Philosophy 211: The Philosophy of Law (Winter 2018)

Professor: Max Cherem
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Schedule: M/W/F 11.55-1.10pm, UL 305
Office hours: T/TH, 9.30-11.30 (& by appt.; last meeting 11.15), HH 202

Course Description:
This course introduces students to basic issues in the philosophy of law. In the first half of the course we review the main schools of thought regarding the origin, justification, and binding force of legal systems: Natural law theory, legal positivism, legal realism, interpretivism, and critical legal studies (CLS). During this time we will also focus on issues such as the relation between law and morality, the nature and main functions of the law, how law impacts political legitimacy, and so on. We then spend a week on the debate between liberalism and CLS, as it clarifies what is at stake in many other debates between competing approaches within the philosophy of law. We conclude with three weeks dedicated to essential topics in the philosophy of law: rights, liberty, and whether or not we have a duty to obey the law.

General learning objectives:
By the end of Phil 211, all students are expected to be able to:
- Articulate the core claims and frameworks of the main schools of thought within the philosophy of law.
- Explain core concepts within the philosophy of law.
- Articulate their own position regarding the main schools of thought and core concepts in the philosophy of law.
- Identify key theoretical and practical challenges regarding the production, enforcement and justification of law.

We will meet these learning objectives through a combination of readings, pre-class reading questions that accompany readings, lectures, in-class discussion, and individual assignments (see below).

Expectations: This syllabus will let you know my expectations. I am also interested in knowing about you and what your expectations for class are. Please take a moment to fill out the note card on your desk with the following:

1. Name, year, major (if known) and relevant interests—academic or otherwise.
2. Prior experience in philosophy, political science, formal logic, mock trial, pre-law, or debate (if any).
3. Any recurring evening conflicts when you’ll be unable to see a film outside of class (e.g. sports, lab, work).
4. (Most important) Your expectations for this class!

Participation & Attendance: jointly make up 10% of your grade. Attendance is a necessary yet not sufficient condition for participation (you can’t participate unless you attend, but attending does not necessarily mean you’re participating). You can take one unexcused absence without consequence. Each subsequent absence will lower your participation grade by 1/3 of a letter grade (B→B−). Missing eight classes or more is grounds for failing the course. Coming to class more than 5 minutes late constitutes ¼ of an absence. If you miss more than 3 days without extenuating, documented reasons you will automatically lose this entire 10%. Think about it: we have 10 weeks and each week we meet 3 times. Missing 3 days is already missing a week—10% of the entire class! Please e-mail me if you miss class. Whether you are late or absent you are responsible for being aware of everything that goes on in class (check with classmates for notes or handouts). As for participation: you need to consistently be an active participant to earn full participation (contribute to in-class discussion, answer questions, respectfully critique / respond to / build upon a point made by an author or a fellow classmate, etc). This means that you should always come to class having carefully and thoroughly read the readings assigned for that day. We will primarily use structured questions, class discussion and some lecture to analyze the readings; this all requires familiarity with the text and active questioning.

Reading: Read the readings before coming to class on the day for which they are listed. Thoroughly read (do not skim) all assigned readings. You may find that it helps to underline/highlight important passages and make notes in the margins of the text (or elsewhere). You need to do close and careful reading of these texts in order to understand them (much like philosophical writing, this is similar to the type of reading one might encounter as a law student). You cannot rush through the readings and expect to fully understand them. If you have an academic background outside of a theoretical discipline, you may find that you need to read some of the readings multiple times to fully understand them. This is because (like any academic skill) reading theoretical texts and fully understanding them is a skill acquired over time. I would encourage you to stick with it, as it gets easier the more theoretical texts you read. Make sure you set aside enough time to properly do the readings. Please come to office hours to discuss any issues you don’t understand.

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1 In winter quarter it is equivalent to missing MORE than 10% of the class, as we have 2 days off for college holidays.
**Writing:** Philosophical thinking is concerned with the argumentative clarity, coherence and the defensibility of a particular position. Your writing should focus on clarity, coherence, succinctness and the construction of sound arguments. The thinking and writing expected in a philosophy class are similar to what you might encounter as a law student. For guidance on writing please read Jim Pryor’s online essay “How to Write a Philosophy Paper”. When writing you need to express yourself very clearly, as I can only grade what you write on the page. Even if you know a theory or argument well in your head, I can only grade what you write (there is no way to evaluate what someone intends to write but fails to clearly express). You will be graded on how well you defend your views (whatever they are) not the particular view / position you take. That being said, there are better and worse ways to construct arguments, so please read Pryor’s essay (be forewarned: some students find his writing style a bit annoying [I think he is trying to be funny]...but the content of this essay is good): [http://www.jimp pryor.net/teaching/guidelines/writing.html](http://www.jimp pryor.net/teaching/guidelines/writing.html). Make sure you write what you mean and that you do so clearly. One way to do this is to let a friend read your writing and see if they understand it. You can also set up an appointment at the writing center. But, keep in mind that it is not a “one-stop shop” that will simply fix all the mistakes in a particular assignment for you so that you can get a better grade. The center’s main purpose is to help develop your writing skills by giving sustained feedback over the course of 4 years. I write fairly detailed comments on each student’s paper so as to explain why you have earned a certain grade. Comments are meant to help you identify your strengths and weaknesses and to do better on the next paper. If you ever feel that my comments show that I have misunderstood what you wrote then please meet with me and we’ll go over the paper.

**Due dates and extensions:** Extensions will not normally be granted. But, please let me know if you feel there are extenuating circumstances that merit an extension (death in the family, documented severe illness, etc.). Assignments are counted down 1/3 of a grade (A to A-) for each day (or part of a day) they are late. You’ll receive assignments via email. The due date/time and hand-in procedure will be in the email.

**Accommodations:** If you need accommodations (due to learning, physical, emotional, or other disabilities) let me know in the 1st week so we can start certifying the accommodation; K-policy: [http://reason.kzoo.edu/studev/disabilities/](http://reason.kzoo.edu/studev/disabilities/).

**Plagiarism & academic integrity:** I don’t tolerate plagiarism or other violations of academic integrity. Any violation (no matter how small or unintentional) will result in at least a failure of the assignment (depending on the assignment and your past performance this may result in failure of the course) and will be reported to dean of student affairs. It is your responsibility to familiarize yourself with the college’s policies. See: [https://reason.kzoo.edu/studev/stuconduct/](https://reason.kzoo.edu/studev/stuconduct/) (especially, but not only, art.1, sect.17 & 18 and art. 3, B1) and [https://reason.kzoo.edu/studev/policies/dishonest/](https://reason.kzoo.edu/studev/policies/dishonest/). If, after reading the college policies, you have questions about what constitutes plagiarism or academic integrity then ask.

**Laptops and phones:** No. This class requires engaged discussion. A distraction-free environment where people can focus on the material is crucial. Because laptops produce a variety of distractions (email, Facebook, E-hay, etc) they are not allowed. Turn off your phones before class. Do not text during class. I can generally see when students are texting. As it wastes class time to call attention to this it will simply be reflected in your participation grade.

**Questions to aid reading and discussion:** 1-2 times a week I email questions that go with the readings for our next meeting. You’ll receive these 12-24 hours in advance of class. You should do the reading even if you do not yet have the questions (you will not receive them for every session). You should merely view them as something extra provided as an aid for your understanding (finding the answers to them is absolutely not a substitute for reading closely and carefully). Even when we do use these questions in class we will not get to every question. I encourage you to think about questions we do not get to and re-read the material with them in mind. Doing so will help you on assignments.

**2 Short summary assignments:** For 3 of the topics we cover I assign a prompt asking you to summarize the views of an author (or several) with respect to a given issue. The prompts are straightforward. Your response should be 550 words maximum. Part of the challenge is fitting a concise summary into so little space. Some students may also find it challenging to merely summarize an issue rather than to also evaluate it. The purpose of the summary assignments is to see that you can first neutrally (and, when necessary, charitably) describe an issue or argument before starting to critique it. But, rest assured: other assignments will give you a chance to express your own views. You only need to complete 2 of the 3 prompts and you may choose which 2 to write. Be aware that these prompts are assigned as we go. This means that if you choose to skip 1 you must then do the subsequent 2. You can also write 3 and take the highest 2 grades (but the third summary attempt won’t receive comments). These are short assignments so they are not marked on the syllabus. Look for them in your email inbox from time to time. I try to space them out fairly evenly over the term.
Grading breakdown:
- Attendance and participation: 10%
- 2 short summaries (550 words each) throughout the term: 30% (each worth 15%)
- Midterm paper: 30%
- Final paper: 30%

REQUIRED TEXTS:
Coursepack, (Available in K-College Bookstore)

Week 1
Mon, 01/08: Preview of course and introductory lecture: What is philosophy of law? What are the main questions?
Reading: Jim Pryor’s online essay (see above) “How to Write a Philosophy Paper”. ALSO: READ AHEAD!!!

Wed, 01/10: What is law anyhow? An early answer: law as a kind of command.
Reading: Austin, “A Positivist Conception of Law” 74-87 (PoL9th) & Wacks “Introduction” (VSI).

Fri, 01/12: The Rule of Law and its Value.
Reading: Fuller, “Eight Ways to Fail to Make Law” & Hart, “The Minimal Moral Content of Law” (both in PoL9th)

Week 2
Mon, 01/15: MLK DAY: NO CLASSES

Wed, 01/17: The Rule of Law and its Value

Fri, 01/19: The Natural Law Tradition
Reading: Wacks, “Natural Law” (VSI) & Aquinas, “Selections from On Law, Morality, and Politics” (PoL9th)

Week 3 NOTE:
Mon, 01/22: The Natural Law Tradition
Reading: Finnis, “Natural Law and Natural Rights” & Bentham, “Of Laws in General” (both from PoL9th) & M. Murphy, “Natural Law Jurisprudence” (CP)

Wed, 01/24: The Natural Law Tradition
Reading: Fuller, “Case of the Speluncean Explorers” (PoL9th) & Altman, “Law & Morality”(AAL, 40-76; NOT 58-66)

Fri, 01/26: Legal Positivism
Reading: Wacks, “Legal Positivism” (VSI) & Hart, “Law as the Union of Primary and Secondary Rules” (PoL9th)

Week 4 NOTE: Midterm paper will likely be assigned via email late in the evening of 1/31.
Mon, 01/29: Legal Positivism
Reading: Coleman, “Negative and Positive Positivism” (PoL9th)

Wed, 01/31: Legal Realism

Fri, 02/02: Interpretation and the Law
Reading: Wacks, “Law as Interpretation” (VSI) & Altman, excerpt from “Law and Morality” section entitled “Dworkin’s Interpretive Theory” (AAL, 58-66).

Week 5: NOTE: Fri, 02/09 is FALL BREAK DAY: NO CLASSES.
Mon, 02/05: Interpretivism
**Week 6:**
**Mon, 02/10:** *The Constitution*
**Reading:** Altman, “The Constitution” (AAL, 79-110)

**Wed, 02/12:** *Constitutionalism*
**Reading:** Hamilton et al., “The Federalist Papers 48 and 51” & Holmes, “Precommitment and the Paradox of Democracy” & Raz, “On the Authority and Interpretation of Constitutions” (All 3 from PoL9th)

**Fri, 02/14:** *Critical Legal Studies*
**Reading:** Altman, “Critical Legal Studies” (AAL, 284-310) & Gordon, “Critical Legal Histories” (PoL9th)

**Week 7:**
**Mon, 02/17:** *Critical Legal Studies versus Liberalism*
**Reading:** Wacks, “Critical Legal Theory” (VSI) & Altman, “Introduction”, “Critical Legal Studies Versus Liberalism” and “Liberalism and Legality” (CLS, 1-56)

**Wed, 02/19:** *Critical Legal Studies versus Liberalism*
**Reading:** Altman, “The Possibility of the Liberal Rule of Law” (CLS, 57-103)

**Fri, 02/21:** *Critical Legal Studies versus Liberalism*
**Reading:** Altman, “The Contradictions of Law” & “Law and Social Reality” (CLS, 104-203)

**Week 8:**
**NOTE:** Final paper will be assigned via email either 02/28 or on 03/03.
**Mon, 02/24:** *Rights*
**Reading:** Dworkin, “Taking Rights Seriously” (CP) & Wacks, “Rights and Justice” (VSI)

**Wed, 02/26:** *Rights*
**Reading:** Feinberg, “The Nature and Value of Rights” & Hart, “Are There Any Natural Rights?” (both in PoL9th)

**Fri, 02/28:** *Punishment*
**Reading:** Feinberg, “The Classic Debate” & Duff “Responsibility, Restoration, and Retribution” (PoL9th)

**Week 9:**
**Mon, 03/03:** *Punishment*
**Reading:** Kadish and Schulhofer, “The Case of Lady Eldon’s French Lace” (Handout distributed in prior class) & an episode of the podcast “criminal”: Episode 30 “The Agreement”.

**Wed, 03/05:** *Punishment*
**Reading:** Lewis, “The Punishment that Leaves Something to Chance” (Handout distributed in prior class)

**Fri, 03/07:** *Liberty*
**Reading:** Mill, “The Liberal Argument” from “On Liberty” & G. Dworkin, “Paternalism” (both in PoL9th)

**Week 10:**
**Mon, 03/10:** *Liberty*
**Reading:** G. Dworkin, “Devlin Was Right” & R. Dworkin, “Liberalism and Moralism” (handout and CP)
**Wed, 03/12:** *Is There a Duty to Obey the Law?*
**Reading:** “Why I am Not an Anarchist” & “Doing One’s Fair Share” by CH Wellman (Coursepack).
**Fri, 03/14:** *Is There a Duty to Obey the Law?*
**Reading:** “Just and Unjust Laws” & “Confronting Injustice” by CH Wellman (Coursepack)

**Final due date:** 03/19 at 2pm (our assigned exam time). Turn papers in to tray at my door (HH #202).