

# LA398-15 History of the Philosophy of Law

**21/22**

**Department**

School of Law

**Level**

Undergraduate Level 3

**Module leader**

Stephen Connelly

**Credit value**

15

**Module duration**

10 weeks

**Assessment**

100% coursework

**Study location**

University of Warwick main campus, Coventry

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## Description

### Introductory description

[Module web page](#)

### Module aims

This module considers how historically philosophers have sought to investigate and explain aspects of law (such as normativity, justice, and power) within the context of their philosophical systems. The module is research driven and designed to accommodate a number of different historical foci according to teaching staff and areas of research.

At the heart of the module is close engagement with primary texts by philosophers, combined with a contextualisation of their thought. Thus not only will students critically appreciate the contributions of key philosophers, but will finely hone their reading and analytic skills

### Outline syllabus

This is an indicative module outline only to give an indication of the sort of topics that may be covered. Actual sessions held may differ.

### Example 1 – Power and right in Spinoza and Leibniz

Following an overview of philosophical context in the C17th century, with particular reference to Descartes and Hobbes, we examine how Spinoza and Leibniz are led to differing responses to the mechanistic theories of power and consequently natural right. We focus on Spinoza's doctrine of power, its relation to the conatus, and how determinism plays out in his theory of civil law and natural right. We seek to understand the challenge Spinozism posed to Leibniz, and how Leibniz's own privileging of action over power leads to a number of innovations in the understanding and teaching of law. Key texts include, Ethics, Political Treatise, the New Method for Teaching and Learning the Law, and the New Essays on the Understanding.

### Example 2 – Absolute power in the High Middle Ages

This programme examines how Aquinas overturns a key tenet of Aristotelean philosophy: that the Prime Mover has no power, being pure act. We trace the moves Aquinas makes to grant a new kind of power to God, and in so doing provide a theory of absolute power. We pay particular attention to the relationship between being, power and existence. Aquinas' arguments are contrasted with those of Duns Scotus, who not only divides the types of power into ordered and absolute, but who also redistributes power to the poorest. Through the work of William of Ockham we examine how these theological concerns influence late medieval thinking on sovereignty. Key texts include extracts from the Summa Theologiae, De Potentia, and Ordinatio q2-4.

### Example 3 – Deontic modalities in European and Arabic Philosophy

Modal approaches to duty have been a fertile ground for philosophy of law since Aristotle, as shown by Simon Knuutila and others. From the possible, it is claimed, the optimal may and indeed ought to be selected. We trace the status of the possible and obligatory from Duns Scotus' brilliant theorisation of possibility, to Leibniz's doctrine of possible worlds, to Hegel's treatment of modality. The programme rounds off with a consideration of Saul Kripke's reformulation of modal logic. Key texts include Opus Oxoniensis, De Conditionibus, Wolff's Ontologia, extracts from the Science of Logic, and papers by Kripke.

### Example 4 – Neoplatonism: the cosmic constitution

The programme explores the influence on Neoplatonist cosmology on subsequent thinking about the proper order and hierarchy of the world. Engaging with the Enneads and The Elements of Theology students will learn about the Neoplatonic world view, focussing particularly on the concepts of priority and causal order, power, symbolism and its relation to law, reversion, and justice. The centrality of Neoplatonist innovations for future thinkers of law are emphasised (Aquinas on power, the politics of Bruno, Campanella and Moore, Leibniz on rights and duties).

### Example 5 – Scotism: Property and poverty

Duns Scotus was foremost a Franciscan bound by a vow of poverty. This programme shows how the Franciscan order's concern for its own poverty and for the poor around them heavily influenced the Schoolman's theory of property, leading him to subvert many existing notions about value and rights. A strong emphasis is placed on contextualising Duns Scotus philosophy (and that of William of Ockham) within property law debates and disputes in the C14th.

### Example 6 – Hellenistic philosophies of law

Faced with Roman conquest, Hellenic philosophers responded differently to the subjectification of their culture and their law. Students examine Stoic innovations such as natural law, cosmopolitical citizenship, determinism as freedom, communism, and a very specific understanding of justice. They then contrast the other key school, of the Epicureans, who posit a foundational rebellion in

matter, but then develop means of avoiding the suffering that results, primarily through contracting and regulating society to reduce pain. The critical role of Middle Academic scepticism in refining positive arguments is emphasised throughout. Key text: Long & Sedley *The Hellenistic Philosophers* (a sourcebook of fragments).

### Example 7 – freedom and the young Hegelians

Students engage with the radical theories of freedom advanced by Max Stirner and Karl Marx in the wake of Hegelianism and Feuerbach. The principle focus is Stirner's scathing critique of society's norms and their claim to 'my own'. These are assessed in their context, but particular regard is had to Marx's appreciation of the force of Stirner's arguments which moved him to refine his own views even as he violently critiques Stirner in *The German Ideology*. Our key question is whether the individual is most free unbound even by personal strictures (anarchism) or as a fully social being (communism)?

## Learning outcomes

By the end of the module, students should be able to:

- Describe the key relevant influences on the legal philosophical thought of Descartes, Spinoza and Leibniz as part of the seventeenth century context of their work.
- Evaluate and interpret primary texts by Descartes, Spinoza and Leibniz, paying particular attention to sense and significance of the terminology used.
- Identify the interaction between various aspects of each thinker's philosophy insofar as they bear on their respective theories.
- Understand and explain in a scholarly way the similarities and differences in the approaches to problems of law, including natural right and natural law, of Descartes, Spinoza and Leibniz, and where appropriate advance interpretations of their legal thought.
- Demonstrate the links between these thinkers legal philosophies and the works of others, including particularly Hobbes, Kant, and Scholastic thought.

## Indicative reading list

Primary Sources:

R. Descartes, *Principles of Philosophy I* (extracts)

B. Spinoza, *Ethics*

\_\_\_\_\_, *Theologico-Political Treatise*

\_\_\_\_\_, *Political Treatise*

GW Leibniz, *Dissertation on the Ars Combinatoria* [with application to law]

\_\_\_\_\_, *Perplexing Cases in the Law*

\_\_\_\_\_, *On Conditions* [in the Law]

\_\_\_\_\_, *A New Method for Teaching and Learning the Law*

\_\_\_\_\_, *New Essays on the Understanding*

Secondary literature:

RM Adams, *Leibniz*

MR. Antognazza, Leibniz: An Intellectual Biography

S. Connelly, Spinoza, right and absolute freedom

\_\_\_\_\_, Leibniz and the logic of law

\_\_\_\_\_, 'God and the Attributes' in Spinoza: Basic Concepts

E. Curley 'Spinoza's Moral Philosophy', in Spinoza: A Collection of Critical Essays, ed.

Marjorie Grene (Notre Dame: University of Notre Dame Press, 1973), 354-76.

\_\_\_\_\_, 'The State of Nature and Its Law in Hobbes and Spinoza', Philosophical Topics 19 (1991): 97-117.

G. Deleuze, Expressionism in Philosophy

\_\_\_\_\_, Spinoza: Practical Philosophy

\_\_\_\_\_, The Fold: Leibniz and the Baroque

Hochstrasser, Natural Law Theories in the Early Enlightenment

C. Johns, The Science of Right in Leibniz's Moral and Political Philosophy

A.de Muralt, L'unité de la philosophie politique

J. Riley, Leibniz's Universal Jurisprudence

D. Rutherford, 'Spinoza's Conception of Law'

R. Sève, Leibniz et l'école moderne du droit naturel

L. Strickland, Leibniz's Monadology

## **Interdisciplinary**

This module includes and expands upon subjects in Philosophy.

## **Subject specific skills**

No subject specific skills defined for this module.

## **Transferable skills**

No transferable skills defined for this module.

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## **Study**

### **Study time**

<b>Type</b>	<b>Required</b>
Lectures	18 sessions of 1 hour (12%)
Seminars	7 sessions of 1 hour (5%)
Total	150 hours

<b>Type</b>	<b>Required</b>
Private study	125 hours (83%)
Total	150 hours

### **Private study description**

No private study requirements defined for this module.

### **Costs**

No further costs have been identified for this module.

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### **Assessment**

You do not need to pass all assessment components to pass the module.

Students can register for this module without taking any assessment.

### **Assessment group A1**

	<b>Weighting</b>	<b>Study time</b>
1500 word essay	15%	
1,500 word essay analysing the thought of philosopher x and legal philosophical problem y.		
2500 word essay	85%	
2,500 essay critically engaging with philosophy of law problem y, using work of philosopher x from first assignment as a reference point.		

### **Feedback on assessment**

Feedback via Tabula

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### **Availability**

### **Courses**

This module is Optional for:

- ULAA-M300 Undergraduate Law
  - Year 2 of M300 Law
  - Year 3 of M300 Law
- ULAA-M105 Undergraduate Law (3 year) (Qualifying Degree)

- Year 2 of M105 Law (3 year) (Qualifying Degree)
- Year 2 of M105 Law (3 year) (Qualifying Degree)
- Year 3 of M105 Law (3 year) (Qualifying Degree)
- Year 3 of M105 Law (3 year) (Qualifying Degree)
- ULAA-M106 Undergraduate Law (4 year) (Qualifying Degree)
  - Year 2 of M106 Law (4 year) (Qualifying Degree)
  - Year 3 of M106 Law (4 year) (Qualifying Degree)
  - Year 4 of M106 Law (4 year) (Qualifying Degree)
- ULAA-M104 Undergraduate Law (Year Abroad)
  - Year 2 of M104 Law (Year Abroad)
  - Year 4 of M104 Law (Year Abroad)
- ULAA-M108 Undergraduate Law (Year Abroad) (Qualifying Degree)
  - Year 2 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 2 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 4 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 4 of M108 Law (Year Abroad) (Qualifying Degree)
- Year 3 of ULAA-ML33 Undergraduate Law and Sociology
- Year 2 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 2 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 3 of ULAA-M110 Undergraduate Law with Humanities (3 Year)
- Year 3 of ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
- ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)
  - Year 2 of M115 Law with Social Sciences (3 year) (Qualifying Degree)
  - Year 2 of M115 Law with Social Sciences (3 year) (Qualifying Degree)

This module is Option list A for:

- Year 4 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 4 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 4 of ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
- ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)
  - Year 3 of M115 Law with Social Sciences (3 year) (Qualifying Degree)
  - Year 3 of M115 Law with Social Sciences (3 year) (Qualifying Degree)

This module is Option list B for:

- ULAA-ML34 BA in Law and Sociology (Qualifying Degree)
  - Year 3 of ML34 Law and Sociology (Qualifying Degree)
  - Year 4 of ML34 Law and Sociology (Qualifying Degree)
- Year 4 of ULAA-ML33 Undergraduate Law and Sociology