

Philosophy 245: Philosophy of Law
Spring 2009

INSTRUCTOR

Prof. Ishani Maitra, Department of Philosophy

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Office hours: Tuesdays 11:30 – 1:00 p.m., and by arrangement

CLASS MEETINGS

Tuesdays 2:30 – 5:20 p.m. in 105 Hill Hall

COURSE DESCRIPTION

This course will serve as an introduction to the philosophy of law. In the first part of the course, we will address some questions about the nature of law, and the connection between law and morality. These include: what is law? Is law a morally neutral social fact, or is it necessarily connected with morality? Under what circumstances are we morally obligated to obey the law? We will then go on to consider some specific moral issues that arise with respect to the law. Under what conditions is the state justified in restricting individuals' liberties? (In particular, under what circumstances can the state impose restrictions on speech, or intrude on its citizens' privacy?) When and how is legal punishment justified? What determines what type or severity of punishment is appropriate for a given infraction? (For instance, is capital punishment ever justified?) We will address these and other questions by reading classical papers and landmark court cases.

BLACKBOARD

There is a Blackboard site for this course, which will be accessible from

<http://blackboard.rutgers.newark.edu>. Course documents (syllabus, class handouts, assignments, some course readings) will be available at this site. Please consult this site regularly for announcements, including changes to the course schedule.

REQUIRED READINGS

1. Joel Feinberg and Jules Coleman, *Philosophy of Law, Eighth Edition* (Wadsworth/Thomson Learning, 2007), available at **New Jersey Books** (167 University Avenue, 973-624-5383).
The readings in this edition of the text are considerably different from those in previous editions. Therefore, you *must* get this edition.
2. Additional readings will be available from the Blackboard site for the course.

COURSE REQUIREMENTS

1. Read the required pieces closely.
Several of the assigned readings are dense, and quite difficult. You must do each reading in advance of the class in which it will be discussed in order to fully understand the lecture material. But additionally, you are also responsible for those parts of the readings which are not discussed in lecture.

2. Regularly attend class.

Attendance in class is required, and essential for doing well in this course. If you miss a class, you are responsible for getting notes from that class.

It is important that you arrive for class on time, and that you refrain from distracting behavior, such as chatting with neighbors, and leaving and returning to the classroom during the lecture. All cell phones, beepers, etc. must be turned off for the duration of the class.

3. Participate in class.

There will be plenty of opportunity during class time to ask questions, make comments, and respond to what I and your classmates say. Everyone is expected to come to class prepared to participate. I will attempt to make sure that the class atmosphere is such that everyone feels comfortable speaking up; if you feel that that is not the case, I strongly encourage you to come talk to me.

4. Take three in-class quizzes during the term.

The first quiz will cover all the course material covered to that point. Each subsequent quiz will cover all the course material since the previous quiz.

For every quiz, you will be allowed to bring in one page (8.5"x11"), double-sided, of notes. No other aids will be allowed.

5. Take the final exam.

The final will be an in-class exam, and will be cumulative in nature. The time and location for the exam will be announced later in the semester.

As in the quizzes, for the final exam, you will be allowed to bring in one page (8.5"x11"), double-sided, of notes. No other aids will be allowed.

GRADING

Quizzes (25% each): 75%

Final exam: 25%

ACADEMIC INTEGRITY

The following is an excerpt from Rutgers University's policy on academic integrity:

Academic freedom is a fundamental right in any institution of higher learning. Honesty and integrity are necessary preconditions of this freedom. Academic integrity requires that all academic work be wholly the product of an identified individual or individuals. Joint efforts are legitimate only when the assistance of others is explicitly acknowledged. Ethical conduct is the obligation of every member of the University community, and breaches of academic integrity constitute serious offenses.

...Students must assume responsibility for maintaining honesty in all work submitted for credit and in any other work designated by the instructor of the course.

Students are also expected to report incidents of academic dishonesty to the instructor or dean of the instructional unit.

For more on the university's policy, including information about penalties for violations, see <http://academicintegrity.rutgers.edu/integrity.shtml>.

COURSE OUTLINE:

Readings for each class meeting are noted. Readings with page numbers included are in the required text for the course. Readings **in bold** will be available from the Blackboard site for the course.

PLEASE BRING THE READINGS TO CLASS EACH WEEK.

In the course of the semester, readings may be added or deleted from this list. *It is your responsibility to keep track of any changes.*

- Tuesday, January 20 *Introduction to the course*
Jurisprudence
No reading
- Tuesday, January 27 *Natural Law*
Saint Thomas Aquinas, "Selections from *On Law, Morality, and Politics*", pp. 8-13
Legal Positivism, Part I
John Austin, "A Positivist Conception of Law", pp. 55-68
- Tuesday, February 3 *Legal Positivism, Part II*
H.L.A. Hart, "Law as the Union of Primary and Secondary Rules", pp. 68-84
- Tuesday, February 10 *The Moral Obligation to Obey the Law*
Plato, *Crito*, pp. 206-214
Martin Luther King, Jr., "Letter from Birmingham Jail", pp. 231-240
- Tuesday, February 17 1ST QUIZ
Liberty, Part I
Start John Stuart Mill, "The Liberal Argument from *On Liberty*", pp. 251-263
- Tuesday, February 24 *Liberty, Part II*
Finish Mill, "The Liberal Argument from *On Liberty*"
Feinberg, "Offensive Nuisances", pp. 438-446 (Sections 1-3)
Dworkin, "Paternalism", pp. 281-291
- Tuesday, March 3 *Privacy*
Roe v. Wade, pp. 392-397
Planned Parenthood of S.E. Pennsylvania v. Casey, pp. 397-401

- Tuesday, March 10 *Expression*
 Cohen v. California, pp. 426-430
 Village of Skokie v. National Socialist Party of America, pp. 430-434
 PruneYard Shopping Center et al. v. Robins et al., pp. 434-438
- Tuesday, March 17 SPRING BREAK – NO CLASS
- Tuesday, March 24 2ND QUIZ
 Legal Punishment, Part I
 Start Joel Feinberg, “The Expressive Function of Punishment”, pp. 629-640, INCLUDING NOTE 2
- Tuesday, March 31 *Legal Punishment, Part II*
 Finish Feinberg, “The Expressive Function of Punishment”
 Joel Feinberg, “The Classic Debate”, pp. 624-629
- Tuesday, April 7 *Capital Punishment*
 Furman v. Georgia, pp. 674-684
 Stephen Nathanson, “Should We Execute Those Who Deserve to Die?”, pp. 665-674
- Tuesday, April 14 *Terrorism & Torture*
 Jeremy Waldron, “Torture and Positive Law: Jurisprudence for the White House” pp. 509-530 – IGNORE FOOTNOTES
- Tuesday, April 21 3RD QUIZ
 Affirmative Action, Part I
 Regents of University of California v. Bakke
- Tuesday, April 28 *Affirmative Action, Part II*
 Excerpts from *Grutter v. Bollinger* and *Gratz v. Bollinger*
 Review for final exam

Date, time and location for final exam TBA