

# PHILOSOPHY & LAW

Philosophy 2220

FALL 2016

Section 001

MWF

3:00p-3:50p

Hellems 245

## INSTRUCTOR

Jonathan Spelman

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<http://ucb-2016f-phil-2220-1.slack.com>

## OFFICE HOURS

I will be holding office hours on Mondays and Wednesdays from 1:00 – 2:50 pm in Hellems 15. I will also be available by appointment.

## CATALOGUE DESCRIPTION

This course considers philosophical issues related to law in general and the U.S. system in particular. Topics to be covered may address such questions as the following: What is the nature of law? What kinds of acts should the law prohibit (e.g., abortion, drug use, pornography, cloning)? Is there a moral obligation to obey the law? Can civil disobedience be justified? Is there a justification for punishing people for breaking the law? Is capital punishment, in particular, morally justified?

## MY DESCRIPTION

This course introduces students to a range of philosophical questions raised by the law and helps them develop the philosophical skills necessary for answering those questions. In particular, it helps students to construct and evaluate arguments, devise thought experiments and counterexamples, and practice intellectual courage, empathy, and humility.

## COURSE TEXTS

Most readings will come from the required text listed below, but there will also be a number of additional readings that I will post on Slack.

### *REQUIRED TEXT*

Adams, David M. *Philosophical Problems in the Law*. 5<sup>th</sup> ed. Boston: Wadsworth, 2013.

ISBN-13: 978-1-133-04999-9

## GRADES

Grades will be assigned in accordance with the university's uniform grading policy. "A" grades are exceptional and are reserved for those students who demonstrate both a comprehensive understanding of the material and competence with all the philosophical skills we work on over the course of the semester. "B-/C+" grades are average.

## **GRADED ELEMENTS**

### *CLASS PREPARATION AND ATTENDANCE*

You are expected to prepare for each class period by reading and flagging the assigned text and reflecting on its content, and you are expected to attend class regularly. After your fifth absence, each additional absence will result in a 5% reduction in your final grade.

### *PARTICIPATION*

You are expected to be an active participant in all small group activities and discussions and to contribute regularly to large group discussions. This is good, not only for you, but also for your classmates and me. We will all benefit from your contributions. It is particularly important that you participate in peer review and homework activities, that you be ready to present any material you are asked to prepare, and that you participate in two large-group debates. Your class participation grade will account for 15% of your final grade.

### *JOURNAL*

You are expected to keep a journal in which you'll write down your reflections on the cases we discuss. Each journal entry should be at least 200 words. It should be a clear and thoughtful, and it should answer the prompt for that case. Your journal entries will typically be due the class after we discuss the case. Your journal grade accounts for 15% of your final grade.

### *HOMEWORK ASSIGNMENTS*

Homework will be assigned on Fridays and will be due on Mondays. Although you should complete each homework assignment on your own, you will be able to rework homework assignments #1, 2, 4, 5, 7, and 8 with input from a small group of your peers. Of these six grades, your lowest grade will be dropped. Each of the remaining five grades will account for 2% of your final grade. You will not be able to rework homework assignments #3, 6, or 9. Each of these homework assignments will account for 5% of your final grade. Combined, your homework assignments will account for 25% of your final grade.

### *MISCELLANEOUS ASSIGNMENTS*

You will be asked to complete a number of miscellaneous assignments throughout the semester. These will receive either a passing or a failing grade. Assignments that receive a failing grade can be redone. Your miscellaneous assignments will account for 5% of your final grade.

### *PAPERS*

During the semester, you will write two 3-4 page (900-1200 word) papers. We will talk more about the paper requirements on September 26. A hard copy of your first paper will be due in class on October 10. An electronic copy of your second paper will be due by 11:59 pm on the day of your final exam. Each paper will account for 20% of your final grade.

<u>GRADED ELEMENT</u>	<u>%</u>
Participation	15
Journal	15
Homework	25
Miscellaneous Assignments	5
<u>Papers</u>	<u>40</u>
Total	100

## ASSIGNED READINGS

### 1 – Introduction to Philosophy & Law

8/22 Blanda, "[The Other Side Is Not Dumb](#)"

8/24 Slack: "How to Read Philosophy"

#### **Redo summary of passage from Mill's *On Liberty***

8/26 Slack: Pojman and Vaughn, excerpt from *Philosophy: The Quest for Truth*

### 2 – The Nature of Law

8/29 PPL: *Riggs et al. v. Palmer* (1889), pp. 184-187

#### **Homework #1**

8/31

9/02 **Reconstruct arguments from *Riggs et al. v. Palmer***

### 3 – Legal Interpretation

9/05 **No Class (Labor Day Holiday)**

9/07 PPL: *Church of the Holy Trinity v. U.S.* (1892), pp. 211-214

PPL: *Smith v. U.S.* (1993), pp. 208-211

#### **Homework #2**

9/09 **Present *Church of the Holy Trinity v. U.S.* or *Smith v. U.S.***

### 4 – Legal Interpretation

9/12 PPL: Scalia, "The Role of U.S. Federal Courts in Interpreting the Constitution," pp. 214-219

#### **Homework #3**

9/14 PPL: Dworkin, "Comment on Scalia," pp. 219-224

9/16 Slack: Scalia, "Response to Dworkin," pp. 166-169

### 5 – Free Speech

9/19 Slack: "How to Write a Précis"

PPL: *Albert Snyder, Petitioner v. Fred W. Phelps, Sr., et al.* (2011), pp. 329-334

#### **Précis of *Albert Snyder, Petitioner v. Fred W. Phelps, Sr., et al.***

9/21 **Redo précis of *Albert Snyder, Petitioner v. Fred W. Phelps, Sr., et al.***

9/23

### 6 – Writing Workshop

9/26 **Quiz on *Albert Snyder, Petitioner v. Fred W. Phelps, Sr., et al.***

9/28 Writing Workshop

9/30 Writing Workshop

### 7 – Writing Workshop

10/03 Writing Workshop

10/05 Writing Workshop

10/07 Writing Workshop

### 8 – Affirmative Action

10/10 **Paper #1**

PPL: *Barbara Grutter v. Lee Bollinger, et al.* (2003), pp. 374-383

10/12 PPL: Nagel, "A Defense of Affirmative Action," pp. 383-386

10/14 PPL: Steele, "Affirmative Action," pp. 386-391

9 – *The Reasonable Person Standard*

10/17 Slack: *State v. Rusk* (1981), pp. 327-331

**Homework #4**

10/19

10/21 Slack: Scheppele, “The Reasonable Woman,” pp. 322-327

10 – *Justification and Excuse*

10/24 PPL: *State v. Leidholm* (1983), pp. 506-508

**Homework #5**

10/26

10/28 PPL: Rosen, “The Battered Woman’s Defense,” pp. 508-515

11 – *Theories of Punishment*

10/31 PPL: *Lockyer v. Andrade* (2003), pp. 531-534

**Homework #6**

11/02 Barry-Jester, Casselman, and Goldstein, “[Should Prison Sentences Be Based On Crimes That Haven’t Been Committed Yet?](#)”

11/04 PPL: Moore, “The Argument for Retributivism,” pp. 558-562

12 – *Capital Punishment*

11/07 **Homework #7**

11/09 PPL: *Gregg v. Georgia* (1976), pp. 623-627

*More Perfect*, Episode 1: [Cruel and Unusual](#)

11/11 PPL: Van den Haag, “The Death Penalty Once More,” pp. 578-584

13 – *Debates*

11/14 **Homework #8**

11/16 **Debate #1: Theories of Punishment**

11/18 **Debate #1: Capital Punishment**

14 – *Fall Break*

11/21 **No Class (Fall Break)**

11/23 **No Class (Fall Break)**

11/25 **No Class (Thanksgiving Holiday)**

15 – *The Duty to Rescue*

11/28 **Homework #9**

PPL: *McFall v. Shimp* (1978), pp. 703-704

11/30 PPL: Macaulay, “Against a Legal Duty to Rescue,” pp. 704-706

12/02 PPL: Weinrib, “The Case for a Duty to Rescue,” pp. 706-713

16 – *Assorted Topics (Subject to Revision)*

12/05 Corvino, “[‘Bake Me a Cake’: Three Paths for Balancing Liberty and Equality](#)”

*More Perfect*, Episode 4: [Imperfect Plaintiffs](#)

12/07 PPL: *Goldschmidt v. Florida* (1986), pp. 604-606

*Criminal*, Episode 39: [Either/Or](#)

12/09 PPL: *Michael H. v. Gerald D.* (1989), pp. 414-418

*More Perfect*, Episode 3: [More Perfect presents: Adoptive Couple v. Baby Girl](#)

*Final Exam* (Wednesday, 12/14, 4:30 pm – 7:00 pm in HLMS 245)

**Debate #2 and Paper #2**

## **POLICY STATEMENTS**

### *ACADEMIC HONESTY*

<http://honorcode.colorado.edu>

All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council at 303-735-2273 or [honor@colorado.edu](mailto:honor@colorado.edu) and those students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member involved and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). Additional information on the Honor Code can be found at the website above.

### *CLASSROOM BEHAVIOR POLICY*

<http://www.colorado.edu/policies/student-classroom-and-course-related-behavior>

[http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student\\_code](http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code)

Students and faculty each have responsibility for maintaining an appropriate learning environment. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, color, culture, religion, creed, politics, veteran's status, sexual orientation, gender, gender identity, gender expression, age, disability, and nationalities. Class rosters are provided to the instructor with the student's legal name. 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. See policies at the websites above.

### *DISABILITY AND MEDICAL CONDITION POLICY*

<http://disabilityservices.colorado.edu/>

If you qualify for accommodations because of a disability, please submit to your professor a letter from Disability Services in a timely manner so that your needs can be addressed. (For exam accommodations, provide your letter at least one week prior to the exam.) Disability Services determines accommodations based on documented disabilities. Contact Disability Services at 303-492-8671 or [dsinfo@colorado.edu](mailto:dsinfo@colorado.edu). If you have a temporary medical condition or have other questions, see the website above.

### *DISCRIMINATION AND HARASSMENT POLICY*

<http://www.colorado.edu/institutionalequity/>

The University of Colorado Boulder will not tolerate acts of discrimination or harassment based upon Protected Classes by any employee or student or related retaliation against any employee or student. For purposes of this CU-Boulder policy, "Protected Classes" refers to race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy. Any student, staff, or faculty member who believes s/he has been the subject of sexual harassment or discrimination or harassment based upon the above-mentioned Protected Classes should contact either the Office of Institutional Equity and Compliance at 303-492-2127 or [cureport@colorado.edu](mailto:cureport@colorado.edu) or the Office of Student Conduct (OSC) at 303-492-5550 or [student.conduct@colorado.edu](mailto:student.conduct@colorado.edu). Information about the Office of Institutional Equity and Compliance, the above referenced policies, and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at the website above.

### *RELIGIOUS OBSERVANCES POLICY*

<http://www.colorado.edu/policies/observance-religious-holidays-and-absences-classes-andor-exams>

Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. Please let me know prior to the third week of classes if one of your religious obligations prohibits you from either attending class on a particular day or completing a particular assignment. See full details at the website above.