

HUMS 092/RLST 012 Divine Law in Historical Perspective
Professor Christine Hayes (christine.hayes@yale.edu), HQ 421
Spring Semester, T Th 9:00-10:15

Course Description

What is divine law? The commandments issued by and expressing the will of a personal deity? An impersonal natural order accessible to human reason? This course explores the radically divergent notions of “divine law” that emerged from Greco-Roman antiquity on the one hand and biblical Israel on the other, the cognitive dissonance that their historical encounter engendered, and the attempts by later Jewish, Christian, and secular thinkers (in late antiquity, medieval, and modern times) to negotiate their competing claims. Topics include: divergent conceptions of the attributes and character of divine law vs. human law; the basis of divine law’s authority (divine reason or divine will) and claim to our fidelity; law as a vehicle for the divine-human relationship vs. law as a debasement of the divine-human relationship; law as a concession to human weakness or a realization of human potential; the impact of historically theological debates over law’s spirit vs. law’s letter on contemporary, secular legal arguments concerning the morality of law and the source of its authority.

NOTE: This is NOT a course on church-state relations.

Office Hours: Tuesday 2-3:30 and by appointment. HQ 421.

Course requirements

1. The course is a reading and discussion seminar. All students are expected to do the assigned reading each week and to participate fully in discussion.
2. Students must turn in a total of 3 “reading responses” over the course of the semester. A reading response is a brief (approx. 2 double-space pages) *reaction* to items in the assigned reading, that raises issues and questions for discussion.
3. A final paper of 10-12 pages is due by e-mail (as a Word document) to the instructor by 11:59 pm, Thursday, Dec 16th. The paper may develop a theme or question raised in an earlier reading response or tackle a new topic of interest.

Grade calculation: Reading Responses 30%; Class discussion 20%; Final paper 50%

Readings:

1. All readings are available through the course website or as a course packet if requested.
2. Each week a **study guide** will be distributed indicating the readings for the week and providing study questions. Primary sources will often be distributed as well. Reading response papers may (but do not have to) directly address any study question or questions on the study guide.

Course Topics and Readings:

I. Introduction AND Greco-Roman Discourses of Law (Divine and Human) – 3 meetings (Sept 2, 7, 9).

Readings:

1. **Sabine**, “A History of Political Theory” in J. C. Smith and David N. Weisstub, *The Western Idea of Law*, pp. 345-351
2. **Martens**, John W., “Higher Law: The Law of Nature” and “Higher Law: The Living Law,” chapters 2 and 3 in *One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law*. Studies in Philo of Alexandria and Mediterranean Antiquity, edited by Robert Berchman and Francesca Calabi, vol. 2 (Boston: Brill Academic, 2003) pp. 13-66.

Primary Sources (distributed):

- ***Plato**, selections from *The Republic*, *Laws*, and the *Statesman*.
- ***Aristotle**, selections from the *Nicomachean Ethics*
- ***Cicero**, selections from “De Legibus” (on the Stoics)

II. Biblical Discourses of Divine Law – 3 meetings (Sept 14, 16) -- students observing Yom Kippur will be accommodated on a different date

Readings:

1. **LeFebvre**, Michael, *Collections, Codes and Torah: The Recharacterization of Israel's Written Law* (New York: T & T Clark, 2006), pp. 1-30.
2. **Hayes**, Christine, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015), chapter 1.

Primary Sources

- *Selections from the **Hebrew Bible/Old Testament**

III. Cognitive Dissonance in Second Temple and Hellenistic Judaism – 2 meetings (Sept 21, 23) -- students observing Sukkot will be accommodated on a different date

Readings:

1. **Najman**, Hindy, “A Written Copy of the Law of Nature? An Unthinkable Paradox?” in *Studia Philonica Annual* 15 (2003).
2. **Reinhartz**, Adele, “The Meaning of “Nomos” in Philo’s *Exposition of the Law*: in *Studies in Religion* 15 (1986) 3:337-345.

3. **Schwartz**, Daniel, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law” in *The Dead Sea Scrolls: Forty Years of Research*, ed. Dimant and Rappaport, (Leiden: Brill, 1992), pp. 229-240.

Primary Sources:

*Selections from *The Letter of Aristeas*

*Selections from *Philo*

*Selections from *4 Maccabees*

*Selections from the **Dead Sea Scrolls**

IV. Law and Spirit: New Testament and the Writings of Paul – 2 meetings (Sept 28, 30)

Readings:

1. **Randall**, “Hellenistic Ways of Deliverance and the Making of the Christian Synthesis” in Weisstub, pp. 368-373

2. **Danielou**, “Christianity as a Jewish Sect” in Weisstub, pp. 373-76

3. **Sanders**, E. P., *Paul*. Pp. 1-7 and 84-100.

Primary Sources

*Selections from the gospel of **Mark**

*Selections from the Letters of Paul (**Romans** and **Galatians**)

V. The Rabbinic Construction of Divine Law – 2 meetings (Oct 5, 7, 12)

Readings:

1. **Hayes**, Christine, “From Second Temple Judaism to Rabbinic Judaism” in *The Emergence of Judaism*, pp. 57-70

2. **Seltzer**, Robert, “Main Works of Rabbinic Literature” in *Jewish People, Jewish Thought*, pp. 260-274

3. **Halbertal**, Moshe, *People of the Book*, pp. 16-50.

4. **Hidary**, Richard, “Why are there lawyers in Heaven? Rabbinic Court Procedure in Halakha and Aggada” in *Rabbis as Greco-Roman Rhetors: Oratory and Sophistic Education in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), pp. 240-263.

Primary Sources (distributed):

Selections from **Talmud** and **Midrash**

VI. Augustine: Law’s Spirit, Law’s Letter – 2 meetings (Oct 14, 19)

Readings:

1. **Goodman**, “The Fathers of the Church,” in *The Origins of the Western legal tradition: from Thales to the Tudors* pp. 93-111

Primary Sources:

***Augustine**, Selections from “The Spirit and the Letter,” in *Later Writings*.

VII. Medieval Jewish Views of the Law – 2 meetings (Oct 26, 28)

Primary Sources:

1. **Maimonides**, *Guide of the Perplexed*, II:15, 16, 25 and III:27, 28, 31, 35, 51, 54

VIII. Medieval Christian Views of Law – 2 meetings (Nov 2, 4)

Background:

1. Harold J. **Berman**, “The Interactions of Law and Religion” in **Smith and Weisstub** pp 387-391.

Primary Sources:

***Aquinas**, Selections from *Treatise on Law*.

IX. Modern Protestant Views of Natural & Human Law – 3 meetings (Nov 9, 11, 16)

Readings:

1. **Witte**, John, Jr. “Introduction,” *Law and Protestantism: The Legal Teachings of the Lutheran Reformation*, pp. 1-30.

2. **Berman**, Harold, “An Ecumenical Christian Jurisprudence” in *The Teachings of Modern Christianity* ed. John Witte, Jr. and Frank Alexander, vol I, pp. 752-764

Primary Sources:

* Martin **Luther**, Selections from “On the Bondage of the Will,” in *Luther and Erasmus on Free Will and Salvation*

* **Niebuhr**, Reinhold, Selected writings in *The Teachings of Modern Christianity*, ed. John Witte, Jr. and Frank Alexander, vol 2, pp. 343-368

X. Modern Jewish views of law and revelation – 3 meetings (Nov 18, 30)

Readings:

1. **Eisen**, Arnold. *Rethinking Modern Judaism: Ritual, Commandment, Community*. Chapter 7.

2. **Falk**, Ze'ev, "Spirituality and Jewish law," in *Religion and Law: Biblical-Judaic and Islamic Perspectives*, ed. Firmage, Weiss and Welch, pp. 127-138.

Primary Sources:

*Moses **Mendelssohn**, *Jerusalem*, Selections from Part II

*Joseph **Soloveitchik**, Selections from *Halakhic Man*

*Yeshayahu **Leibowitz**, "Religious Praxis: The Meaning of Halakhah" in *Judaism, Human Values and the Jewish State* pp. 3-29.

XI. Anglo-American Legal Theory: Legal Positivism (Hart) vs. Natural Law (Dworkin, Fuller) – 2 meetings (Dec 2, 7, 9)

Readings:

1. **Hart**, H. L. A., *The Concept of Law*, 1-17, 79-99

2. **Hart**, H. L. A., "Positivism and the Separation of Law and Morals" in 71 *Harvard Law Review* (1957) number 4

3. **Dworkin**, Ronald. *Law's Empire*, pp. 1-73, chapter 7

4. **Fuller**, Lon L. "Positivism and Fidelity to Law – A Reply to Professor Hart" in 71 *Harvard Law Review* 650 (1957)