

PHL 317E – Law and Morality – Syllabus

Course Information

- Course Number: PHL 317E
- Course Website on Moodle
- Credits: 3
- Class meets: MWF 11:00-11:50AM in LA 202
- Instructor: Prof. Soazig Le Bihan
 - Office Number: LA 153
 - Office Hours: Wednesdays, 1:30 to 4; Fridays, 2:30 to 5PM
 - Mailbox: LA 152
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 - Phone: 406-243-6233

Course Description

This course explores the complex relationships between law and morality. We will look into the philosophical arguments underlying moral dilemma arising in the legal context: what justifies state power to punish wrong doing, what justifies the rights to private property or free speech, what are human rights and others issues of the like. Throughout we will be reading legal cases and engage with the deep issues that the cases pose.

The learning goals are that students:

1. improve their skills in:
 - a. evaluating arguments for validity and soundness,
 - b. distinguishing between normative and descriptive claims, and between different kinds of normative claims (moral, legal, prudential, etc.),
 - c. reading, writing, and analytical thinking;
 - d. engaging in rigorous, but respectful, argumentative debate;
 - e. (HONORS OPTION) rigorous academic research;
2. as well as learn:
 - a. to understand and critically evaluate some important concepts and arguments in moral philosophy, analytic jurisprudence, normative jurisprudence, and critical theories of law;
 - b. to develop a well-informed, coherent, and circumspect view of their own on some of the major practical issues in the philosophy of law.

Textbooks

Andrei Marmor (ed), *The Routledge Companion to Philosophy of Law*

Course Requirements

Your grade will be based on the following:

NON-HONORS OPTION:

| Assignment | Points |
|-------------------------------------|-----------|
| Attendance and participation | 10 points |
| Homework | 20 points |
| Exam 1 | 20 points |
| Exam 2 | 20 points |
| Final Exam (comprehensive) | 30 points |

HONORS OPTION:

| Assignment | Points |
|-------------------------------------|-----------|
| Attendance and participation | 10 points |
| Short Paper 1 | 20 points |
| Short Paper 2 | 20 points |
| Final Paper | 50 points |

Attendance and Participation

Attendance is required, and necessary to succeed in the course. There will be a lot of material covered, and the material covered will be difficult.

You are allowed to miss **two classes without penalty**. Following that, you will lose 2% each time you miss a class up to a maximum of 10% (that is, a letter grade).

You are expected to arrive on time and stay for the duration of the class. **Three late arrivals count as one absence**. If you have to leave early, please tell me at the beginning of class and sit close to the exit to minimize the disturbance to the class.

You are expected to give your full attention to the class. Cell phones or other means of communication should be silenced for the duration of class. You will be asked to leave if you are doing anything not relevant for class, e.g. reading the newspaper, sleeping, doing work for other classes, etc. **Three offenses of this type will count as one absence**.

That said, absences may be excused in cases of **illness or other extreme circumstances**. Relevant documentation is required in such cases.

You also will be expected to work through the material covered during the classes you may have missed.

Participation in class will not be graded, but consistent and active participation to the class will increase your final grade by up to half a letter grade.

Homework (NON HONORS):

Each week, you will be required:

- to carefully read the reading assignment,
- to take a quiz on that material on Moodle *before class*,
- to write a response paper about that material *after class*.

Your response paper should be about 500 words in length (+/- 10%).

You will be allowed to miss **one homework without penalty**. Following that, you will lose 5% for each assignment missed up to a maximum of 10%.

Your quizzes will be automatically graded on Moodle.

As for your response mini-paper to the readings, you should aim to fulfill most of the following criteria:

1. **Writing.** The student completes all mini-papers. All mini-papers are of appropriate length and utilize appropriate grammar/spelling/punctuation.
2. **Focus and Organization.** Mini-papers are well targeted on the topic at hand and well structured.
3. **Knowledge Gain.** Mini-papers include specific insights the student has gained from the readings and class discussions.
4. **Connections.** Mini-papers demonstrate the student's capacity to make connections between personal experience and new knowledge acquired in class.
5. **Self-Reflection.** Mini-papers give evidence of self-awareness and self-reflection relating to the student's views on the relationships between law and morality.

In-class Exams (NON-HONORS)

All in-class exams (including the final) will consist in answering short questions, which will be inspired by the quiz questions.

Note that the short questions asked in the exams roughly correspond to the quiz questions. This means that if you do your homework regularly, and if you correct your answers after we have covered the material every week, studying for the exams should be easy.

The exams during the semester deal with the material covered since the preceding exam (or the beginning of the class for the first exam). **The final in-class exam is comprehensive.**

All exams are closed-notes and closed-books.

The exams are mandatory to pass to course.

Absences may be excused only in cases of severe illness or other extreme circumstances. Proof of extreme circumstances or severe illness is required. Make up exams will not be given unless there is proof of extreme circumstances.

Papers (HONORS OPTION)

You will be asked to write two short papers (1000 words +/- 10%) and to develop a longer paper (2500 words +/- 10%) on the relationships between morality and the law over the course of the semester. Your longer paper should expand on one of the shorter ones.

Topics:

I will provide a topic for the first short paper. As for the second/research papers, I will be happy to suggest some topics, but you are free to choose your own topic if you'd like. If so, you are expected to talk to me about your choice before the first assignment related to paper. I will be glad to assist in the selection and formulation of the topic. No two papers in the class can be on exactly the same topic. If conflicts arise, the first person to turn in the topic will have priority, else there will be a coin flip.

Original thinking is necessary for the papers. That said, original thinking does not amount to asserting your personal opinions without taking into account any appropriate literature on your topic. In order to help you, I will require that:

- you take one of the chapter of the textbook as a starting point,
- you choose at least two primary sources (that is, two recent scholarly articles or original texts from leading authors and scholars) offering differing views on the issue of your choice,
- you contribute to that discussion with your own take on that issue.

Steps:

For the first short paper, you have the option to submit an outline before you submit the paper – *at least one week before the deadline*.

For your second paper, you will be required:

- to submit a thesis statement/outline of your argument and a short bibliography (10 points),
- to submit your final version of the paper (10 points)

You are expected to implement the feedback I give you on your papers at each stage of the writing process. Failure to do so will affect your grade.

For the final paper, you will be required to expand on one of the shorter paper. I will help you develop your paper into a longer research paper. You will be required:

- to submit a plan to expand on your paper (10 points)
- to present your progress on your paper in class (20 points),
- to submit your final version of your paper (20 points).

All assignments must be submitted on Moodle.

Grades:

Note that the final versions papers will be largely graded on the basis on how you responded my comments on your draft.

Your papers will be graded along the following scale:

- **A range:** This paper is outstanding in form and content. The material covered in class is understood in depth: the student shows that s/he has a command on, including a critical understanding of, the material. The thesis is clear and insightful; it is original, or it expands in a new way on ideas presented in the course. The argument is unified and coherent. The evidence presented in support of the argument is carefully chosen and deftly handled. The analysis is complex and nuanced. The sources are original texts or quality scholars' literature. The student utilizes appropriate grammar/spelling/punctuation as well as a clear, precise, and concise style.
- **B range:** The argument, while coherent, does not have the complexity, the insight, or the integrated structure, of an A range paper. The material covered in class is well understood: the student does not make any mistake on the materials but does not show great depth in critical understanding. The paper's thesis is clear and the argument is coherent. The paper presents evidence in support of its points. The sources are original texts or quality scholars' literature. The student utilizes appropriate grammar/spelling/punctuation as well as a clear, precise, and concise style.
- **C range:** This paper has some but not all of the basic components of an argumentative essay (i.e., thesis, evidence, coherent structure). For example: the paper features a clear misunderstanding of some of the material covered in class, or the thesis is not clear or incoherent, or the argument is not coherently structured, or evidence in support of the thesis is lacking, or only non-scholarly sources are used. The student still utilizes appropriate grammar/spelling/punctuation as well as an appropriate argumentative writing style.

Course policies

No-tech classroom rules

On the basis of the most current research, I will forbid any laptop/tablet/cellphone in the classroom. I require that you come with pens and notebooks, and that you take notes by hand.

Responsibilities

My role as an instructor is to provide you with an opportunity to learn and master the material. I will do my best to explain things clearly and let you know what is expected of you. I want you to succeed in this course and I am available to help you if you are committed to do your part.

Your role as a student is to be proactive and to advocate for yourself. Philosophy is hard and it is only if you engage the material that you will be get something out of it. If you do not understand something or are confused, please let me know. It is your responsibility to voice your questions and concerns. We will work together to help you master the material. Be sure to advocate for yourself. In my experience,

students who put in effort, attend class regularly, turn in assignments, and ask questions when they are confused can succeed in my classes.

“Show up, Pay attention, Ask for help” (Anonymous on www.ratemyprofessor.com)

Late Assignments

Homework: Late homework assignments will NOT be accepted for this class. Again, you will be allowed to miss one homework assignment without penalty. Following that, you will lose 5% for each assignment missed up to a maximum of 10%.

Papers: Without any prior arrangements, the grade of any late assignment will be lowered by one letter grade by ½ a day after the deadline.

IMPORTANT NOTE: If you encounter difficulties concerning an assignment, it is almost always possible to make arrangements before the assignment is due. No accommodation is possible once the deadline has passed.

Come and talk to me before it is too late.

Drop Policy

I adhere to the UM policy on dropping courses. Between the first and 45th instructional day, it is entirely your decision whether to drop the course or not. If you want to drop course between the 46th instructional day and the last instructional day prior to finals week, and you want me to recommend the drop, you will have to provide reasons that you should be allowed to drop the course. Acceptable reasons demonstrate that some (post 45th instructional day) circumstance out of your control interferes with your ability to complete the course. Simply not having done the work required of you, or belief that you do not think that you can get the grade you want, or that you need such and such grade to maintain your financial aid, are not sufficient reasons for me to recommend dropping the course after the 45th instructional day, though they might be prior to the 45th day.

The 45th day of instruction this semester is **October 29th**.

University Resources

Writing Center

Students from all levels can take advantage of the writing center (LA 144: drop in or by appointment)

“The Writing Center exists to help all UM students improve their writing skills as they pursue their academic and professional goals. We provide free writing instruction through one-on-one tutoring, in-class workshops, and the Writing Assistant program.” (quoted from the writing center website)

For more information, go the website:

http://www.umt.edu/writingcenter/welcom_about.htm

Students with Disabilities

If you are a student with a disability and wish to discuss reasonable accommodations for this course, it is your responsibility to contact me and discuss the specific modifications you wish to request. Please be advised I may request that you provide a letter from Disability Services for Students verifying your right to reasonable modifications. If you have not yet contacted Disability Services, located in Lommasson Center 154, please do so in order to verify your disability and to coordinate your reasonable modifications. For more information, visit the Disability Services website at [\url{www.umt.edu/dss/}](http://www.umt.edu/dss/).

Tentative Schedule

Below is the material that we'll try cover in chronological order. I do not know how fast we will go at this point. It is more than likely that we will choose among topics at the end, depending on the students' preferences. My tentative plan is to work in sequence: (1) book chapter, (2) Application to case, (3) Learning Activities.

Unit 1: Presentation of the course, Syllabus, Introduction: What is law?

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch.1
Orin S. Kerr (2007). How to Read a Legal Opinion. *The Green Bag*, 11:1.
Dred Scott v. John Sandford

Unit 2: The Justification of Punishment

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 10
Regina v. Dudley & Stephens

Unit 3: The Justification of Paternalism

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 30
In Re Osborne

Unit 4: Moralism

Reading TBA
Lawrence v. Texas
Griswold v. Connecticut

Unit 5: Criminal Attempts

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 13
People v. Rizzo et al.
People v. Dlugash

Unit 6: Self-Defense

J.J. Thomson (1991). "Self-Defense". *Philosophy and Public Affairs*. 20: 283-310.
People v. Goetz

Unit 7: Proximate Cause in Torts

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 17
Palsgraf v. Long Island R. Co

Unit 8: The Right to Private Property

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 18
Pierson v. Post
Moore v. Regents of California

Unit 9: Constitutional Judicial Review

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 28
Lochner v. New York

Unit 10: Discrimination

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 37
Brown v. Board of Education
Grutter v. Bollinger

Unit 11: The Right to Privacy

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 38
Andrei Marmor (2014) “What Is the Right to Privacy?” *USC Law Legal Studies Paper*:14-13.
Shulman v. Group W. Productions

Unit 12: Human Rights

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 23
Case TBA

Unit 13: The Morality and Law of War

Andrei Marmor (ed), The Routledge Companion to Philosophy of Law, ch. 24
Case TBA

Unit 14: Right to Free Speech / Hate Speech / Pornography

Readings TBA
Case TBA

Unit 15: Responsibility / Rape

Reading TBA
Case TBA

Unit 16: Animal Law

Reading TBA
Case TBA

Important Dates/ Class events

| WEEK | M | W | F |
|----------------|------------------------------|-------------------------|-------------------------|
| Week 1 | 8/27 | 29 | 31 |
| Week 2 | 9/3 No class | 5 | 7 |
| Week 3 | 9/10 | 12 | 14 |
| Week 4 | 9/17 Constitution Day | 19 | 21 EXAM/PAPER 1 |
| Week 5 | 9/24 | 26 | 28 |
| Week 6 | 10/1 | 3 | 5 Jim Murray |
| Week 7 | 10/8 PROSPECTUS | 10 | 12 |
| Week 8 | 10/15 | 17 | 19 |
| Week 9 | 10/22 | 24 | 26 EXAM/PAPER 2 |
| Week 10 | 10/29 Drop Day | 31 No Class | 11/2 No Class |
| Week 11 | 11/5 | 7 | 9 |
| Week 12 | 11/12 No class | 14 | 16 PROSPECTUS |
| Week 13 | 11/19 | 21 No class | 23 No class |
| Week 14 | 11/26 | 28 Presentations | 30 Presentations |
| Week 15 | 12/3 Presentations | 5 Presentations | 7 Presentations |
| Week 16 | 12/10 | 12 | 14 FINAL 8-10AM |

| Important Dates | Description |
|-------------------------------|---|
| August 27. | Autumn classes begin |
| September 3. | Labor Day Holiday – no classes, offices closed |
| September 17 | Constitution Day |
| September 21. | EXAM/PAPER 1 |
| October 5. | Guest Lecture – Jim Murray |
| October 8. | PROSPECTUS DUE |
| October 26. | EXAM/PAPER 2 |
| October 29. | Drop Day – 5PM |
| October 31, November 2 | PSA 2018 – No class |
| November 6. | Election Day – no classes, offices closed |
| November 12. | Veteran’s Day Observed – no classes, offices closed |
| November 21. | Student Travel Day – no classes |
| November 22 – 23. | Thanksgiving Break – no classes, offices closed |
| November 28-December 5 | Paper Presentations |
| December 7. | Last day of regular Autumn classes |
| December 10 – 14. | Autumn Final Examinations |
| December 14, 8-10AM | FINAL EXAM |