

PHIL 222 – Philosophy of Law
Syllabus – keep handy for reference

Spring 2022

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Office hours: MTR 11-12, or by appointment

Texts:

“Philosophy of Law” course pack available at BSU bookstore.

There will be additional readings either posted online or distributed in class. All readings mentioned are required unless otherwise noted. I will also assign some films to be viewed at home – these may be the subject of writing prompts and hence required.

Overview and objectives:

This course is an exploration of a variety of philosophical issues pertaining to law. We will not be “studying the law” in the sense of learning what all the laws are, although we will refer to real laws, court decisions, and the Constitution in the course of our investigations. Philosophy of Law, like the “philosophy of” other things, is concerned with the theoretical underpinnings of our subject; ontological, epistemological, and ethical ramifications or presuppositions of our subject; questions of justification. More specifically, we will examine questions such as: What is law? Where does it come from? What is the nature of legal and judicial reasoning? What grounds legal authority? How are rights understood in the law? How shall we understand the relation between morality and law? What is the grounding of a system of punishment? What is responsibility in the law? Our objectives for this semester are to look at some of the main philosophical theories pertaining to these questions, get a better sense of what law is and what legal systems are, and to learn to think philosophically about these issues. Although this class is beneficial to the pre-law student, its essence is philosophy.

Requirements:

First of all, please note that you are required to do all assigned readings and viewings, whether from the texts, on handouts, or on the internet, and to be prepared to comment on them if called on in class to do so. Repeated unpreparedness indicates that you are not taking the class seriously and will result in grade reduction as appropriate. Also, regular attendance is a requirement of the class. This is a reflection of the fact that the primary vehicle for learning the material is the class itself, of which you should see yourself as an important part. Obviously there is such a thing as a good reason to miss class, but be sure you limit your absences to such occasions, as absences in excess of three will result in reduction of overall grade no matter what your average is. Similarly, everyone is late once in a while, but chronic lateness will count as one or more absences. If you do have to miss class, it is your responsibility to get the notes, and any announcements or additional assignments, from a classmate. (On the other hand, if I am late, it almost certainly means I am ill – call the department office at x1258.) In general, try to observe some of the ground rules of civilized society: Anything with an off switch should be off (as should, ideally, hats), eat and drink quietly and discreetly, don’t do homework for another class, don’t go to sleep. You are not to use your phone, laptop, or tablet during class. Disruptive behavior will result in your being asked to leave. Conversely, constructive participation will be

rewarded. Philosophy has, as its essence, the idea of conversation. There will be some lecturing as I introduce you to material, but you should feel free to ask questions -- of me, and of your classmates -- and to agree or disagree as you see fit. However, you must strive to maintain an atmosphere of civil discourse. There is a difference between philosophical argument (which is cooperative and constructive) and belligerent bickering. Also, please note that this course deals with issues that are always provocative and controversial. A requirement of the class is a willingness to listen to and debate others' points of view and a commitment to freedom of expression. There is no requirement to accept any view, but toleration is crucial. If you are not comfortable with lively and vigorous debate in which your views will be challenged and in which you may freely challenge others' views (including the professor's), you should not take this class. The willingness to engage in critical examination and critical re-thinking of what you think you know and what others think they know to be true is a central prerequisite for the class.

Subject to adjustments as noted above, your grade will primarily be calculated thus:

Weekly response: each week, with one or two exceptions, I will ask you to respond to some question or reflect on some problem. You will reply via email not later than Sunday at noon. Your reply need not be more than a paragraph, but must demonstrate critical reflection and real engagement with the material. **Successful completion of all weekly responses=40%**

Two short papers (approx. 3 pages) One will be approximately midway through the term; the other May 11. **2@30% each=60%**. Plagiarism=F

Late papers will be penalized one letter grade per day. Papers should be written in WORD, formatted in 12-point Times New Roman, double-spaced with 1-inch margins all around. Your name, date, and "PHIL222" should appear top right on the first page. Page numbering on. Documentation of sources on a separate page following the end of your paper. The papers should be uploaded to Blackboard (if you have trouble uploading, send as an attachment to an email; be sure it's a .doc or .docx file). The weekly responses should just be in the body of an email, and in both cases, this should be an email sent from your bridgew.edu account, with a subject line saying "weekly response #x" or "first essay" etc.

Outline:

The course is divided into several distinct but often related topics. I've allotted time for up to 6 classes for each unit, plus we have days set aside for visiting speakers.

Part 1 is on the nature of law. What is law? What makes a valid law valid? What is the "natural" in "natural law"? Where does law come from?

Part 2 is concerned with theories of interpretation, some of which you may have heard of: formalism, originalism, realism, and so on.

Part 3 will be an exploration of the evolution of law and legal systems, including a look at the idea of polycentric law.

Part 4 is devoted to several philosophical problems in the law: the nature of punishment, criminal justice reform, rights theory, and civil disobedience theory. If time permits we will discuss all four of these.

The basic outline, mapped onto a calendar, will be as follows:

<u>Week of:</u>	<u>Topic, reading assignment for that week; other notes:</u>
Jan 20	Intro to course (via zoom <u>today only</u> , in-person class beginning 1/25)
Jan 25-27	Begin Part 1
Feb 1-3	
Feb 8-10	
Feb 15-17	Begin Part 2
Feb 22-24	
Mar 1- 3	
Mar 15-17	Begin Part 3
Mar 22	
Mar 24	Guest speaker, class meets in DMF120
Mar 29-31	
Apr 5	No class today
Apr 7	Begin Part 4
Apr 12	
Apr 14	Guest speaker, class meets in DMF120
Apr 19-21	
Apr 26-28	
May 9	Second paper due, 9:00 AM

The above calendar is subject to change, to allow us some flexibility. As the discussions proceed, we may find some topics expanded, others reduced. See below for a detailed outline.

Course Outline with readings:

Selections with an asterisk are not in the course pack as they are available online. I will provide the URLs for these selections. Other selections may be handed out or posted.

Jan 25-Feb 10: The nature of law

1. H.L.A Hart, *The Concept of Law* (Oxford UP, 1961) , pp. 77-96
2. *Thomas Aquinas, *Summa Theologica*, questions 90-97
3. Lon Fuller, *The Morality of Law* (Yale UP 1964), pp. 33-38
4. *Frederic Bastiat, *The Law* (FEE, 1987 (1850))
5. Friedrich Hayek, *The Constitution of Liberty* (U of Chicago Press, 1960), pp. 148-175
6. Friedrich Hayek, *Law, Legislation, and Liberty* (U of Chicago Press, 1973), pp. 35-54, 72-144

Feb 15-Mar 3: Legal interpretation

1. Two Handouts
2. Richard Posner, "Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution," *Case Western Reserve University Law Review*, v. 37 (1987), pp 179ff
3. John Hasnas, "The Myth of the Rule of Law," *Wisconsin Law Review*, vol 1995 no. 1, pp. 199ff

Mar 15-31: Polycentrism and the evolution of law

1. Bruce Benson, "Are Public Goods Really Common Pools? Considerations of the Evolution of Policing and Highways in England," *Economic Inquiry* XXXII (April 1994), pp. 249-271
2. Joseph R. Peden, "Property Rights in Celtic Irish Law," *Journal of Libertarian Studies* 1 (1977), pp. 81-95

3. David Friedman, "Private Creation and Enforcement of Law – A Historical Case," *Journal of Legal Studies* 8 (1979), pp. 399-415
4. Paul Milgrom, Douglass North, and Barry Weingast, "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs," *Economics and Politics* 2 (1990), pp. 1-23
5. Bruce Benson, Legal Evolution in Primitive Societies, *Journal of Institutional and Theoretical Economics* 144, 5 (1988), pp. 772-788
6. Terry L. Anderson and P.J. Hill, "An American Experiment in Anarcho-Capitalism: The *Not So Wild, Wild West*," *Journal of Libertarian Studies* 3, 1 (1979), pp. 9-29.
7. Harold Berman, *Law and Revolution* (Harvard UP, 1983), pp. 520-558
8. *Randy Barnett, "Pursuing Justice in a Free Society," Part One (*Criminal Justice Ethics* Summer-Fall 1985); Part Two (*Criminal Justice Ethics* Winter-Spring 1986)

Apr 7-28: philosophical issues in the law

1. *Jeremy Bentham, *The Principles of Morals and Legislation* (Prometheus Books 1988), pp. 170-188
2. *Immanuel Kant, "On the Right to Punish," *The Metaphysics of Morals* (Cambridge UP, 1991), pp. 140-144
3. John Rawls, "Two Concepts of Rules," *Philosophical Review* 64 (1955), pp. 3-13
4. Herbert Morris, "Persons and Punishment," *The Monist* (1968)
5. Plato, "Crito," in *Five Dialogues*, ed. G.M.A. Grube (Hackett 1981), pp. 45-56
6. *Thoreau, "Civil Disobedience"
7. John Rawls, "Legal Obligation and the Duty of Fair Play," in S. Hook, ed., *Law and Philosophy* (NYU Press 1964), pp. 3-18
8. A. John Simmons, "The Principle of Fair Play," *Philosophy and Public Affairs*, vol 8, no 4 (1979), pp. 307-337
9. Richard Epstein, "A Theory of Strict Liability," *Journal of Legal Studies* vol 2 (Jan 1973)
10. Criminal Justice Reform online forum
11. *Thomas Jefferson, Declaration of Independence
12. Rights theory handout

Films assigned for home viewing may include: *12 Angry Men*, *Breaker Morant*, *A Man for All Seasons*, *Judgement at Nuremberg*, *The Castle*, *Billy Budd*, *Gideon's Trumpet*, *Unalienable*.

Useful online resources:

<http://www.supremecourtus.gov/opinions/opinions.html> -- The US Supreme Court
<http://www.constitution.org/liberlib.htm> -- Historical legal writings (includes our Constitution)
<http://www.constitution.org/mil/ucmj19970615.htm> -- Military law
<http://www.law.harvard.edu/library/> -- Harvard Law Library
<http://www4.law.cornell.edu/uscode/> -- Searchable US Code
<http://www.findlaw.com> -- all-purpose resource
http://lsolum.typepad.com/legal_theory_lexicon/ -- Legal Theory Lexicon