The Philosophy of Law

Spring 2020

Tuesday-Thursday 11:00 AM – 12:15 PM (Bolton Hall B79)
Instructor: Dr. Stan Husi
husi@uwm.edu, (414) 229-4719
Office hours: Tuesday & Thursday 1-3 PM (Curtin Hall, CRT, 635)

Course Description:
In this course we will examine fundamental issues in the philosophy of law, including, among other things, the nature and content of law, the relationship between law and morality, the obligation to obey the law, and the justification of punishment. Readings will be drawn from both historical and contemporary sources.

Required Course Preparation:
To achieve the learning goals of this course, it is essential that students come prepared to each course meeting, through the traditional assignment of texts to be read before class, requiring a substantial time commitment. Students are expected to complete the entire reading assignments for the relevant week by the class on Tuesday. This means students are expected to read the assigned texts between Wednesday and Sunday. Please consult closely the section on time commitment.

Texts
No books are required for this course. All texts are posted on our course website. Most texts are from very recent very popular books. Students are encouraged to check out the entire books if they like them. Most texts are also available as audiobooks. Please contact the instructor if you have questions.

Work Involved & Grading:
Grades are determined by the following components:
- 10 Weekly Reading Responses (3 points each, 30 points total)
- 2 Opinions (5 points each, 10 points total)
- Group Project (15 points)
- Midterm (15 points)
- Final Exam (30 points)

A more detailed explanation of each component is provided below.

Points-to-grade schedule:

<table>
<thead>
<tr>
<th>Score Range</th>
<th>Grade</th>
</tr>
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<tbody>
<tr>
<td>93-100</td>
<td>A</td>
</tr>
<tr>
<td>90-92</td>
<td>A-</td>
</tr>
<tr>
<td>87-89</td>
<td>B+</td>
</tr>
<tr>
<td>83-86</td>
<td>B</td>
</tr>
<tr>
<td>80-82</td>
<td>B-</td>
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An incomplete may be given to a student who has carried a subject successfully until near the end of the semester but, because of illness or other unusual and substantiated cause beyond that student's control, has been unable to take or complete the final examination or to complete some limited amount of term work. An incomplete is not given unless the student proves to the instructor that s/he was prevented from completing course requirements for just cause as indicated above.
Weekly Reading Responses:
This class contains a substantial reading component. Accordingly, the responses to the readings constitute collectively a very substantial factor determining the grade. Students are expected to submit one response each week, at the end of each Tuesday class, totaling 13 responses. Among all responses, only the 10 best responses count, and consequently, the poorest three responses are dropped. Each response is supposed to answer a number of questions concerning the assigned readings for the relevant week. The questions are distributed by Thursday/Friday, and are also posted on our course webpage. Each response is supposed to be about one page, in regular font size 12, single-spaced, and must be submitted in typed and printed-out format. I must insist on the printed-out format, without exceptions, because I’d liked students to submit their responses at the end of the Tuesday class, as opposed to the beginning of the class, in order to enable students to consult their response during class discussion. To ensure proper procedure, any hand written comment on the responses is summarily discounted.

Each response is then graded along the following scheme: A good response receives a score of 3 points. A decent response receives a score of 2 points. An acceptable response receives a score of 1 point. A poor response still meeting the formal requirements receives a score of \( \frac{1}{2} \) point. The guiding criterion of assessment is whether the responses display some reasonable level of engagement with the reading, which, naturally, presupposes careful reading of the assigned material. There usually is not a single way of displaying a reasonable level of engagement, but rather several different ways. Some of the questions to be answered are quite specific, some more open-ended. All are designed with a view of enabling students to answer them adequately based solely on a careful reading of the assigned material, nothing more. With that provision, the expectation is that students receive mostly high scores on the responses.

Responses will not be accepted late, and students must submit their own response in person.

Opinions:
Students are expected to submit (at least) two opinions, on topics discussed by a presentation group, on (at least) two respective Wednesday classes. Each presentation group is going to announce what issue they are going to discuss on the Tuesday class prior to their presentation on Thursday, and the opinion ought to address that very issue, advancing and defending a specific viewpoint on that same issue. Each opinion is supposed to be about two pages, in regular font size 12, double-spaced, and must be submitted in typed and printed-out format. The opinion is going to be graded along the following lines: A good opinion received 5 points, a decent opinion receives 4 points, an acceptable opinion received 3 points, an opinion that is intelligible receives 2 points. The best two opinions are going to count, and students may submit more than two opinions.

Group Presentation:
Each student is expected to participate in a small group project. Each group is first going to select a specific issue they are going to discuss in their presentation. The group will present two opposing viewpoints on that issue, with students equally divided to represent both viewpoints (2-3 students each). In the presentation, each side will present their position in a brief. The briefs of both sides will be exchanged to the other group, the instructor, and the TA on the Tuesday class prior to the presentation, in typed out and printed out format. Then each group will prepare a response to the brief of the other side prior to the presentation on Thursday, and present that response as part of the total presentation. Thus, the presentation will have the following format, with the corresponding time expectations:
- Presentation of first brief (5-10 minutes)
- Presentation by the second brief (5-10 minutes)
- Presentation of the response to the first brief (3-5 minutes)
- Presentation of the response to the second brief (3-5 minutes)
The entire presentation is thus supposed to last about 20-30 minutes, after which the discussion will be opened up to the entire class for another 30 minutes.

Each presentation group will go through multiple stages. First, they will meet and identify an issue for discussion, and determine who will represent which position. At the specified date prior to the presentation, each participant will submit an outline of what they are going to do as part of their presentation. After that, at the specified date prior to the presentation, each side of the presentation group will submit their briefs to the other side, the instructor, and the TA. The outline will count for 3 points, the brief for 5 points, and the presentation, including the response, for 7 points.

Midterm & Final Exam:
The Midterm and Final exam together count for 45 points or 45% of the grade. Regarding the overall exam-score, there are two scenarios: (1) If the final exam receives a higher grade than the midterm exam, and provided the midterm receives at least a D, the midterm exam will be dropped (counting for nothing) and the final exam will count for 45 points or 45% of the grade. (2) If the midterm exam receives a higher grade than the final exam, or if the midterm receives a grade lower than a D, the final exam will count for 30 points or 30% of the grade, and the midterm exam will count for 15 points or 15% of the grade. The midterm exam thus has a probationary character, intended to prepare students for the final exam, with the nice benefit of potentially helping but not hurting a student’s overall exam-score. Students need to bring their own blue book to the exams. Students are explicitly encouraged to form study groups in preparation for the exams.

A note on the exams: A list of sample exam-questions will be distributed at least one week prior to the exams, enabling students to effectively prepare for the exam (for the final exam, the list will be distributed in the final week of classes). The actual exam will feature a number of questions selected from these sample questions. There will be no question appearing on the actual exam that was not among the sample questions. At the class immediately preceding the exam, we will reserve some time for exam-preparation, and students are encouraged to ask clarificatory questions about the distributed list of questions, though naturally should not expect “substantive” answers. Students will have a full two hours for the final exam, on TBD. The midterm exam will be held in class on 03/12, and take one hour.

Expectations about Time Commitment:
This 3-credit course meets for 2½ hours of class time per week during the semester. As a matter of university guidelines, students are expected to put in at least 6½ hours per week (on average) studying and working on assignments to achieve the learning goals of 3-credit courses. For this course, the expected overall 6½ hours time commitment would break down as follows:

Reading: Students are expected to commit up to 4 hours each week toward reading the assigned material. The distribution of the reading assignments has been deliberately designed so as to implement this expectation, consulting the narration time of the reading material. Students will differ in their reading pace, which is entirely all right, and there is no qualitative distinction as to which pace is better than others. The instructor would count himself towards the slower spectrum. Students are strongly advised to plan their reading time wisely, to spread it out evenly and overall several days; ideally, students would spend up to one hour reading on the days between our Thursday and Tuesday meetings, on Thursday, Friday, Saturday, and Sunday. The key to success, as is so often the case, is to get started early. Students will enjoy and get out more of the readings when done leisurely and without stress.

Responses: Students should spend up to 1 hour each week on the reading response.

Other Assignments: The remaining 1½ hours each week will be dedicated on all other assignments, including preparation for the exams and the group project. As is in the nature of these assignments, the time necessary to complete them will be unequally distributed throughout the semester. In the sum total, the remaining 1 hour each week adds up to roughly 14 hours.
Attendance:
For each class missed without proper excuse, up to three points may be subtracted from the student's overall score (one point for the first unexcused missed class, two for the second, three for the third and for each subsequent unexcused missed class). Sign-in sheets will be distributed on a regular basis, at the beginning of class.

Academic Integrity:
Cheating on exams or plagiarism are violations of the academic honor code and carry severe sanctions, including failing the course, suspension, or even dismissal from the university. For further information, including the university's policy concerning academic misconduct, please consult: http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm

Special Accommodations:
Any student with a documented disability needing academic adjustments or accommodations is requested to speak with me during the first two weeks of class. All discussions will remain confidential. Students with disabilities should also contact the Student Accessibility Center at 229-6287. Please consult for further information: http://www4.uwm.edu/sac/

Students are permitted to miss class and/or submit late assignments, without penalty, as a result of religious observance, as long as students inform me at least one week ahead of the relevant class or assignment. I reserve the right to request official confirmation in particular cases.

Reasonable accommodations will also be provided to students called to active military duty.

For further details about university policies, please consult: http://www4.uwm.edu/secu/SyllabusLinks.pdf

Office Hours:
My official office hours are Tuesday & Thursday, 1-2 PM, in Curtin Hall, CRT, 635. Students are encouraged to drop by anytime; I’m quite often in my office. Also, students may set up individual appointments per email.

Courtesy Requests:
Cell phones should be turned off during class. Laptops may not be used during class.

Teaching Assistant:
We are happy to have Risha Narayan Kuthoore as a Teaching Assistant. Risha Kuthoore will grade all weekly responses. The instructor will grade the exams. Students should contact Risha Kuthoore per email if they wish to arrange a conference with him (ideally on Thursday 1-3). The email address is: kuthoore@uwm.edu
Schedule:

Week 1 – **Law and Morality**

Michael Sandel, “Doing the Right Thing.”

01/21
01/23

Week 2 – **Consequences & Rights**

Raymond Wacks, “Rights.”
Jeremy Waldron, “Rights.”
Ronald Dworkin, “Hard Cases.”

01/28 Reading Responses 1
01/30

Week 3 – **What is Law? Three Approaches I**

Charles Beitz, “Human Rights.”
Selections from H.L. Hart

02/04 Natural Law Reading Responses 2
02/06 Positivism

Week 4 – **What is Law? Three Approaches II**

Selections from Ronald Dworkin.

02/11 Law as Integrity Reading Responses 3
02/13 Class Reserved for Review Class – NO CLASS.

Week 5 – **Disobedience**

Martin Luther King, “Letter from Birmingham Jail.”
William Lloyd Garrison, “No Compromise with Slavery.”
John Rawls, “The Justification of Civil Disobedience.”

02/18 Reading Responses 4
02/20

Week 6 – **Obedience**

A. John Simmons, “The Principle of Fair Play.”
Michael Huemer, “The Problem of Political Authority.”

02/25 Reading Responses 5
02/27

Week 7 – **The Rule of Law**

C.L. Ten, “Constitutionalism and the Rule of Law.”
Fukuyama, “The Origins of the Rule of Law.”

03/03 Presentation group 1 “markets” meets at the end of class. Reading Responses 6
03/05 Outline due for presentation group “markets.” Presentation group 2 “Segregation” meets at the end of class.

Week 8 – **The Law and Democracy**


03/10 Brief Exchange “Markets.” Reading Responses 7
Outline due for presentation group “Segregation.”
03/12 MIDTERM

SPRING RECESS

Week 9 - **The Law and The Market**

Elizabeth Anderson, “Is Women’s Labor a Commodity?”
Alan Wertheimer, “Commercial Surrogacy,” from *Exploitation*.

03/24 Group Announcement “Markets” Reading Responses 8
03/26 Group Presentation 1: “Markets” Brief Exchange “Segregation.”
Presentation group 3 “Affirmative Action” meets at the end of class.

Week 10 - **Integration & Segregation**

Elizabeth Anderson, *The Imperative of Integration*, Excerpts.
03/31 Group Announcement “Segregation”
Outline due for presentation group “Affirmative Action.”
04/02 Group Presentation 2: “Segregation.”
Presentation group 4 “Religion” meets at the end of class.
Brief Exchange “Affirmative Action.”

Week 11 – **Affirmative Action**

Thomas Sowell, “Against Affirmative Action.”
Ronald Dworkin, “Why Bakke Has No Case.”
Carl Cohen, “Why Racial Preference is Illegal and Immoral.”

04/07 Group Announcement “Affirmative Action.”
Outline due for presentation group “Religion.”
04/09 Group Presentation 3: “Affirmative Action.”
Brief Exchange “Religion.”
Presentation group 5 “Free Speech” meets at the end of class.

Week 12 – **Religion**

Geoffrey Stone, *Sex and the Constitution,* Excerpts.

04/14 Group Announcement “Religion.”
Outline due for presentation group “Free Speech.”
04/16 Group Presentation 4: “Religion.”
Brief Exchange “Free Speech.”
Presentation group 6 “Criminal Law” meets at the end of class.

Week 13 – **Free Speech**

David K. Shipler, *Freedom of Speech: Mightier Than the Sword,* Excerpts.
Erwin Chemerinsky & Howard Gillman, *Free Speech on Campus,* Excerpts.
Jeremy Waldron, *The Harm in Hate Speech,* Excerpts.

04/21 Group Announcement “Free Speech.”
Brief Exchange “Free Speech.”
04/23 Group Presentation 5: “Free Speech.”
Brief Exchange “Criminal Law.”

Week 14 – **The Proper Bounds of the Criminal Law**

Joel Feinberg, *Harm to Others, The Moral Limits of the Criminal Law & Offense to Others,* Excerpts.
Geoffrey Stone, *Sex and the Constitution*, Excerpts.
Michael Huemer, “America’s Unjust Drug War.”

04/28  Group Announcement “Criminal Law.”
04/30  Group Presentation 6: “Criminal Law.”

**Week 15 - Punishment**

Scott Turow, *Ultimate Punishment, A Lawyer’s Reflections on Dealing with the Death Penalty.*

05/05  Reading Responses 14
05/07  Bon Voyage.

XXX  Review Session.
XXX  Final Exam