

PHIL 496: Morality and the Law

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Class Meetings: T, TH 2-3:15, Life Sciences South Rm 244

Introduction.

This is an introductory course in the philosophy of law, or jurisprudence, which emphasizes the particular role that morality plays in our understanding and application of the law. You might think that the clarity and rigor of the law puts it at odds with philosophical controversy and inconclusiveness. I hope to show you that this is not the case, and that the law is already deeply entangled in philosophical discussion about moral goodness and its impact on social institutions. Trying to identify and answer these problems expands our understanding the principles behind the meaning, limits, and enforcement of the law. As a constantly evolving social institution which depends on our endorsement and criticism, it is important for us to treat the law as something which is not beyond critique and analysis.

What's Expected of You.

It's very important that you keep up with the reading. I know, it's dense and sometimes difficult, but I promise to do my best at clarifying things in lecture if you do your part and read the assigned texts *before* class begins. Even if you don't totally understand what you're reading, having looked at it before class will be surprisingly helpful, trust me. I also expect you to pay attention to lectures. I strongly encourage you not to take notes on a laptop. There are two reasons for this. First, I've tried various ways of containing things like Facebooking and all of them have failed. Second, taking notes on your laptop in lecture leads to poor retention. Part of this is access to the internet, but the other part of it is that attempting to take notes encourages you to try recording verbatim. This is not a good way to learn. I know, some of you type faster than you write. But that's okay, because effective note taking is largely about choosing *what* to write down not simply writing it *all* down. Here is a summary of the skills you will develop:

- Students will be introduced to philosophical ways of thinking about morality's place in the law.
- Students will be able to identify and explain major movements in philosophy of law, especially natural law, legal positivism, and realism.
- Students will develop close reading and analytical skills of both philosophical and legal texts.
- Students will learn to identify and explain philosophical assumptions and reasoning in legal texts.
- Students will develop their critical, argumentative, and clear writing skills and put them to use in a term paper.

Texts.

All of the readings will be uploaded to the blackboard site for the course. If you have trouble downloading any of them please let me know asap so that I can make sure everyone has proper access. In general, I will try to keep the readings short, but I expect that you'll spend some serious time reading and thinking about them before and then after class.

Assignments.

(1) Quizzes (4@5%ea = 20%): These quizzes exist to reward keeping up with the reading. They will be easy if you have done the reading carefully. I won't ask any trick questions. Instead, they will require knowledge of the basic theses and concepts in the readings.

(2) Exams (4@15%ea = 60%): Each exam will include a mix of at least two of the following: IDs, short answer, and short essay questions. They are not cumulative but cover all of the material since the last exam.

(3) Final Paper (1@20%): This short (~2000 word) paper will ask you to apply the course material and discussion to analyze philosophical arguments surrounding a particular case. Topics will be distributed after exam 3.

Helpful participation in class discussion is noted and makes the difference between borderline grades going up or staying put.

Course Schedule

Please see blackboard for the readings as many of them are excerpted.
Please complete all readings before the class for which they are assigned begins.

Date:Topic	Reading for the Day	Due
1/17: Introduction: Two types of moral problems	<i>Case: The Speluncean Explorers (Handout)</i>	
1/22: Natural Law	<i>Case: Riggs et al. v Palmer (1889)</i> (1) St. Thomas Aquinas "What is Law?" (2) Dr. Martin Luther King Jr. "Letter from the Birmingham Jail"	
1/24: Positivism and Commands	<i>Case: Citizens United v. Federal Election Commission (2009)</i> (1) John Austin, "Legal Positivism" (2) H.L.A. Hart "Positivism and the Separation of Law and Morals" (Part 1)	
1/29: Realism and Moral Psychology	<i>Case: N.G. and S.G. v. Connecticut (2004)</i> (1) Jerome Frank, "Realism and the Law" (2) Howard Erlanger <i>et al.</i> "Is It Time For a New Legal Realism?"	Quiz
1/31: Rules and Moral Constraint	<i>Case: Riggs et al. v. Palmer (1889)</i> (1) H.L.A. Hart, "Positivism and the Separation of Law and Morals" (Part 2) (2) Lon Fuller, "Positivism and Fidelity to Law"	
2/5: Natural Law Revisited	<i>Case: McLoughlin v. O'Brian (1983)</i> (1) Ronald Dworkin, "Law as Integrity"	
2/7: Feminist Jurisprudence	<i>Case: Commonwealth v. Berkowitz (1992)</i> <i>Case: State in the Interest of M.T.S. (1992)</i> (1) Catherine MacKinnon, "Rape: On Coercion and Consent"	
2/12: Exam 1	Exam 1	Exam 1
2/14: A Duty to Obey the Law?	(1) Plato, <i>Crito</i> (2) John Rawls, "A Theory of Civil Disobedience"	
2/19: Jury Nullification	<i>Case: Bushell's Case (1670)</i> <i>Case: US v. Spock (1969)</i> <i>Case: US v. Thomas (1997)</i> (1) Robert Nozick, "Moral Constraints and the State" (2) Ronald Dworkin "On Not Prosecuting Civil Disobedience"	
2/21	No Class	
2/26: International Law	<i>Case: Statement of Slobodan Milosevic (2002)</i> <i>Case: Prosecutor v. Slobodan Milosevic (2002)</i> <i>Case: The Antelope</i> (1) Sean Murphy, "Principles of International Law"	Quiz

Date:Topic	Reading for the Day	Due
2/28: International Law and Human Rights	<i>Case: Kiobel v. Royal Dutch Petroleum (2012)</i> (1) Thomas Pogge, "How Should Human Rights Be Conceived?"	
3/5: Exam 2	Exam 2	Exam 2
3/7: Freedom of Speech	<i>Case: Snyder v. Phelps (2010)</i> (1) Patrick Devlin, "The Enforcement of Morals" (2) H.L.A. Hart, "Law, Liberty, and Morality" (3) Gerald Dworkin, "Devlin Was Right: Law and the Enforcement of Morality"	
3/12: Religious Tolerance and State Obligations	<i>Case: Wisconsin v. Yoder (1972)</i> (1) Richard Arneson and Ian Schapiro, "Democratic Autonomy and Religious Freedom: A Critique of Wisconsin v. Yoder"	
3/14: Forced Medication	<i>Case: Sell v. US (2003)</i> (1) Howard V. Zonana, "Competency to Be Executed and Forced Medication: <i>Singleton v. Norris</i> "	
3/19: Drug legalization	<i>Case: Gonzales (Ashcroft) v. Raich (2005)</i> (1) Edwin J. Delattre, "Illegal Narcotics—Moral Issues and Public Policy" (2) Milton Friedman, "There's No Justice in the War on Drugs: Can Our Laws Be Moral If They Have So Racist an Effect?"	Quiz
3/21: Affirmative Action	<i>Case: Barbara Grutter v. Lee Bollinger, et al. (2003)</i> (1) Thomas Nagel, "A defense of Affirmative Action" (2) Shelby Steele, "Affirmative Action"	
3/26: Homosexuality	<i>Case: Baehr v. Miike (Lewin) (1990)</i> <i>Law: H.R.3396 Defense of Marriage Act (1996)</i> (1) Kory Schaff, "Equal Protection and Same Sex Marriage"	
3/28: Exam 3	Exam 3	Exam 3
4/2, 4/3	Spring Break, no class	
4/9: "Judicial Activism"	<i>Case: Church of the Holy Trinity v. US</i> (1) Antonin Scalia, "The Role of the US Federal Courts in Interpreting the Constitution" (2) Ronald Dworkin, "Comment on Scalia" Hand out paper assignment	
4/11: Harm	(1) John Stuart Mill, "On Liberty" (2) Joel Feinberg, "A Ride on the Bus" (3) Douglas N. Husak, "Intent"	
4/16: Criminal Responsibility	(1) John Martin Fischer and Mark Ravizza "Responsibility and Control"	

Date:Topic	Reading for the Day	Due
4/18: Diminished Responsibility	(1) Gary Watson, "Responsibility and the Limits of Evil"	
4/23: Excusing the Insane	(1) Stephen J. Morse, "Excusing the Crazy: The Insanity Defense Reconsidered" (2) Norval Morris, "The Abolition of the Insanity Defense"	
4/25: Attempts and Luck	(1) David Lewis, "The Punishment that Leaves Something to Chance" (2) Sanford Kadish, "The Criminal Law and the Luck of the Draw"	Quiz
4/30: Punishment I: Retributivism	(1) Michael S. Moore, "The Argument for Retributivism"	
5/2: Punishment II: the Death Penalty and Racism	(1) Randall Kennedy, "Homicide, Race, and Capital Punishment"	
5/7: Exam 4	Exam 4	Exam 4
5/16: Paper Due	Turn in time and place TBA	

The Not-So-Vaguely Legalistic Fine Print.

1. Accommodation.

It is the student's responsibility to inform the instructor of any special accommodations required. Let me know ASAP so that I can ensure that your needs are met promptly.

2. Make-up Policy.

There will be no make-ups except in cases of documented medical excuse. If you're worried about completing an assignment on time, the best thing to do is to come see me during office hours **before the assignment is due**. Maybe we can work something out. At any rate, I will not be able to accommodate you after the due date for any non-documented non-medical reason.

3. Drop Policy. Please pay careful attention to the SDSU drop deadlines, they are posted on the SDSU website.

4. Plagiarism and Academic Dishonesty.

Using another person's ideas in your own writing without citing them is plagiarism. For example, if you copy text from an internet site, even if you change the wording, and do not cite the source, you are plagiarizing. Failing to cite others when you use their ideas, even though you've put it in your own words, is like presenting them as your own. If you have any questions about what counts as fair use, please ask me. Academic dishonesty is turning in work that is not entirely your own. This may include plagiarizing, but it also includes letting others write parts of your papers for you or simply mooching off of the group you're working with. Plagiarism and academic dishonest are morally wrong, illegal, and against the school's honor code. When in doubt: cite it. Or better yet **don't copy or directly paraphrase anything from any source**. Explain the ideas in your own words and to the best of your ability. This is really what I want to read. For those of you who cannot be motivated by anything other than the threat of credible sanction, here it is: I will not tolerate plagiarism and will see that it is punished severely.