

Philosophy 334: PHILOSOPHY OF LAW
TR 8:00-9:15am
G. Rollie White Coliseum 267A
Fall 2009

Instructor: Professor Colleen Murphy
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Office Hours: Wednesdays 3:30pm-5:30pm and by appointment

Course Description:

This course is meant to serve as an introduction to the philosophy of law. The first set questions we examine concern the nature of law. Is law simply a set of written rules you can look up in statutes and judicial opinions, or does it also include general principles, morality, custom, and convention? Is there a necessary connection between law and morality? We then turn to particular issues that arise in the criminal law. Questions we will consider include when and why is punishment justified? How do we determine the amount of punishment that is appropriate in any particular case? What are the obligations of lawyers within the criminal justice system?

Required Texts:

John Arthur and William H. Shaw, *Readings in the Philosophy of Law*, 4th edition, Prentice Hall [hereafter *PL*]

Course Requirements and Expectations:

Class Participation	15%
Paper #1	25%
Paper #2	27%
Final	33%

Course Objectives:

In this course, you should:

1. Acquire a basic knowledge of the main theoretical debates in the philosophy of law.
2. Learn how to read and interpret contemporary philosophical texts.
3. Write an effective philosophical research paper.

Course Prerequisites:

There are no prerequisites for this course.

Grading Scale:

Questions on examinations will be essay questions. Essay questions require you to write reasoned responses to interpretative questions about the views of the philosophers we study. Papers have more extensive requirements and criteria, which will be detailed in each assignment.

In evaluating term papers and the answers to essay questions, I will use the following criteria:

- **Accuracy:** Is the answer accurate about such things as whether a given philosopher expressed a certain view, was associated with a particular philosophical group, was a student of another philosopher, wrote a particular work, etc.? For the term paper, this criterion includes complete and accurate acknowledgment of any other works used.
- **Argument:** Does the answer present a coherently structured argument? This is an important criterion in the case of answers to essay questions.

- **Completeness/Relevance:** Does the answer deal with all the important facts and issues that are relevant to the question? Also, does it spend its time discussing issues that are *not* relevant?
- **Writing:** Is the answer clearly written and free from spelling or grammatical errors? For the term paper: does the paper follow the appropriate format for the paper layout, the citation of sources, etc.?

The following table explains how I apply these criteria in evaluating a particular item (an essay answer on an exam or a term paper). Please note that this is **not** intended as a set of rubrics that can be applied mechanically to determine a grade; it does, however, explain what I look for.

Grade	Accuracy	Argument	Completeness/Relevance	Writing
A	No errors or omissions.	Well-constructed argument that gives a good defense of the point.	Deals with all the relevant material and issues and wastes no time on irrelevant points.	No grammatical errors; clearly written and a pleasure to read.
B	Only minor errors or omissions.	A good argumentative structure overall, but with some problems or weaknesses.	Omits only minor relevant material or includes only minor digressions from the topic.	Reasonably clearly written, with at most a few minor grammatical or spelling errors.
C	Significant errors, but mostly accurate.	The overall structure of the argument can be discerned, but it has significant problems or weaknesses.	Covers most of the relevant issues, but with some significant omissions; sometimes wanders off topic.	Basically readable, with some problems in spelling or grammar.
D	More erroneous than correct; major omissions.	Very poorly constructed argument; argument is inconsistently structured or incoherent.	Fails to cover major relevant issues; has only a little to do with the topic.	Difficult to read; many grammatical and spelling errors.
F	Nothing accurate.	No discernible argument.	Unrelated to question.	Incomprehensible.

Course Readings and Schedule:¹

The Nature of Law

Week 1

Tuesday, September 1

First day of class

Introduction

Thursday, September 3

Brian Bix, "Traditional Natural Law Theory," pp. 112-115

William Blackstone, "Blackstone's Commentaries," pp. 121-125

Week 2

Tuesday, September 8

John Austin, "The Province of Jurisprudence Determined," pp. 126-130

Thursday, September 10

Oliver Wendell Holmes, "The Path of Law," pp. 135-138

Week 3

Tuesday, September 15

H.L.A. Hart, "Positivism and the Separation of Law and Morals," pp. 147-155

Thursday, September 17

H.L.A. Hart, "Positivism and the Separation of Law and Morals," pp. 147-155

Week 4

Tuesday, September 22

H.L.A. Hart, "Law as the Union of Primary and Secondary Rules," pp. 155-160

Thursday, September 24

Ronald Dworkin, "The Model of Rules," pp. 164-170 PL

Legal Reasoning

Week 5

Tuesday, September 29

Sanford Levinson, "Interpreting the Adultery Clause of the Ten Commandments," pp. 66-67

Thursday, October 1

Tony Honore, "Interpretation," pp. 80-81.

Paper 1 due

Week 6

Tuesday, October 6

"Can a Murderer Inherit?" *Riggs v. Palmer* 86-90

Constitutional Law

Thursday, October 8

William H. Rehnquist, "The Notion of a Living Constitution," pp. 540-545

Week 7

Tuesday, October 13

Ronald Dworkin, "Constitutional Cases," pp. 546-554

Thursday, October 15

John Arthur, "Democracy, Judicial Review, and the Special Competency of Judges," pp. 555-564

¹ All course readings are in *PL*.

Criminal Law

Week 8

Tuesday, October 20

Richard B. Brandt, "The Utilitarian Theory of Criminal Punishment," pp. 246-251

Thursday, October 22

Herbert Morris, "Persons and Punishment," pp. 252-258

Week 9

Tuesday, October 27

Jean Hampton, "The Moral Education Theory of Punishment," pp. 259-262

Thursday, October 29

Randy E. Barnett, "Restitution: A New Paradigm of Criminal Punishment," pp. 263-268

Week 10

Tuesday, November 3

Richard B. Brandt, "The Principles of Criminal Law," pp. 347-351

Paper 2 due

Thursday, November 5

The "Rotten Social Background" Excuse, *United States v. Alexander and Murdock*, pp. 390-395

Week 11

Tuesday, November 10

Gregg v. Georgia, pp. 324-330

Thursday, November 12

McCleskey v. Kemp, pp. 339-341

Week 12

Tuesday, November 17

Rummel v. Estelle pp. 335-338

Thursday, November 19

Monroe H. Freedman, "Lawyers' Ethics in an Adversary System," pp. 2-10

Week 13

Tuesday, November 24

John H. Langein, "An Alternative to the Adversary System," pp. 10-10

Thursday, November 26

No class

Week 14

Tuesday, December 1

TBD

Thursday, December 3

TBD

Week 15

Tuesday, December 8

TBD

Last day of class

Monday, December 14, 1:00-3:00pm

Final

POLICIES

1. All assignments are due at the beginning of class. Please review the dates on which exams and papers are scheduled to see if you face any conflicts. You are responsible for arranging other commitments you may have such that you are able to take the exams when scheduled. Exams will be rescheduled only when there is a university sanctioned excuse. Please read Section 7 of the Texas A&M University Student Rules at <http://student-rules.tamu.edu/rule07> for a list of excused absences. In this class we will follow rule 7.1.6.1 for illnesses greater than three days and 7.1.6.2.b for illnesses for no more than three days. Please contact me as soon as you know you will miss a class or an exam so that a reasonable alternative can be accommodated. Unexcused absences will result in a grade of zero for missed work or exams.
2. Plagiarism-
According to the Texas A&M University Definitions of Academic Misconduct, plagiarism is the appropriation of another person's ideas, processes, results or words without giving appropriate credit (www.tamu.edu/aggiehonor <<http://www.tamu.edu/aggiehonor>>). You should credit your use of anyone else's words, graphic images, or ideas using standard citation styles. If I should discover that you have failed to properly credit sources or have used a paper written by someone else, I will recommend that you receive an F in this course. The Aggie Honor System Office processes for adjudication and appeals can be found at www.tamu.edu/aggiehonor <<http://www.tamu.edu/aggiehonor>>.
3. Grade complaints-
I will be more than happy to discuss your grade with you on a couple of conditions. First, you must wait at least 24 hours after you get the assignment back. Take this time to carefully read all the comments I have given you. Second, you must come with a written statement about why you think that there is a discrepancy between the quality of the work and the grade it received.
4. The Americans with Disabilities Act (ADA) is a federal anti-discrimination statute that provides comprehensive civil rights protection for persons with disabilities. Among other things, this legislation requires that all students with disabilities be guaranteed a learning environment that provides for reasonable accommodation of their disabilities. If you believe you have a disability requiring an accommodation, please contact the Department of Student Life, Services for Students with Disabilities in Room B118 of Cain Hall or call 845-1637.
5. Academic Integrity Statement

"An Aggie does not lie, cheat, or steal or tolerate those who do."

Upon accepting admission to Texas A&M University, a student immediately assumes a commitment to uphold the Honor Code, to accept responsibility for learning, and to follow the philosophy and rules of the Honor System. Students will be required to state their commitment on examinations, research papers, and other academic work. Ignorance of the rules does not exclude any member of the TAMU community from the requirements or the processes of the Honor System.

For additional information please visit: www.tamu.edu/aggiehonor/

Pledge

On all course work, assignments, or examinations at Texas A&M University, the following Honor Pledge shall be pre-printed and signed by the student:

"On my honor, as an Aggie, I have neither given nor received unauthorized aid on this academic work."

