

Faculty of Law – USP - Department of Philosophy and Theory of Law
DFD5948 – Contemporary Themes and Readings in Legal Theory V
Opening hours Friday from 8.30 am to 12.30 pm.
Prof. Ronaldo Porto Macedo Jr.

Seminar Calendar - 1st. semester 2024

Texts available at: <https://edisciplinas.usp.br/course/view.php?id=96102>
Password: [wittgenstein2022](#)

March

1. 03/08 – Start of classes
2. 15/03 (BH Postema Event on March 11th to 13th) There will be classes
3. 03/23
03/29 Holy Week

April

1. 05/04
2. 12/04
3. 04/19
4. 04/26 Class with Scott Hershovitz

May

5. 03/05 (Munster 02 to 03 May 2024) **There will be no classes**
6. 10/05
7. 17/05
8. 05/24 Class with Scott Hershovitz
30-31/5 and 01/06 Corpus Christi

June

9. 07/06 (SELA 2024 Friday morning, June 7, and run through lunch on Sunday, June 9) – **There will be no classes**
10. 11. 14/06
11. 12. 06/22
12. 06/29 **No class**

Seminars and classes

1. Course presentation
2. Eliminativism in Legal Theory I 1st Part – Scott Hershovitz and the end of Legal Theory (Pages 1161- 1195)
Required Readings Part I

- *HERSHOVITZ, Scott, 'The End of Jurisprudence' (2015) 124 Yale Law Journal 1160¹. (pages 1161-1178)²

Additional Readings

- MURPHY, Liam, 'Better to see law this way' (2008) 83 NYU L Rev 1088 (2008).
- NYE, Hillary, 'The One-System View and Dworkin's Anti-Archimedean Eliminativism' (2021) Law and Philosophy, DOI: 10.1007/s10982-020-09401-7.
- NYE, Hillary, 'Does Law 'Exist'? Eliminativism in Legal Philosophy' (2022) Washington University Jurisprudence Review Vol 15:1.
- Green, Michael S., "The New Eliminativism" (2016). Popular Media. 397. https://scholarship.law.wm.edu/popular_media/397 Reviewing Scott Hershovitz's The End of Jurisprudence (124 Yale L.J. 1160 (2015)).
- <https://plato.stanford.edu/Entries/materialism-eliminative/>

3. 2nd Part – Scott Hershovitz and the end of Legal Theory II

Required Readings Part II³

- HERSHOVITZ, Scott, 'The End of Jurisprudence' (2015) 124 Yale Law Journal 1160. (pages 1179-1195)

Additional Readings

- MURPHY, Liam, 'Better to see law this way' (2008) 83 NYU L Rev 1088 (2008).
- NYE, Hillary, 'The One-System View and Dworkin's Anti-Archimedean Eliminativism' (2021) Law and Philosophy, DOI: 10.1007/s10982-020-09401-7.
- Green, Michael S., "The New Eliminativism" (2016). Popular Media. 397. https://scholarship.law.wm.edu/popular_media/397

¹ The End of Jurisprudence abstract. For more than forty years, jurisprudence has been dominated by the Hart- Dworkin debate. The debate starts from the premise that our legal practices generate rights and obligations that are distinctively legal, and the question at issue is how the content of these rights and obligations is determined. Positivists say that their content is determined ultimately or exclusively by social facts. Anti-positivists say that moral facts must play a part in determining their content. In this Essay, I argue that the debate rests on a mistake. Our legal practices do not generate rights and obligations that are distinctively legal. At best, they generate moral rights and obligations, some of which we label legal. I defend this view by drawing analogies with other normative practices, like making promises, posting rules, and playing games. And I try to explain why it looks like legal practices generate distinctively legal rights and obligations even though they do not. I conclude with some thoughts about the questions that jurisprudence should pursue in the wake of the Hart-Dworkin debate.

² essay contents

introduction 1162

i. the fly-bottle 1163

ii. the troubles 1167

iii. the way out 1173

iv. house rules 1174

³ v. promises 1179

vi. playing games 1181

vii. can we leave the fly-bottle? 1186

viii. should we leave the fly-bottle? 1193

conclusion: the end of jurisprudence 1195

Reviewing Scott Hershovitz's The End of Jurisprudence (124 Yale L.J. 1160 (2015)).

Law as a Moral Idea – Scott Hershovitz, Harvard University Press (December 5, 2023)

4. Required Readings

- introduction: That Is Not a Rule 1 one: A Moral Practice 16

5. Required Readings

- two: A Tale of Two Textualists 44

6. Required Readings

- three: Not a Set of Norms 67

7. Required Readings

- four: An Immoral Practice? 94 + five: Stop! In the Name of Law 112

8. **Scott Hershovitz Class**

9. Required Readings

- six: Roy Moore and the Rule of Law 134 + seven: Lawyers and Morality 150

10. Required Readings

- conclusion: Law Is a Moral Practice 168 Appendix: Frequently Asked Questions 179

11. **Scott Hershovitz Class**

12. Required Readings

- Eliminativism in Legal Theory II 1st Part – Hillary Nye and the Eliminativist (Lecture with Hilary Nye??) *NYE, Hillary, ‘Does Law ‘Exist’? Eliminativism in Legal Philosophy” (2022) Washington University Jurisprudence Review Vol 15:1.

Additional Readings

- KORNHAUSER, Lewis, ‘Doing Without the Concept of Law’ (2015) NYU School of Law Public Law & Legal Theory Research Paper Series Working Paper No. 15-33.
- MURPHY, Liam. What Makes Law – An Introduction to the Philosophy of Law (Cambridge University Press 2014). Chapter 06.
- Nye, H. The One-System View and Dworkin’s Anti-Archimedean Eliminativism. Law and Philos 40, 247–276 (2021). <https://doi.org/10.1007/s10982-020-09401-7>

OBJECTIVES OF THE DISCIPLINE:

The subject aims to develop students' ability to conduct a rigorous reading of complex texts while simultaneously stimulating reflection and the formation of critical reasoning based on the material read. Furthermore, it aims to provide theoretical depth in themes of Legal Theory beyond the legal positivism generally covered in undergraduate courses.

There will be weekly seminars, to be held in groups or pairs, which will consist of preparing an oral presentation and written handout of the text read. Thus, the discipline encourages students to organize themselves to carry out group work and develop oral presentation skills using visual resources such as PowerPoint and others.

The course also aims to increase students' ability to participate in plenary discussions (with colleagues and the teacher) by encouraging serious debate based on texts. The course also aims to familiarize students with the current controversy surrounding the rationality or irrationality of legal decisions and moral and political philosophy, making particular reference to the use of law as a paradigm of practical rationality by rules and taking as a reference the work of Scott Hershovitz and eliminativism, accompanied by small introductory classes.

COMMENTS:

- 1) This course presupposes a good command of the English language, as its primary bibliography does not include translation.
- 2) Students must be available for an average weekly reading load of around 60 pages of theoretical texts of reasonable complexity and difficulty. Rigour and care are required when reading texts.
- 3) Reading Hart's Concept of Law and the text "Law as a system of rules" in Taking Rights Seriously by Ronald Dworkin is strongly recommended.
- 4) The course will be organized in the form of a seminar where effective participation from students will be required in all classes.
- 5) The course's final assessment will be done through individual work.
- 6) For guidance on how to present seminars on structural text reading techniques, it is recommended to read the following text: "The structural reading method (Texts in Debate)" by Ronaldo Porto Macedo Jr, Ronaldo Porto Macedo Jr, chapter I by Macedo Jr, Ronaldo Porto (org) Filosofia Política, Atlas, 2008, also in Cadernos Direito GV nº 16 - mar/2007, available for download at <http://www.direitogv.com.br/interna.aspx?PagId=HTKCNKWI&IDCategory=4&IDSubCategory=84>
- 7) It is recommended that you read the book MACEDO JR by Ronaldo Porto. 2013. From Chess to Courtesy: Dworkin and contemporary legal theory. São Paulo: Saraiva.
- 8) It is recommended to read Ronald Dworkin's articles, Hard Cases and Model of Rules I, republished in Taking Rights Seriously.

RULES AND DEADLINES FOR CARRYING OUT MANDATORY ACTIVITIES:

Any doubts regarding delivery deadlines, registration issues, seminar dates and groups, and any other type that does not involve the course's syllabus must be addressed exclusively by the monitors.

1) Handout

The handout must be photocopied and delivered to the postgraduate monitor and colleagues on the seminar day.

The handout file must be sent to the postgraduate monitor's email by 8 am on the day before the seminar presentation.

The file sent must be called "handout_seminárioXX" (e.g.: handout_seminário02). This should also be the subject of the email. There should be no period in the file name (e.g. josédasilva.fichamento03).

The students' names must appear in the text sent, indicating the seminar number and the bibliographical indication of the text from which the handout was prepared.

2) Presentation

- The presentation should be around 12 to 14 minutes long.
- "Sew" the mental sheet well: introduction I, development I, and conclusion.
- Use hooks at the beginning and end of the presentation (avoid: "That's basically what I had to say").
- Use a "cheat sheet" or script with the sequence of the main items. The text must be presented in its "whole". That is, its structure must be apparent.
- "Readings" should not be done in presentations. The presentation should be something other than a handout reading.
- The use of PowerPoint is recommended but optional. Make slides concise, readable and, above all, visual: avoid information overload. Usually, a 12-minute presentation should not (in theory) involve several slides greater than
 - Remember that this is not synonymous with Teleprompter during the PowerPoint presentation.
- Use a pointer and don't face the screen: look at the listeners.
- Do a timed rehearsal (during the presentation, "hide" the clock).
- Before starting, check the area well and eliminate any "noises".
- Take care of your speech (voice, intonation and pronunciation) and body expression (facial expression, gestures and posture).
- Don't be disturbed by noise. Keep calm and try to interact with listeners.
- "Escape" from improvisation.
- Remember that this is a presentation for an audience that has already read the text.
- Leave criticisms and observations external to the text for the debate, not for the presentation. After the presentation, the seminar starts.
- Note: For seminar presentations, all group members must be prepared to give the complete presentation; that is, if any member(s) is not present, the other(s) must replace it(s) unconditionally.

Useful readings:

- Green, Michael S., "The New Eliminativism" (2016). Popular Media. 397.https://scholarship.law.wm.edu/popular_media/397

Primary and reference bibliography:

1. André Coelho, Saulo de Matos, Thomas Bustamante (Organizadores), Interpretando o império do direito Ensaios críticos e analíticos, Arraes, 2018
2. ANSCOMBE, Elizabeth. Modern Moral Theory, in Philosophy 33, n. 124, January 1958. reprinted in Ethics, Religion and Politics (The Collected Philosophical Papers of G. E. M. Anscombe, Volume 3), Minneapolis, MN: University of Minnesota Press, 1981. pp. 26–42.
3. BURLEY, Justine (Ed.). Dworkin and his critics: with replies by Dworkin. Malden: Blackwell, 2005.
4. Cohen, Marshall, Ronald Dworkin and Contemporary Jurisprudence, Duckworth, 1994.
5. DWORKIN, Ronald Interpretation, Morality and Truth (pdf) (36 p.)
6. DWORKIN, Ronald Justice in Robes, Harvard University Press, 2006, Hart's Post script and the character of political philosophy, (tb Oxford Journal of legal studies, heionline).

7. DWORKIN, Ronald Objectivity and truth: You'd better believe it, *Philosophy and Public Affairs*; Spring 1996; 25, 2; Research Library Core.
8. DWORKIN, Ronald Uma Questão de Princípio. São Paulo: Martins Fontes, 2001.
9. Dworkin, Ronald. (1977) *Taking Rights seriously*. Cambridge (MA): Harvard University Press. (existe tradução para o Português, Martins Fontes, 2006)
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11. DWORKIN, Ronald. 1996. Objectivity and Truth: You'd better believe it, *Philosophy and Public Affairs*, vol. 25, n. 2., p. 87-139.
12. DWORKIN, Ronald. 2001a. "Do liberal values conflict?". In: DWORKIN, Ronald; LILLA, Mark; SILVERS, Robert. *The Legacy of Isaiah Berlin*. New York: The New York Review of Books, pp. 91-104.
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16. DWORKIN, Ronald; LILLA, Mark; SILVERS, Robert (eds.). 2001a. *The Legacy of Isaiah Berlin*. New York: The New York Review of Books.
17. Fish, Stanley. "Working on the chain gang: interpretation in law and literature" in Aarnio, A.; MacCormick, N (editors). *Legal Reasoning Volume II*, New York: New York University Press, 1992.
18. Guest, Stephen, Ronald Dworkin (1991), Stanford University Press, California. (existe tradução para o Português pela Elsevier, 2010)
19. Hart, H. L. (1997) *The concept of law*. 2nd ed. Oxford: Oxford Univ. Press. (existe tradução para o Português da Editora Calouste Gulbenkian)
20. Hart, H. L.. (1983) *Essays in jurisprudence and philosophy*. Oxford [Oxfordshire]: Clarendon Press, Oxford University Press.
21. HERSHOVITZ, Scott (Ed.). *Exploring "Law's empire": the jurisprudence of Ronald Dworkin*. New York: Oxford University Press, 2006.
22. Lacey, Nicola (2006). *A Life of H. L. A. Hart: The Nightmare and the Noble Dream*, Oxford University Press, USA.
23. MacCormick, Neil (1981) *H.L.A.Hart*. California: Stanford University Press.
24. MacCormick, Neil . *Institutions of Law* (Oxford: OUP, 2007)
25. MACEDO JR, Ronaldo Porto. 2010. Como levar Ronald Dworkin a sério ou como fotografar um porco-espinho em movimento. In: GUEST, Stephen. *Ronald Dworkin*. Rio de Janeiro: Elsevier, p. VII-XVIII.
26. MACEDO JR, Ronaldo Porto. 2013. *Do Xadrez à Cortesia: Dworkin e a teoria do direito contemporânea*. São Paulo: Saraiva.
27. MACEDO JUNIOR, Ronaldo Porto. Como dar seminários sobre textos conceitualmente complexos. In: FEFERBAUM Marina; GHIRARDI, José Garcez (Orgs.). *Ensino do direito para um mundo em transformação* (São Paulo: Fundação Getulio Vargas, 2012ª) pp. 95-146. (Coleção Acadêmica Livre).
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- do_direito_para_um_mundo_em_transformacao.pdf>. Acesso em: 16 jul. 2013.
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 29. Michelon Junior, Cláudio Fortunato (2004), Aceitação e objetividade: uma comparação entre as teses de Hart e do positivismo precedente sobre a linguagem e o conhecimento do direito, São Paulo: Revista dos Tribunais.
 30. Morrison, Wayne, Filosofia do Direito. Dos gregos ao pós-modernismo, Martins Fontes, São Paulo, 2006.
 31. Patterson, Dennis, Law and Truth, Oxford University Press, 1996.
 32. POSTEMA, G.J.A Treatise of Legal Philosophy And General Jurisprudence, SPRINGER, 2011, Páginas: 643.
 33. Raz, Joseph, (1986) The morality of freedom, Oxford: Clarendon.
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 35. Raz, Joseph, (1990) Practical reason and norms, Oxford University.
 36. Simmonds, N. E. Central Issues in Jurisprudence. 2ª ed., Londres: Sweet and Maxwell, 2002.
 37. Will Waluchow and Stefan Sciaraffa, The Legacy of Ronald Dworkin, Oxford, 2016