Professor J. Budziszewski
Departments of Government and Philosophy
Class meets M, 12:30-3:30pm in BAT 1.104
Office hours are M 10:30am-Noon, W 3:30-5:00pm
Office is MEZ 3.106
Email address is jbud@grandecom.net

PREREQUISITES

Graduate standing.

DESCRIPTION

Briefly: This graduate seminar is designed for multiple constituencies – for grad students specializing in diverse fields of Political Science, Philosophy, and Law -- as further explained below. It considers the concept of natural law; its sources; the classical synthesis; the modern unraveling of this synthesis; its unexpected contemporary revival; and its critics. Is there really a natural law? What difference does it make if there is? Is it really “natural,” and really “law”? What are its implications for government, ethics, and jurisprudence? Can it answer its critics? Can it do the theoretical and cultural work that some of its proponents hope that it can?

Seminar context: Ancient and medieval political thinkers held that a humane political order must be rationally grounded on what is naturally good for human beings, and that the resulting norms are morally binding and have the form of law. For a time, modern thinkers continued to use the language of natural law. In its name, they inspired revolutions, as in the U.S. Declaration of Independence, which famously invokes “the laws of nature and nature’s God.” Yet these moderns also thinned and flattened the concept of natural law, and discarded most of its classical theoretical equipment. Eventually they came to deny that so-called natural law was either truly natural or truly law, and the very idea of natural law came into disrepute. The end of the story? Not quite. Natural law seems to be one of those world civilizational motifs that cannot be kept down forever; as the Roman poet wrote, “You may drive out nature with a pitchfork, yet it will always return.” Against expectation and in the face of strong opposition, our own times are witnessing a modest renaissance of the classical natural law tradition, and a refurbishing of its theoretical equipment. This is an opportune moment to take stock: Where has natural law theory been, where it is now, and where it is headed?
Philosophy students may be interested because of the connection of natural law theory with the revival of neo-Aristotelian and Thomistic meta-ethics. International Relations students may be interested because of the influence of natural law theory on international law and organization, international human rights jurisprudence, and just war theory. Comparative Politics students may be interested because of the bearing of natural law theory on the question of cross-cultural universals. Public Law and American Political Development students may be interested because of the influence of natural law theory on American constitutional traditions. Public Law and Public Policy students may be interested because of how natural law theory addresses the question of whether public moral norms have a rational basis, rather than being arbitrary and invidious.

GRADING

Research paper: 2/3
Vigorous participation in seminar: 1/3

Students are encouraged to choose research topics that connect natural law theory to their own areas of specialization. Further details concerning the research paper will be provided during the first session of the seminar.

For students enrolled in Law 397S, the paper requirements will be adjusted, if necessary, so that they can meet the Law School’s requirements for writing seminar credit, which are stated here: http://www.utexas.edu/law/sao/academics/writingseminar.html

TEXTS

Details are shown on the course calendar. The readings include carefully selected, non-overwhelming excerpts from a large number of authors from ancient times to the present. All of the readings will be either online or On Blackboard electronic reserves. No purchases are required; however, copies of two of my own books, What We Can't Not Know: A Guide (rev. ed., 2011), and The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction (2009), will be available at the bookstore.

SEMINAR CALENDAR

Week 1, Monday 29 August:
An Introduction to the Concept Of Natural Law

J. Budziszewski, The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction (Intercollegiate Studies Institute, 2009), as follows: Appendix ("A Note on Natural Law Theories"), pp. 199-201. On Blackboard electronic reserves.

**Week 2, date TBA (cannot meet Monday 5 September, Labor Day): Some Early Statements of Natural Law**


Aristotle (384-322 B.C.), as follows:

*Politics*, 3.16.1287a8-32 (on the rule of law, the rule of reason, and the rule of God). Online at http://www.nlnrac.org/classical/aristotle/primary-source-documents


*Nicomachean Ethics*, 2.6 (on the exceptionlessness of certain natural norms)

*Nicomachean Ethics*, 5.1, entire (on justice in the general sense as "lawfulness")

*Nicomachean Ethics*, 5.7.1134b19-1135a5 (on justice by nature and convention).

*Nicomachean Ethics*, 8.1, entire (on justice by nature).


Marcus Tullius Cicero, as follows:
On the Republic (51 B.C.), excerpts online at http://www.nlncrac.org/classical/cicero/primary-source-documents

On the Laws (51 B.C.), excerpts online at http://www.nlncrac.org/classical/cicero/primary-source-documents

On Duties (44 B.C.), excerpts online at http://www.nlncrac.org/classical/cicero/primary-source-documents (later in the course, for Cicero's views of just war, we will be using other excerpts which are not at this website).


Week 3, Monday 12 September:
The Classical Synthesis, I

Thomas Aquinas, Treatise on Law. Same as Summa Theologica (1265-1274), I-II, Questions 90-108. Online option: Go to Summa Theologica at www.newadvent.org/summa. Click on Prima Secundae Partis. Scroll down to Law. We will be focusing on Questions 90-97, giving some attention to Questions 98-108.

Week 4, Monday 19 September:
The Classical Synthesis, II

Thomas Aquinas, Summa Contra Gentiles (1258-1264), Book 3, Chapters 121-126, 128-129. Online at http://www2.nd.edu/Departments/Maritain/etc/gc.htm

Week 5, Monday 26 September:
 Late Medieval and Early Modern Experiments and Departures

Although the readings in this unit continue to the term "natural law," over time they deviate further and further from the conception of natural law embodied in the classical tradition, throw out most of the theoretical equipment needed to understand it (such as natural teleology, the distinction between synderesis and conscientia, and a richly structured view of human fulfillment), and replace it with different equipment (such as the hypothesis of an original state of anarchy, and a simplified, eventually hedonistic view of human fulfillment).


**Week 6, Monday 3 October:**

**Natural Law, International Law, and War, I**


Augustine of Hippo (354-430 A.D.), as follows. (Augustine approaches the problem of just war from the perspective of theology rather than philosophy, but the criteria and distinctions he applies to just war have been appropriated by the classical natural
law tradition.)


"Reply to Faustus the Manichaean" (about 400), Book 22, Chapters 73-79 (around 400 A.D.) Online at http://www.newadvent.org/fathers/140622.htm

Letter 138, "To Marcellinus" (about 412 A.D.), esp. the discussion of whether good Christians are bad citizens. Online at http://www.newadvent.org/fathers/1102138.htm


Letter 229, "To Darius" (about 429 A.D.) Online at http://www.newadvent.org/fathers/1102229.htm


[In Questions on the Heptateuch, 6.10, Augustine addresses the justice of the Old Testament wars, but this has not yet been translated into English.]

Week 7, Monday 10 October: Natural Law, International Law, and War, II

For this unit the readings fall into different categories. This one, which is very long, will be split up and divided among the seminar participants:

Hugo Grotius, Rights of War And Peace (1625). Online in various versions at http://oll.libertyfund.org ; use the 2005 edition, edited by Richard Tuck, in either PDF or HTML versions. Versions are also online at http://www.lonang.org/exlibris/grotius/index.html and http://www.constitution.org/gro/djbp.htm , but the latter is missing some chapters.
Required of all seminar participants:


Recommended but not required (among the American Founders, Thomas Jefferson was strongly influenced by Burlamaqui, and James Madison by Vattel):


Jean-Jacque Burlamaqui, Principles of Natural and Politic Law (1748), especially Volume 2, Part 4, "In which are considered the different rights of sovereignty with respect to foreign states; the right of war, and every thing relating to it; public treaties, and the right of ambassadors." Online at http://www.constitution.org/burla/burla_.htm and at http://www.lonang.com/exlibris/burlamaqui


Week 8, Monday 17 October:
Natural Law and Human Rights

Bartolome de las Casas, Apologetic History of the Indies (1530). Excerpts online at http://www.columbia.edu/acis/ets/CCREAD/lascasas.htm


**Week 9, Monday 24 October:**

**The American Reception of the Natural Law Tradition**


Continental Congress, "Declaration of Independence" (1776). Online at http://avalon.law.yale.edu/18th_century/declare.asp and in many other places.


Week 10, Monday 31 October:
The Convoluted Course of Natural Law in American Jurisprudence

U.S. Supreme Court, Calder v. Bull, 3 U.S. 386 (Dall.) (1798). Online at http://www.constitution.org/ussc/003-386.htm and at many other places. Note the way in which Justices Chase and Iredell “talk past each other”; they seem to disagree about how much disagreement there is about the precepts of natural law, but actually, though one is speaking of its foundational precepts, the other is speaking of their remote implications.


U.S. Supreme Court, Lawrence v. Texas, 539 U.S. 558 (2003), online at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=02-102 and at many other place. Note especially the majority’s skepticism about whether public moral norms could be anything but arbitrary and invidious (a skepticism not extended to the moral views of the Court itself).

Week 11, Monday 7 November:
Some Influential Rejections of the Idea of Natural Law


Week 12, Monday 14 November:
Various Defenses and Restatements of the Idea of Natural Law


Peter Geach, "Good and Evil," *Analysis* 17 (1956), pp. 33-42. Available online through most university libraries by using JSTOR. The slightly different version reprinted in Philippa Foot, *Theories of Ethics* (Oxford University Press, 1967), pp. 64–73, is online in many places including http://evans-experientialism.freewebspace.com/geach02.htm and http://fair-use.org/peter-t-geach/good-and-evil


**Week 13, Monday 21 November:**
**Selected Catholic Thought and Catholic Magisterial Teaching on the Natural Law Tradition**


**Week 14, Monday 28 November:**

**The Protestant, Jewish, and Islamic Reception of the Natural Law Tradition**


J. Budziszewski, in Rex Ahdar and Nicholas Aroney, eds., *Shari'a in the West* (Oxford, 2010), Chapter 11 ("Natural Law, Democracy, and Shari‘a"), pp. 181-206. On Blackboard electronic reserves. The context of the chapter is the proposal of the
Anglican Archbishop of Canterbury, Rowan Williams, that the English judicial system accommodate Islamic religious courts and Shari'a religious law.