

**Legal Interpretation**  
**Philosophy 285**  
**Fall 2015**

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***Course Description***

There is a lively debate (involving legal academics, philosophers of language, philosophers of law, and even US Supreme Court Justices) about the proper way for judges to interpret statutes and constitutional provisions. In the past thirty years, there has been a resurgence of interest in various forms of originalism. The basic originalist approaches to the interpretation of a legal provision P are these: (1) Original Semantic Intent: Look to what the framers of P intended to say in using P, (2) Original Pragmatic Intent: Look to what the framers of P intended to convey or communicate (beyond what they intended to say) in using P, (3) Original Meaning: Look to the original meaning of P (or what a reasonable speaker of the language of P at the time of P's adoption would have understood P to mean), (4) Original Expectations: Look to what the framers of P intended to accomplish in giving legal effect to P, (5) Original Methods: Look to the methods of interpretation used at the time of the framing of P to fix the legal effect of P. Originalism in all of its various forms has many detractors. Opponents of originalism want judges to look to moral and/or political theory, or contemporary meanings, or the economical/social/political consequences of this vs. that interpretation, or precedents, in addition to (or instead of) original intent/meaning/expectations/methods. The purpose of this seminar is to look at representative arguments for and against these various approaches, with emphasis on how/whether the philosophy of language can help.

***Readings***

All readings will be found on the TED website for this course in the form of PDFs or links to articles. You may access library materials remotely free of charge by setting up a VPN through the library web site.

1. Introduction: Cases

No Reading

2. Semantics and Pragmatics I

Gottlob Frege, "On Sense and Reference"

Paul Grice, *Studies in the Way of Words*, 22-40

Deirdre Wilson and Dan Sperber, "Relevance Theory"

### 3. Semantics and Pragmatics II

Robyn Carston, “Implicature, Explicature, and Truth-Theoretic Semantics”

Kent Bach, “Conversational Implicature”

Scott Soames, “Drawing the Line between Meaning and Implicature—and Relating Both to Assertion”

### 4. Quantifier Domain Restriction and Legal Interpretation

Small v. United States (2005), Breyer opinion

Ali v. Federal Bureau of Prisons (2008), Thomas opinion

Jason Stanley and Zoltan Gendler Szabo, “On Quantifier Domain Restriction”

### 5. Intentionalism

Larry Alexander and Emily Sherwin, *Demystifying Legal Reasoning*, 131-166

Larry Alexander, “Telepathic Law”

Heidi Hurd, “Why Would Anyone Care About Original Intent?”

Natalie Stoljar, “Vagueness, Counterfactual Intentions, and Legal Interpretation”

### 6. Originalism of Principle

Background: Ronald Dworkin, *Law’s Empire*, 15-30, 45-73

Ronald Dworkin, *Law’s Empire*, 225-266, 337-354, 379-399

David Brink, “Originalism and Constructive Interpretation”

Connie Rosati, “The Moral Reading of Constitutions”

### 7. Original Public Meaning and Original Application

Antonin Scalia, *A Matter of Interpretation*, 3-47, 144-149

Ronald Dworkin, *A Matter of Interpretation*, 115-127

Victoria Nourse, “Two Kinds of Plain Meaning”

Mark Greenberg and Harry Litman, “The Meaning of Original Meaning”

### 8. The Battle over Canons: Original Public Meaning v. Purposivism

Antonin Scalia and Bryan Garner, *Reading Law*, 1-46, 56-65, 69-77, 93-100, 107-111, 167-179, 195-213, 225-239, 296-302, 320-321, 411-414

William Eskridge Jr., “The New Textualism and Normative Canons: Review of *Reading Law*”

### 9. Construction or Original Methods?

Randy Barnett, *Restoring the Lost Constitution*, 89-130

Michael Rappaport and John McGinnis, *Originalism and the Good Constitution*, 116-153

Solum, “Originalism and Constitutional Construction”, 474-475, 499-511

### 10. Pragmatic Originalism

Scott Soames, “Interpreting Legal Texts: What Is, and What is Not, Special about the Law”

Scott Soames, “Toward a Theory of Legal Interpretation”

Mark Greenberg, “Legislation as Communication”

## ***Requirements***

- One short (2-3 page) paper per week, starting in the second week and ending in the eighth. Each paper must be sent to me as an e-mail attachment by 5pm on the day before the seminar in which the relevant issues will be discussed. Your paper should, if at all possible, do one of the following: (i) provide a logical reconstruction of a difficult argument to be found in a relevant text, (ii) criticize the validity or soundness of an argument in a relevant text, (iii) provide a counter-example to a central claim made in a relevant text, or (iv) articulate and defend an interpretation or philosophical position that competes with those found in the relevant texts. If you can't find a way to do one of (i)-(iv), discuss your plans for the paper with me beforehand. I will calculate your grade based on the grades of your five best papers. (This means that you can turn in all seven and I will drop the lowest two grades, or you can simply turn in five).
- One long (15-20 page) term paper sent to me by email, due Thursday, December 10, preceded by a prospectus (also emailed to me) due Friday, November 20.
  - The long paper must address positions and/or arguments to be found in the course readings or in readings approved on the basis of the prospectus.
  - The prospectus (2-3 pages) should include an articulation of your paper's main thesis, the paper's rough structure, along with a summary of some of the arguments you will be planning to use in support of the main thesis, and a bibliography.
  - Please note that I will not give out an incomplete grade unless you have a valid excuse for not being able to complete your paper by the deadline.
- One 15 minute in-class presentation. The purpose of the presentation is to introduce the main issues/problems/arguments to be discussed in seminar that day, raising some of your own questions/comments/criticisms along the way or at the end. The presentation may be related to the short paper, though the short paper (given its length) should be less introductory and more focused. You should not simply read your presentation, though you may speak your way through a handout. A handout is recommended, though not mandatory. Please do not use the handout as a way of summarizing every detail in the readings: focus on what you take to be the central issues.
- Attendance is required at every seminar meeting, unless a valid excuse is communicated to me in a timely manner (if possible, ahead of time).
- Your grade will be based on the quality of your papers (70% for the term paper, 15% for the short papers), your presentation (10%), and your participation in seminar (5%).
- If you need accommodation for a disability or for a religious reason, please let me know as soon as possible.