

Updated March 26, 2012

**PHILOSOPHY 175
PHILOSOPHY OF LAW
SPRING 2012
112 REISS
MW 12-12:50**

Discussion sections

- Section 1: Thursday, 10-10:50, Walsh 397 (JE)
- Section 2: Thursday, 11-11:50, Walsh 491A (AL)
- Section 3, Thursday, 10-10:50, Healy 106 (AL)
- Section 4, Thursday, 11-11:50, Walsh 397 (JE)

Instructor

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Teaching assistants:

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Office hours Wednesdays, Thursdays 1-2, and by appointment (Kennedy Institute of Ethics, 4th floor Healy—Anne's name is on the door)

Required text

- David Adams, *Philosophical Problems in the Law*, 4th ed. (Thomson Wadsworth, 2005)
- Other readings on Blackboard (Bb) or online

Course requirements, policies, and basic information

- Four writing assignments: the first two about 900 words; the third about 1200 words; the last about 1500 words.
- A final exam, during the exam period (Monday, 5/7, 12:30-2:30).
- Participation in a debate in your discussion section. Your TA may also give you some further assignments (but nothing huge).
- Regular attendance and participation. You are permitted one unexcused absence from discussion section. Participation in class discussions is essential to the quality of the class. Please do the assigned reading before class.
- Laptops are not permitted in lecture or discussion.

- Extensions and late papers: if you need an extension on an assignment please request it at least 24 hours in advance of the due date. Assignments turned in late without permission will be penalized. Back up your work frequently.
- Approximate grade value of assignments: first paper 10%; second paper 10%; third paper 15%; fourth paper 20%; final exam 25%; attendance and participation 20%.
- Please come to class on time and stay till the end. Late arrivals and early departures are distracting.
- We encourage you to come to office hours or make an appointment to talk with your TA or me; we welcome the opportunity to get to know you better outside of class. If you are having problems that interfere with your performance in the course or are otherwise making your life difficult, please let me and your teaching assistant know.
- Check Blackboard regularly for announcements, assignments, and readings not in Adams.

About the course

The aims of the course are to introduce you to basic problems in the philosophy of law, to understand the relationships between law and morality, and to develop your analytic thinking and writing skills.

We begin by considering the extent to which the law may limit people's liberty, looking at John Stuart Mill's "harm principle" and its application to issues such as paternalistic legislation (seatbelt, helmet, and drug laws), privacy (sexual activity), and freedom of expression (libel, hate speech). 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? We will also study the Eighth Amendment's prohibition on "cruel and unusual punishments," which serves as a transition to the section on criminal law. We examine fundamental ideas in criminal and civil law, such as intent, causation, responsibility, and punishment. Among the topics are the justifications for legal punishment; the criteria for legal and moral responsibility; "Good Samaritan" laws requiring people to come to the aid of others; and the basis for class action suits. In the last part of the course we investigate difficult questions about what law is, and the nature of its authority. Do you have a moral obligation to obey the law? Does the legitimacy of law depend on a correspondence with moral or natural law? Is unjust law, such as Nazi law, really law?

We'll study four out of the five chapters of Adams, in the following order: Chapter 2, Chapter 4, Chapter 5, Chapter 1. Chapter 1 is left for last because it covers the most abstract and difficult issues.

Academic integrity

Academic dishonesty will not be tolerated. The rise of the internet as a research tool has engendered some confusion about what constitutes cheating, plagiarism, and the legitimate uses of other people's works. Please read the pages on the [campus website on academic integrity](#), which prohibits cheating and plagiarism, defined as "the act of passing off as one's own the ideas or writings of another."

Accommodations for students with disabilities

Students with disabilities should inform me at the beginning of the semester, so that appropriate accommodations can be provided.

SYLLABUS (may be updated periodically)

Unless otherwise indicated, readings are in the Adams anthology. You should also read the introductions to the chapters and the sections (at least the parts that pertain to the assigned readings)—not necessarily before the readings, but at some point. They are very helpful. Other readings are on Blackboard (Bb) or online.

The syllabus is likely to undergo a few changes. Dates are approximate: we may speed up or (more likely) fall behind. A few changes in the readings, including additional readings, are possible. Stay tuned; I post updates and other announcements on Blackboard regularly.

1. 1/11. First day. The relationship between law and morality. *South Florida Free Beaches v. City of Miami*.

1/16. MLK Day—no class.

Chapter 2: Liberty, the First Amendment, and Constitutional Interpretation

Liberty, paternalism, and morality

2. 1/18. J.S. Mill, “On Liberty” (in Adams, *and* Bb).

For general background useful throughout the course, also read, in the first couple of weeks: Adams, 7-14; Orin Kerr, “How To Read a Legal Opinion” (Bb); “The U.S. Court System” (Bb).

3. 1/23. Gerald Dworkin, “Paternalism” (Bb); Jim Holt, “The New, Soft Paternalism” (Bb); Patrick Devlin, “The Enforcement of Morals.”

4. 1/25. H.L.A. Hart, “Law, Liberty, and Morality”; *Lawrence v. Texas*; Joel Feinberg, “A Ride on the Bus.”

Freedom of expression

5. 1/30. *Griswold v. Connecticut*; *Cohen v. California*; *Texas v. Johnson*.

6. 2/1. J.S. Mill, on freedom of expression (Bb); Lichtenberg, notes on freedom of expression (Bb).

2/4. FIRST PAPER DUE.

Legal and constitutional interpretation

7. 2/6. *Smith v. U.S.*; *Church of the Holy Trinity v. U.S.*; *Riggs v. Palmer* (p. 149); Antonin Scalia, “The Role of U.S. Federal Courts in Interpreting the Constitution.”

8. 2/8. David Souter, Harvard Commencement Remarks (Bb); Ronald Dworkin, “‘Natural Law’ Revisited” (Bb).

Chapter 4: Criminal Law

Punishment

9. 2/13. Adams, “The Purposes of Punishment” (442-6); Michael Moore, “The Argument for Retributivism.”

10. 2/15. *Lockyer v. Andrade*; *Harmelin v. Michigan* (Bb); Rachel Aviv, “No Remorse” (Bb)

2/20. Presidents’ Day—no class.

11. 2/22. James Forman, [“Why Care About Mass Incarceration?”](#)

12. 2/27. Catching up.

Crime: Mens Rea, Justification, Excuses, Rape

13. 2/29. Adams, “Criminal Law” (385-90); Douglas Husak, “Intent”; *People v. Young* (Bb); *People v. Dlugash*.

3/4 (Sunday). **SECOND PAPER DUE.**

Week of 3/5. spring break.

14. 3/12. Sanford Kadish, “The Criminal Law and the Luck of the Draw”; Judith Thomson, “The Decline of Cause”

15. 3/14. Adams, “Justification and Excuse” (406-11); [the Bernard Goetz case](#); *State of North Carolina v. Norman* (Bb); Cathryn Jo Rosen, “The Battered Woman’s Defense”

16. 3/19. *State v. Rusk* (Bb); *Regina v. Morgan* (Bb).

17. 3/21. Adams, “The Insanity Plea” (411-14); The Case of the Dog ‘Provetie’; *State v. Cameron*; Norval Morris, “The Abolition of the Insanity Defense”; Stephen Morse, “Excusing the Crazy: The Insanity Defense Reconsidered”

3/22. Debate about rape in discussion sections. (More information to follow soon.)

Chapter 5: Tort Law

Cause and fault

18. 3/26. *Holden v. Wal-Mart Stores*; Oliver Wendell Holmes, “The Fault Requirement in Tort.”

19. 3/28. *Palsgraf v. Long Island Railroad*; H.L.A. Hart and A.M. Honore, “Tracing Consequences.”

4/1. **THIRD PAPER DUE.**

Duty to rescue

20. 4/2. *McFall v. Shimp*; Thomas Macaulay, “Against a Legal Duty to Rescue

21. 4/4. Joel Feinberg, “The Moral and Legal Responsibility of the Bad Samaritan” (Bb). Pages 59 (beginning with the section “Gratuitous Favors”) to 64 (up until “Macaulay’s Objections...”) are optional.

4/9. Easter Monday—no class.

Cause and mass torts

22. 4/11. *Summers v. Tice*; *Sindell v. Abbott Laboratories* (skip sections I-III, on pages 610-14, and the footnotes) (Bb).

4/12. Debate about legal duty to aid in discussion sections.

Chapter 1: The Nature of Law and Legal Reasoning

23. 4/16. Adams, 15-16 (on Nuremberg Trial); Trial of Border Guards; Robert Jackson, “Opening Address for the United States, Nuremberg Trials”; Charles Wyzanski, Jr., “Nuremberg: A Fair Trial?”

24. 4/18. Adams, 40-46; H.L.A. Hart, “Positivism and the Separation of Law and Morals”; Lon Fuller, “Positivism and Fidelity to Law”; Lon Fuller, “Eight Ways to Fail to Make Law” (Bb).

25. 4/23. Thomas Aquinas, “What Is Law?”; Martin Luther King, Jr., “Letter from Birmingham Jail”; Lon Fuller, “The Problem of the Grudge Informer.”

26. 4/25. David Luban, “The Moral Authority of Law” (32-47, end of top paragraph).

27. 4/30. *Billy Budd*.

4/30. FINAL PAPER DUE.

Final exam: Monday, 5/7, 12:30-2:30.