

MORALITY, LAW, AND JUSTICE: ISSUES IN LEGAL PHILOSOPHY



INSTRUCTOR

Simone Gubler

CONTACT

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LECTURE TIMES

1:25PM - 2:15PM

LECTURE LOCATION

Greenlaw 302

OFFICE HOURS

Wednesday 10AM-11AM

Friday 10AM-11AM

OFFICE LOCATION

Caldwell 214A

COURSE DESCRIPTION

"I cannot recognize the verdict of guilty... I would stress that I am guilty of having been obedient, having subordinated myself to my official duties and the obligations of war service and my oath of allegiance and my oath of office, and in addition, once the war started, there was also martial law. Obedience is commended as a virtue. May I therefore ask that consideration be given to the fact that I obeyed, and not whom I obeyed."

Thus spoke Adolph Eichmann, one of the architects of the Holocaust, during his trial in Jerusalem. In this course, we will study the relationship between law, morality, and justice. We will focus in particular upon four questions raised by Eichmann's plea: (1) What makes a law authoritative? (2) What sort of relationship exists (or should exist) between moral and legal responsibility? (3) What should we do when confronted by immoral laws? And, (4) how should we respond to those who resist (and those who obey) the law? In pursuing answers to these questions, we will read and engage with the theoretical work of philosophers, jurists, and criminals (as well as with the work of some philosopher-jurist-criminals). We will gain familiarity with some of the major issues and theoretical constructs that have characterized the philosophy of law to date. And we will engage with real legal cases, in order to better understand the practical import of our philosophical labors.

By the end of this course, students will have:

- Become conversant with some of the major debates in the philosophy of law
- Developed familiarity with classic and contemporary texts in the history of legal philosophy
- Practiced applying abstract theories to real problems of social and individual conduct
- Laid the theoretical groundwork for a reflective career as an outlaw or a model citizen

POLICIES

Office Hours

All students are encouraged to visit me during my office hours. I want each of you to come at least once, early on in the semester, so that I can get to know you. In the first class, I will pass around a sign-up sheet, so that you can make an appointment to meet with me in Week Two. After that, you are welcome to drop by at any time during office hours, or by appointment as necessary. Office hours represent a good opportunity to discuss any questions you might have in relation to the course, as well as to troubleshoot any challenges that threaten your academic success.

Readings

All assigned readings are compulsory. The readings may be found on Sakai. Readings consist of edited extracts from longer works, so be sure to use the versions on Sakai in preparation for class.

Disabilities

Accommodations will be made for students with disabilities. If you think that you are likely to need accommodations, please contact Accessibility, Resources and Service (details here: <https://ars.unc.edu/accommodations>), and present your Accommodation Letter to me as soon as possible.

Academic Honesty

Academic dishonesty will not be tolerated. It is your responsibility to familiarize yourself with the requirements of the student Honor Code (<https://catalog.unc.edu/policies-procedures/honor-code/>). You will be asked to sign the honor pledge as a condition of submitting assignments for this course. Suspected violations of the Honor Code will be reported to the Office of Student Conduct.

Electronic Devices

No phones are to be used during class time. Use of other electronic devices is discouraged. Electronic devices are distracting - not merely for you, but for the people around you. A bonus: studies suggest that you'll enjoy better recall if you take notes by hand (see for example: <http://www.theatlantic.com/technology/archive/2014/05/to-remember-a-lecture-better-take-notes-by-hand/361478/>).

Charity

Some of the ideas that we'll deal with in this class are likely to seem very odd to you. You might even want to reject them outright. That's perfectly normal. When we encounter new or unfamiliar ideas and arguments, especially when they seem to threaten our standard ways of thinking about things, there's a strong impulse to reject them. But the art of being a good philosopher is, in part, the art of pushing through (and then rationally investigating) that initial reaction of repulsion to a strange idea. So, to that end, let's operate according to a guiding principle: 'the principle of charity':

"The principle of charity governs the interpretation of the beliefs and utterances of others. It urges charitable interpretation, meaning interpretation that maximizes the truth or rationality of what others think and say"

- R. Feldman, *Routledge Encyclopedia of Philosophy*

I'd like us to follow this principle in all of our work in this class — in our interactions with each other, with invited guests, as well as with the ideas in the set readings.

So, when someone makes an argument or claim:

- Start from the assumption that the person is rational and is trying to communicate something interesting and meaningful to you.
- Be generous: try to give the best possible interpretation to their statement.
- Be patient: avoid attributing wrongness or confusion until you've carefully considered whether a relevant insight may be derived from their statement.

ASSESSMENT

Short Essay: Euthyphro

- 10%** The prompt for this short discussion paper (2 pages) will be posted on Sakai and distributed in class on Friday, August 23. Due in class on Friday, September 6.

In-Class Reading Quizzes

- 10%** These five quizzes contain questions that anyone who has done their reading should be able to address. When will I give them? Only time (and diligent class attendance) will tell!

Group Exercise: The Rule of Law

- 15%** On Sakai, you will find a powerpoint presentation entitled "The Rule of Law." It is distributed as an educational resource by the North Carolina Judicial Branch. You will be assigned to groups in class on Monday, September 23. Your group will be given time in class on the 25th to begin to plan your own response to this resource. Your response will be comprised of a 1-2 page critical discussion of the content of the "Rule of Law" powerpoint, and your own (new, improved, and philosophically robust) powerpoint, prepared for a popular audience. Groups will share their powerpoint presentations in class on the 4th and 7th of October.

Midterm Take-Home Exam

- 30%** The take-home exam will be distributed in class on the 11th of October and will cover all material up to that date. Answers are due in class on the 14th of October.

Final Paper

- 35%** Topics for the final paper will be distributed on the 11th of November. This assignment has two components.
1. You are to produce a 2 page blueprint for the paper, including a topic sentence, paragraph by paragraph argument plan and an annotated bibliography. The blueprint is worth 1/4 of the final paper grade. It is due on the 18th of November. You will receive feedback on the 22nd of November.
 2. The final 7-8 page paper is due on Sakai, on the 9th of December.

ASSESSMENT

Attendance

Attendance is compulsory. Each student is permitted a maximum of two unexplained absences. Each further unexplained absence will result in a 2% reduction in the overall course grade.

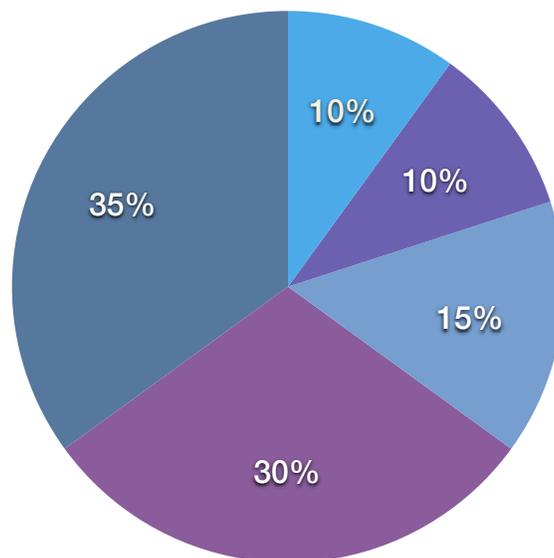
Extra Credit

Your education does not end at the classroom doors. As an incentive to participate in, and benefit from, the research activity of the university at large, 2% extra credit is on offer to students who attend events that are relevant to this class (1% per event, maximum of two events). There is a list of eligible events on Sakai (you may also apply to the instructor to add an event to the list). You will need to write a short account of each event that you attend (prompt online) in order to claim credit for it.

FINAL GRADE BREAKDOWN

A	94-100	A-	90-93
B+	87-89	B	84-86
B-	80-83	C+	77-79
C	74-76	C-	70-73
D+	67-69	D	64-66
D-	60-63	F	0-59

- Short Discussion Paper - 10
- Reading Quizzes - 10
- The Rule of Law - 15
- Mid-Term Exam - 30
- Final Paper - 35



**SCHEDULE
OF CLASSES**

WEEK ONE Wednesday, August 21	Introduction	<i>Syllabus</i>
WEEK ONE Friday, August 23		<i>Euthyphro</i> Plato
WEEK TWO Monday, August 26	What is law? What makes it authoritative?	<i>Treatise on Law</i> Aquinas
WEEK TWO Wednesday, August 28		<i>Treatise on Law</i> Aquinas
WEEK TWO Friday, August 30		<i>Commentaries on the Law of England</i> William Blackstone
WEEK THREE Monday, September 2	LABOR DAY	No class
WEEK THREE Wednesday, September 4		<i>Leviathan</i> Thomas Hobbes
WEEK THREE Friday, September 6	<i>Short essay due in class</i>	<i>Leviathan</i> Thomas Hobbes
WEEK FOUR Monday, September 9		<i>On Liberty</i> J.S. Mill
WEEK FOUR Wednesday, September 11		<i>On Liberty</i> J.S. Mill
WEEK FOUR Friday, September 13		<i>Morality, Harm, and the Law</i> Gerald Dworkin
WEEK FIVE Monday, September 16		<i>The Province of Jurisprudence Determined</i> John Austin
WEEK FIVE Wednesday, September 18		<i>The Province of Jurisprudence Determined</i> John Austin

WEEK FIVE Friday, September 20		<i>The Concept of Law</i> H.L.A. Hart
WEEK SIX Monday, September 23		<i>The Concept of Law</i> H.L.A. Hart
WEEK SIX Wednesday, September 25	<i>Rule of law powerpoint exercise begins in class</i>	No reading: in class exercise
WEEK SIX Friday, September 27		<i>Law's Empire</i> Ronald Dworkin
WEEK SEVEN Monday, September 30		<i>Riggs v Palmer</i>
WEEK SEVEN Wednesday, October 2		<i>Law's Empire II</i> Ronald Dworkin
WEEK SEVEN Friday, October 4		Exercise (Dworkin)
WEEK EIGHT Monday, October 7	<i>Powerpoint Presentations</i>	No reading: in class exercise
WEEK EIGHT Wednesday, October 9	<i>Powerpoint Presentations</i>	<i>Is There a Prima Facie Obligation to Obey the Law?</i> M.B.E. Smith
WEEK EIGHT Friday, October 11	Mid-term exam distributed	<i>Is There a Prima Facie Obligation to Obey the Law?</i> M.B.E. Smith
WEEK NINE Monday, October 14	Mid-term exam due in class	<i>Civil Disobedience</i> Henry David Thoreau
WEEK NINE Wednesday, October 16		<i>Letter from a Birmingham Jail</i> Martin Luther-King Jr.
WEEK NINE Friday, October 18	Fall Break	No class

WEEK TEN Monday, October 21	Moral responsibility and legal responsibility	<i>Freedom and Resentment</i> Peter Strawson
WEEK TEN Wednesday, October 23		<i>The Impossibility of Moral Responsibility</i> Galen Strawson
WEEK TEN Friday, October 25		<i>Responsibility and the Limits of Evil: Variations on a Strawsonian Theme</i> Gary Watson
WEEK ELEVEN Monday, October 28		<i>Mental Impairment, Moral Understanding, and Criminal Responsibility</i> Cordelia Fine and Jeanette Kennett
WEEK ELEVEN Wednesday, October 30		<i>Moral Luck</i> Bernard Williams
WEEK ELEVEN Friday, November 1		<i>Opening Statement at Nuremberg</i> Robert Jackson
WEEK TWELVE Monday, November 4		<i>The Question of German Guilt</i> Karl Jaspers
WEEK TWELVE Wednesday, November 6		<i>Eichmann in Jerusalem</i> Hannah Arendt
WEEK TWELVE Friday, November 8	Retribution, Punishment & Restoration	<i>U.S. Supreme Court, Payne v. Tennessee (1991)</i>
WEEK THIRTEEN Monday, November 11	Topics for final essay distributed	<i>The Moral Worth of Retribution</i> Michael Moore
WEEK THIRTEEN Wednesday, November 13		<i>Discipline and Punish</i> Michel Foucault
WEEK THIRTEEN Friday, November 15		<i>The Punishment that Leaves Something to Chance</i> David Lewis

WEEK FOURTEEN Monday, November 18	Blueprints due in class	<i>The New Jim Crow</i> Michelle Alexander
WEEK FOURTEEN Wednesday, November 20		<i>The New Jim Crow</i> Michelle Alexander
WEEK FOURTEEN Friday, November 22		<i>Are Prisons Obsolete?</i> Angela Davis
WEEK FOURTEEN Monday, November 25		<i>Restorative Justice & Responsive Regulation</i> John Braithwaite
WEEK FOURTEEN Wednesday, November 27	Thanksgiving	No class
WEEK FOURTEEN Friday, November 29	Thanksgiving	No class
WEEK FOURTEEN Monday, December 2	Last day of class	<i>Repairing the Harm: Victims and Restorative Justice</i> Heather Strang and Lawrence Sherman
EXAM WEEK Monday, December 9	Final paper due	
	End.	