

PHILOSOPHY OF LAW
FALL 2019
Thursdays 1-3:30
DC Jail, Georgetown

Instructor

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Required readings will be distributed in class at least a week beforehand.

Course requirements, policies, and basic information

- A brief writing assignment (a few sentences or a paragraph) that you bring to class *each week*. In it you will raise a question or issue from that week's reading that you find interesting or confusing and would like to discuss further in class.
- Four papers: the first two about 900 words; the third about 1200 words; the last about 1500 words. Due dates to be assigned.
- Regular attendance and participation. Participation in class discussions is essential to the quality of the class. Please do the assigned reading before class and come prepared to discuss it.
- Extensions and late papers: if you need an extension on an assignment please request it in advance of the due date if at all possible.
- Approximate grade value of assignments: first paper 10%; second paper 20%; third paper 25%; fourth paper 25%; attendance and participation 20%.
- We will spend part of each class engaged in close reading of one or more of the assigned texts.

About the course

The aims of the course are to introduce you to some basic problems in the philosophy of law and to develop your analytic skills in thinking, writing, and speaking. "Philosophy of law" brings together two giant subjects, philosophy and law. There are many things we could study in a course with this title; I've chosen a few of what I think are the most interesting ones.

We begin by considering the extent to which the law may limit people's liberty. What should be illegal? What should be criminal? We'll look at John Stuart Mill's "harm principle," which says that the only legitimate reason for limiting people's liberty through law is to prevent harm to others. Applications we'll discuss include seatbelt and helmet laws, sugary drink laws, and laws prohibiting recreational drugs.

These issues raise important questions about legal and constitutional interpretation. For example, how should we understand and interpret the First Amendment ("Congress shall make no law abridging the freedom of speech...or of the press") in light of the fact that Congress *does* make laws abridging freedom of speech and press; the Second Amendment, which some take to prohibit all gun laws; or the Eighth Amendment's prohibition on "cruel and unusual punishments"?

We then examine fundamental ideas in civil and criminal law, such as causation, intention, responsibility, and punishment. We'll begin with some readings in tort law—the civil law of accidents. We'll then spend several weeks on criminal law, studying defenses such as self-defense, excuses such as insanity, and justifications for punishment. At the end we will investigate difficult questions about what law is, and the nature of its authority. Do you have a moral obligation to obey the law? Is unjust law really law?

SCHEDULE OF CLASSES AND READINGS

The syllabus is likely to undergo changes. Dates are approximate: we may speed up or (more likely) fall behind. Some weeks we may carry over discussions and readings from the previous week for the first part of the class, then go on to discuss the material listed on the syllabus for that week.

Please do the readings *before* the class under which they are listed, and in the order listed on the syllabus. Always bring the readings to class. If at all possible, keep all the readings together in a binder. Underline, highlight, write comments or questions in the margins!

Week 1. August 29. Introduction. The scope of the law.

David Adams, "Philosophy and the Law"

John Stuart Mill, from *On Liberty*, chapter 1

Sarah Conly, "Three Cheers for the Nanny State"

Aaron Ross Powell, "The Barbarianism of Paternalism"

ACLU Pros and Cons, "Should Illegal Drugs Be Legalized?"

Week 2. September 5. Freedom of expression.

South Florida Free Beaches v. Miami

Texas v. Johnson

Matal v. Tam

J.S. Mill, "Of the Liberty of Thought and Discussion"

Judith Lichtenberg, "Notes on Freedom of Expression"

Week 3. September 12. Legal and constitutional interpretation.

Smith v. U.S.

Church of the Holy Trinity v. U.S.

Riggs v. Palmer

Antonin Scalia, "The Role of U.S. Federal Courts in Interpreting the Constitution"

Week 4. September 19. Interpretation, continued.

David Souter, "Harvard Commencement Remarks"

Richard Posner on interpretation

A line of cases regarding 18 U.S. Code §924

Three Sixth Amendment cases: *Betts v. Brady*, *Gideon v. Wainwright*, *Strickland v. Washington*

Week 5. September 26. Tort law.

Adams, The law of tort

Holden v. Wal-Mart Stores

Week 6. October 3. Tort law continued.

Lynch v. Fisher

Palsgraf v. Long Island Railroad

Adams, Causation and liability

Optional: *Escola v. Coca Cola Bottling Co.*

Week 7. October 10. Midsemester interlude.

Watch and discuss *Twelve Angry Men*.

Week 8. October 17. Criminal law and mens rea.

Adams, "Criminal Law"

Douglas Husak, "Intent"

People v. Dlugash

People v. Young

Paul Robinson, "The Bomb Thief and the Theory of Justification Defenses"

Model Penal Code, §2.01-2.02

Week 9. October 24. Self-preservation and self-defense

Regina v. Dudley and Stephens

People v. Goetz (next time: from Linder instead of case)

State of North Carolina v. Norman

Joshua Dressler, "Self-Defense"

Week 10. October 31. (Halloween!) Responsibility, insanity, and free will.

Theodore Sider, "Free Will and Responsibility"

David Eagleman, "The Brain on Trial"

Frontline, "From Daniel M'Naghten to John Hinckley: A Brief History of the Insanity Defense"

Week 11. November 7. Punishment: whether, why, how much?

David Adams, "Punishment and Responsibility"

Lockyer v. Andrade

German constitutional case

Jeffrey Reiman, "Justice, Civilization, and the Death Penalty"

Ernest van den Haag, "In Defense of the Death Penalty"

Week 12. November 14. Race, crime, and punishment.

McCleskey v. Kemp

Michelle Alexander, "The Color of Justice"

Daniel Kelly and Erica Roedder, "Racial Cognition and the Ethics of Implicit Bias"

Stephen Nathanson, "The Problem of Unjust Deserts"

Batson v. Kentucky

Alliance for Justice, "Batson's Unfulfilled Promise: Curtis Flowers and Racial Exclusion in the Jury Selection Process"

Week 13. November 21. Disobedience and injustice.

Martin Luther King, "Letter from Birmingham Jail"

Paul Butler and Andrew Leipold, "Jury Nullification"

November 28. Thanksgiving. No class.

Week 14. December 5. Is there an obligation to obey the law?

Adams, "What Is Law?"

Robert Jackson, "Opening Address for the U.S., Nuremberg Trials"

Charles Wyzanski, Jr., "Nuremberg: A Fair Trial?"

Lon Fuller, "The Problem of the Grudge Informer"