

**Course Syllabus
Philosophy of Law
PHIL 461, Fall, 2008**

Instructor: Dr. Matt Zwolinski

Office Hours: Tues: 9:00-12:00; Fri: 2:25-4:25

Office: F167A

Course Website: <http://pope.sandiego.edu>

Phone: 619-260-4094

Email: mzwolinski@sandiego.edu

Required Books:

Joel Feinberg and Jules Coleman, eds., *Philosophy of Law*, 8th edition (F+C)

Joshua Dressler, *Understanding Criminal Law*, 4th edition (UCL)

Other Readings on Electronic Reserve at Copley Library (ER)

Content:

This course is designed to sharpen our philosophic understanding of the law. It is divided into two parts. The first part is a survey of some of the most important theories of analytic jurisprudential thought, including Natural Law Theory, Legal Realism, Hart's Positivism, and Dworkin's interpretivism. Analytic jurisprudence deals with the conceptual analysis of law. We will examine the following sorts of questions: What is the law? How is it different from other systems of norms, such as morality? Is law identical with the words of some set of statutes? Which ones? (How do we know which ones?) What role do judges play in the creation of law? Or do they merely apply it?

The second part of the course will deal with questions of normative jurisprudence. Specifically, we will be interested the conditions under which individuals should, or should not be, held responsible for their actions under the criminal law. Questions we will examine include: whether unsuccessful attempted crimes should be punished the same way successful crimes are, the proper understanding and punishment of insane criminal behavior, and the nature and extent of moral limits on the scope of actions the criminal law is empowered to punish.

A Caution:

This is an upper-division philosophy course, not a "pre-law" course. The subject of our investigation is the law, but the method of our investigation is *analytic philosophy*. Our focus will be on the careful reading, analysis, and presentation of arguments, largely via the method of rigorous conceptual analysis. These are skills which will serve you well in law school, but you should also be aware of the significant differences between the philosophical and legal approaches to problems. In short, you should keep in mind two points:

- 1) You need to know how to "do" philosophy in order to do well in this class. There aren't any formal prerequisites for this course. But you will find it very difficult if you have not had at least Introduction to Philosophy and/or some sort of Ethics. Talk to me if this is a concern.
- 2) Don't take this course for the wrong reasons. If you don't *like* doing philosophy for its own sake, you're probably in the wrong place. Taking a few extra practice LSATs will help you in your law school applications a lot more than a mediocre grade in this course.

Course Requirements:

Philosophical readings are dense and difficult. It will probably take longer than you expect to read them once, and it will probably be necessary to re-read most pieces at least once to come to an adequate understanding of the material. You should expect to spend at least **six hours per week outside of class** time reading and re-reading the material. If you do this, you will have a much easier time with the short writing assignments, which should probably take up at least an additional **five to six hours each** in preparation time.

- **Quizzes** – I will give 5-10 unannounced, multiple-choice quizzes over the course of the semester. The purpose of these quizzes is to test your completion and comprehension of the day's reading assignment, and to encourage attendance at class. You will not be excused from quizzes missed due to absences *unless* you either a) notify me *at least 24 hours in advance and in writing* (email is fine) that you will be absent, or b) provide me with a *documented medical excuse* after your absence. These are the *only* acceptable excuses for missing a quiz. These quizzes are difficult, so it is vital that you read the material carefully and in advance of class.
- **Papers** – I will assign three writing assignments over the course of the semester.
 - **Short Papers:** The first two will be relatively short – no less than two and no more than three pages (typed, double-spaced, 1 inch margins and normal fonts) in length. I will assign a topic for these papers which will involve two tasks: 1) reconstructing an argument or arguments from one or more of the readings we have covered in class, and 2) providing an original critical evaluation of that/those argument(s). These papers are short not to make life easy for you but in order to force you to think carefully about what is essential to an argument and what is not. I will grade these papers with an eye to *detail* and *conceptual rigor*. Expect to be challenged.
 - **Term Paper:** The third writing assignment will be longer – between 8 and 10 pages (typed, double-spaced, 1 inch margins and normal fonts) in length. You will have more freedom on this assignment with regard to your topic, but will still be expected to reconstruct and critically evaluate some of the arguments we have covered in class. This paper will be due on the day and time of your scheduled final. I will provide more guidance on my expectations for this assignment as the due date draws closer.
 - **Topic Proposal:** You will be expected to clear your topic with me in advance, by submitting to me an approximately ½ - 1 page proposal no later than November 20th. This proposal should state the subject of your paper (what debate will you be looking at), a rough version of your thesis (what position will you be arguing for), and a preliminary list of sources that you will be consulting. These sources must include at least three philosophic articles which we have not covered in class. Philosophic articles means journal articles or book chapters – internet sites do not count!
 - **Late papers:** Papers are due on Turnitin.com (see below) at the beginning of the class period on the day indicated on the schedule below. Late papers will be penalized 5 percentage points per day, without exception.
- **Participation** – Philosophy is best learned through active conversation with others. It is therefore important that you be a regular participant in classroom discussions. Ideally, you will be sufficiently engaged with the material to contribute to these discussions spontaneously and voluntarily. As an additional stimulus, however, I will call randomly on students to answer questions in class. If you cannot answer a question satisfactorily (due to lack of preparation or absence), your class participation grade will be affected. Well thought-out contributions to the website will also count toward your participation grade. Students may ask at any time to be informed of their current class participation grade.

Your Grade

Each activity in this class is worth a certain number of points. Your grade will be determined based on a straight (un-curved) analysis of percentage of points earned vs. total points.

Quizzes 5-10 @ 5 points each	25-50
2 Short Papers @ 20 points each	40
Term Paper Topic Proposal:	5
Term Paper:	40
Participation	10
Total Points:	120-145

A+	97 - 100%
A	93 - 96.9
A-	90 - 92.9
B+	87 - 89.9
B	83 - 86.9
B-	80 - 82.9
C+	77 - 79.9
C	73 - 76.9
C-	70 - 72.9
D+	67 - 67.9
D	63 - 66.9
D-	60 - 62.9
F	59.9 or below

Academic Integrity

You are expected to know and follow University Policies on cheating and plagiarism. See the Code of Academic Integrity. Outside research is *a good thing* in a philosophy paper. Just cite it! If it is determined that you have cheated, you will fail the course and I may recommend that you be expelled from the University.

USD subscribes to a service called Turnitin.com. Turnitin.com is a web-based application that compares the content of submitted papers to the Turnitin.com database and checks for textual similarities. All required papers for this course may be subject to submission to Turnitin.com for textual similarity review and to verify originality. All submitted papers will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting textual similarities and verifying originality. Each student is responsible for submitting his or her papers in such a way that no identifying information about the student is included. A student may not have anyone else submit papers on the student's behalf to Turnitin.com. A student may request in writing that his or her papers not be submitted to Turnitin.com. However, if a student chooses this option, the student may be required to provide documentation in a form required by the faculty member to substantiate that the papers are the student's original work.

**Schedule for PHIL 461: Philosophy of Law
Fall, 2008
Matt Zwolinski**

KEY DATES AT A GLANCE

Oct 1	-	WA1 Due
Nov 5	-	WA2 Due
Nov 19	-	Term Paper Topic Proposal Due
Nov 26	-	Thanksgiving Break: no class
Dec 15	-	Term Paper Due at 2:00 PM

Schedule of Readings

Part 1 – Analytic Jurisprudence – The Nature of Law

Week 1 (Sept 3) – Introduction

Week 2 (Sep 8-10) – Law’s Nature and Natural Law Theory

Required Reading: Lon Fuller – The Purple Shirts (ER)

Required Reading: Thomas Aquinas: *Summa Theologica* (F+C),

Week 3 (Sept 15-17) – Legal Positivism

Required Reading: John Austin: *The Province of Jurisprudence Determined*, HLA Hart, “Law as the Union of Primary and Secondary Rules” (F+C),

Week 4 (Sept 22-24) – Reconciling Positivism and Natural Law

Required Reading: Brian Bix, “Natural Law Theory,” and Frederick Schauer, “Positivism as Pariah” (ER)

Week 5 (Sept 29-Oct 1) – Skepticism about “The Law”: Legal Realism

Required Reading: O.W. Holmes, “The Path of the Law,” Jerome Frank, “Legal Realism,” and Karl Llewellyn, “Ships and Shoes and Sealing Wax” (F+C)

WA1 Due, October 1

Week 6 (Oct 6-8) – Dworkin’s Interpretivism

Required Reading: *Riggs v Palmer* (ER), Ronald Dworkin, “Integrity in Law” (F+C)

Week 7 (Oct 13-15) – The Moral Obligation to Obey the Law

Required Reading: Plato, “Crito,” M.B.E. Smith, “Is there a *Prima Facie* Obligation to Obey the Law”? (F+C)

Part 2 – Normative Jurisprudence – Moral Issues in the Criminal Law

Week 8 (Oct 20-22) – A Brief Overview of the US Criminal Law

Required Reading: Joshua Dressler, “Actus Reus,” “Justifications and Excuses,” “Mens Rea” (UCL)

Week 9 (Oct 27-29) – Criminal Attempts – Part 1, Mistakes

Required Reading: Sanford Kadish and Stephen Schulhofer, “The Case of Lady Eldon’s French Lace” (F+C), Dressler, Chapters 12-13 (UCL)

Week 10 (Nov 3-5) – Criminal Attempts – Part 2, Luck

Required Reading: David Lewis, “The Punishment that Leaves Something to Chance” (F+C), Dressler, “Attempt,” section 27.01 – 27.02[D], 27.03 – 27.04
WA2 Due, November 5

Week 11 (Nov 10-12) – The Justification of Punishment

Required Reading: Dressler, Chapter 2 “Punishment” (UCL), Joel Feinberg, “The Classic Debate,” and “The Expressive Function of Punishment” (F+C)

Week 12 (Nov 17-19) – Excuses from Criminal Responsibility: Part 1, Insanity

Required Reading: Dressler, Chapter 25 “Insanity” (UCL), Denno: “Who is Andrea Yates? A Short Story about Insanity” (ER),
Term Paper Topic Proposal Due, November 19th
Video: November 19th

Week 13 (Nov 24) – Excuses from Criminal Responsibility: Part 2, Sleepwalking

Required Reading: Mike Horn, “A Rude Awakening” (ER)
No Class Wednesday, November 26th

Week 14 (Dec 1-3) – Moral Limits on the Criminal Law – Part 1, The Harm Principle

Required Reading: John Stuart Mill, “The Liberal Argument from *On Liberty*,” (F+C)

Week 15 (Dec 8-10) – Moral Limits on the Criminal Law – Drug Prohibition

Required Reading: Doug Husak and Peter de Marneffe, excerpts from *The Legalization of Drugs* (ER)