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TEACHING JURISPRUDENCE IN A CATHOLIC LAW SCHOOL

JEFFREY A. POJANOWSKI[†]

Jurisprudence plays an important role in John Breen and Lee Strang's history of Catholic legal education and in their prescription for its future. Legal philosophy in general, and the natural law tradition in particular, provide a central justification for the existence of distinctive Catholic law schools. They are right to argue so. As part of the broader Catholic intellectual tradition, which emphasizes the unity of knowledge and the eternal significance of mundane practice, natural law philosophy rejects mere vocationalism. It can provide the animating form and direction of a legal education that is more than one damn thing after another in preparation for the bar.

Of course, many law schools seek to provide more than that: they want students to learn how to “think like a lawyer” or “effect positive change in the world.” In modern or postmodern hands, however, those aims come with related dangers. Technique without telos raises the risk of educating an army of Thrasymachuses.¹ A passion for justice, when unmoored from a stable moral framework, engenders an emotionalism that can lead to ideological excess or the cynicism that flows from its disappointment.² In either direction, crude instrumentalism lurks in the wings. Natural law's moral realism—confident in the firm architecture of the normative universe but humble about

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¹ See PLATO, THE REPUBLIC 338c (Allan Bloom trans., 3d ed. 2016) (“‘Now listen,’ [Thrasymachus] said. ‘I say that the just is nothing other than the advantage of the stronger.’”).

² Cf. Pierre Schlag, *Normative and Nowhere to Go*, 43 STAN. L. REV. 167, 167–68 (1990) (“I became a legal academic instead. The possibilities for normative speculation seemed endless. I would write for the Warren Court . . . forever . . . and no one would dare call me on it. Yes. And I would write the great American utopian chain novel—each chapter more morally appealing than the last. I would argue that in the future, we should all be *really* moral . . . for even more than fifteen minutes.” (alterations in original) (footnotes omitted)).

the limits of reason on the details—seeks to place law on firm ground while orienting and dignifying the craft and technique necessary for completing law’s many contingencies.

Sounds good on paper—a promissory note for a different, better, kind of legal education. But can we deliver? As Breen and Strang demonstrate in their book, a number of talented legal academics strove to reform Catholic legal education in this image in the middle of the twentieth century, but failed.³ The challenges were legion: a dearth of hireable faculty who could convey this vision, an apathy at the law faculty and university levels, and the dissipation and fragmentation of the neo-Thomist intellectual movement that inspired the reform in the first place.

Things are no easier today. The pool of candidates to staff such a law school is even smaller, what with feeble catechesis, the waning institutional strength of the Church, and the increased secularization of American society and education. With most Catholic law schools following the ambient culture in the past fifty years, most faculty would be downright hostile, rather than merely indifferent, to reorientation around natural law jurisprudence and the broader Catholic intellectual tradition. And while there are green shoots in Catholic philosophy across the country, we are enjoying nothing like the revival in Catholic learning the post–World War II period witnessed. Compared to our predecessors who failed, we are less knowledgeable of, or less confident in, the promises of the Catholic intellectual tradition in general and natural law jurisprudence in particular.

All this and more applies to many students at Catholic law schools, who may be no better catechized or no more receptive to the Catholic intellectual tradition than the faculty and administration at would-be reforming schools. Just as in the earlier eras of Catholic legal education, most law students enter our doors for the keys to a professional career or to advance political causes they hold dear. Some enjoy a Catholic ambiance that has a similar vibe to that of their high school or college, but far fewer than was the case at the time of Brendan Brown’s failed revolution. More will be indifferent or even hostile, given the extent that rankings and financial aid packages (rationally) drive students’ selection of law schools.

³ For examples of early reform manifestos, see Brendan F. Brown, *Jurisprudential Aims of Church Law Schools in the United States, a Survey*, 13 NOTRE DAME LAW. 163 (1938); James Thomas Connor, *Some Catholic Law School Objectives*, 36 CATH. EDUC. REV. 161 (1938).

It's not a pretty picture, but as Christians, Catholics can choose no attitude besides hope. Grace, moreover, works upon nature, and we have no choice but to hope while working smart and hard in the fields we are given. Catholic legal education may be at mustard seed status, but we all know what Christ said about that.⁴ What kind of hope is there for natural law jurisprudence in a scattering time?⁵

I hardly have the answers, but I can offer a small lesson from my experience teaching jurisprudence at Notre Dame, one of the few remaining law schools in the nation that still requires the course.⁶ As a law school where the Catholic character remains comparatively strong among the faculty and the student body, Notre Dame likely offers the best-case scenario for what the beginning of reform in our era can look like. The challenges remain substantial, but nine years of teaching the course sheds light on what can make such a course more successful, or at least less of a failure.

Unsurprisingly, many of the students in my jurisprudence class are enrolled because they are interested in graduating, not because they are interested in the moral foundations of our legal system. A handful indeed have such interest, and a number remain open to the possibility that the class is not in fact a waste of their time. A jurisprudence teacher in such a required class therefore has the task of (a) teaching the committed, (b) engaging the persuadable, and (c) changing the minds of some of the resentful. The task is even trickier when the teacher is, like me, a poorly catechized, sloppily self-taught Catholic revert with a formal Thomistic education consisting of one day's worth of discussing the *Summa* in a college Great Books course.

I did not appreciate these facts when I crafted the first instantiation of the course. Inspired by the sweeping ambition of my college's Great Books sequence⁷ and the theoretical

⁴ See *Matthew* 17:20 (New American).

⁵ I've adopted this phrase from the title of Eric Miller's book, *HOPE IN A SCATTERING TIME: A LIFE OF CHRISTOPHER LASCH* (2010).

⁶ As I am amply informed by my friends abroad, required jurisprudence courses are far more frequent elsewhere in the common-law world.

⁷ See *Humanities Sequence*, PRINCETON U. HUMANISTIC STUD., <https://humstudies.princeton.edu/humanities-sequence/> (last visited June 20, 2020) [<https://perma.cc/P4AM-CGGH>].

sophistication of my law school jurisprudence course,⁸ I assembled a magisterial two-volume packet that took the students from the Ancient Greeks to Critical Legal Studies in order. The course was an utter failure. A wag commented in the course evaluation that the class felt like being enrolled “in the History of Magic at Hogwarts,” and in retrospect, that was not far from the mark. For the student interested in such a story, the class could have been a success, though I would have had to have done a better job connecting themes across the march of history. For most, however, the course was a succession of thinkers and arguments often impenetrable, abstract, and ordered most obviously by historical sequence, but with little other thematic sense. Whatever the value in the principle, in practice it was unbearable for the resentful and baffling to many of those open to persuasion.

Nor would a more didactic course have been more successful. I could imagine a course that leads with a close reading of Thomas’s *Treatise on Law*, parses the work of the neo-Scholastics, and perhaps teaches modern alternatives with an eye toward debunking them. Even if this were the correct way to teach the tradition—and I am not convinced it is—such a course *could* engage a group of students looking to ground the law in their deeply held faith, *if* taught by a dynamic teacher deeply learned in the tradition. But today, many students would regard such a course as arid, alien catechesis at best, or irrelevant or annoying proselytization at worst.

On the other hand, one cannot play it safe by retreating to a jurisprudence class more traditional in modern lights. Even if one is satisfied with the analytic canon of Hart, Fuller, Dworkin, and Raz (with a sprinkling of John Finnis to Catholic taste), such a course can be a march in the desert for conscripted students. And, with due respect to my friends in analytic jurisprudence, I must agree that the students have a point. I take great interest in pondering whether the rule of recognition can be capable of value-neutral evaluation or whether it must rest on normative criteria,⁹ but I am also well aware that “[l]egal interpretation

⁸ See *Jurisprudence: Legal Ideals*, HARV. L. SCH., <https://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=74043> (last visited June 20, 2020) [<https://perma.cc/55J8-SBAQ>].

⁹ See generally Brian Bix, *On the Dividing Line Between Natural Law and Positivism*, 75 NOTRE DAME L. REV. 1613 (2000) (identifying this as a central question in general jurisprudence).

takes place in a field of pain and death.”¹⁰ The refinements of modern analysis hardly capture the urgency, and possible fascination, of the moral questions law raises once you are willing to engage the terrain or look under the surface, as opposed to stepping back to Olympian heights of abstraction. The big, conceptual questions are important ones, but I began to think their importance was best conveyed indirectly, at least to those forced to take jurisprudence.

After a few years of experimentation, and in light of these reflections, I have hit upon a formula that works reasonably well, or at least less badly than the alternatives I have tried.¹¹ I build the class around two basic, related questions: (1) Why do we have this institution called law? And (2) given our answer to question (1), what is the best way for officials, lawyers, and citizens to go about operating that institution?

In answering those questions, we don’t start with Thomas or even John Finnis. Rather, we start with *The Path of the Law*, for Holmes has framed so much of the legal culture’s social and moral imaginary, and the essay distills it for readers in pure form.¹² Then we proceed to five different modules, each of which consists of four classes. Each module presents a different set of answers to the basic questions we raise at the beginning. As I currently teach it, the sequence is Legal Realism, Rule Formalism, Dworkinian Moral Principles, Legal Traditionalism, and then Natural Law.

Rather than giving an abstract exposition of each of the five “takes,” the units show that thinking in action: we have a class on common law, statutory interpretation, constitutional interpretation, and *then* a class providing a theoretical roundup that pulls the themes together. Each of the first three substantive classes in a unit, moreover, pairs a short scholarly article with a case exemplifying that take on law’s purposes and execution. For example, the common law class on legal realism pairs Herman Oliphant’s “A Return to Stare Decisis”¹³ with the California Supreme Court’s decision in *Escola v. Coca-Cola Bottling Co.*, which allows the students to see Judge Traynor formulate and defend strict products liability while picking apart the majority’s

¹⁰ Robert M. Cover, Essay, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

¹¹ An edited version of my current syllabus is attached as an appendix.

¹² Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897).

¹³ Herman Oliphant, *A Return to Stare Decisis*, 14 AM. BAR. ASS’N J. 71 (1928).

attempt to rule for the plaintiff within the strained confines of *res ipsa loquitor*.¹⁴ In the Rule Formalism class on statutory interpretation, the students read an obscure case in which Justice Marshall and Justice Scalia team up to bounce a meritorious case on a technicality¹⁵ against the backdrop of Frederick Schauer's essay, "Statutory Construction and the Coordinating Function of Plain Meaning."¹⁶ And so on.

The goal of this part of the course is not, or not *merely*, to introduce them to a variety of perspectives on the nature and purpose of law. They *do* gain those perspectives, and I strive to demonstrate the appeal of each position, along with its attendant weaknesses. Nor is the goal of this part of the course to be *merely* a philosophically enriched legal methods class. Still, compared to the average doctrinal course, they get more systematic engagement with the art of precedential reasoning, textualist and purposivist statutory interpretation, and methods of originalist and living constitutionalism. In both respects, a student with purely instrumentalist aims could profit from this course as a practical, how-to guide to figuring out what makes different judges tick and gaining facility in the second-level moves that savvy courts and litigators make in interesting cases. One might even suspect that this practical aspect is intended to get skeptical students on board. ("Come for practical lawyering, stay for the contemplation of law's moral purposes.")

Yet, the purpose of this five-part sequence is to suggest, without bullying or propagandizing, that the natural law tradition has something to say to us today. My point, which students are free to accept or reject (with no consequences for their grades in either direction!), is that the natural law tradition integrates whatever is appealing about the previous approaches we discussed. Like Legal Realism, it recognizes that positive law is a product of human choice for human purposes, though it seeks to avoid the value skepticism or naturalist metaphysics of many Realists. Its recognition of the value of positive, entrenched norms gives a moral underpinning to rule formalism's insights that is richer than Hobbesian or rule-utilitarian decisionism. With Dworkin, the natural lawyer recognizes that law lives a

¹⁴ *Escola v. Coca-Cola Bottling Co.*, 150 P.2d 436 (Cal. 1944).

¹⁵ *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988).

¹⁶ Frederick Schauer, *Statutory Construction and the Coordination Function of Plain Meaning*, 1990 SUP. CT. REV. 231.

double life,¹⁷ providing historic, created positive law that is informed, critiqued, and undergirded by non-positd moral norms and principles. With its recognition that many questions of practical reason are undetermined, however, it avoids the extravagance and the moral heroism of Hercules. Like the traditionalist, the natural lawyer appreciates that practical reasoning in law is similar to Aristotelian *phronesis*, not simply reduced to bare rule-following or moral deduction, while at the same time demonstrating a cultivated, community-informed craft instinct more determinate and less arbitrary than policy whim. At the same time, its insistence that absolute moral norms provide the outer frame for such practical reasoning prevents the traditionalist's epistemic humility from descending into moral particularism.

Similarly, while the students will learn the tricks of the trade in construing precedent and interpreting legal texts, they will take on the more important lesson that our methodological arguments are *moral* arguments about how best to operate our legal system, which itself is ultimately a moral project serving the purposes of promoting the common good and protecting individual human rights. It can never be (human) law all the way up, even if you conclude, for moral reasons, that law's purposes are best served more frequently than not by constraining law-appliers through formal, entrenched posited rules.

But even if the students follow me this far—and by the time of the natural law unit comes around, I let them know what I've been doing—it's not all sweetness and light. For even if the natural law tradition in theory can provide a framework for integrating the truths in our fragmented jurisprudential landscape, there remains Arthur Leff's lurking, haunting question: "Sez who?"¹⁸ There's a formal elegance to the argument of my course, but

¹⁷ See 4 JOHN FINNIS, *Adjudication and Legal Change*, in *PHILOSOPHY OF LAW: COLLECTED ESSAYS* 397, 397 (2011) ("Law has a double life. It is in force as a matter of fact But it has its force by directing the practical reasoning of . . . persons and groups [F]acts count in practical reasoning only by virtue of some further, normative premise(s)")

¹⁸ See Arthur Allen Leff, *Unspeakable Ethics, Unnatural Law*, 1979 *DUKE L.J.* 1229, 1230 ("Imagine, now, a legal system based upon perceived normative propositions—*oughts*—which are absolutely binding, wholly unquestionable, once found. Consider the normative proposition, 'Thou shalt not commit adultery.' Under what circumstances, if any, would one conclude that it is *wrong* to commit adultery? Maybe it helps to put the question another way: when would it be impermissible to make the formal intellectual equivalent of what is known in barrooms and schoolyards as 'the grand sez who?').

there remains the pressing question of whether its premises in fact hold. Do we believe there is, in fact, a moral reality out there framing our deliberation about first-order questions of justice and second-order questions about who ought to answer them and how? One that is objective and accessible to humans for providing nonarbitrary guidance? It is comforting (and true!) for the natural lawyer to note that many questions are underdetermined, but if invoked too much, at some point the student may suspect that *determinatio* is a crutch, a dodge, or a feint into a kind of Hobbesian second-best that values settlement over all else.

With nonjudgmentalism, casual emotivism, and “you do you” ensconced as leading doctrines of our day, invoking a universal moral order or objective truth about human flourishing is decidedly countercultural, and not in the way that generates a frisson of bad-boy affirmation in an iconoclastic age. At best, it invokes spooky, glow-in-the-dark Things We Don’t Believe in Anymore; at worst it threatens a scolding, pluralism-crushing moral totalitarianism. Now, it’s all well and good to trot out the fact that we all agree the Nazis, the Fugitive Slave Law, and the Black Codes were bad, or to demonstrate the logical argument that moral relativism is self-contradicting, but that can only take us so far. So that is where my course transposes into a different key.

Shifting from cases and arguments, we read Steve Smith’s delightful and accessible book, *Law’s Quandary*, which is a MacIntyre-haunted meditation on how our legal practice presupposes a richer metaphysical framework we profess to no longer embrace.¹⁹ Drawing on the work of Joseph Vining,²⁰ however, Smith offers a paradoxical (and more hopeful) twist on MacIntyre’s *After Virtue*,²¹ suggesting that the stubborn persistence of our legal practices, despite our apparent disenchantment, points to the fact that we believe far more than we let on. And perhaps that we cannot help but believe.²² (Perhaps because it is written on the heart?) Law, from this perspective, is an “opening” out of the iron cage, the immanent frame, or whatever your favorite metaphor is to describe the

¹⁹ STEVEN D. SMITH, *LAW’S QUANDARY* (2004).

²⁰ *Id.* at 170–75 (discussing JOSEPH VINING, *FROM NEWTON’S SLEEP* (1995)).

²¹ ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (3d ed. 2007).

²² *See* SMITH, *supra* note 19, at 174–75.

limits of our current dispensation. More importantly, rather than fusillading the students with the necessity of the natural law, the book seeks to elicit the realization that the stubborn belief rests within them, even when part of them professes doubt. As in the movie *Scream*, the call of the natural (eternal?) law is coming *from inside the house*.

The course, like Smith's book, closes with a gesture, rather than final theorems, proofs, or Thomistic *quaestiones*. With an echo of MacIntyre's concluding choice between Nietzsche or Aristotle,²³ we read an excerpt of Posner's pragmatist's manifesto²⁴ and Albert Alschuler's assault of Holmes's caricature of the natural law tradition.²⁵ At that point, the students can contemplate their choice and ponder which way points toward flourishing. In a different time, or perhaps with a different, more learned, and more skilled professor, we would close in a less tentative fashion. (I am neither Trotsky nor St. Benedict.²⁶) At this point, and with my limited abilities, however, I am content to gather the scattered seeds, pull some weeds, and hope we can cultivate even richer pastures in the future.

²³ See *After Virtue: Nietzsche or Aristotle, Trotsky and St. Benedict*, in MACINTYRE, *supra* note 21, at 256–63.

²⁴ RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 454–69 (1990).

²⁵ Albert W. Alschuler, *From Blackstone to Holmes: The Revolt Against Natural Law*, 36 PEPP. L. REV. 491 (2009).

²⁶ See MACINTYRE, *supra* note 21, at 263 (“We are waiting not for a Godot, but for another—doubtless very different—St. Benedict.”).

APPENDIX: SYLLABUS EXCERPT

JURISPRUDENCE

PROFESSOR JEFF POJANOWSKI

Course Description and Goals

What is Jurisprudence? You may get as many answers to the question as you get answerers, but this class will focus on some key questions: Why do we have law, and how do our answers to that first question shape our thinking about how law and legal reasoning should work?

Here is another way of thinking about this jurisprudence class. A doctrinal class usually consists of two parts: (1) the rules of a subject themselves and (2) “other.” In this “other” we reason by analogy, talk about legal principles, identify broader themes, criticize doctrine on political, moral, or economic terms, and try to grasp broader themes about the subject and how it changes. This “other” is usually what lawyers get paid for: anyone with a decent grasp of legal English and a Westlaw account can look up rules. Yet legal education only teaches this “other” indirectly—as a byproduct of learning the rules themselves. This class is an attempt to look more systematically at this free-floating aspect of your legal education and, well, try to make it less free-floating. In that respect, Jurisprudence is in fact intensely practical.

But it is not entirely practical, and that’s a good thing. This class gives you an opportunity to reflect on the nature and aims of the practice to which you are about to devote your career. Robert Cover was only being slightly dramatic when he said, “Legal interpretation takes place on a field of pain and death.” Legal rules and their application *do* result in death sentences, prison terms, fines, injunctions, and the forcible taking of property. They can also enforce important promises, protect the weak from the strong, and secure our peace, property, and self-direction. Given the gravity of law, any legal education seems incomplete without some space for critical reflection on what law is, what it is for, how this powerful social institution connects to morality and the common good, and how you, as a lawyer, play a role in that.

Reading Assignments

A tentative schedule of assignments is set forth below.

Introduction

- Class 1:
 - Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897).

Legal Realism

- Class 2: Common Law
 - *Escola v. Coca Cola Bottling Co.*, 150 P.2d 436 (Cal. 1944).
 - Herman Oliphant, *A Return to Stare Decisis*, 14 AM. BAR. ASS'N J. 71 (1928).
- Class 3: Statute
 - *NCTA v. Brand X*, 545 U.S. 967 (2005) (opinion of Thomas, J.).
 - Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863 (1930).
- Class 4: Constitution
 - *Payne v. Tennessee*, 501 U.S. 808 (1991) (opinions of Rehnquist, C.J., and Marshall, J.).
 - Thomas Reed Powell, *The Logic and Rhetoric of Constitutional Law*, 15 J. PHIL. PSYCHOL. & SCI. METHODS 645 (1918).
- Class 5: Theoretical Roundup
 - Brian Leiter, *American Legal Realism*, in THE BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY (Martin P. Golding & William A. Edmundson eds., 2005).

Law as Rules

- Class 6: Common Law
 - *Thing v. La Chusa*, 771 P.2d 814 (Cal. 1989) (opinion of Eagleson, J.).
 - LARRY ALEXANDER & EMILY SHERWIN, DEMYSTIFYING LEGAL REASONING 31–50 (2008).

- Class 7: Statute
 - Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988).
 - Frederick Schauer, *Statutory Construction and the Coordination Function of Plain Meaning*, 1990 SUP. CT. REV. 231.
- Class 8: Constitution
 - McDonald v. Smith, 472 U.S. 479 (1985).
 - Larry Alexander, *Originalism, the Why and the What*, 82 FORDHAM L. REV. 539 (2013).
- Class 9: Theoretical Roundup
 - Larry Alexander, “*With Me, It’s All er Nuthin’*”: *Formalism in Law and Morality*, 66 U. CHI. L. REV. 530, 530–55 (1999).

Law as Moral Principles

- Class 10: Common Law
 - MacPherson v. Buick Motor Co., 217 N.Y. 382 (N.Y. 1916) (opinion of Cardozo, J.).
 - Ronald Dworkin, *Hard Cases*, 88 HARV. L. REV. 1057, 1058–65, 1087–1101 (1975).
- Class 11: Statute
 - United Steelworkers v. Weber, 443 U.S. 193 (1979) (opinions of Brennan and Rehnquist, JJ.).
 - Ronald Dworkin, *How to Read the Civil Rights Act, in A MATTER OF PRINCIPLE* 316–31 (1985).
- Class 12: Constitution
 - Atkins v. Virginia, 536 U.S. 304 (2002) (opinion of Stevens, J.).
 - Ronald Dworkin, *The Moral Reading of the Constitution*, N.Y. REVIEW OF BOOKS, Mar. 21, 1996.
- Class 13: Theoretical Roundup
 - RONALD DWORKIN, *LAW’S EMPIRE* 254–71, 407–13 (1986).

Law as Traditional Practice

- Class 14: Common Law
 - Sotelo v. DirectRevenue, LLC, 384 F. Supp. 2d 1219 (N.D. Ill. 2005) (omit discussion sections I, II, IV, & VII).
 - A.W.B. Simpson, *The Common Law and Legal Theory*, in OXFORD ESSAYS IN JURISPRUDENCE (2d ser. 1973).

- Class 15: Statute
 - Bond v. United States, 572 U.S. 844 (2014) (opinion of Roberts, C.J.).
 - Martin Krygier, *The Traditionality of Statutes*, 1 RATIO JURIS 20 (1988).

- Class 16: Constitution
 - Am. Legion v. Am. Humanist Ass'n, 139 S. Ct. 2067 (2019) (excerpt).
 - Marc O. DeGirolami, *First Amendment Traditionalism*, WASH. U. LAW. REV. (forthcoming).

- Class 17: Theoretical Roundup
 - F.A. Hayek, *Freedom, Reason, and Tradition*, 68 ETHICS 229 (1958).

Natural Law Theory

- Class 18: Common Law
 - Pavesich v. New England Life Ins. Co., 50 S.E. 68 (Ga. 1905) (excerpt).
 - John Finnis, *The Fairy Tale's Moral*, 115 L.Q. REV. 170 (1999).

- Class 19: Statute
 - King v. Burwell, 135 S. Ct. 2480 (2015) (opinion of Roberts, C.J.).
 - RICHARD EKINS, THE NATURE OF LEGISLATIVE INTENT 219–24, 230–36, 244–49 (2012).

- Class 20: Constitution
 - Griswold v. Connecticut, 381 U.S. 479 (1965) (opinions of Douglas and Black, JJ.).
 - Stephen Macedo, *The Inescapability of Natural Law*, 5 BENCHMARK 117 (1993).

- Jeffrey A. Pojanowski & Kevin C. Walsh, *Enduring Originalism*, 105 GEO. L.J. 97 (2016) (Introduction and Part II).
- Class 21: Theoretical Roundup
 - JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 281–90 (2d ed. 2011).

Law in a Quandary?

(All page numbers reference to

STEVEN D. SMITH, *LAW'S QUANDARY* (2004))

- Class 22: 1–37
- Class 23: 39–64
- Class 24: 65–96
- Class 25: 97–125
- Class 26: 126–53
- Class 27: 155–79

Concluding Class

- RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 454–69 (1990).
- Albert W. Alschuler, *From Blackstone to Holmes: The Revolt against Natural Law*, 36 PEPP. L. REV. 491 (2009).