

Syllabus

Philosophy of Law

Prof. Leo Zaibert

Fall 2009, Tuesdays and Thursdays, 10:55 - 12:40 p.m., SSCI 010

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Office Hours: Tuesdays and Thursdays 1:30-3:00 p.m., and by appointment.

Course Description

The law is all around us; hardly a day goes by in which we are not affected by this or that legal institution. This course will be divided into two parts. During the first two or three weeks we will discuss general question regarding the nature of law and its connection to morality. Thus, we will focus on two fundamental questions: What exactly is law?, and Can an immoral law exist? The rest of the term will be devoted to a particular legal institution, one which, I hope, we do not experience very frequently at all: punishment. What is punishment? What is the criminal law? Why is it legitimate for the state to inflict suffering on wrongdoers? What are the different degrees of condemnation for crimes, and why do they exist?

Required Texts

- 1) Ronald Dworkin (ed.), *The Philosophy of Law*, Oxford: Oxford University Press (1977), henceforth PL.
- 2) H. L. A. Hart, *Punishment and Responsibility* (2nd edition), Oxford: Oxford University Press (2008), henceforth PR.

The books are available at the College's bookstore.

Recommended Texts

- 1) Ronald Dworkin, *Taking Rights Seriously*, Cambridge, MA: Harvard University Press (2978).
- 2) H. L. A. Hart, *The Concept of Law*, (2nd ed.) Oxford: Clarendon Press (1997).
- 3) Jules Coleman (ed.) *Hart's Postscript: Essays on the Postscript to The Concept of Law*, Oxford: Oxford University Press (2001).
- 4) Leo Zaibert, *Five Ways Patricia can Kill her Husband: A Theory of Intentionality and Blame*, Chicago: Open Court (2005).
- 5) Leo Zaibert, *Punishment and Retribution*, Aldershot: Ashgate (2006).

Grading

- 1) Mid-Term Exam, (October 8): 30%
- 2) Final Exam (during Final Exams Week): 30%
- 3) Term Paper (due on November 17): 40%

The exams will cover any material that we might have studied, whether it is material we discussed in class or that it is part of any of the assigned readings) up to the day of the test. It is your obligation to come to class and to be aware of the deadlines. Except for truly exceptional circumstances, I will not give make up exams, so make sure you do not miss them.

Grading Policy:

Receiving a grade of 'A' entails that the student has shown exceptional grasp of the material, and that he or she has excellent writing skills. The 'B' range suggests very good command of the material in the course and above-average writing skills. The 'C' range indicates that the student's grasp of the material and writing abilities are average. The 'D' range suggests that the student's grasp of the material and writing skills are poor.

Attendance and Class Participation

Attendance is mandatory. Make sure you do not miss class, and that you arrive promptly; many discussions that we will have in class you will not find in the books. And philosophy can best be learned in live group discussions; some of the assigned readings will be excruciatingly difficult unless you come to class and participate in the discussions. More than something you will just *study*, philosophy is something you will *do*. After a student misses two classes, each additional absence will entail a deduction of a letter grade, i.e., from A to A-, from A- to B+, and so on, unless, of course, real and convincing justification is provided. More than five absences will automatically result in a failing grade for the course.

Active class participation can only help you; students are strongly encouraged to participate as much as they wish in class discussions. There will be, however, no penalty for those students that decide not to participate; some people might be shy, nervous, or insecure, and I will not penalize them for that. But I cannot emphasize enough how important it is for you to participate in our discussions. Active participation will help you get a better grasp of the material, and therefore, it will contribute to your overall success in the course. Although there will be no reward for merely attending classes and no penalty for merely being silent in class, you will soon realize how important attendance and participation are.

NOTE: If you miss class, please do not write e-mails asking me to write to you about what we did that day in the classroom. I will ignore such requests. It is your responsibility to come to class, and if you wish to find out what you missed you might come to my office during office hours. My e-mail and my voice mail should only be used for emergencies; I will ignore frivolous e-mails and voice mails. My office door is virtually always open, and you are virtually always welcome.

Conduct in the Classroom

I will treat everyone with respect and cordiality: I expect the same in return. For example, though I have a cell phone, I do not have it on while in the classroom, so please turn yours off. The classroom is not meant to be checking your cell phones or pagers. If you want to bring a laptop computer to class, that is fine; I cannot always monitor what you are doing with the computer, but I request that you do not use the computer for anything other than taking notes. Please do not disturb class in any other ways, such as carrying out conversations with your classmates; these sorts of conversations, of course, are bad for you, since you can hardly pay attention to our discussions as you chat, but they also disturb other students. Do not be disrespectful to anyone in the classroom. I welcome discussion: if you disagree with someone (including myself, or any of our authors), feel free to argue as vehemently as you wish for your position, but do it in a kind and considerate manner.

Academic Integrity

Students are expected to abide by Union College's *Statement on Academic Integrity* (please take a look at <http://www.union.edu/library/refroom/statement.htm>). Plagiarism will entail, at the very least, an automatic failing grade in the course, and the same will hold for other affronts to academic integrity (such as cheating on exams, etc.)

Term Paper

The term paper should address some issue related to what we studied in class. Within these limits, you are free to focus upon any problem with a clear philosophical dimension; you are encouraged to be as creative as you wish. I am available to discuss your projects during my office hours. The following are a few guidelines for your paper that you must observe.

- a) The paper must have three sections, the first being an introduction in which you clearly state what it is that you are going to show in the paper, and the last containing a summary of your conclusions. Read your paper before you hand it in, and make sure that someone else (let alone yourself) will be able to understand your written views. Having an introduction and a conclusion are useful means toward that end.
- b) Internet references are **absolutely prohibited**. Papers with such references will be penalized severely. All references must be to printed books or articles. The author of the book, the publisher, the date of publication, and the page number from which you are quoting must be clearly indicated.
- c) The paper should be printed on white paper.

- d) The pages should be numbered, and numbered consecutively.
- e) The length of the paper should be around 15 pages (do not include a cover page; on the first page put the title of the paper and your name), avoid extremely large (or small) fonts or margins, the paper should be double-spaced throughout (including footnotes), and it must be free from typos (spelling will be graded). This length is a general guideline, do not worry if your paper is *a bit* longer.
- f) Clearly indicate, by using quotation marks, which words are not yours, and give appropriate references. Do not paraphrase.
- g) Please remember that spelling and syntax will be graded.

Schedule and Class Topics

First Week (Sep 10): Introduction.

Second Week (Sep 15-17): Positivism and its Discontents. PL: 1-65.

Third Week (Sep 22-24): Law and Ethics. PL: 66-88.

Fourth Week (Sep 29- Oct 1): Punishment: Definition, Justification, and Gradation. PR: 1-53.

Fifth Week (Oct 6-8): Case Study: Murder. PR: 54-89.

Sixth Week (Oct 13-15): Acts and Intentions. PR: 90-135.

Seventh Week (Oct 20-22): Negligence. PR: 136-157.

Eighth Week (Oct 27-29): Responsibility, Liability and Culpability. PR: 158-209.

Ninth Week (Nov 3-5): Retribution. PR: 210-237.

Tenth Week (Nov 10-12): Retribution. PR: 210-237.

The most important aspect of this schedule is the order in which the topics are presented, not the correlation of dates with topics. I expect, and for reasons that will become clear as we move along, hope, that some readings will take much longer than the schedule indicates. Moreover, it is likely that I will assign additional readings, which I would announce in class. I am not interested in racing our way through the texts; I want us to really think hard, to philosophize about our texts, and to learn as much as possible from each of the topics that we do discuss. The schedule above is just a guideline, and deviations from it are a real possibility.