

## PHIL 125B: Philosophy of Law MW 12-1:30pm

### **Instructor:**

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Office Hours: MW 1:30-3pm or 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 class, 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, judgments of competence and legal responsibility, punishment, and judicial review. No prior acquaintance with legal philosophy is expected or required, but one prior philosophy course is recommended.

### **Learning Goals:**

1. Understand and be able to explain views about the nature and role of law, the relationship between law and morality, and the justification of punishment.
2. Identify and charitably interpret arguments from the assigned texts and be able to critically assess their merits.
3. Present philosophical ideas clearly and concisely, both orally and in writing.
4. Synthesize the above skills in papers that summarize a philosophical argument, introduce possible objections, and assess whether the objections are successful.

### **Course Website:**

This course will have a website in which I will post the syllabus, all readings and course assignments, and any supplemental readings. All students enrolled in the course should have access to this website already, but if you have any difficulties with this, let me know.

The course website will also have a section labeled Blogs in which you are to complete your responses to course readings, described in detail below.

Additionally, the course website will also have a forum, where you should feel free to post any questions you have about the course readings or class discussions. These forum posts 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.

## 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 day before the class meets, for a total of ten posts. 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).

## 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.

## 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 course website forums. Reading philosophy can be quite difficult and time-consuming, especially if you haven't done much of it before. I recommend taking notes and reading the required texts multiple times.

## Grading

I will grade all assignments from this course (aside from the blog posts) anonymously. What this means is that **you should not include your name anywhere on your course assignments, but rather include your student ID number as identifying information.** Grading anonymously 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 of the 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.

**Credit Hours:**

Success in this four-credit course is based on the expectation that students will spend a minimum of nine hours of study time per week in preparation for class (readings, papers, exam preparation, etc.)

**Late Work Policy**

I will provide a 24-hour extension, no questions asked, if you contact me before a paper deadline and send me what you have written so far. 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, and you didn't contact me, handing in the paper on Tuesday would bring an A paper down to an A-, etc. If you fall behind on work for this class for whatever reason, please come talk to me so that we can figure out a plan to help you get back on track.

**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.

**Class Conduct**

I consider this classroom to be a place where you will be treated with respect, and I welcome individuals of all ages, backgrounds, ethnicities, genders, gender identities, gender expressions, national origins, religious affiliations, sexual orientations, ability – and other visible and nonvisible differences. All members of this class are expected to contribute to a respectful, welcoming and inclusive environment for every other member of the class. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

**Accommodations**

If you have a learning or physical disability, or if you learn best utilizing a particular method, please discuss with me how I can best accommodate your learning needs. I am committed to creating an effective learning environment for all learning styles. I can do this most successfully if you discuss your needs with me in advance. I will maintain the confidentiality of your learning needs.

Brandeis seeks to welcome and include all students. If you are a student who needs accommodations as outlined in an accommodations letter, please talk with me and present your letter of accommodation as soon as you can. I want to support you.

In order to provide test accommodations, I need the letter more than 48 hours in advance. I want to provide your accommodations, but cannot do so retroactively. If you have questions about documenting a disability or requesting accommodations, please contact Student Accessibility Support (SAS) at 781.736.3470 or [access@brandeis.edu](mailto:access@brandeis.edu).

**Academic Integrity and Plagiarism Policy**

You are expected to be honest in all of your academic work. Please consult [Brandeis University Rights and Responsibilities](#) for all policies and procedures related to academic integrity. Students may be required to submit work to [TurnItIn.com](https://turnitin.com) software to verify originality. Allegations of alleged academic dishonesty will be forwarded to the director of academic integrity. Sanctions for academic

dishonesty can include failing grades and/or suspension from the university. [Citation and research assistance](#) can be found on the [university library website](#).

**Note:** I reserve 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. If you want to read further on any of the topics listed below, I am happy to recommend additional readings.

## Course Schedule:

### Section 1: Foundations

#### Week 1: The Role of Law

8/30 - Plato, "Crito"

9/1 - Martin Luther King, "Letter from a Birmingham Jail"

#### Week 2: Introduction to Moral Theory (and Civil Disobedience)

9/13 - Mark Timmons, *Moral Theory: An Introduction* (pgs 1- 8, 13-17)

How to read a legal case:

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

9/15 - "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>

#### Weeks 3-5: Obedience and Disobedience

##### Week 3:

9/20 & 22 - Christopher Wellman – "Why I Am Not an Anarchist"

**NB: No class September 27 (which is apparently a Tuesday at Brandeis)**

##### Week 4:

9/29 - John Rawls, "The Arguments for the Principle of Fairness," "The Duty to Comply with an Unjust Law," (*A Theory of Justice*, p. 301-312)

10/4 - John Rawls, "The Definition of Civil Disobedience," "The Justification of Civil Disobedience" (*A Theory of Justice* p. 319-323, 326-331)

##### Week 5:

10/6 - Tommie Shelby, "Justice, Deviance, and the Dark Ghetto"

10/11 – Tamara Fakhoury, "Quiet Resistance"

**FIRST PAPER DUE 10/6**

### Section 2: Freedom and Its Limits

#### Week 6: Paternalism

10/13 - John Stuart Mill, *On Liberty*, Chapters 1 and 2

10/18 - Sarah Conly, precis of *Against Autonomy: Justifying Coercive Paternalism*

The Nirvana Approach to Paternalism

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

Jessica Flanigan, "Seat Belt Mandates and Paternalism" (read sections 1, 2, & 5, skim sections 3 & 4)

Weeks 7 and 8: Freedom of Speech

Week 7:

10/20 & 25 - 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)

Frederick Schauer, "On the Distinction Between Speech and Action"

10/25 - Some relevant cases:

Chaplinsky v. New Hampshire

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

Brandenberg 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)

Masterpiece Cakeshop v. Colorado Civil Rights Commission

<https://supreme.justia.com/cases/federal/us/584/16-111/#tab-opinion-3910083>

**MIDTERM EXAM 10/27**

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

Week 9: Causation, Responsibility, and Proportionality

11/1 - 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)

The Insanity Defense

[https://www.law.cornell.edu/wex/insanity\\_defense](https://www.law.cornell.edu/wex/insanity_defense)

11/3 - Jeffrey Toobin, "The Mitigator"

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

Some relevant cases:

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/>

Weeks 10 & 11: The Justification of Punishment

Week 10:

11/8 - Gary Watson, "Responsibility and the Limits of Evil"

11/10 - John Rawls, "Two Concepts of Rules"

Week 11:

11/15 - Jean Hampton, "The Moral Education Theory of Punishment"

11/17 - Geoffrey Sayre-McCord, "Criminal Justice and Legal Reparations as an Alternative to Punishment"

**Section 4: Legal Interpretation**

Week 12 & 13: Legal Interpretation and Judicial Review

Week 12:

11/22 - Marbury v. Madison

<https://www.oyez.org/cases/1789-1850/5us137>

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)

11/29 - Erwin Chemerinsky, "In Defense of Judicial Review"

**SECOND PAPER DUE 11/29**

Week 13:

12/1 - Jeremy Waldron, "Does Law Promise Justice?"

12/6 - David Dyzenhaus, "With the Benefit of Hindsight: The Case of Bram Fischer"

Week 14

12/8 - Review

**FINAL EXAM**