

PHIL 4260-001: Philosophy of Law
F 9:25am-12:05pm, Columbine Hall 322
Fall 2018

Professor: Jennifer Kling, PhD

Office Hours: MW 10am-1pm; available by appointment (Columbine Hall 4057)

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Course Description:

Why do we need laws? (After all, if only criminals break laws, then they don't seem to be doing much for the rest of us...) And what is a law, anyway? (Surely the nasty dictums passed by dictators and tyrants aren't really *laws*; surely they're just orders enforced at gunpoint...) Are there good reasons for the domestic legal conventions and procedures that we currently have and use? (It does seem odd that a U.S. Supreme Court decision made 100 years ago has bearing on a case to be decided today...) Is there such a thing as international law? (There's no world state, so surely things like the UDHR and the Geneva Convention are more like guidelines than actual laws...) In this course, we will investigate each of these questions in turn, in an attempt to understand the philosophical underpinnings of law, considered both theoretically and in practice. However, while we will study what others have thought about these questions, our efforts will not be purely academic; we will also be focused on learning how to understand, analyze, and (possibly) challenge court opinions on acceptable legal and philosophical grounds.

In this class, you will have to struggle with big concepts that you may not have engaged with before, and you will have to work hard to succeed. Along the way you will come to better understand what legal and political philosophers do, how they do it, and why. That will entail using and refining your abilities to effectively think, argue, read, and write. In other words, in this course you are going to learn how to *do* legal and political philosophy, which is both difficult and rewarding.

Course Requirements:

Participation (10%): You will need to both do the readings and come to class in order to be successful in this course. If you don't do the readings, you'll be lost in class; if you don't come to class, you'll be lost in the readings and the assignments. While **excessive** participation is not required, some willingness to engage with both me and your fellow classmates is necessary—without this willingness on your part, we won't be able to have the sort of productive class discussions that will enable you to successfully engage in the course. So, while a lack of participation won't harm your grade very much, participation can significantly *help* your grade. ****Attendance is not participation! However, I do take attendance into account when determining your participation grade.****

I appreciate that speaking to a classroom full of your peers can be difficult; so, there are a number of other ways to participate in class. You may speak in class, you may engage in small group work, you may visit during my office hours, you may send me emails with questions, comments, and concerns, you may start online discussion threads, you may post relevant outside documents/videos/blogs, etc. to the course Canvas website, you may tweet and/or blog and/or journal about issues raised in class, etc. If you're unsure of whether some action counts as participation, please see me, and we'll discuss it.

Argument Reconstructions (5% each): You are required to submit **six** argument reconstructions throughout the semester. (5% each x 6 posts=30%)

Argument reconstructions are due by the start of the class period on the due date. **Late argument reconstructions will not be accepted.** They should be roughly ½-1 page in length, and should reconstruct the relevant argument. Argument reconstructions should be created in MindMup 2.0, and submitted via Canvas. If you wish to submit an argument reconstruction in some other form, please see

me, and we'll discuss it. ****Collaboration is encouraged but not required. If you do collaborate with a classmate, each classmate must turn in a copy of the argument reconstruction.****

Papers (15% each): There are **two** required academic papers for this course. (15% each x 2 papers=30%) Each paper should be 3 pages long, and should present and *critically engage* some issue brought up in the course texts and class discussions. I will provide a list of topics one week in advance of each paper's due date. If you wish to write on a topic not on the list, please come see me to discuss your proposed topic. If you wish to submit a paper in some other form (podcast, video, tumblr, etc), please see me, and we'll discuss it.

Papers are due by the start of the class period on the due date. For every 24-hour period that a paper is late, I will take 5 points off. That said, I am aware that life happens; if you feel you need an extension, **please ask me as soon as possible.** The earlier you ask, the more likely I am to give you an extension. Failure to turn in any one of the papers will result in failing the course.

In-class Presentation (10%): Each student must do an in-class presentation, either by themselves or with a partner. Each presentation should be 5-10 minutes long, and should present and *critically engage* with the main points from the assigned text for the day. We will pick presentation dates a few weeks into the semester, so that students have a feel for the topic/text on which they would like to present. If you wish to present on a topic/issue that is not covered by an assigned text, please see me, and we'll discuss it. Failure to do an in-class presentation will result in failing the course. ****Again, collaboration is encouraged but not required. If you do collaborate with a partner, each partner must turn in a copy of the presentation.****

Final Paper (20%): There is a required final paper for this course. Final papers should be 5-6 pages long, and should present one of the theories studied in the course, and then critically apply that theory to a contemporary issue of their choice. Students should pick a specific topic in conjunction with the professor. Failure to turn in the final paper will result in failing the course.

Grading Scale:

A: An 'A' denotes exceptional skill and ability. An 'A' student demonstrates an excellent grasp of the material (i.e., the student understands the material enough to explain it succinctly and well), and also displays the ability to engage thoughtfully with both the broad issues and finer points under discussion.

A: 100-93 A-: 92-90

B: A 'B' denotes solid-to-impressive skill and ability. A 'B' student demonstrates a good grasp of the material (i.e., the student understands the material well enough to explain it with few mistakes), and also displays the ability to engage thoughtfully with most, if not all, of the issues and points under discussion.

B+: 89-87 B: 86-83 B-: 82-80

C: A 'C' denotes adequate skill and ability. A 'C' student demonstrates a fair grasp of the material (i.e., the student understands the big picture, but makes some serious errors in presentation), and also displays the ability to engage thoughtfully with at least some of the issues under discussion.

C+: 79-77 C: 76-73 C-: 72-70

D: A 'D' denotes inadequate skill and ability. A 'D' student has serious problems with grasping the material, and fails to engage thoughtfully with any of the issues under discussion.

D+: 69-67 D: 66-63 D-: 62-60

F: An 'F' denotes catastrophic problems in fulfilling the requirements of the course. An 'F' student neither grasps the material nor engages with it critically at any level. F: 59-0

While hard work is correlated with success, it is not sufficient for success. To get a good grade in this course, you need to not only understand and engage with the material, but also communicate your understanding and engagement to me via your participation, projects, papers, and exam. If you sense that you are heading towards a grade you do not want, please come see me as soon as possible (if you wait until the end of the semester, it will be too late).

Assignments:

All readings, videos, podcasts, etc. can be found on this course's Canvas site.

Week 1: Introduction + Why do we need laws?

Friday, August 24th Introduction to the Course *and* Course Contract
Read: Plato, *Crito*
Watch: “What is the tragedy of the commons?,” TED-Ed short film

Week 2: Why do we need laws, continued

Friday, August 31st **Read:** Aristotle, *Politics*, Book I, Chapters 1-2
Read: Hobbes, *Leviathan*, Chapter 11, Chapter 13

Week 3: What is law/What is a law? (The Rule of Law)

Friday, September 7th **ARGUMENT RECONSTRUCTION #1 DUE** and
Read: Lon Fuller, “Eight Ways to Fail to Make a Law”
Read: Jeremy Waldron, “The Rule of Law and the Importance of Procedure”

Week 4: The Rule of Law, continued

Friday, September 14th **Read:** H.L.A. Hart, “Laws and Morals”
Read: George Klosko, “Presumptive Benefit, Fairness, and Political Obligation”

Week 5: What is law/What is a law? (Natural Law Theory)

Friday, September 21st **PAPER #1 DUE** and
Read: Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Chapters 1-2
Read: Saint Thomas Aquinas, *Summa Theologica*, Questions 90, 94

Week 6: Natural Law Theory, continued

Friday, September 28th **ARGUMENT RECONSTRUCTION #2 DUE** and
Read: John Finnis, “Natural Law and Natural Rights”
Read: Joel Feinberg, “The Nature and Value of Rights”

Week 7: What is law/What is a law? (Legal Positivism)

Friday, October 5th **Read:** John Austin, *The Providence of Jurisprudence Determined*, Lecture 1
Read: H.L.A. Hart, *The Concept of Law* (selections)

Week 8: Legal Positivism, continued

Friday, October 12th

ARGUMENT RECONSTRUCTION #3 DUE and
Read: Ronald Dworkin, “The Model of Rules”
Listen: “Nicola Lacey on H.L.A. Hart and Legal Positivism,”
Philosophy Bites Podcast

Week 9: Domestic Legal Conventions and Procedures

Friday, October 19th

Professor Out
Watch In Class: *Prohibition*, Episodes 1 & 2, Ken Burns and Lynn
Novick

Week 10: Domestic Legal Conventions and Procedures (Constitutional Law: First Amendment)

Friday, October 26th

ARGUMENT RECONSTRUCTION #4 DUE and
Read: John Stuart Mill, *On Liberty*, Chapter 2
Read: Miles Unterreiner, “Limiting Free Speech”

Week 11: Constitutional Law, continued

Friday, November 2nd

PAPER #2 DUE and
Read: Raymond Wacks, *Philosophy of Law*, chapter 4
Read: Robert Dahl, *How Democratic is the American Constitution?*,
selections

Week 12: Domestic Legal Conventions and Procedures (Tort Law: Negligence and Luck)

Friday, November 9th

Read: John Goldberg and Benjamin Zipursky, “Tort Law and
Moral Luck”
Read: Jeremy Waldron, “Moments of Carelessness and Massive
Loss”

Week 13: Tort Law, continued + Criminal Law

Friday, November 16th

ARGUMENT RECONSTRUCTION #5 DUE and
Listen: “The Wishes of the Dead,” Hi-Phi Nation Podcast
Read: Fritz Allhoff, “Wrongful Convictions, Wrongful Acquittals,
and Blackstone’s Ratio”

Week 14: Domestic Legal Conventions and Procedures (Criminal Law)

Friday, November 23rd

NO CLASS: THANKSGIVING BREAK

Week 15: Criminal Law, continued

Friday, November 30th

ARGUMENT RECONSTRUCTION #6 DUE and
Read: Erin Kelly, “Criminal Justice Without Retribution”
Read: Michelle Alexander, *The New Jim Crow* (selections)

Week 16: International Law

Friday, December 7th

Read: Allan Buchanan, "The Idea of a Moral Theory of International Law"

Read: Win-Chiat Lee, "Terrorism and Universal Jurisdiction"

Final Exam Week

Wednesday, December 12th

Final Paper Due by 5pm MST

Student Conduct

All students at UCCS are responsible for knowing and adhering to the conduct policies of this institution. For more information, please see the [Student Conduct Policies](#). Please obey the spirit as well as the law of UCCS's Student Code of Conduct. If you think that something is in violation of the Code, it probably is, so check before doing it. Regarding academic integrity, please remember that unintentional plagiarism is still plagiarism, and so **you must cite all of your sources** for papers!

****Please note:** every assignment turned in for this class must be your own original work, produced specifically *for this class*. You may not turn in an assignment written for a previous and/or different class. To do so would constitute (self) plagiarism, and will be treated as such.**

Sex- and Gender-based Violence and Harassment

Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, religion, national origin, etc. If you or someone you know has been harassed or assaulted for **any** reason, you can find the appropriate resources here:

<https://www.uccs.edu/equity/resources>.

The Writing Center

The Writing Center at UCCS is a free resource available to all students. Students are encouraged to visit the writing center for writing feedback at any stage in the writing process. For information regarding their tutors, hours, location, or to utilize their online links and resources, please visit

<https://www.uccs.edu/writingcenter/>.

Military Deployment and Military Service

In order to assist students who are called to active duty the Campus has compiled a set of guidelines that include information on withdrawing from courses. General information can be accessed at:

<https://www.uccs.edu/military/current-students/active-duty-and-reservists/deployment>

Students with Disabilities

If you are a student with a disability and believe you will need accommodations for this class, it is your responsibility to register with Disability Services and provide them with documentation of your disability. They will work with you to determine what accommodations are appropriate for your situation. To avoid any delay, you should contact Disability Services as soon as possible. Please note that accommodations are not retroactive and disability accommodations cannot be provided until a Faculty Accommodation Letter has been given to me. Please contact Disability Services for more information at Main Hall room 105, 719-255-3354 or dservice@uccs.edu.

Syllabus Changes

I reserve the right to make changes to this syllabus as appropriate. The odds that I'll do so during the semester are small, but if I do, I will inform you as soon as possible.