Course Syllabus  
Philosophy of Law  
PHIL 461, Fall, 2004

Instructor: Matt Zwolinski  
Office Hours: MW: 2:15-4:15; F: 2:15-3:15  
Office: F167A  
Course Website: http://homer.sandiego.edu:9300/  
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Email: mzwolinski@sandiego.edu

Required Books:  
Ronald Dworkin, *Law’s Empire*  
John Stuart Mill, *On Liberty*  
Other Readings on Electronic Reserve at Copley Library

Content:

This course is designed to sharpen our philosophical understanding of the law. It is roughly divided into two parts. The first half is a careful survey of the two most important texts in 20th century jurisprudential thought: H.L.A. Hart’s *The Concept of Law*, and Ronald Dworkin’s *Law’s Empire*. In this part of the course, we will be concerned with questions of analytic jurisprudence -- i.e. 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 half of the course will deal with questions of normative jurisprudence. Specifically, we will be interested in asking what moral limits there are on the sorts of things the law can command or prohibit. We will begin with J.S. Mill’s classic defense of the “harm principle,” and go on to examine three contemporary challenges to that principle: legal moralism, legal paternalism, and the legal prohibition of offense.

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 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:

There are a lot of readings for this course, and they are difficult. Be prepared to read some of them several times. And bring your book to class. Much of our class time will be spent going closely over passages from the text.

Expect this class to be discussion intensive. I try to rely on volunteers for the most part, but (and this is one way this course will be similar to law school), I will also from time to time call on random students to provide summaries of positions/arguments that we have read for that day.

Your final grade will be determined by three factors:

- **Short papers** – You will write three short (2-3 page) papers summarizing and critiquing one of the arguments we have read. These papers must be narrowly focused and tightly argued to be successful. I will suggest topics, but you are welcome and encouraged to come up with your own, especially on the second two. These papers will count for 10% of your final grade each.

- **Final paper** – Your final paper should be approximately 10-12 pages in length. The focus should still be argumentative, i.e. you should be focusing on presenting and evaluating arguments. External research is acceptable, but not required. You may choose your own topic for this paper, but need to clear it with me by the date specified on the schedule below. This paper will be worth 60% of your final grade.

- **Participation** – The final 10% of your grade is made up by your class participation. You are expected to be an active participant in class. No excuses will be accepted for absences: accidents happen, life intrudes, and I understand that. But there’s just no substitute for performance. You must make a commitment to attend this class and be a regular and lively participant (showing up every day and not speaking will earn you a C in participation at best). If you can’t do that, you should drop the course.

**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.
# Schedule of Readings for PHIL 461: Philosophy of Law

**Fall, 2004**  
Matt Zwolinski

## Part 1 – Analytic Jurisprudence

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<tr>
<th>Week</th>
<th>Reading Details</th>
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<tr>
<td>Week 1 (Sept 3)</td>
<td>Introduction</td>
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| Week 2 (Sept 6-10) | **No Class September 6 (Labor Day)**  
Fuller, “The Problem of the Grudge Informer”  
Hart, Chapter 1 |
| Week 3 (Sept 13-17) | Hart, Chapters 2-3                                                            |
| Week 4 (Sept 20-24) | Hart, Chapters 4-5                                                            |
| Week 5 (Sept 27-Oct 1) | **Short Paper 1 due September 22nd**  
Hart, Chapter 6-7 |
| Week 6 (Oct 4-8) | Hart, Chapter 8                                                                 |
| Week 7 (Oct 11-15) | Dworkin, Chapters 1-2                                                          |
| Week 8 (Oct 18-22) | **Short Paper 2 due October 13th**  
Dworkin, Chapters 3-4 |
| Week 9 (Oct 25-29) | Dworkin, Chapter 4 continued, Chapter 6                                         |
| Week 10 (Nov 1–5) | Dworkin, Chapter 6 continued, Chapter 7                                         |
| Week 11 (Nov 8-12) | Dworkin, Chapter 9                                                              |

## Part 2 – Normative Jurisprudence

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<th>Week</th>
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<tr>
<td>Week 12 (Nov 15-19)</td>
<td>Mill, Chapters 1, 4, and 5</td>
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<tr>
<td>Week 13 (Nov 22-26)</td>
<td>Mill Continued</td>
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| Week 14 (Nov 29-Dec 3) | **Final Paper Topic due Nov 29th**  
Feinberg, “Legal Paternalism”  
G. Dworkin, “Paternalism”  
Village of Skokie v. National Socialist Party |
| Week 15 (Dec 3-7) | Devlin, “Morals and the Criminal Law”  
George, “Social Cohesion and the Legal Enforcement of Morals”  
Village of Skokie v. National Socialist Party |
| Week 16 (Dec 10-13) | Feinberg, “Offensive Nuisances”                                               |

**Final Papers are due by Friday, December 17, 2:00 PM in the Philosophy Department office, or by email. No late papers!**