theory, feminist legal theory, and law and literature.

Second- or third-year students may elect to take the basic upperclass jurisprudence course typically offered each year under the name Jurisprudence. Although the precise content of the basic jurisprudence course will vary from instructor to instructor and from year to year, the course typically features a survey of natural law, legal positivism, and realism. These three competing accounts of the nature of legal authority, obligation, and reasoning once framed most discussions of jurisprudence in the United States. Georgetown’s basic Jurisprudence courses generally extend beyond the triad of natural law, positivism and realism to include discussion of critical legal studies, feminism, and critical race theory. Some of the material covered in the basic jurisprudence course will be familiar to students who elected Curriculum B in their first-year of law school or who chose to take certain Curriculum A electives in the second semester of their first year. But all upperclass students are encouraged to deepen their understandings of jurisprudential issues through the upperclass Jurisprudence elective or other upperclass courses and seminars.

The Law Center offers a rich array of upperclass jurisprudence courses and seminars in addition to the basic course. Some of these examine the philosophical assumptions of the doctrines of common law, constitutional law, or statutory interpretation. Others trace the intellectual traditions that have helped to shape the law. Still others closely analyze particular law-related concepts and values— including liberty, equality, neutrality, privacy, progress, community, rationality, due process, democracy, human rights, the social contract, and the market. The “isms” critical to understanding of American law, notably, liberalism, conservatism, republicanism, federalism, majoritarianism, and racism, have also earned a central place in jurisprudence courses or seminars. Competing moral and ethical perspectives are examined in a number of jurisprudence courses, as is the relationship between law and morality. Epistemology, metaphysics, and the philosophy of language appear in jurisprudence courses to illuminate questions of knowledge, evidence, personhood, and meaning. Finally, jurisprudence courses tackle controversial public policy concerns, such as the death penalty, affirmative action, and environmental protection. Students who wish to satisfy their upperclass writing requirements in jurisprudence should consider one of many special interest jurisprudence seminars, including Conservative Jurisprudence Seminar, Conservatism in Law and Politics in America, Feminist Jurisprudence Seminar, Jewish Law Seminar, and Law and Philosophy: Hannah Arendt: Evil, Human Rights, and Law.

Search Jurisprudence Courses (http://curriculum.law.georgetown.edu/course-search/?cluster=cluster_18)

LAW 1754 v00 Africana Legal Studies (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201754%20v00)

J.D. Seminar (cross-listed) | 2-3 credit hours
Western law—like Western religion, Western fashion, Western individualism, and Western education—has been imposed on African people enslavement, colonialism, and imperialism. But the history of African people and their thinking on “law” or rules for social living does not begin with these atrocities. This is the central, initial recognition of “Africana Legal Studies.” This seminar focuses on the indigenous African ways of knowing “law” and governance constructs. It will explore the need for application of an Africana Studies lens to legal scholarship, the tenets of Africana Studies, and the contours of Africana Legal Studies. The course will explore a theoretical framework for how to identify and distill precolonial, pre-enslavement (“pre-Maafa”) ways of knowing law. It will include an examination of how Africana legal frameworks have evolved in the face of Western colonialism, European enslavement, and other externally-imposed social structures and how Western law interrupted and interfered with Africana legal frameworks. From participating in this African-centered exploration of “law,” governance, and persistence, students may derive insights and strategies for addressing the issues of today, legal and beyond. The writing requirement offers students an opportunity to write on a topic of their choice pertaining to Africana legal frameworks.

Learning Objectives:

Students successfully completing this course will be able to (1) identify the Africana Studies conceptual framework, (2) de-center the West in their thinking about “law” and indigenous ways of knowing governance, (3) identify methods for researching and identifying Africana “legal” frameworks, (4) through class readings and discussions, analyze avenues of inquiry surrounding the relationship between Africana “legal” frameworks and other frameworks of governance, and (5) discuss and consider ways that American jurisprudence and statutes interfere(d) and interact(ed) with Africana governance protocols. The primary course evaluation is by the traditional two-draft seminar paper.

Note: This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2 credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.
LAW 1724 v00 Conservative Legal and Political Thought Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201724%20v00)
J.D. Seminar (cross-listed) | 3 credit hours
The course will introduce students to the writings of the main conservative legal theorists, their contribution to modern legal theory and participation in modern legal theoretical debates. Students will read about the internal debates within the legal conservative movement by focusing on the split between libertarians and traditionalists within the movement including debates regarding “originalism” and “textualism” as conservative interpretive approaches to the law.

The course will be divided into three sections: The first section of the course will address the question: Who is a conservative? The second: Who is a legal conservative? And the third: What is a conservative method of legal interpretation?

LAW 1756 v00 Criminal Law Theory in Context (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201756%20v00)
J.D. Seminar (cross-listed) | 2-3 credit hours
This seminar will introduce students to contemporary theoretical thinking about substantive criminal law. We will explore some of the most pressing problems in criminal jurisprudence, as well as some perennial ones, through the lens of the tension between morality and context.

Philosophers of the criminal law have traditionally turned to moral reasoning when trying to justify or critique penal laws. Morality purports to dictate how individuals ought to act toward one another as a matter of universal truth, and therefore views social context as detrimental to analytical clarity. Sociolegal and critical scholars, on the other hand, highlight the relevance of contingent factors, such as material conditions, historical narratives, and political power relations, for proper understanding of the criminal law. However, they generally stop short of offering compelling normative theories to guide our way forward. The seminar will examine the prospects and perils of both views, explore whether they can be reconciled, and consider prominent alternative frameworks that are gaining traction in recent scholarship.

Students will become familiar with the central philosophical puzzles underlying the criminal law as well as with cutting edge theoretical approaches for tackling them. We will pay attention to both general issues, like criminalization (what to impose liability for), defenses (when to relieve of liability), and punishment (what form liability ought to take), and pertinent issues at this historical moment, like hate crimes, gun violence, and prison abolition.

There are no prerequisites. For JD students, prior or concurrent enrollment in Criminal Law is recommended, though not required.

Recommended: For JD students, prior or concurrent enrollment in Criminal Law is recommended, though not required.

Note: The 3 credit section of this seminar (LAW-J-1756-09) is restricted to J.D. students only.

This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2 credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.
This seminar will provide students with an opportunity to take a deep dive into different strands of feminist legal theory and examine closely emerging discourses in more modern feminism(s). During the first few weeks, we will read several classics in feminist thought, analyzing their basic pre-suppositions about sex, sexuality, gender, power relations, and the role of law in constructing them. From the beginning, we will pay particular attention to the ways in which feminist theory and activism within the legal field were often informed and limited by the specific class and race positions of their participants.

The emphasis of the seminar is on theory because theory is the lens through which we view and therefore act in the world. However, students will have an opportunity to write their papers on topics of their own choosing, which may involve a specific case or controversy related to feminist causes/ideas/themes within the legal field, or even outside. We will also be discussing specific feminist controversies throughout the seminar, after we have covered some of the different strands of feminist legal thought.

The seminar will be graded on the basis of class participation and a final paper. Class participation has three components. It includes participation in classroom discussions, a 500 word post engaging with one of the week’s readings (each student expected to post once during the semester), and a concrete contribution to the seminar’s Annotated Lexicon and Bibliography on #MeToo. The Annotated Lexicon and Bibliography will be a collective, collaborative enterprise by seminar participants. It will reflect our collective effort to reflect on and understand the relationship between older strands of feminism and the emerging feminist discourses after the #MeToo movement.

The final paper will either be a 4000 word paper for the 2 credit option or a final paper that meets the requirements of the JD upper class legal writing requirement. The Law Center’s policy for such papers requires the submission of an outline, first draft and final paper. Both the first draft and final paper must be at least 6,000 words long (approximately 25 double-space pages) excluding footnotes. Students will write on topics of their own choosing, after discussing their topics with me. The final paper may be an extended discussion of materials introduced during the course of the semester or it may be a researched project.

A background in feminist theory may be helpful but is not a requirement, as we will cover some classic readings and build from there.

**Note:** This seminar requires a paper. J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the Upperclass Legal Writing Requirement. The paper requirements of the 2 credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.
This seminar compares Jewish and American non-religious law. It examines the concepts, structure, and methodology underlying the Jewish legal system, as found in the Bible and as developed by Jewish courts, legislation, and legal writers down to the present. Particular attention is paid to sources of American legal concepts that may be found in the Jewish legal system; to the analogies between the two systems as they are today; and to the insight which Jewish law provides on contemporary legal issues, such as evidence, privacy, abortion, contracts, property, torts, and legal ethics. Primary source materials in translation are used, as are secondary materials prepared by noted authorities.

This interdisciplinary seminar will examine theories of justice and the relationship between law and morality in light of religious and theological visions of the good life and accounts of order. Materials and discussions will probe questions such as: What are the moral values underlying the law? How does the law achieve justice or fall short of this goal? How can moral judgments be brought to bear, if at all, in modern, secular legal institutions and in the formation of public policies?

Throughout the class we will have opportunities to consider how morality and ideas of justice shape, and are shaped by, contemporary legal problems such as: the legal regulation of sexual activity and marriage, controversies regarding federally mandated health insurance, abortion, euthanasia and physician assisted suicide, immigration, regulation of financial institutions, and/or other issues which emerge as topics of particular student interest.

Particular attention will be paid to understanding methods for dialogue across differing thought systems and disciplines and to developing the skills for communication across claims that would otherwise tend to generate religious and political polarization.

This seminar requires a series of short reflection and reaction papers which aim to facilitate thoughtful and active student participation in seminar discussions throughout the course. This course does not satisfy the JD Upper Level Writing Requirement.

### Course Goals/Student Learning Outcomes

Students should become familiar with historical and modern debates about legal philosophy. This is a highly interdisciplinary course, introducing students to concepts and skills from analytic philosophy, linguistics, and empirical social science (e.g. competence in reading and evaluating empirical work related to legal interpretation).

**Note:** J.D. students must register for the 3 credit section of the seminar if they wish to write a paper fulfilling the J.D. Upperclass Legal Writing Requirement. The paper requirements of the two-credit section will not fulfill the J.D. Upperclass Legal Writing Requirement.
Full-time and Visiting Faculty

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