

Philosophical Problems of Law and Justice¹

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Hours: T 1-2pm; W 1:30-2:30pm

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Hours: W 12-1:30pm; Th 1:30-2:30pm



DESCRIPTION

In this course, we will examine some of the major philosophical issues surrounding law and legal practice, by reading not only theoretical essays about law, but also actual legal decisions. The goal is to develop a toolbox to think critically about the role of law in our societies and the relationship responsible citizens might entertain toward it—both as subjects to and participants in the legal system. We will begin by inquiring into the nature of law itself. Is law a branch of morality, discoverable by reason and necessarily conducive to the common good; or is it nothing more than the commands issued by the sovereign? When judges interpret the Constitution, do they discover the law or do they, in effect, make it up as they go along? What is the character of legal interpretation and legal reasoning? We will then investigate the political morality of law, focusing on the relation between law and individual liberty. What principles should/do guide law's protection and restriction of our rights? When, if ever, is paternalistic interference by the state into the lives of its citizens justified? We will consider in particular the legal issues surrounding pornography and free speech. The third part of the course, which is devoted to crime and punishment, addresses these questions and more: What is criminal intent? What, if anything, justifies punishment by the state? What is wrong with mass incarceration?

OBJECTIVES

- 1) To explore legal, political, and ethical questions of importance to contemporary society

¹ Photo credit: Shepard Fairey, *Obey Giant Propaganda, Law Enforcement*.

- 2) To educate the student about the law and legal practice (with a focus on the US legal system)
- 3) To introduce the student to some of the major concepts, issues and debates in contemporary legal philosophy
- 4) To promote the student's ability to read, write, and publicly argue in a logical and critical manner about questions of philosophical and legal significance
- 5) To foster the student's ability to think in an informed and reasoned way about practical and theoretical questions concerning law and justice

REQUIREMENTS


Assessment for the class will be a mixture of written and oral, individual and team, work. It includes 5 main components, for a total of 100%:

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|-------------------------------|-----|
| ○ <u>Moot Courts</u> | 55% |
| ○ <u>Participation</u> | 5% |
| ○ <u>Pre-Class Posts</u> | 10% |
| ○ <u>Critical Reflections</u> | 20% |
| ○ <u>Group Work</u> | 10% |

Failure to complete one of these assignments will result in an 'F' for the course. You will be able to access your grades on Blackboard's Grade Center. Grade conversion:

A: 94-100	A-: 90-93.9	B+ 87-89.9	B: 84-86.9	B-: 80-83.9	C+: 77-79.9
C: 74-76.9	C-: 70-73.9	D+ 67-69.9	D: 64-68.9	F: 0-64	

1. Moot Court (55%)

The course includes five moot courts (marked ), during which some students will play the role of Lawyers presenting their case in oral arguments to the Justices of the "Ultimate-Supreme Court." Detailed instructions about the assignment can be found on Blackboard in the document titled "Moot Court: Instructions." Read them today so you can get a sense of this course's expectations and start thinking about your Moot Court preferences.

2. Participation (5%)

The success of this class depends to a great degree on your preparation, participation, and contributions to class discussion. I count on everyone to be as active and engaged a participant as possible. Check out "Philosophy for Beginners" for detailed advice on how to read philosophy and be an active learner. Come prepared to participate by doing the reading, reflecting upon the course material, and bringing to class any questions and thoughts about the text. Class participation does not simply entail speaking, but also listening in an engaged and respectful manner to the thoughts of your classmates. Visiting MacKenzie or me during our office hours counts as participation.

Attendance is expected and recorded. If you miss a class, whether excused or unexcused, you have one week from the day your return to class to write a 600-word paper

critically examining the reading that was assigned for the day you missed. Your participation grade in the course, which is on a 1-10 scale, will be lowered by half a point for every class absence you do not make up for. Coming to class late also negatively affects your participation grade. You will be assigned a provisional participation grade by October 15, so you have some idea where you stand.

3. Pre-Class Posts (10%)

Before every class, except for moot courts and group work, you will post on Blackboard: (1) a reaction to the reading and (2) a response to someone else's post. Each post should be about 150-300 words. In your reading reaction (1), you should first state what you take to be the text's main thesis and argument (not the topic—but the position defended by the author) and then raise a question or present an objection. You may share your confusion about the text and simply ask for clarification. In your response (2), you can, for instance: attempt to clarify another student's confusion, or imagine what the author would respond to another student's objection.

The reading reaction and response to someone else must be posted at least 1.5 hours before class start (that is, by 8:20am). *No late submissions will ever be accepted.* Each Blackboard post will be evaluated on a 5-star rating. There should be 30 posts over the semester (15 threads x2), so the possibility of getting 150 stars total. The syllabus and moot courts quiz will be counted here too, for 10 points, and a grand total of 160 points/stars.

4. Critical Reflections (20%)

Each student will produce two 500-to-600-word Critical Reflections (CritRef; each worth 10% of your final grade). The first one, due **October 18**, will address whichever text you choose (excluding legal documents) from unit I; the second one, due **November 19**, can focus on any text from units II or III. In your CritRef, you are to:

1. Identify one important *philosophical-legal claim* for which the author is arguing.
2. Reconstruct the best possible *argument(s)* that the author gives for this claim.
3. Critically *evaluate* (one of) these argument(s).

Half the CritRef should be devoted to this third task. To critically evaluate an argument is to say whether it is good or bad and why. There are several ways that an argument might be bad. It may be that the reasons given don't actually lend support to the conclusion, or it may be that some of the reasons offered in support of the conclusion are false. It may be that you think the conclusion is true, but that the argument for that conclusion is not the best available. In such a case, you may support the claim with what you take to be a better argument.

One thing to avoid when evaluating a text is to say "the author needs to say more about *x* or *y*." In all likelihood, the author has said more about *x* and *y* elsewhere—you just haven't read these other texts. Another pitfall is to systematically ask for empirical

evidence: if you think it's relevant, go look for the empirical evidence in question and see whether it supports or undermines the author's argument.

If you find the argument compelling, one thing you can do is draw out its broader implications: perhaps it has practical policy implications about how we should deal with a contemporary problem; or it may be that if we accept this argument as cogent, then we must give up some other widely endorsed claim.

CritRef#1 will be assessed using the following rubric (for 10% of the final grade):

The Critical Reflection paper <i>introduces</i> the author/text/issue efficiently and concisely.		1
The paper <i>identifies one important philosophical-legal claim</i> for which the author is arguing.		1
The paper accurately <i>reconstructs the argument</i> (premises and inferential structure) that supports the thesis previously identified, demonstrating clear and nuanced understanding of the text.		4
The paper articulates a solid <i>critical evaluation</i> of the argument that was just reconstructed, demonstrating thoughtful engagement and critical ability.		4
Total		10

CritRef#2 will be peer-evaluated (for 7% of the final grade), with the feedback (3%) due November 26. Instructions will follow.

5. Group Work (10%)

The course ends with a Group Work assignment over two days (workshop and in-class presentations). I'll send you the instructions in due time.

MATERIALS

All materials for this course are uploaded to Blackboard or hyperlinked on the syllabus. Please let me know if you notice broken hyperlinks and defective footnotes. Print out the readings and bring them to class. Coming to class without the texts negatively affects your participation grade.

The reading load is often heavy and difficult. To stay afloat, plan for a sufficient amount of time to actively read the texts (3 hours). Don't hesitate to come to my and MacKenzie's office hours if you have any difficulty (even if you don't!). You should read my "Philosophy for Beginners" for guidelines on how to approach reading philosophical texts (on Blackboard).

Word: You need to submit your assignments in word doc for this class. As a Northeastern student, you can get Word for free. In myNEU, go to "Tech Marketplace for Students" and "Access Office365."

ADDITIONAL POLICIES

★ Teaching Assistant: We are lucky to have MacKenzie Nekton's help this semester. MacKenzie, a candidate for B.S. in Politics, Philosophy, and Economics (PPE), has taken this class before and she will help you prepare for your Moot Courts and much else. Please email both of us if you have any questions or concerns. MacKenzie will likely be more quickly available than I am, and she will be able to answer most substantive and logistical questions. You are welcome and encouraged to stop by at any time during MacKenzie's office hours to talk about the material, your papers, presentation, or anything else.

No electronic devices in class. Research shows that [students perform substantially worse when they use computers to take notes in class](#).² The use or display of any mobile computing or communications devices (including computers, recording devices, phones, iPads, or iPods) is strictly banned during class, except with the explicit permission of the instructor. Tuck your cell away; do not leave it on your desk or lap. You'll need to print out all the materials, so plan ahead!

Emails: Always indicate the course number in the email subject (ex: "PHIL 2301 question about Moot Court #1"). Write in a polite and professional manner:

- Start your email with a salutation ("Dear Professor Delmas" is better than "Hi!").
- Sign your full name (Sincerely, First Name Last Name).

I will respond to your queries within **2** business days. If I haven't done so, please send me another email.

Classroom climate: One aim of studying philosophy is to unsettle our received convictions and upset our unexamined beliefs. Because of the controversial and provocative nature of some of the materials we will be studying this semester, I ask that all students exercise respect and generosity towards one another in the face of your inevitable disagreements. It is always welcome to criticize an idea, but never to attack the person who holds it. *If at any point in the semester a student feels uncomfortable with the class climate or disrespected in any way, please do not hesitate to come speak with me directly.*

Gender inclusivity: Language is gender-inclusive when we use words that affirm and respect how people describe, express, and experience their gender. Please let me know your preferred pronouns and names. I—we—will honor students' gender identities and gender expressions.

Title IX: Northeastern is committed to providing equal opportunity to its students and employees, and to eliminating discrimination when it occurs. In furtherance of this commitment, the University strictly prohibits discrimination or harassment on the basis of race, color, religion, religious creed, genetic information, sex, gender identity, sexual orientation, age, national origin, ancestry, veteran, or disability status. The

² <https://seii.mit.edu/wp-content/uploads/2016/05/SEII-Discussion-Paper-2016.02-Payne-Carter-Greenberg-and-Walker-2.pdf>

Northeastern University [Title IX policy](#) articulates how the University will respond to reported allegations of sexual harassment involving students, including sexual assault, and provides a consolidated statement of the rights and responsibilities under University policies and Title IX, as amended by the Violence Against Women Reauthorization Act of 2013.³

Accessibility needs: Northeastern is fully committed to creating a community characterized by inclusion and diversity. As part of this commitment, it upholds the American with Disabilities Act as Amended of 2008 and the American with Disabilities Act and Section 504 of Rehabilitation Act, referred to collectively as the ADA. The ADA requires Northeastern to provide reasonable accommodations to students with disabilities unless doing so would create an undue hardship, compromise the health and safety of members of the university community, or fundamentally alter the nature of the university's employment mission. Students seeking information regarding ADA accommodations should review the University's ADA Information and Resources. Procedure available [here](#).⁴

Academic integrity: The Department of Philosophy takes very seriously the issue of academic honesty, and as set forth in Northeastern University's principles on Academic Honesty and Integrity Policy (the complete text can be found at [NEU's Office of Student Conduct and Conflict Resolution](#)).⁵ Any student who appears to violate these principles will fail the course and will be put on academic probation. Individual faculty, with the support of the Department, can impose harsher penalties and as they deem necessary. *Cheating* is one example of academic dishonesty, and which is defined as using or attempting to use unauthorized materials, information, or study aids in any academic exercise. When completing any academic assignment, a student shall rely on his or her own mastery of the subject. Cheating includes *plagiarism*, which is defined as using as one's own the words, ideas, data, code, or other original academic material of another without providing proper citation or attribution. Plagiarism can apply to any assignment, either final or drafted copies, and it can occur either accidentally or deliberately. Claiming that one has "forgotten" to document ideas or material taken from another source does not exempt one from plagiarizing. Your instructor will clarify specific guidelines on fair use of material for this class.

FACT (Faculty Advisor Communication Tool): I will be using this tool to alert advisors of any students who are having difficulty meeting the expectations for the course as described in the syllabus. This is intended to help students who may benefit from additional support. A fact report is not punitive in any way. It does not affect your grade and does not go on your transcript. It only alerts you and your advisor that you might

³ http://www.northeastern.edu/policies/pdfs/Title_IX_Policy.pdf

⁴ <http://www.northeastern.edu/oidi/compliance/americans-disabilities-act-ada/>

⁵ <http://www.northeastern.edu/osccr/academic-integrity-policy/>

need some additional support. If you think you might need extra help, please talk to me and/or your college advisor.

Appealing grades: Any student who feels that their assigned grade does not reflect his or her performance on an assignment can appeal the grade. All appeals must be submitted to the instructor in writing, in the form of a one-page document that clearly explains why you believe that the assigned grade does not reflect your performance. Petitioners must wait at least twenty-four hours after the grade is announced before submitting their appeals. All appeals must be submitted no later than one week after the grade is announced.

Other concerns: Life at college can be very challenging. Students sometimes feel overwhelmed, lost, anxious, or depressed. Sometimes they experience relationship difficulties and low self-esteem. I care about your success in this course, and I care even more about your well being. University Health and Counseling Services is staffed by experienced, professional psychologists and counselors, who are attuned to the needs of college students. Their services are free and confidential. Find out more [here](#).⁶




CLASS SCHEDULE

The following reading schedule is subject to change. It is your responsibility to make sure you always have the latest draft.

CLASS	TOPIC	READINGS
F 9/6	Hello!	Introduction(s)
		I THE NATURE OF LAW AND LEGAL INTERPRETATION
T 9/10	Natural Law	Aquinas, <i>On Law, Morality, and Politics</i> (Part II of <i>Summa Theologica</i>): Q. 90 and Q. 96 art. 4 ⁷ Fuller, Eight Ways to Fail to Make Laws Syllabus and Moot Courts Quiz: Read the syllabus and “Moot Courts: Instructions”
F 9/13	Positivism & Realism	Austin, <i>The Province of Jurisprudence Determined</i> (Excerpts) Holmes, The Path of the Law Sign up for your Moot Court





⁶ <https://www.northeastern.edu/uahcs/counseling-services/>

⁷ Available at newadvent.org

T 9/17	Soft Positivism	Hart, <i>The Concept of Law</i> (Excerpts)
F 9/20	Hard Cases	Hart, Positivism and the Separation of Law and Morals U.S. Supreme Court, 1889: Riggs v. Palmer ⁸
T 9/24		MOOT COURT #1: NUREMBERG
F 9/27	Judicial Review	The Constitution ⁹ of the United States (esp. the Bill of Rights) Waldron, The Core of the Case Against Judicial Review
T 10/1	Moral Reading	Dworkin, Law as Integrity
F 10/4		**Class canceled**
T 10/8	Originalism	Scalia, The Role of U.S. Federal Courts in Interpreting the Constitution Dworkin, Comment on Scalia
F 10/11		MOOT COURT #2: GUNS
T 10/15	Critical Race Theory	Bell, Racial Realism Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations
II POLITICAL MORALITY		
F 10/18	Liberty and Harm	Mill, <i>On Liberty</i> (excerpts) Devlin, The Enforcement of Morals <i>South Florida Free Beaches Inc. v. City of Miami</i> (1984) CritRef#1 due
T 10/22		MOOT COURT #3: PLURAL MARRIAGE

⁸ http://www.courts.state.ny.us/reporter/archives/riggs_palmer.htm

⁹ <http://constitutionus.com/>




<p>F 10/25</p>	<p>Pornography, Obscenity, and Hate Speech</p>	<p><i>Miller v. California</i>¹⁰ (1972) <i>American Booksellers Association v. Hudnut</i> (1985) MacKinnon, Not A Moral Issue</p> <p> <i>Philosophy Bites</i>: Rae Langton on Hate Speech (< 15 min)</p>
<p>T 10/29</p>	<p></p>	<p>MOOT COURT #4: CIVIL DISOBEDIENCE</p>
<p>F 11/1</p>	<p>Privacy</p>	<p>Bork, The Right of Privacy <i>Griswold v. Connecticut</i> (1965)</p> <p> Bridges, The Poverty of Privacy Rights¹¹ (40-min)</p>
<p>T 11/5 F 11/8</p>	<p></p>	<p>In-class screening: Steven Spielberg, <i>Minority Report</i> (2002)</p>
<p>T 11/12</p>	<p></p>	<p>MOOT COURT #5: SURVEILLANCE</p>
<p>III CRIME AND PUNISHMENT</p>		
<p>F 11/15</p>	<p>Criminal Intent and Defenses</p>	<p>The Necessity Defense: Lifeboat Case: <i>The Queen v. Dudley and Stephens</i>¹²</p> <p>The Insanity Defense:</p> <ul style="list-style-type: none"> - House of Lords, 1843: The M'Naghten Rules - New Jersey Supreme Court, 1963: State v. Guido - American Law Institute: The Insanity Defense <p>The Prozac Defense: J. Marshall, The Drug Made Me Do It: An Examination of the Prozac Defense¹³</p>

¹⁰ <https://www.oyez.org/cases/1971/70-73>

¹¹ <https://vimeo.com/237181229>

¹² <http://www.justiceharvard.org/resources/the-queen-vs-dudley-and-stephens-1884-the-lifeboat-case/>

¹³ <http://www.theneuroethicsblog.com/2013/09/the-drug-made-me-do-it-examination-of.html>

T 11/19	Justifying Punishment	Bentham, Utilitarian Theory of Punishment Moore, The Argument for Retributivism CritRef#2 due
F 11/22	Prison abolition	Davis, <i>Are Prisons Obsolete?</i>  Watch Michelle Alexander's PBS interview ¹⁴ (8 min.)
T 11/26		Group Work: <i>Workshop</i> CritRef#2 peer feedback due
<i>Thanksgiving</i>		
T 12/3		Group Work: <i>Presentations</i>

¹⁴ <http://video.pbs.org/video/2186573602/>