

**Special Topic: Philosophy of Law
Phil. 299, Spring 2015**

Instructor: Dr. Arash Naraghi

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Office Hours: Tuesday 1:00-2:00pm, Wednesday 4:00-5:00pm, and by appointment.

Lectures: MW 11:45am- 12:55pm, Main St. Campus, Memorial Hall, 302.

Course Description:

Philosophy of law or jurisprudence is the application of the rational techniques of the discipline of a philosophy to the subject matter of law. In this course, we explore four major topics related to law from philosophical perspective: (i) the nature of law; (ii) the relation between law and morality; (iii) moral justifications for legal punishment; and finally, (iv) the problematic of capital punishment.

Course Objectives:

1. An awareness of the complexity of moral issues related to law, and the moral foundations for criminal laws, and of the need for interdisciplinary understanding for legal decision-making;
2. A grappling with the student's own values and moral position-taking;
 - a) We will have class discussions in which students will be encouraged to articulate not only their own positions but also they must be able to articulate objections to their views as per their studies, and respond to the challenges that are raised.
 - b) Students do a class presentation, doing research and then taking a specific position related to the themes of our study. In a process of class debate, they must be able to defend their position.
 - c) The entire class encourages students to juxtapose their own moral and philosophical convictions and perspectives with the various theories and philosophies of law that we will be studying. In one major long paper that is assigned, they have to outline one of the views we have been studying, and compare and contrast with their own and other alternatives. Through all three of these methods described above, students develop increased awareness of the meaning of main moral concepts, and moral issues related to law, such as the moral foundations of legal punishments, especially the issue of death penalty, have the opportunity to grapple with their own values and moral positions.
3. An enhanced capacity for moral and philosophical discernment, criticism, and argument.

Required Texts:

(1) *Philosophy Of Law: An Introduction To Jurisprudence*, (Jeffrie Murphy, and Julies Coleman)

Publisher: Westview Press; Revised Edition (December 4, 1989)

ISBN-13: 978-0813308487

(2) *Punishment and the Death Penalty: The Current Debate*, (Robert M. Baird, Stuart E. Rosenbaum)

Publisher: Prometheus Books; Trade edition (March 1995)

ISBN-13: 978-0879759469

(Some additional material will be posted on Blackboard. Please make sure you have access to Blackboard.)

Note: You will find that you get the most out of the course if you read each assignment before lecture and then re-read the assignment after the lecture.

Lecture attendance:

It is not possible to perform well in the course without attending lectures regularly. We will cover substantial amounts of material in the lectures not necessarily included anywhere in the readings. It is highly unlikely that you will learn this material adequately by, e.g., borrowing your friend's lecture notes. You have two class sessions you can miss with no question asked. Beyond those two class sessions, any further missed classes without a really good excuse (involving a note from your doctor, psychiatrist, parole officer, etc.) will cost you 2% of your final grade.

Academic honesty:

Students are required to honor academic integrity. The course imposes the application of Moravian College's Academic Honesty Policy. The policy is to be found at Moravian College's *Student Handbook*.

Important Note: Please turn off your cell phones before walking into class! If you are having an emergency that requires you to have your cell phone on, please tell me at the beginning of class. No text messaging is allowed during the class, and the use of computers should be strictly confined to the things directly related to the class.

Course requirements:

- (1) A regular final exam, scheduled for **Monday May 4, at 8:30am**, plus a midterm (tentatively scheduled for **Monday, March 2nd**). You will receive Study Guide for the Midterm and Final Exams prior to the exams to know what kind of questions you should expect on the Midterm and Final Exams. Make up final exam will be administered only under the most extraordinary of circumstances, and only in light of appropriate supporting documents.
- (2) One paper (700-1500 words). On March 23th the paper topic will be posted on Blackboard. The paper due is **April 8th**. Paper should be typed, double spaced, and spell-checked. You are responsible to submit a hard copy of your paper. In some exceptional cases, you may be allowed to submit your paper through email. If so, you must receive a confirmation email from me, otherwise, you must assume that I have not received your paper. If the paper is turned in late without prior permission, the grade will be adjusted downwards by a third of a grade for each day the paper is late (e.g., A to A-, A- to B+,

- B+ to B, etc.). It is always helpful to discuss the draft of your paper with your friends, roommates, or classmates so as to solicit feedback.
- (3) You will be required to write some short paragraphs (roughly two pages) consist of your critical evaluation of the material to be discussed in the class. In the paragraphs, you should concentrate on a specific concept, theme or question. I am to assign 12 assignments throughout the semester, however, you are required to complete only 10 assignments of this sort by the end of the semester, that is, you have the option of choosing 10 out of 12 assignments. The topic for the reflecting paper will be posted on Wednesdays and the due date will be the next Wednesdays (There would be no assignment for the first week).
- (4) You will be divided into two groups, and groups are required to participate in 4 class debates. As a group you receive a grade between 0 and 10 for each discussion. If you miss a debate, you individually receive 0 for the missing debate, unless you have an extremely good excuse for your absence. If your absence is excused, then I will decide how you may make up for the missing debate. However, if you miss more than one debate, the make- up policy applies only to one of them, and you will receive 0 for the rest.

Grading:

Final Exam: 25% - Midterm Exam: 25%- Paper: 20% - Class debates: 10% - Weekly Paragraphs: 20%.

The grading scale is as follows:

Points	Grade	4-point conversion
95-100	A	4
90-95	A-	3.7
87-90	B+	3.3
84-87	B	3
80-84	B-	2.7
77-80	C+	2.3
74-77	C	2
70-74	C-	1.7
67-70	D+	1.3
64-67	D	1
60-64	D-	0.7
0-60	F	0

Tentative Lecture Schedule:

I. Preliminary Remarks: January 19

- What is Philosophy of Law?
- What is Argument?

Readings:

- (1) *Philosophy of Law*: “Introduction: What is Philosophy of Law?” pp. 1-5.

PART ONE: THE NATURE OF LAW

II. The Nature of Law (1): Classical Legal Positivism; Austin’s Command Theory: January 21, 26, 28.

Readings:

- (1) *Philosophy of Law*: “The Nature of Law” pp.19-26.
(2) John Austin, from: *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence*. (Will be posted on Blackboard).

III. The Nature of Law (2): From Commands to Rules: Hart’s Legal Positivism: Feb. 2, 4, 9.

Readings:

- (1) *Philosophy of Law*: “The Nature of Law” pp.26-33.
(2) H. I. A. Hart, from: *The Concept of Law*, (Will be posted on Blackboard)

IV. The Nature of Law (3): Natural Law Theory: Feb.11, 16.

Readings:

- (1) *Philosophy of Law*, “The Nature of Law” pp.11-19, 33-51.
(2) Thomas Aquinas, from: *Summa Theologia*. (Will be posted on Blackboard).
(3) John Finn, from: *Natural Law and Natural Right*. (Will be posted on Blackboard.)

V. The Nature of Law (4): Legal Realism: Feb.18, 23.

Reading:

- (1) *Philosophy of Law*, “The Nature of Law” pp. 33-36. *Belief*: Ch. 7.
(2) Duncan Kennedy, “Freedom and Constraint in Adjudication: A Critical Phenomenology”. (Will be posted on Blackboard.)

First Class Debate: Wed. Feb. 25th.

Midterm Exam: Mon. March 2nd.

PART TWO: LAW AND MORALITY

VI. Moral Theory and Its Application to Law: March 4, 16, 18.

Readings:

- (1) *Philosophy of Law*, “Moral Theory and Its Application to Law” pp.67-108.
(2) John Rawls, “Legal Obligation and the Duty of Fair Play”. (Will be posted on Blackboard).
(3) John Rawls, “The Justification of Civil Disobedience”. (Will be posted on Blackboard).

On March 23, the paper topic will be assigned.

PART THREE: PUNISHMENT

VII. The Justification for Punishment (1): Deterrence: March 23, 25.

Readings:

- (1) *Philosophy of Law*, “Crime and Punishment”, pp.109-120.
- (2) *Punishment and Death Penalty*, “Introduction” pp. 7-10; Richard Wasserstrom “Punishment vs. Rehabilitation” pp.41-76., “Punishment” pp.17-29; John Rawls, “Two Concepts of Rules”.

Second Class Debate: Mon. March 30th.

VIII. The Justification for Punishment (2): Retribution: April 1, 6.

Readings:

- (1) *Philosophy of Law*, “Crime and Punishment” pp.120-124.
- (2) Kant, “On the Right to Punish”. (Will be posted on Blackboard).
- (3) Michael Davis, “Harm and Retribution” (Will be posted on Blackboard).
- (4) *Punishment and Death Penalty*, “Punishment” by J. D. Mabbott, pp.17-29.

IX. The Justification for Punishment (3): Therapy: April 8.

Readings:

- (1) Karl Menninger, “Therapy, Not Punishment”, in *Punishment and Death Penalty*, pp. 41-49.

The paper due is on April 8th.

X. The Justification for Punishment (4): Playing Fair: April 13, 15.

Readings:

- (1) Richard Dagger, “Playing fair with Punishment”, in *Punishment and Death Penalty*, pp.77-92.

The Third Class Debate: April 20.

PART FOUR: CAPITAL PUNISHMENT

XI. Arguments for Capital Punishment: April 22

Readings:

- (1) Ernest van den Haag, “On Deterrence and Death Penalty”, in *Punishment and Death Penalty*, pp. 125-155.

XII. Arguments against Capital Punishment: April 27.

Readings:

- (1) Michael L. Radelet, Hugo Adam Bedau, and Constance E. Putnam, “Punishment of the Innocent”, in *Punishment and Death Penalty*, pp. 95-102.

- (2) Jeffrey H. Reiman, "Justice, Civilization, and the Death Penalty: Answering van den Haag", in *Punishment and Death Penalty*, pp. 175-205.

On April 27, you will receive the Study Guide for the Final Exam.

Fourth Class Debate: Tue. April 29.

The Final Exam will be held on Monday, May 4, 8:30AM, Main St. Campus, Memorial Hall, 302.

Important Notes:

- Students who wish to request accommodations in this class for a disability should contact Ms. Elaine Mara, Assistant Director of Academic & Disability Support, located on the first floor of Monocacy Hall (extension 1401). Accommodations cannot be provided until authorization is received from the Academic & Disability Support office.
- The Writing Center is located in a building that is not accessible to persons with mobility impairments. If you need the services of the Writing Center, please call 610-861-1392. The Writing Center tutors will make arrangements with the student who needs tutoring services to meet in an accessible location, such as the library or a study/conference room in PPHAC.