

Fall Semester 2006
Political Science 216
Issues in the Philosophy of Law

Mr. Cullen

Buckman 306, ext. 3661

Office hours: Tuesday 10:30 AM -12:: 30 PM and by appointment

This course is a selective survey of some perennial issues in the philosophy of law: the nature of law, the relation of law and justice, whether the law should enforce morality, the rationale of punishment, the insanity defense and, generally, the understanding of human agency that underlies our (contested) views of criminal liability. Our plan is to evaluate the understanding of right and wrong that underlies our laws, the way our legal system enforces and interprets those laws, serves justice, or fails to. Our main objective is to better understand what the “rule of law” entails, and to evaluate the various views or theories of the person that are implied by the criminal law in particular. More specific course objectives include:

1. Understanding certain key concepts and doctrines of the criminal law.
2. Understanding the general and specific purposes of the criminal law.
3. Appreciating the limits of the criminal sanction and the complex relationship of law, justice and morality.
4. Understanding and critically evaluating the different rationales for punishment and the background conceptions of the human person as a rational and a passionate being.
5. Understanding the significance of autonomy and responsibility as prerequisites of legal accountability, and appreciating the challenge to models of autonomy or free agency offered by modern science.
6. Developing the ability to read carefully and write critically on legal topics.
7. Acquiring a better understanding of the challenges facing attorneys, judges and citizens.

The class will be conducted as a seminar. Our format will be intensive discussion of cases and doctrines, which presupposes careful reading and probing reflection on your part in preparation for each class. We will be struggling with puzzles and controversies that admit of no clear resolution and over which the best legal minds continue to disagree.

Do not expect to sit back and passively “absorb” information. Every student will be responsible for framing issues, initiating and advancing discussion, and making connections among the readings and arguments as we proceed through them over the semester.

REQUIRED TEXTS

John Arthur and William Shaw, Readings in the Philosophy of Law, 3rd edition (RPL)
Paul H. Robinson, Would You Convict? (WYC)

Other required readings are indicated on the schedule below or will be announced.

COURSE REQUIREMENTS

You must complete all written work to pass the course, and all such work is subject to the principles and provisions of the college's Honor Code. Grades for the course will be based on two papers, a final examination and your participation in class (which may include occasional brief writing assignments and oral presentations).

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| Writing Assignments | 20% |
| First examination | 15% |
| Second examination | 20% |
| Class participation | 15% |
| Final Examination | 30% |

SCHEDULE OF READINGS

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|-----------------|---|
| W August 23: | Introduction and Overview <i>The Nature of Law</i> |
| F August 25: | <i>Riggs v. Palmer</i> RPL, 103-107; 141-146. <i>Legal Reasoning</i> |
| M August 28: | RPL, 78-96. |
| W August 30: | RPL, 97-102. |
| F September 1: | No Class <i>Can breaking the law be justified?</i> |
| W September 6: | RPL, 63-71. |
| F September 8: | RPL, 71-77. <i>Respecting autonomy</i> |
| M September 11: | RPL, 575-586; Gerald Dworkin, "Paternalism" (handout) |
| W September 13: | Marion Smiley, "Legalizing Laetrile" (handout) |

- F September 15: Jeffrey Reiman, “Drug Addiction” (handout)
- Should moral obligations be legally binding?***
- M September 18: Thomas Macaulay, “Notes on the Indian Penal Code” (Handout)
- W September 20: RPL, 425-429; Ernest Weinrib, “The Duty to Rescue” (handout)
- F September 22: The Uniform Anatomical Gift Act (Handout)
- Theories of Punishment***
- M September 25: RPL, 242; 250-263
- W September 27: “The Crime of Punishment” (Handout)
- F September 29: Joel Feinberg, “The Expressive Function of Punishment” (handout)
- M October 2: Ernest Van Den Haag, “The Ultimate Punishment;”” Walter Berns “For Capital Punishment” (handout)
- W October 4: Jeffrey Reiman, “Justice Civilization and the Death Penalty;” Van Den Haag, “Reply to Reiman” (handout)
- F October 6: Exam**
- M October 9: **When is killing a crime?**
Lon Fuller, “The Case of the Speluncean Explorers” (handout); RPL, 277-281; *U.S. v. Holmes* (handout)
- W October 11: cont’d
- F October 13: George Fletcher: “A Crime of Self Defense” (handout)
- W October 18: RPL, 309-317; The Judy Norman Case (handout)
- F October 20: The Cases of George Gounagias and Calvin Ott (handout)
- Women and the Law***
- M October 23: RPL, 205-223
- W October 25: RPL, 301-309; The Mike Tyson Case (handout)
- F October 27: Discussion

Sickness or Sin? Insanity and the Law

- M October 30: The Bonnie Garland Case (handout)
- W November 1: RPL, 318-334
- F November 3: The Andrea Yates Case (handout)
- M November 6: Norval Morris, “The Abolition of the Insanity Defense” (handout)
- W November 8: Stephen Morse, “The Insanity Defense Reconsidered” (handout)
- F November 10: Exam**
- Intentionality and Consequences**
- M November 13: WYC, Chapter 1
- Can Ignorance Excuse?**
- W November 15: WYC, Chapter 2
- F November 17: Cont’d Discussion
- Can Doing Wrong Be Right?**
- M November 20: WYC, Chapter 3
- M November 27: WYC, Chapter 3 cont’d.
- Problems in Assigning Blame**
- W November 29: WYC, Chapter 4
- F December 1: WYC, Chapter 4
- The Abuse Excuse**
- M December 4: WYC, Chapter 5
- W December 6: Conclusion