

Philosophy of Law

Professor: Taojie Wang (taojie_wang@brown.edu)

Course Meetings: This course is designed with two meetings/week, 13 weeks/semester timeframe in mind that fits a class size of over 30 students (adjustable to fit other timeframes & smaller class sizes).

Office Hours: Sign up in Google doc

Course Description

This course introduces you to some of the core problems of philosophy of law. The law purports to obligate us to do things, and to a great extent, people comply. What it is, however, and how it could have this kind of authority on us raises difficult philosophical questions. On top of that, how the law should deal with certain pressing issues raises further questions. We will study traditional and contemporary writings on a wide range of such questions, including the obligation to obey the law, unjust law, responsibility and excuses, punishment, natural law and positivism, interpretation of legal texts, constitutions, democracy, judicial review, free speech, and more.

During this course, we will work towards a better understanding of the complexities and concepts involved in these topics and what those concepts mean for the philosophical and legal issues that we care deeply about in our daily lives. Therefore, our class will be of practical importance even though our starting point is some abstract concepts.

Course Materials

You are not required to buy any texts for this course. All readings will be made available electronically online.

Learning Activities and Assessments

Weekly Response Piece

As a weekly assignment, you are required to write either one response piece to one of the two readings of your choice or a response to one of your classmates' response piece. A response piece should be between 200-300 words, submitted through Canvas under the Discussion post section. Response pieces are meant to be short notes to help you keep in mind what the structure of the text is and the question(s) you have regarding the text. It should be something that, once you look back at it during class, can help you have something to say, or some questions to ask, about the text.

If you are writing a response to someone else's response piece, you are likely to do something different. In that case, if you find the point they made appealing, or that you share the questions they had, you can support them by saying your reasons for finding their point appealing, and saying why you think these questions matter. It would also be great if you could offer a potential answer to their questions. On the other hand, if you find that their understanding of the structure of the text differs from yours, you could compare the two readings and see which one is better supported. Or if you have an objection to a point they made, you can do that.

Doing these may take a little time at first. However, I will guide you by providing extensive feedback. As the course progresses and you become more familiar with the reading and reflective processes, writing this will become more comfortable and rewarding.

Papers

Students will be required to write three papers throughout the semester:

- Paper 1: 800 words
- Paper 2: 1000 words
- Paper 3: 1500 words

For each of the papers, you should choose one of the topics we have covered so far in class. In addition to the provided guidelines on how to write a philosophy paper, there will be a class session dedicated to that.

Grades Breakdown

Grades will be based on classroom participation, response pieces, and the three papers. Here's the weight each of these carries:

Classroom participation: 10%

Response piece: 20%

Paper 1: 15%

Paper 2: 25%

Paper 3: 30%

Attendance Policies

It is expected that you will be present at all course meetings. Please contact me if you cannot make it to class; students may have up to three such excused absences with no effect on the contributions to the participation grade (even without completing any additional work). Beyond three such absences, you will need to contact me to work out alternative arrangements for contributing to our collective work and class conversation (generally, additional comments in the Google Doc, but other options may be available). If you are more than ten minutes late to class, you will be counted as absent.

Diversity, Accessibility, and Accommodation

I strive to make this course a welcoming place for all perspectives, where all students are treated as valued and respected members of the class community regardless of gender, sex, ethnicity, religious affiliation, sexual identity, socioeconomic background, or ability. Please reach out to me early in the term if you have a condition, religious commitment, or extenuating circumstance that might require accommodations or modification of any of the course procedures.

Reading Schedule and Important Dates

Week 1: Introduction

Tuesday

- Introduction.
- Complete the Welcome Survey.

Thursday

- Rawls, "Legal Obligation and the Duty of Fair Play."

Week 2

Tuesday

- Simmons, “The Principle of Fair Play.”

Thursday

- Shelby, “Justice, Deviance, and the Dark Ghetto”

Week 3

Tuesday

- Martin Luther King, Jr. “Letter from a Birmingham Jail.”

Thursday

- Rawls, “The Justification of Civil Disobedience.”

Week 4

Tuesday (Responsibility and Excuses)

- Hart and Honoré, *Causation in the Law*, excerpts.

Thursday

- Writing Workshop before the first paper is assigned.
- Paper 1 assigned.

Week 5

Tuesday

- Kelly, “Blame and Excuses”

Thursday

- Williams, “Moral Luck.”
- Paper 1 due.

Week 6

Tuesday (Punishment)

- Bentham, *An Introduction to the Principles of Morals and Legislation*, excerpts.

Thursday

- Kant, *The Metaphysics of Morals*, excerpts.
- Davis, “Harm and Retribution.”

Week 7

Tuesday

- van den Haag, “The Collapse of the Case Against Capital Punishment”

Thursday

- “Nathanson, “Does it Matter if the Death Penalty is Arbitrarily Administered?”

Week 8

Tuesday (Natural Law and Positivism)

- Aquinas, *from Summa Theologica*

Thursday

- Austin, *The Province of Jurisprudence Determined*, excerpts.
- Hart, *The Concept of Law*, excerpts.
- Paper 2 assigned.

Week 9

Tuesday

- Dworkin, *Taking Rights Seriously*, excerpts.

- Dworkin, *Law's Empire*, excerpts.

Thursday (Interpretation of Legal Texts)

- Schauer, "Formalism,"
- Bork, *The Tempting of America*, excerpts.
- Paper 2 due.

Week 10

Tuesday (Constitutions, Democracy, and Judicial Review)

- Waldron, "The Core of the Case Against Judicial Review," (secs 1-3).

Thursday

- "Waldron continued.

Week 11

Tuesday

- Solum, "Originalism"
- Sunstein, "Originalism"

Thursday (Free Speech)

- Mill, *On Liberty*, excerpts.

Week 12

Tuesday

- Scanlon, "A Theory of Freedom of Expression"

Thursday

- American Civil Liberties Union, "Speech on Campus"
- Paper 3 assigned (due by the end of next week).