

**Morality and Law**  
**PHIL 280 – Spring 2018**  
**Course Meetings: MWF 12:20-1:10pm in Caldwell 105**

**Instructor:**

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Office Hours: Tuesdays, 2-3 pm, Fridays, 1:15-2:15pm and by appointment

**Course Description:** It seems plausible that in general we morally ought to obey the law. There seem to be clear examples, however, of laws that are or were unjust. In this course, we will explore this tension in the course of considering a variety of views about the proper relationship between law and morality. More specifically, we will examine the moral dimensions of particular aspects of the law, including criminal law, competence and responsibility, punishment, and torts. No prior acquaintance with legal philosophy is expected or required.

**Course Website:** This course will have a Sakai site on which I will post the **syllabus, course assignments, and any additional readings**. All students enrolled in the course should have access to the Sakai site, but if you have any difficulty with this, please let me know.

The Sakai site will also have a section labeled **blogs** in which you are to complete your responses to course readings, described in more detail below. Additionally, the Sakai site will also have a **forum**, where you should feel free to post any questions you have about the reading or class discussions. These forum posts will count as a form of participation in the course, and I will reply to them regularly, schedule permitting.

**Course Requirements:**

1) Two writing assignments	30% (15% each)
2) Ten responses to course readings	10% (1% each)
3) Midterm exam	20%
4) Final exam	30%
5) Participation	10%

**1) Writing assignments**

There are two papers that need to be handed in (in class) during the semester. They must be 4-5 pages (double-spaced, 12 pt font, Times New Roman, 1" margins). Topics will be posted two weeks before the due date.

Paper 1 is due on Friday, 2/2 (topic posted by 1/17)

Paper 2 is due on Wednesday, 4/11 (topic posted by 3/28)

**2) Responses to course readings:**

In preparation for the class, you will need to post a short response to the readings for that week on Sakai (under 'blog') before 5 pm on the Tuesday or Thursday before the class meets, for a total of ten posts, **distributed over the semester as follows: 3 posts for section 1; 2 for section 2; 4 for section 3; and 1 for section 4**. These responses should be short (100-150 words) and include, regarding a passage/chapter of your choice: 1. A question (explained if necessary), 2. A critique (a

short paragraph), and 3. Something you liked about the reading (a sentence or two). Good quality posts will be rewarded with 1 point, passable posts with 0.5 point, no points for posts that lack any effort or insight.

### **3 & 4) Midterm and Final Exams**

The examinations for this course will be a combination of multiple-choice and short essays. These exams will primarily test your ability to understand and write clearly about the works that we have studied. The final exam will be cumulative.

**5) Participation:** One earns a high participation grade in this course by attending class regularly, carefully preparing thoughts on the readings, and speaking in class and/or posting on the Sakai forums. **Reading philosophy can be quite difficult, especially if you haven't done much of it before. I recommend taking notes and reading the required texts multiple times. I also strongly prefer that you print out course readings rather than using electronics in the classroom, as there is considerable empirical evidence that electronics are distracting.**

### **Grading:**

I will grade all assignments from this course (aside from the blog posts) blind. What this means is that **you should not include your name anywhere on your course assignments, but rather include your PID as identifying information.** Grading blind is one way of correcting against certain kinds of bias, and ensuring that every student is graded fairly.

Below is a list of criteria that will be used to evaluate your papers (note that the % only give a rough indication of how important these aspects are, and that not all of the criteria will apply equally to each of the different assignments; this is not a mathematical scale):

#### **a. Quality of ideas (50%)**

Range and depth of argument; fair representation position of the philosopher; logic of argument; quality and/or originality of thought; appropriate sense of the complexity of the topic; appropriate awareness of opposing views.

#### **b. Organization and Argumentation (40%)**

Clarity of thesis statement in the introduction; logical and clear arrangement of ideas; effective use of transitions; unity and coherence of paragraphs; good development of arguments through supporting details and evidence.

#### **c. Clarity, style, and grammar (10%)**

Ease of readability; appropriate voice, tone, and style for the assignment; clarity of sentence structure; grammatically correct sentences; accurate spelling; careful proofreading.

If you have any questions about these policies, please feel free to ask me about them.

### **Late work policy:**

**If you need an extension on a paper, you must contact me with at least one day's notice and a medical or comparable excuse (barring very unusual circumstances). Otherwise, late work will be graded down a third of a letter grade for each full day that it is late.** In other words, if a paper were due on Monday, you would need to email me by Sunday to receive an extension if one is appropriate. If you didn't contact me or an extension is not appropriate given your circumstances, handing in the paper on Tuesday would bring an A paper down to an A-, etc.

**Excused Absences:**

If you have special needs, or plan to be absent from class on a particular date, please send me an e-mail (preferably at least one day in advance) to explain your situation. Otherwise I expect you to attend each and every class and take the exams as scheduled.

**Accommodations:**

**Any student with a disability or special learning requirement impacting his or her participation in the course should discuss this with me in the first week of class so that reasonable accommodations may be made.** An example of a special need would be larger font for handouts.

**Honor Code:**

**The honor code is in effect in this and all other classes at UNC.** You are responsible for complying with this code and therefore also for learning its content and for clarifying any questions you may have regarding this content or applicability. One matter I would like to be explicit about is that papers turned in for other classes are not eligible to be turned in for this class.

The code is available online here:

<https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>

**Note:** The instructor reserves the right to make changes to the syllabus, including paper due dates and test dates, when unforeseen circumstances occur. These changes will be announced as early as possible so that you can adjust your schedule.

## Course Schedule:

### Section 1: Foundations

#### Week 1: The Role of Law

W, 1/10 – Plato, “Crito”

F, 1/12 – Martin Luther King, “Letter from a Birmingham Jail”

#### Week 2: Introduction to Moral Theory

M, 1/15 – MLK Day, no class

W, 1/17 – Mark Timmons, *Moral Theory: An Introduction* (pgs 1- 8, 13-17)

F, 1/19 – Timmons (continued), How to read a legal case:

<http://euro.ecom.cmu.edu/program/law/08-732/Courts/howtoreadv2.pdf>

#### Weeks 3 and 4: Obedience and Disobedience

M, 1/22 - Christopher Wellman – “Why I Am Not an Anarchist” (from *Is There a Duty To Obey the Law?*)

“Fed Up with War, Some Won’t Pay Taxes”:

<http://www.washingtonpost.com/wp-dyn/content/article/2007/07/04/AR2007070401145.html>

“We Will Not Pay: The Americans Withholding their Taxes to Fight Trump”:

<https://www.theguardian.com/us-news/2017/feb/15/tax-refusing-pay-protest-trump>

“Should We Prosecute Climate Change Protestors Who Break the Law?”

<https://psmag.com/environment/prosecute-climate-change-protesters-break-law-93187>

W, 1/24 – John Rawls, “The Arguments for the Principle of Fairness” (*A Theory of Justice*, p. 301-308)

F, 1/26 – Robert Nozick: “The Principle of Fairness” (*Anarchy, State, Utopia*, p. 90-95)

M, 1/29 – John Rawls, “The Duty to Comply with an Unjust Law,” “The Definition of Civil Disobedience” (*A Theory of Justice* p. 308-312, 319-323)

W, 1/31 – John Rawls, “The Justification of Civil Disobedience” (*A Theory of Justice* p. 326-331), Tommie Shelby, “Justice, Deviance, and the Dark Ghetto”

F, 2/2 – Rawls and Shelby continued

#### FIRST PAPER DUE

### Section 2: Freedom and Its Limits

#### Week 5: Paternalism

M, 2/5 – John Stuart Mill *On Liberty* chps 1 and 2

W, 2/7 – Mill (continued),

Sarah Conly, precis of *Against Autonomy: Justifying Coercive Paternalism*

F, 2/9 – The Nirvana Approach to Paternalism:

<http://bleedingheartlibertarians.com/2014/05/the-nirvana-approach-to-paternalism/#comment-1370989493>

Jessica Flanigan, selections from *Seat Belt Mandates and Paternalism*

re: Osborne: <https://www.leagle.com/decision/1972666294a2d3721657>

#### Weeks 6 and 7: Freedom of Speech

M, 2/12 – Scanlon, “A Theory of Freedom of Expression”

W, 2/14 – Scanlon continued, Amendment 1

[https://www.law.cornell.edu/constitution/first\\_amendment](https://www.law.cornell.edu/constitution/first_amendment)

[https://www.law.cornell.edu/wex/first\\_amendment](https://www.law.cornell.edu/wex/first_amendment)

F, 2/16 – Chaplinsky v. New Hampshire

<https://supreme.justia.com/cases/federal/us/315/568/case.html>

Brandenburg v. Ohio

[https://www.law.cornell.edu/supremecourt/text/395/444#writing-USSC\\_CR\\_0395\\_0444\\_ZO](https://www.law.cornell.edu/supremecourt/text/395/444#writing-USSC_CR_0395_0444_ZO)

M, 2/19 – Frederick Schauer, “On the Distinction Between Speech and Action”

W, 2/21 – Masterpiece Cakeshop v. Colorado Civil Rights Commission

<https://www.nytimes.com/2017/12/05/podcasts/the-daily/supreme-court-gay-wedding-cake.html> (audio, through 14:28)

[https://www.nytimes.com/2017/11/27/opinion/gay-wedding-cake.html?\\_r=0](https://www.nytimes.com/2017/11/27/opinion/gay-wedding-cake.html?_r=0)

F, 2/23 – Rae Langton, “Speech Acts and Unspeakable Acts”

### **Section 3: Legal Responsibility and Punishment**

#### **Week 8: Causation and Torts**

M, 2/26 – Hart and Honore, selections from *Causation in the Law*

W, 2/28 – Palsgraff v. Long Island Railroad:

[http://www.courts.state.ny.us/reporter/archives/palsgraf\\_lirr.htm](http://www.courts.state.ny.us/reporter/archives/palsgraf_lirr.htm),

Liebeck v. McDonald’s:

<https://www.tortmuseum.org/liebeck-v-mcdonalds/>

F, 3/2 – **MIDTERM**

#### **Week 9: Mitigating Circumstances**

M, 3/5 – The Insanity Defense, [https://www.law.cornell.edu/wex/insanity\\_defense](https://www.law.cornell.edu/wex/insanity_defense)

Steven Smith, “Neuroscience, Ethics and Legal Responsibility: The Problem of the Insanity Defense”

W, 3/7 – Jeffrey Toobin, “The Mitigator”

<https://www.newyorker.com/magazine/2011/05/09/the-mitigator>

F, 3/9 – CLASS CANCELLED

#### **Week 10:**

M, 3/12-3/18 – Spring Break, no class

#### **Weeks 11 & 12: Punishment**

M, 3/19 – Gary Watson, “Responsibility and the Limits of Evil”

W, 3/21 – John Rawls, “Two Concepts of Rules”

F, 3/23 – Jean Hampton, “The Moral Education Theory of Punishment”

M, 3/26 – Watson, Rawls, and Hampton continued

W, 3/28 – Coker v. Georgia: <https://www.oyez.org/cases/1976/75-5444>,

<https://supreme.justia.com/cases/federal/us/433/584/>

Lockyer v. Andrade: <https://www.oyez.org/cases/2002/01-1127>,

<https://supreme.justia.com/cases/federal/us/538/63/>

F, 3/30 – UNIVERSITY HOLIDAY, NO CLASS

#### **Week 13: Alternatives to Punishment?**

M, 4/2 – Peter Raynor and Gwen Robinson, “Why Help Offenders? Arguments for Rehabilitation as a Penal Strategy”

W, 4/4 – Geoff Sayre-McCord, “Criminal Justice and Legal Reparations as an Alternative to Punishment”

F, 4/6 – Nicola Lacey and Hanna Pickard, “To Blame or to Forgive? Reconciling Punishment and Forgiveness in Criminal Justice”

## **Section 4: Legal Interpretation and Course Wrap-up**

### **Weeks 14 & 15: Legal Interpretation**

M, 4/9 – Marbury v. Madison: <https://www.oyez.org/cases/1789-1850/5us137>,

W, 4/11 – Antonin Scalia on interpreting the Constitution:

[http://www.bc.edu/content/dam/files/centers/boisi/pdf/Symposia/Symposia\\_2010-2011/Constitutional\\_Interpretation\\_Scalia.pdf](http://www.bc.edu/content/dam/files/centers/boisi/pdf/Symposia/Symposia_2010-2011/Constitutional_Interpretation_Scalia.pdf)

### **SECOND PAPER DUE**

F, 4/13 – Ronald Dworkin, “The Arduous Virtue of Fidelity”

M, 4/16 – Erwin Chemerinsky, “A Defense of Judicial Review”

W, 4/18 – Jeremy Waldron, “Does the Law Promise Justice?”

F, 4/20 – David Dyzenhaus, “The Case of Bram Fischer”

### **Week 16: Review**

M, 4/23 Foundations

W, 4/25 Freedom and its Limits, Legal Responsibility

F, 4/27 Punishment, Legal Interpretation

**Final Exam – Tuesday May 1 at 12pm**