

PHIL 453

TOPICS IN PHILOSOPHY OF LAW



PROFESSOR

Simone Gubler

CONTACT

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LECTURE TIMES

3:00PM - 4:15PM TTH

LECTURE LOCATION

FH106

OFFICE HOURS

TTH 12-1PM

OFFICE LOCATION

JC103B

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 break the law? In pursuing answers to these questions, we will read and engage with the theoretical work and lived experiences of philosophers, jurists, and law-breakers. 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 a range of legal cases, in order to better understand the practical import of our philosophical labors.

POLICIES

Office Hours

All students are encouraged to visit me during my office hours. My office hours are online directly after class this semester, as well as by appointment. So please feel free to email me to set up a time that works for you. Office hours represent a great opportunity to discuss any questions you might have in relation to the course, as well as to troubleshoot any challenges that threaten your success.

Readings

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

Disability Services

Any student with a disability needing academic adjustments or accommodations is requested to speak with the Disability Resource Center (Pennington Student Achievement Center, Suite 230) as soon as possible to arrange for appropriate accommodations.

Academic Honesty

Many norms will be in question in this course. One community standard that will not be up for debate, however, is academic honesty. The University Academic Standards Policy defines academic dishonesty, and mandates specific sanctions for violations. See the University Academic Standards policy: UAM 6,502.

Student Learning Outcomes

As stipulated in the UNR course catalogue, upon completion of this course, students will be able to:

1. state a thesis about a problem in the philosophy of law, and provide evidence and philosophical argument (including replies to counter-arguments) in its defense.
2. explain and interpret the ideas associated with philosophical theories of law in the philosophical literature.
3. distinguish better and worse reasoning, and recognize relevant logical relationships and patterns of inference in different legal theories.
4. show what is at stake in abstract debates in the philosophy of law, and indicate how different positions in these debates help elucidate our understanding of the Constitutions of the United States and Nevada, as well as the evolution of American institutions and ideals.
5. trace the sources and development of important legal concepts within American intellectual traditions and cultural institutions.

Audio and Video Recording

Surreptitious or covert video-taping of class or unauthorized audio recording of class is prohibited by law and by Board of Regents policy. This class may be videotaped or audio recorded only with the written permission of the instructor. In order to accommodate students with disabilities, some students may be given permission to record class lectures and discussions. Therefore, students should understand that their comments during class may be recorded.

POLICIES

Equal Opportunity and Title IX

The University of Nevada, Reno is committed to providing a safe learning and work environment for all. If you believe you have experienced discrimination, sexual harassment, sexual assault, domestic/dating violence, or stalking, whether on or off campus, or need information related to immigration concerns, please contact the University's Equal Opportunity & Title IX office at 775-784-1547. Resources and interim measures are available to assist you. For more information, please visit: <https://www.unr.edu/equal-opportunity-title-ix>

Failure to Comply with Policy (including as outlined in this Syllabus) or Directives of a University Employee

In accordance with section 6,502 of the University Administrative Manual, a student may receive academic and disciplinary sanctions for failure to comply with policy, including this syllabus, for failure to comply with the directions of a University Official, for disruptive behavior in the classroom, or any other prohibited action. "Disruptive behavior" is defined in part as behavior, including but not limited to failure to follow course, laboratory or safety rules, or endangering the health of others. A student may be dropped from class at any time for misconduct or disruptive behavior in the classroom upon recommendation of the instructor and with approval of the college dean. A student may also receive disciplinary sanctions through the Office of Student Conduct for misconduct or disruptive behavior, including endangering the health of others, in the classroom. The student shall not receive a refund for course fees or tuition.

Philosophical 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

- 10%** **Short Essay - Euthyphro (2 pages)**

The prompt for this short essay (2 pages) is available on WebCampus. Due on WebCampus on September 15th.
- 30%** **Weekly Quiz/Discussion**

Each week you will be required to take a multiple choice quiz and complete a discussion prompt based on recent readings. These short exercises are hosted on WebCampus.
- 20%** **Midterm Podcast Assignment**

Please refer to the prompt on WebCampus. Due on WebCampus on October 20th.
- 30%** **Final Essay (8-10 pages)**

The topics for the final essay are available on WebCampus. The final essay is due on WebCampus on December 15th.
- 10%** **Participation and Attendance**

This is an upper level course and participation in class exercises is expected. Attendance is also required. You are permitted two unexplained absences. Each further unexplained absence will result in a 2% reduction in the overall course grade.

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

SCHEDULE OF CLASSES

WEEK ONE Tuesday, August 30	Introduction	<i>Course Syllabus</i> and in-class exercise
WEEK ONE Thursday, September 1		<i>Euthyphro</i> Plato
WEEK TWO Tuesday, September 6	What is law? Where does it come from? What makes it authoritative?	<i>Treatise on Law</i> Aquinas
WEEK TWO Thursday, September 8		<i>The Common Law</i> Blackstone
WEEK THREE Tuesday, September 13		<i>Hiding from Humanity, Disgust, Shame and the Law</i> Martha Nussbaum
WEEK THREE Thursday, September 15	<i>Short Essay - Euthyphro due on WebCampus</i>	<i>The Province of Jurisprudence Determined</i> John Austin
WEEK FOUR Tuesday, September 20		<i>The Concept of Law</i> H.L.A. Hart
WEEK FOUR Thursday, September 22		<i>Law's Empire</i> Ronald Dworkin And <i>Riggs v Palmer</i>
WEEK FIVE Tuesday, September 27	Judicial Interpretation	<i>The Case of the Speluncean Explorers</i> Lon Fuller
WEEK FIVE Thursday, September 29	<i>No Class - President's Day</i>	
WEEK SIX Tuesday, October 4	Constitutional Interpretation	<i>The Moral Reading of the Constitution</i> Ronald Dworkin
WEEK SIX Thursday, October 6	Law, liberty, and obedience	<i>On Liberty</i> J.S. Mill
WEEK SEVEN Tuesday, October 11		<i>Speaking Among Ourselves - Democracy and the Law</i> Seana Shifrin

SCHEDULE OF READINGS

WEEK SEVEN Thursday, October 13		<i>Is There a Prima Facie Obligation to Obey the Law?</i> M.B.E. Smith
WEEK EIGHT Tuesday, October 18		<i>A Duty to Resist: When Disobedience Should Be Uncivil</i> Candice Delmas
WEEK EIGHT Thursday, October 20	<i>Midterm - Podcast due on WebCampus</i>	In-class exercise
WEEK NINE Tuesday, October 25	Moral responsibility and legal responsibility	<i>Responsibility and the Limits of Evil: Variations on a Strawsonian Theme</i> Gary Watson and https://www.wnycstudios.org/podcasts/radiolab/episodes/317421-blame
WEEK NINE Thursday, October 27		<i>Mental Impairment, Moral Understanding, and Criminal Responsibility</i> Cordelia Fine and Jeanette Kennett
WEEK TEN Tuesday, November 1		<i>Moral Luck</i> Thomas Nagel
WEEK TEN Thursday, November 3	Retribution, Punishment & Restoration	<i>The Classic Debate - Joel Feinberg</i>
WEEK ELEVEN Tuesday, November 8		<i>The Moral Worth of Retribution</i> Michael Moore
WEEK ELEVEN Thursday, November 10		<i>The Punishment that Leaves Something to Chance</i> David Lewis
WEEK TWELVE Tuesday, November 15		<i>Liberty and Individualized Evidence</i> Judith Jarvis Thomson
WEEK TWELVE Thursday, November 17		<i>U.S. Supreme Court, Payne v. Tennessee (1991)</i>

SCHEDULE OF READINGS

WEEK THIRTEEN Tuesday, November 22		<i>Restorative Justice & Responsive Regulation</i> John Braithwaite
WEEK THIRTEEN Thursday, November 24	<i>Thanksgiving</i>	
WEEK FOURTEEN Tuesday, November 29	Imprisonment	<i>The New Jim Crow</i> Michelle Alexander
WEEK FOURTEEN Thursday, December 1		<i>Are Prisons Obsolete?</i> Angela Davis
WEEK FIFTEEN Tuesday, December 6	Ethics and legal practice	<i>Lawyers as Professionals: Some Moral Issues</i> Richard Wasserstrom
WEEK FIFTEEN Thursday, December 8	Last day of classes	
WEEK SIXTEEN Thursday, December 15	<i>Final Essay Due Online</i>	