

LAW 6045: Philosophy and American Law

Working with the assumption that political practices, public institutions, and law inevitably embody theoretical assumptions about such things as human nature, justice, rights, citizenship, and freedom, this course will explore the way in which American law and politics reflects particular philosophical commitments. Before focusing on the American context, however, the course will briefly consider the rival accounts of human nature, politics, and law found in the classical and liberal traditions, since these have shaped the American policy in distinctive ways. Then, borrowing the framework of Michael Sandel's *Democracy's Discontent*, the course will examine the main philosophical movements that have competed for primacy as American's public philosophy. It will focus on two schools, liberal proceduralism and civic republicanism, examining the way in which each conceives of the relationship between the individual and community, the nature of the state and civil society, and the proper function of law. It will analyze salient cases in various areas (such as economic regulation and privacy) in order to understand which philosophical foundation animates the Court's reasoning. Finally, it will ask the students to normatively evaluate these competing public philosophies and their legal implications and to suggest avenues for further development of the respective traditions or alternative sources for a more adequate theory and practice of law and politics.

Credits: 2.0