

PHILOSOPHY 496: MORALITY AND THE LAW

SYLLABUS

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SAN DIEGO STATE UNIVERSITY, SPRING 2014

EBA-343 T, 4:00PM-6:40PM

OFFICE HOURS: T/TH 2:00PM-3:30PM, AL 429, OR BY APPOINTMENT

FINAL EXAM: 5/13/14, 4:00PM-6:00PM

COURSE DESCRIPTION

Comprehensive introduction to moral dimensions of the law, to include justification of law, legal interpretation, law and liberty, and limits and justification of criminal sanctions. Readings in classical and contemporary legal, moral, political theory, and case law.

PREREQUISITES

Completion of general education requirement in Foundations of Learning II.C.

INTRODUCTION

This course addresses topics in the philosophy of law, or jurisprudence, which emphasize 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 the nature of 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 for its existence, we must treat the law as something which is not beyond the reach of philosophical investigation.

WHAT IS EXPECTED OF YOU IN THIS COURSE

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 feel that you 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 the 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 course's learning outcomes:

- An understanding of philosophical ways of thinking about morality's place in the law.
- The ability to identify and explain the major movements in the philosophy of law, especially natural law, legal positivism, and realism.
- An understanding of the various critical movements which have arisen from marginalized voices including women, African Americans, and the disabled.
- Gain familiarity with philosophical methodology through reading philosophical texts and writing analytical papers about them.
- Develop critical writing skills by writing papers which reconstruct and expose arguments and analyze them critically.
- An ability to apply these philosophical models to the real world via relevant court decisions.

TEXTS

- *Readings in the Philosophy of Law, 5th Edition*. John Arthur and William H. Shaw (eds.). Available at the SDSU Bookstore and online. This text includes most of our readings, as well as supplemental cases which students will find useful when writing papers.
- Additional readings and cases will be made available via the course blackboard page (<http://blackboard.sdsu.edu>)

ASSIGNMENTS

(1) Short Writing Assignments (4@10%ea. = 40%): These are short ~2 page papers aimed at analytical writing practice and checking on your reading comprehension. The first of these assignments will simply ask you to reconstruct one of the views in the reading and answer a brief question about it. The other three will ask you to analyze a chosen court case via the perspective of a course author. See the "rubric" below.

(2) Exams (2@20%ea = 40%): Each of these will include a mix of at least two of the following: term/concept identification questions, short answer questions, short essay questions. They are not cumulative, but cover all of the material since the previous exam.

(3) Reading Quizzes (~10, 10% collectively): Almost every week I will post reading quizzes on Blackboard. These are **REQUIRED**. You will be able to take them when it is convenient, within a 28 hour period prior to the relevant class. The quizzes will be available by noon the day before class until the start of class. I will not "reopen" quizzes if you miss the window. ***Make sure that you are prepared to take the quiz when you open it. Completion is forced once the quiz has begun.***

(4) Helpful Participation: Respectful and timely class participation will be used to make the difference between borderline grades. Participation can come in many forms—asking questions in class or during discussion is only one of them. Others include asking questions of me through email, visiting during office hours, or participating in the forums on our blackboard page.

ADDITIONAL NOTES

1. Computers and Phones. These won't be allowed, even to take notes. I know, I know, but I've tried to be nice about it and it doesn't work, so they're banned. Students observed using them will be asked to leave.

2. Office hours. You'll do well to take advantage of them. If the times I've picked don't work out for you this won't be an excuse because I'm very able to schedule individual meetings with you if you take the initiative.

3. Cheating and Plagiarism. You will be beholden to the University's code of conduct, definitions, and consequences outlined here: <http://www.sa.sdsu.edu/srr/cheating-plagiarism.html>. But much more importantly, from my perspective, is that you do your own work honestly and with earnest effort because anything else is a waste of our time. Think about the kind of person you want to be and then act accordingly.

4. Disabilities and Other Special Accommodations. If you have any concerns here please see me as soon as possible about them so that we can make the appropriate arrangements. If you have special needs due to a learning disability, please avail yourself of the resources in the Student Disability Services in Calpulli Center, Suite 3101 (third floor) Hours: Monday - Friday, 8 am - 4:30. Students who need special religious accommodations should see me as well, as they are entitled to them in many instances.

5. Late Assignments. My policy on late assignments is that I don't accept them if you have not made prior arrangements with me to hand them in late. "Prior" here means at least 48 hours in advance, and it means real contact with me about it (i.e. You can't just fire off an email to me and say "sorry I'm not turning it in," the matter must be *settled between us* 48 hours in advance). That said, I'm usually willing to be flexible if the reasons are sensible. Emergencies will be handled on a case-by-case basis and may require documentation.

RUBRIC

This rubric should offer you a sense of how your written work will be evaluated. The categories do not exactly correlate to grades, but "A" papers will be strong in several categories.

	STRONG WORK	NEEDS IMPROVEMENT	UNSATISFACTORY
AUDIENCE	Assumes audience has read the assigned texts carefully; paper uses evidence to make points rather than summarize.	Spends <i>inappropriate</i> amount of time merely summarizing text or repeating material covered in class.	Shows little evidence of understanding the key ideas in the text, or ideas mostly taken directly from lecture notes.
THESIS	Single clear thesis that would be insightful or interesting to someone who had already studied the texts.	Thesis either lacks clear structure, manageable claim, or is too obvious to most thoughtful readers to be interesting.	No clear thesis or multiple competing theses.
BODY	Well-structured paragraphs with effective evidence (see below). Avoids generalizations.	Extraneous generalization, lack of clear connection with the thesis throughout, ineffective use of evidence.	No sense of organization, poor control of paragraph contents and ineffective or no use of evidence.
ARGUMENT	All necessary points in proving or developing the thesis are made; makes compelling argument for thesis; doesn't assume that the reader agrees with the author	Some missteps or missed steps made in proving the thesis, but there is still an attempt to show that the thesis is correct. Argument compelling to those who already agree.	Essay fails to prove or develop a compelling thesis.
USE OF EVIDENCE	Draws evidence from close reading of text and only uses quotations when necessary and then explains them effectively.	Evidence is of a general kind and does not support the immediate claim being made (or the thesis) or it is too general and this is not explained.	Little evidence used; does not support points made or draws support entirely from lecture notes. Poor use of quotations.
DEPTH	Draws implications that go beyond the immediate thesis based on the analysis presented.	Summarizes the paper but doesn't have implications for anything other than what is said.	Essay fails to show that the author sees the connections between the present topic and others in the course.
MECHANICS	Nearly flawless grammar, spelling, word choice. Reads clearly and without being wordy or relying on jargon.	Grammar, spelling, word choice, sentence structure are not confusing but are inefficient, substantially unclear, and show lack of adequate proofing.	Careless typographical errors, or difficult to read. Uses terms without defining them. Poorly written.

COURSE SCHEDULE

Most readings are found in the Adams text, readings marked with at [B] are available on the course Blackboard page.

1/28: Introduction: The Rule of Law

Case: The Speluncean Explorers (Handout) [B]

2/4: A Duty to Obey the Law?

- (1) Plato, Crito
- (2) John Rawls, "The Justification of Civil Disobedience"
- (4) Ronald Dworkin "On Not Prosecuting Civil Disobedience"

2/11: Natural Law and Positivism

- (1) Can a Murderer Inherit? *Riggs et al. v Palmer* (1889)
- (2) St. Thomas Aquinas *Summa Theologiae*
- (3) Dr. Martin Luther King Jr. "Letter from the Birmingham Jail" [B]
- (4) Citizens United v. Federal Election Commission (2009) [B]
- (5) John Austin, "The Providence of Jurisprudence Determined"
- (6) H.L.A. Hart "Positivism and the Separation of Law and Morals" (§§1-2)

2/18: Moral Constraint: Rules vs. Integrity

- (1) *McLoughlin v. O'Brian* (1983)
- (2) H.L.A. Hart, "Law as the Union of Primary and Secondary Rules"
- (3) Ronald Dworkin, "Law as Integrity"

Short Writing Assignment 1 Due

2/25: Realism and Critical Legal Studies

- (1) *N.G. and S.G. v. Connecticut* (2004) [B]
- (2) Jerome Frank, "A Realist View of the Law"
- (3) *Commonwealth v. Berkowitz* (1992) [B]
- (4) Catherine MacKinnon, "Rape: On Coercion and Consent"

3/11: Midterm Exam

3/18: "Judicial Activism"

- (1) *Church of the Holy Trinity v. US* (1892) [B]
- (2) "Use" of a Firearm, *Smith v. US* (1993)
- (3) Antonin Scalia, "Interpreting the Constitution"
- (4) Ronald Dworkin, "A Response to Scalia"

3/25: Religious Toleration

- (1) Religious Freedom and Public Education, *Wisconsin v. Yoder* (1972)
- (2) Richard Arneson and Ian Schapiro, "Democratic Autonomy and Religious Freedom: A Critique of Wisconsin v. Yoder" [B]

Short Writing Assignment 2 Due

4/1: NO CLASS, SPRING BREAK

4/8: Equality and Affirmative Action

- (1) Affirmative Action in Universities, *Grutter v. Bollinger and Gratz v. Bollinger* (2003)
- (2) Ronald Dworkin, "Racial Equality and Affirmative Action"
- (3) Shelby Steele, "Affirmative Action" [B]

4/15: Freedom of Speech

- (1) *Snyder v. Phelps* (2010) [B]
- (2) Nazi Marches, *Village of Skokie v. National Socialist Party*
- (3) John Stuart Mill, "On Liberty of Thought and Discussion"

Short Writing Assignment 3 Due

4/22: Punishment

- (1) Michael S. Moore, "The Argument for Retributivism" [B]
- (2) Jean Hampton, "The Moral Education Theory of Punishment"

4/29: Sentencing and Mental Illness

- (1) Capital Punishment, *Gregg v. Georgia*
- (2) *Sell v. US* (2003) [B]
- (3) Howard V. Zonana, "Competency to Be Executed and Forced Medication: Singleton v. Norris" [B]
- (4) Executing Mentally Retarded Murderers, *Atkins v. Virginia*
- (5) Joel Feinberg, "What Is So Special About Mental Illness?"

5/6: Insanity Defenses and Excuses

- (1) Stephen J. Morse, "Excusing the Crazy: The Insanity Defense Reconsidered" [B]
- (2) Norval Morris, "The Abolition of the Insanity Defense" [B]

Short Writing Assignment 4 Due

5/13: Final Exam, EBA-343 4:00pm-6:00pm