

# **PHILOSOPHY OF LAW**

Course: PHIL 3740

Spring, 2013

Hours: Tuesday, 6:30 pm-9:15 pm

Classroom: Boylan Hall, 3305

Texts: *Philosophy of Law*, 8<sup>th</sup> edition (Joel Feinberg, Jules Coleman, eds.)

*Various articles and court cases available online*

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Office Hours: Tuesday, 12:00 noon -5:00 pm *and by appointment* (Boylan Hall, #4300)

## ***COURSE DESCRIPTION***

This course explores the issues that arise at the intersection of questions about law and justice. We will critically analyze the nature and sources of law and legal institutions from the perspective of moral and political philosophy. Specifically, we will focus on topics such as equality and discrimination, the nature and sources of rights, the relationship between liberty and social (and governmental) control, the justification for punishment (including the death penalty), and the nature of, and approaches to, terrorism. We will engage with texts in legal history, legal philosophy, social and political philosophy, and court decisions.

The goals of this course are (at least) twofold: First, I want to help you to familiarize yourself with the texts that we will encounter, and to clarify any difficulties or misunderstandings that might occur as a result of the challenging nature of our readings. What this means is that I want you to come away with much more than just a fuzzy notion of what "a bunch of guys" said: I want us, together, to be able to really get to the heart of the matter.

Second, I want you to become comfortable with critiquing and critically analyzing what you have read. That is, I want to know what the texts that we are encountering are making *you* think and feel and, very importantly, your *reasons* for your reactions. In other words, I want to help you develop your own opinions and arguments so that you are able to express them clearly and powerfully.

Oh, and one more thing. I want you to have *fun*.

## ***COURSE OBJECTIVES***

By the end of the course you will:

- Understand the central concepts, theories, and dilemmas in the philosophy of law;
- Be able to argue in support or in opposition to a claim within the philosophy of law;
- Be able to read and explain to others sophisticated philosophical arguments;
- Be able to take apart complicated arguments, finding their weak and strong points, and charitably address these strengths and weaknesses;
- Improve your speaking and writing abilities by becoming more confident in expressing yourself, more convincing in presenting your claims, and more effective in formulating your thesis statements and supporting arguments;
- Become a more informed and nuanced thinker about law and philosophy and legal, social and political issues in general;
- Become a more engaged and informed democratic citizen

## ***LECTURE AND DISCUSSION FORMAT AND CONDUCT***

As you probably already realize, in this course we will deal with many controversial and sensitive issues, and chances are, at some point during the semester, you might find yourself disagreeing with me, with the text, or with someone in the class. This is normal and to be expected (in fact, even encouraged). But how do we argue and debate without stepping on each other's toes (too much)? For this purpose, I have a few guidelines for our discussions, and as a class, we may decide to add to it as we go along. For now, here is a draft of our code of conduct:

- Respect others' right to hold opinions and beliefs that differ from yours;
- Challenge or criticize ideas, not people;
- Listen to what others are saying even if you do not agree;
- Please, please be courteous to one another (and to me) -- do not interrupt or engage; in private conversation while others are speaking;
- Support your statements with good evidence -- give us a rationale for your points;
- Avoid making broad generalizations about entire groups, or, if you feel compelled to do so, present us with evidence of why you think this is merited;
- Give everyone a chance to talk -- we all have something valuable to add to the discussion.

***VERY IMPORTANT: I encourage you to raise your hand and speak up -- what a terrible time we would all have if it was just my voice we all heard for over an hour! I will call on individuals, encourage you to talk to each other, and ALWAYS will take questions, comments, challenges, gripes (well, some gripes), etc. during class. You guys are better at teaching each other than you think!***

## ***ATTENDANCE***

As you may have guessed, attendance is mandatory. If you know you will be absent on particular days due to sports, music, or other commitments (long weekends are not commitments, folks!), please let me know in advance. Many missed days will make it very difficult for you to pass this course. PARTICIPATION IS ESSENTIAL!

## **GRADING AND ASSIGNMENTS:**

There will be 2 short (5-7 pages) papers, a midterm, and a final examination. Each paper will count for 20% of your grade, the midterm will also count 20%, and the final examination will count 25%. Participation will count for 15% of your grade.

***Receipt of a passing grade requires completion of both papers, the midterm, and the final examination.***

The first paper will be on an assigned topic:

- The first paper is due: **Tuesday, March 19<sup>th</sup>**
- The midterm is scheduled on: **Tuesday, April 9<sup>th</sup>**
- Your second paper:

**The second paper will look something like this:**

During the semester, all of you will be responsible, either by yourself or by teaming up with another student, for developing an oral argument on a topic (to be arranged with me) to be presented to the class as a whole. Your task is not only to come up with a cogent and convincing argument, but also to defend your position against the challenges of others. Your paper (written either individually or as a group) will be developed out of this argument, and will be due a week after your presentation (if there is a conflict with another paper assigned in this class, your due date will be extended).

- Final exam: **Tuesday, May 21<sup>st</sup>, 6:00 pm- 8:00 pm**

Late papers: Late papers will be accepted, but points will be taken off for lateness (unless previously arranged), with every week about 1/2 of a grade being subtracted. Thus, if your paper merited a B and it is a week late, you would get a B-. However, you must turn in all papers, even if VERY late, in order to pass this class.

**PLEASE NOTE:** *The readings are to be completed by the day that they are noted on the syllabus.*

## **COURSE SCHEDULE**

**Tuesday, January 29:** Introduction: What is law? What is justice? And who cares?

### **Part I: What is law and where does it come from?**

**Tuesday, February 5:** (1). Natural Law

Reading: Feinberg and Coleman, pp. 8-17; 36-54

(2). Legal Positivism and Legal Realism

Reading: Feinberg and Coleman, pp. 55-84; 117-119

**Tuesday, February 12<sup>th</sup>: NO CLASS**

### **Part II: Is the authority of the law just? How and why we give consent**

**Thursday, February 14: (1). Legal Interpretation and Critical Theory**

**Reading: Feinberg and Coleman, pp. 134-160; 180-191**

**(2). International Law**

**Reading: Feinberg and Coleman, pp.192-205**

**Tuesday, February 19:** (1). Are we morally obligated to obey the law?

Reading: Feinberg and Coleman, pp.206 -240

(2). Consent Theory

Reading: John Locke, Second Treatise on Civil Government, Chapters I, II, V, VII, VIII, IX

available at:

<http://oregonstate.edu/instruct/phl302/texts/locke/locke2/2nd-contents.html>

**Tuesday, February 26:** (1). Problems with consent: can consent justify suicide?

Reading: Dan Brock, "Voluntary Active Euthanasia," *Hastings Center Report* 22 (2) (1992): 10-22 (available on Blackboard in the "Course Documents" section);

United States Supreme Court, *Washington v. Glucksberg* 117 S.Ct. 2258 (1997), available at:

<http://www.law.cornell.edu/supct/html/96-110.ZC2.html>

(2). Problems with consent: Justice, gender, and rape

Reading: Feinberg and Coleman, pp.322-335; Model Penal Code: Rape

### **Part III: The Morality of Law: Individual liberty vs. state authority**

**Tuesday, March 5:** (1). Liberal theory: self-determination

Reading: Feinberg and Coleman, pp. 251-263; 281-291

(2). What are rights, and do we have any?

Reading: Feinberg and Coleman, pp. 347-357; 368-376

**Tuesday, March 12:** (1). The right to privacy

Reading: *Griswold v. Connecticut* 381 U.S. 479 (1965), available at:

[http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0381\\_0479\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0381_0479_ZS.html)

Feinberg and Coleman, pp.392-408

(2). Conservative Critiques of the Public/Private Division

Reading: Feinberg and Coleman, pp. 377-380; Robert Bork, "The Case Against Political Judging," *National Review*, December 8, 1989, pp. 23-28(available on Blackboard in the "Course Documents" section)

### **Part IV: Justice and the freedom of expression: Freedom of speech and hate speech**

**Tuesday, March 19:** (1). Offense vs. harm: Do we have a right not to be offended?

Reading: Feinberg and Coleman, pp. 438-455

(2). Are there limits to the free expression of opinion? Part I:  
Pornography

Reading: Feinberg and Coleman, pp. 409-419

(3). Are there limits to the free expression of opinion? Part II:  
Political speech, property rights, and hate speech

Reading: Feinberg and Coleman, pp. 426-438; Phil Cox, "The disputation of hate: Speech codes, pluralism, and academic freedoms," *Social Theory and Practice*, 21.1, 1995 (available on Blackboard in the "Course Documents" section)

**SPRING BREAK, March 25<sup>th</sup>-April 2<sup>nd</sup>: NO CLASS**

**Tuesday, April 9: MIDTERM EXAM**

### **Part V: Race, law, and equality**

**Tuesday, April 16:** (1). Some arguments for race-conscious affirmative action

Reading: Feinberg and Coleman, pp. 292-308;

*Grutter v. Bollinger*, 539 U.S. 306 (2003), available at:

<http://www.law.cornell.edu/supct/html/02-241.ZS.html>

Lee C Bollinger, "Why Diversity Matters," *Chronicle of Higher Education*, 53.39, 2007. (found at: <http://chronicle.com.proxy.brooklyn.cuny.edu:2048/article/Why-Diversity-Matters/9152/>)

(2). Some arguments against race-conscious affirmative action

Reading: *Gratz v. Bollinger*, 539 U.S. 244 (2003), available at:

<http://www.law.cornell.edu/supct/html/02-516.ZS.html>

Lisa H. Newton, "Reverse Discrimination as Unjustified," *Ethics*, 83.4, 1973, pp. 308-312. (available on Blackboard in the "Course Documents" section)

## **Part VI: Law, justice, and punishment**

**Tuesday, April 23:** (1). What is punishment, and is it justified?

Reading: Feinberg and Coleman, pp. 624-664

(2). Punishment, desert, and state of mind

Reading: Feinberg and Coleman, pp.618-624

**Tuesday, April 30:** (1). The death penalty (Part I)

Reading: Feinberg and Coleman, pp. 665-684

(2). The death penalty (Part II)

Reading: Ernest Van Den Haag, "On Deterrence and the Death Penalty," *Ethics*, 78.4, 1968, pp. 280-288; Jeffrey H. Reiman, "Justice, Civilization, and the Death Penalty: Answering van den Haag," *Philosophy and Public Affairs*, 14.2, 1985, pp. 115-148 (available on Blackboard in the "Course Documents" section)

## **Part VII: The brave new world of law and justice (PART I): War and terrorism**

**Tuesday, May 7:** (1). Just war theory

Reading: Brian Orend, "War," *The Stanford Encyclopedia of Philosophy* (July 2005), Edward N. Zalta (ed.), <http://plato.stanford.edu/entries/war/> (Please read just the "Just War Theory" sections).

(2). Terrorism (Part I: What is it and what it might mean)

Reading: Feinberg and Coleman, pp. 456-479

## **The brave new world of law and justice (PART II): Law and Biomedical Research**

**Tuesday, May 14:** (1). Who owns your genes?

Reading: (available on Blackboard in the "Course Documents" section)

(2). The law and your brain

Reading: (available on Blackboard in the "Course Documents" section)

(3). Review and some concluding remarks

***THE INSTRUCTOR RESERVES THE RIGHT TO MAKE ALTERATIONS TO THIS SYLLABUS THROUGHOUT THE TERM!!!!***

## **BROOKLYN COLLEGE POLICIES**

### **STUDENTS WITH DISABILITIES**

In order to receive disability-related academic accommodations students must first be registered with the Center for Student Disability Services. Students who have a documented disability or suspect they may have a disability are invited to set up an appointment with the Director of the Center for Student Disability Services, Ms. Valerie Stewart-Lovell at 718-951-5538. If you have already registered with the Center for Student Disability Services please provide your professor with the course accommodation form and discuss your specific accommodation with him/her.

### **CLASS ATTENDANCE AND RELIGIOUS BELIEFS**

For information about the state law regarding non-attendance due to religious beliefs, please see page 53 in the Undergraduate Student Bulletin.

### **PLAGIARISM AND CHEATING:**

This is a very unpleasant subject, but we might as well get it over with. No cheating or plagiarism will be tolerated. Period. To refresh your memories, the following is a general summary of the cheating-plagiarism policy:

The faculty and administration of Brooklyn College support an environment free from cheating and plagiarism. Each student is responsible for being aware of what constitutes cheating and plagiarism and for avoiding both. The complete text of the CUNY Academic Integrity Policy and the Brooklyn College procedure for implementing that policy can be found at this site: <http://www.brooklyn.cuny.edu/bc/policies>. If a faculty member suspects a violation of academic integrity and, upon investigation, confirms that violation, or if the student admits the violation, the faculty member **MUST** report the violation.

**CUNY POLICY ON ACADEMIC INTEGRITY (This policy can be found on: <http://www.brooklyn.cuny.edu/pub/documents/academicintegritypolicy.pdf>)**

Definitions and Examples of Academic Dishonesty

1. **Cheating** is the unauthorized use or attempted use of material, information, notes, study aids, devices or communication during an academic exercise. The following are some examples of cheating, but by no means is it an exhaustive list:
  - Copying from another student during an examination or allowing another to copy your work.
  - Unauthorized collaboration on a take home assignment or examination.
  - Using notes during a closed book examination.
  - Taking an examination for another student, or asking or allowing another student to take an examination for you.
  - Changing a graded exam and returning it for more credit.

- Submitting substantial portions of the same paper to more than one course without consulting with each instructor.
  - Preparing answers or writing notes in a blue book (exam booklet) before an examination. Allowing others to research and write assigned papers or do assigned projects, including use of commercial term paper services.
  - Giving assistance to acts of academic misconduct/dishonesty.
  - Fabricating data (all or in part).
  - Submitting someone else's work as your own.
  - Unauthorized use during an examination of any electronic devices such as cell phones, palm pilots, computers or other technologies to retrieve or send information.
2. **Plagiarism** is the act of presenting another person's ideas, research or writings as your own. The following are some examples of plagiarism, but by no means is it an exhaustive list:
- Copying another person's actual works without the use of quotation marks and footnotes attributing the words to their source.
  - Presenting another person's ideas or theories in your own words without acknowledging the source.
  - Using information that is not common knowledge without acknowledging the source.
  - Failing to acknowledge collaborators on homework and laboratory assignments.
3. **Internet plagiarism** includes submitting downloaded term papers or parts of term papers, paraphrasing or copying information from the internet without citing the source, and "cutting & pasting" from various sources without proper attribution.
4. **Obtaining Unfair Advantage** is any activity that intentionally or unintentionally gives a student an unfair advantage in his/her academic work over another student. The following are some examples of obtaining an unfair advantage, but by no means is it an exhaustive list:
- Stealing, reproducing, circulating or otherwise gaining advance access to examination materials.
  - Depriving other students of access to library materials by stealing, destroying, defacing, or concealing them.
  - Retaining, using or circulating examination materials which clearly indicate that they should be returned at the end of the exam.
  - Intentionally obstructing or interfering with another student's work.

Most importantly, remember this: I do not have all the answers. You do not have all the answers. Philosophy is a process by which we can at least begin to engage in asking the right questions. This class is all about seeing just where those questions will lead us.