Philosophy of Law Fall 2018

WASHINGTON UNIVERSITY IN ST. LOUIS
PHIL 346: PHILOSOPHY OF LAW

Meetings: MW, 4:00P-5:30P, Louderman 461

Instructor: Jonathan Gingerich

Email: jgingerich@wustl.edu

Cell: [see course website] (I'm unlikely to answer texts and calls after 7 PM)

Office: Umrath Hall, Room 234

Office Hours: W 2:00P-4:00P

Website: https://wustl.instructure.com/courses/5804

Course Description

This course will provide an introduction to some central issues in the philosophy of law. We will consider questions such as the following: What is law? Do we have a moral obligation to obey laws? What is the relationship between democracy and whatever obligations to follow the law we might have? What sorts of failures of democracy might make it permissible or obligatory not to follow laws? What is the role of lawyers and the legal profession in democratic governance? This course will address these questions primarily by reading contemporary academic philosophy books and articles, although we will also read some historical philosophy and several law review articles.

By taking this class, students will learn to: carefully read and explain difficult philosophical texts; clearly articulate and defend philosophical views about the law, both orally and in writing; independently assess philosophical arguments about law; refine and defend their beliefs about whether or not we have an obligation to follow democratically enacted laws; and take pleasure in the challenges of careful and rigorous reading and thinking about both philosophy and law.

Texts

All texts will be available on the course website. We'll be reading two books, Robert Paul Wolff's *In Defense of Anarchism*, and Jean-Jacques Rousseau's *The Social Contract*. You're welcome to buy hard copies of these texts, but I'll also make them available electronically. If you want to buy a copy of *The Social Contract*, I ask that you purchase the 2002 Yale University Press Edition edited by Susan Dunn (ISBN 0-300-09141-9) so that we all have the same translation and page numbers.

Many of the texts we will be reading are dense, philosophical texts, and I strongly encourage you to read them at least twice.

Screen Free Classroom

In order to avoid distractions and to promote lively participation, thoughtful note taking, and good cheer, I ask that you bring (1) a paper notepad, (2) a writing utensil, and (3) a paper copy of the reading to every class meeting, and **refrain from using your cell phones, tablets, and laptops in class**. Please notify me if special circumstances, such as an injury or a disability, require you to take notes electronically. Please also notify me if obtaining hard copies of the course materials poses a problem for you.

Graded Coursework

Philosophy is a conversational activity. This course is capped at 35 students, and this course will be discussion-based: every session will center around in-class discussion.

In order for this collaborative endeavor to work, you must complete the assigned reading before class and arrive prepared to discuss it. You owe it not only to yourself, but to your fellow students, to come prepared, and to bring your energy and enthusiasm to share.

All of the following course requirements must be completed in order to receive a passing grade in the course. If you are at all concerned that you may not be able to satisfy one of the course requirements on time, please get in touch with me as soon as possible.

Class Participation

Regular class attendance and active participation will be essential in this collaborative, discussion-based course. Consistently helpful contributions to class discussion may result in the raising of a student's final grade by up to a third of a full letter (e.g. from a B to a B+). Likewise, I may lower the final grade by up to one third of a full letter (e.g. from a B to a B-) in case of spotty attendance or failure to contribute productively to class discussion.

Note that philosophical conversation is more about listening and thinking than it is about speaking, especially when the conversation involves more than two people. I do not care about the quantity but rather about the thoughtfulness of your contributions to the discussion. A thoughtful contribution is one that arises from the careful attention you will pay to your face-to-face interlocutors and to the text.

Reading Responses

Throughout the term, I will ask you to write ten brief (approximately 1 page, double-spaced) response papers to the reading assignment.

You may turn in a reading response paper through the course website **the morning of each lecture by 11:00 AM.**

The purpose of the reading response papers is to get you thinking about the readings before we meet and discuss them, let you practice and improve your philosophical writing, and provide you with a chance to try out ideas and arguments that you may wish to develop in your final paper.

We will have twenty-three lectures with assigned reading over the course of the term. You are free to choose which ten times you submit reading response papers, but because you only need to submit reading response papers before ten lectures of your choice, late submissions of reading response papers will not be accepted except in extraordinary circumstances. I strongly recommend that you not wait until the middle of the course to begin submitting papers so they don't pile up.

A few pointers for writing reading response papers:

- You don't need to do any additional reading or research to write these papers; you simply need to read the assigned texts and think about questions that emerge from them.
- You should avoid merely summarizing the reading. Instead, you should look for thoughts in the readings that excite, confuse, intrigue, or infuriate you and write about them. If you do this, you are likely to write about important interpretative (what does the author mean?) or critical (is the author right?) issues. Comparative points (what is the relationship between one author and another?) may also arise over the course of the term.
- You don't have to write on everything in the reading for a particular day. Indeed, it would be best to select a narrower topic, because if you try to write about everything, you're likely to end up merely summarizing.
- You don't need to try to be original in your reading response papers. The aim is just for you to think critically and clearly about the text and try to understand it.
- Reading responses may serve as a good staring point for our discussion in class. If there is something you'd like to talk about in class, consider writing about it in a reading response paper.
- Reading response papers may also serve as a good starting point for a term paper: if our reading addresses a topic that you think you might want to write your term paper about, consider writing about it in a reading response.

Exams

There will be a **closed-book in-class exam covering units 1 and 2 at the end of week 5**. Further details about the exam will be provided at the end of week 4.

There will be **a closed-book in-class exam covering units 3, 4, and 5 at the end of week 15.** The exam will consist of one or more short essay questions, and will cover the material from the weeks six through fifteen. Further details about the exam will be provided at the end of week 14.

Term Paper

The final paper should be approximately 10 pages, double-spaced, on a topic of your choosing that grows out of one of our meetings or readings. A proposed paper topic is due **Friday of week 10**, a rough draft is due **Friday of week 12**, comments on another student's paper are due on **Monday of week 14**, and the final paper is due on **on December 14.**

Paper Topic: A copy of **a proposed topic is due through the course website by 5:00 PM on Friday of week 10**. The proposed topic should be a one-paragraph abstract or statement of a question that you plan to discuss in your term paper. This topic is not a commitment, and you may change your mind about your paper topic, but you will receive feedback on your proposed topic to help you improve your final paper.

Rough Draft: Another way in which you will develop your paper ideas is by helping one another with feedback on a rough draft of the paper. Giving feedback on your peers' writing also helps you to take up the perspective of the reader in thinking through what makes for a good philosophy paper. To be ready for the collaborative editing process, **you will submit a rough, partial draft of your final paper (around 7-8 pages long), due on the course website by 5:00 pm on Friday of week 12**. Please also **bring two hard copies to class for the first lecture of week 13**. This draft will not be letter-graded: everyone who turns in a satisfactory draft by the deadline will get full credit, whereas those not turning in a draft will receive a zero for this portion of the grade. It is crucial that you complete your draft on time so that you can participate in the peer editing exercise.

Peer Editing Exercise: We will have a collaborative editing exercise in class at the beginning of week 13, shortly after rough drafts are due. In addition to the in-class exercise, **you will submit written comments on another student's paper by 6:00 pm on Monday, of week 14. You will email your comments to your partner in addition to submitting your comments though the course website.** Because your partner will rely on your comments in revising their paper, extensions will be granted only in extraordinary circumstances.

Final Draft: The **final paper is due on the course website by 6:00 PM on December 14.** This paper will be graded on the standard letter scale using the rubric that appears at the end of this syllabus. Aside from last minute emergencies, extensions must be arranged at least 24 hours in advance.

Final Grades

Your course grade will be computed as follows:

25% Reading Responses (x10) (approximately 1 page each)
10% First Exam
15% Second Exam
5% Rough Draft
5% Peer Review
40% Term paper (approximately 10 pages)

Academic Integrity

You are expected to abide by Washington University's policies on academic integrity. I recommend that you read through the university's policy, which is available at https://wustl.edu/about/compliance-policies/academic-policies/undergraduate-student-academic-integrity-policy/.

A few important reminders about academic integrity are relevant to the writing assignments for this course:

- Write your own papers and properly attribute other people's ideas and words that you include in your writing.
- If you copy someone else's words into your assignment word for word, indicate that these words are a quotation by enclosing them in quotation marks.
- Provide a citation if you paraphrase someone else's idea in your own writing.
- Whenever you cite something, provide a citation that includes enough information that your reader could locate the material that you're citing. (For our course materials, you can just give the author's last name and a page number.)
- If you have any questions about whether what constitutes academic misconduct, please ask.

Accessibility

Students needing academic accommodations based on a disability should contact Cornerstone: The Center for Advanced Learning (https://cornerstone.wustl.edu). Cornerstone provides academic-mentoring programs (or tutoring) for students, as well as services for students with disabilities. Students with disabilities should contact Cornerstone's Disabilities Resources office. Cornerstone is located on the first floor of the Gregg Residence Hall on the South 40.

Schedule of Readings

I. UNIT 1: What is the Nature of Law?
   A. Week 1: Introduction
      1. Lecture 1 (8/27)
         a) OPTIONAL: John Austin, *The Province of Jurisprudence Determined*, lecture I
      2. Lecture 2 (8/29)
         a) Oliver Wendell Holmes, "The Path of the Law"
   B. Week 2: Positivism
      1. Lecture 3 (9/3)
         a) No Lecture - Labor Day
      2. Lecture 4 (9/5)
         a) H.L.A. Hart, "Law as the Union of Primary and Secondary Rules"
   C. Week 3: Anti-Positivism
      1. Lecture 5 (9/10)
         a) Ronald Dworkin, "The Model of Rules I"
      2. Lecture 6 (9/12)
         a) Ronald Dworkin, "Hard Cases"

II. UNIT 2: Critical Approaches to Law
   A. Week 4: Multiple Legal Consciousness
      1. Lecture 7 (9/17)

a) Mari J. Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations" (skip the footnotes)

2. Lecture 8 (9/19)
   a) Angela P. Harris, "Race and Essentialism in Feminist Legal Theory" (skip the footnotes)

B. Week 5: The Structure of Law and the Limits of Legal Change
1. Lecture 9 (9/24)
   a) Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" (skip the footnotes)
2. Lecture 10 (9/26)
   a) Closed Book First Exam in Class (covering Units 1 & 2)

III. UNIT 3: Up Against the Law, Citizen: An Obligation to Obey the Law

A. Week 6: Consent and Authority
1. Lecture 11 (10/1)
   a) Plato, *Crito*
2. Lecture 12 (10/3)
   a) David Hume, "Of the Original Contract

B. Week 7: The Service Conception of Authority
1. Lecture 13 (10/8)
   a) Joseph Raz, "Authority and Justification"
2. Lecture 14 (10/10)
   a) Scott Hershovitz, "The Role of Authority"

C. Week 8: Democracy as a Basis of Authority
1. Lecture 15 (10/15)
   a) No Lecture - Fall Break
2. Lecture 16 (10/17)
   a) Jean-Jacques Rousseau, *The Social Contract*, book I (skip ch 9 except for the final paragraph)

D. Week 9: Democracy as a Basis of Authority, Continued
1. Lecture 17 (10/22)
   a) Jean-Jacques Rousseau, *The Social Contract*, book II
2. Lecture 18 (10/24)
   a) Jean-Jacques Rousseau, *The Social Contract*, book III, ch 1-11, 17
   b) Jean-Jacques Rousseau, *The Social Contract*, book IV, ch 1-3

IV. UNIT 4: Up Against the Law, Citizen: The Anarchist Challenge

A. Week 10: Philosophical Anarchism
1. Lecture 19 (10/29)
   a) Robert Paul Wolff, *In Defense of Anarchism*, ch. 1 (the preface is optional)
2. Lecture 20 (10/31)
   a) Robert Paul Wolff, *In Defense of Anarchism*, ch. 2 (skip the appendix on "The Irrationality of Majority Rule" on pp. 58-67; focus on ch. 2, § 4)
   3. Proposed Paper Topic Due Online by 5:00 PM on Friday

B. Week 11: Political Anarchism; Answering the Anarchist Challenge
1. Lecture 21 (11/5)
   a) Robert Paul Wolff, *In Defense of Anarchism*, ch. 3
   b) Peter Kropotkin, "Anarchist Communism: Its Basis and Principles"*

2. Lecture 22 (11/7)
    a) David Estlund, "Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority"

C. Week 12: Answering the Anarchist Challenge, Continued
1. Lecture 23 (11/12)
    a) Tom Christiano, "The Authority of Democracy"
2. Lecture 24 (11/14)
    a) V.I. Lenin, *The State and Revolution*, ch. 5
    b) Rosa Luxemburg, *The Russian Revolution*, ch. 6
    c) Jacqueline Rose, "What More Could We Want of Ourselves!"
    d) USA Black Panther Party, "The Ten-Point Program"
    e) (There are a lot of readings for this lecture, but they are short. Focus on the Lenin and Luxemburg essays.)
3. **Rough Draft of Term Paper Due Online by 5:00 PM on Friday**

D. Week 13: Answering the Anarchist Challenge, Continued
1. Lecture 25 (11/19)
    a) Peer Editing Workshop in Class (Bring two hard copies of your rough draft to class with you)
2. Lecture 26 (11/21)
    a) No Lecture - Thanksgiving

V. UNIT 5: Disobeying Law

A. Week 14: General Defeaters of Legal Obligation
1. **Comments on Another Student's Paper Due Online and by Email by 6:00 PM on Monday**
2. Lecture 27 (11/26)
    a) Martin Luther King, Jr., "Letter from a Birmingham Jail"
    b) John Rawls, "The Justification of Civil Disobedience"
3. Lecture 28 (11/28)
    a) Alice Goffman, *On the Run: Fugitive Life in an American City*, Introduction and ch 1
    b) Michelle Alexander, "The New Jim Crow" (op-ed)
    c) OPTIONAL: Howard Zinn, "Law, Justice, and Disobedience"

B. Week 15: Justifying Civil Disobedience
1. Lecture 29 (12/3)
    a) Tommie Shelby, "Justice, Deviance, and the Dark Ghetto"
2. Lecture 30 (12/5)
    a) Closed Book Second Exam in Class (covering Units 3, 4 & 5)

VI. EXAM PERIOD

A. Term Paper Due Online by 6:00 PM on December 14

Grading Rubric for Term Papers

A, A-	Excellent essay	• Writing is straightforward and easy to read. • Essay is clearly organized so that paragraphs clearly flow from one another and the reader is never lost. • Essay topic clearly sets out a significant philosophical problem or question and makes the reader care about it. • Exposition shows mastery of the philosophical materials used and conveys complete comprehension of arguments to the reader. Exposition provides a new point of access to the material discussed. • Essay advances an insightful, creative, or very thoughtful philosophical argument that is well supported. Demonstrates awareness of significant objections to the position it advances and responds effectively to them.
B+, B, B-	Good essay	• Writing is readable, although some sentences may be difficult. • Essay is coherently organized, but the reader is sometimes lost. • Essay topic sets out a significant philosophical problem or question, although the essay may fail to show the reader why they should care about the topic. • Exposition of philosophical materials contains no major mistakes and effectively conveys the central arguments and themes to the reader. • Essay advances a philosophical argument and provides support for it although the argument might contain minor errors or need more development in places. Demonstrates independent thought about the topic and awareness of significant objections to the position it advances.
C+, C, C-	Adequate essay	• Writing is very difficult but not impossible to read. Many sentences are convoluted or ungrammatical. • Essay is poorly organized and the reader is often lost. • Essay topic provides an opportunity to exposit and argue about course materials but is not otherwise philosophically significant. • Exposition shows a grasp of the central arguments and themes of the philosophical texts discussed but does not effectively convey it to the reader. • Essay advances a philosophical argument. There may be serious problems with the argument, but the argument has promise of amounting to more than mere counter-assertion. Essay rehashes reading or lecture material rather than demonstrating independent thought about the topic.
D+ or lower	Inadequate essay	• Writing is very difficult but not impossible to read. Most sentences are convoluted or ungrammatical and it is very difficult for the reader to understand the author's meaning. • Essay is unorganized and it is unclear to the reader why one paragraph follows another. • Essay topic poses a coherent question but is unrelated to the themes of the course. • Exposition fails to show a grasp of the central arguments and themes of the philosophical texts discussed. • Essay makes large argumentative errors or amounts to mere counter-assertion and fails to demonstrate original thought about the material.
F	Failing essay	Essay does not make a good faith effort to meet the requirements of the assignment.