

PHL271: Law and Morality (Summer 2021)

Course Description

Law and morality are both systems of norms, meaning that both tell people what they ought to do. While they often coincide with one another, occasionally they do not. On the one hand, it is legally impermissible, but probably morally permissible, to jaywalk through an empty intersection; on the other hand, it is legally permissible, but probably morally impermissible, to break a promise to a friend. While most philosophers think that this shows that law and morality are distinct from one another, many of them still think that law and morality still have some necessary relationships to one another. In this course, we will consider three of these supposed relationships, which reflect the three central roles occupied by persons in legal systems. First, *judges* may wonder whether they can or must apply moral tests to establish whether someone has broken the law. Second, in crafting laws, *legislators* may wonder whether the immorality of some conduct permits or even requires them to criminalize it. Finally, *citizens* may wonder whether they have a moral duty to obey the law.

Teaching Team

Instructor: Steve Coyne (steven.coyne@mail.utoronto.ca)

Office hours: Drop-in appointments are on Monday 12-12:30PM and Wednesday 8:30-9AM. I have bookable appointments on Mondays from 2-4PM – see the Quercus page for how to book appointments. I use Zoom (with the ‘Waiting Room’) for my office hours – the link is available on the main course webpage.

E-mail: I make every attempt to respond to administrative questions (e.g. about extensions, course registration, etc) within 24 hours. I’m also happy to answer quick, specific questions about course content by e-mail, though you should consider posting these questions on the class message board or raising them in lecture.

Teaching Assistant: Henry Krahn (henry.krahn@mail.utoronto.ca)

Course Flow

This is an online synchronous course on BB Collaborate. Lectures run from 9-12PM on Mondays and 9-11AM on Wednesdays. Lectures will be recorded, and short summaries of lectures will be made available after lecture. You should also enroll for a tutorial section – either Wednesday 11-12PM or 12-1PM. Attendance at lectures and tutorials is not officially taken, but note that contributions at these sessions is an important way of earning participation points.

Bear in mind that summer classes go by quickly. Every lecture is the equivalent of one week of regular work in fall and winter. You should be prepared to spend 10-15 hours a week, in addition to the lectures and tutorials themselves, on your readings and assignments for this course.

Readings

All readings will be directly accessible through Quercus.

Evaluation

| Course Component | Percentage of Grade | Date(s) due |
|--------------------|---------------------|------------------------------|
| Written Assignment | 25% | 10:00PM, May 20 |
| Essay | 30% | 10:00PM, June 6 |
| Quizzes | 30% (7.5% each) | Various – see schedule below |
| Participation | 15% | Throughout the course |

Note that all assignments should be submitted through Quercus through the corresponding links under ‘Assignments’. Please submit all assignments in .doc, .docx, or .pdf.

Quizzes: You will be required to complete four quizzes (available on Quercus). Each quiz will be composed of multiple choice questions and possibly short answer questions.

Essays: You will be required to complete two written assignments about Supreme Court cases. The first assignment (25%, 1200 words) will concern *Roncarelli v. Duplessis*, a Supreme Court case about the rule of law. The second assignment (30%, 1200 words) will concern *R. v. Butler*, a Supreme Court case about free speech and pornography.

Participation will be scored on a points system:

| Method of Participation | Typical Number of Points | Maximum Limits |
|--|--------------------------|---------------------------------|
| Individual audio contributions during lecture or tutorial | 2 | 3 per lecture 2 per tutorial |
| A set of substantial, noticeable written contributions to chat in a given session (e.g. several contributions of 1-3 sentences each) | 1 | 1 per lecture 1 per tutorial |
| Written contributions to the class message board | 1-2 | 3 per week |

At the end of the semester, I will translate your number of points into a grade score, using the following rough guidelines:

- 15 points guarantees at least a 50.
- 25 points guarantees at least a 65.
- 40 points guarantees at least an 80.
- Grades up to 90 will be awarded strictly on the basis of number of points earned. Grades of 90 and above will be awarded in consultation with Henry in cases of exceptionally active, highly thoughtful participation.

Aside from that, note the following:

- Please observe the usual etiquette of BB Collaborate:
 - Make sure you raise your hand before making an audio contribution, and wait for me to give you the floor. Try to remember to lower your hand after you’ve made your contribution.
 - Note that I will not necessarily immediately acknowledge a raised hand (e.g. if I’m in the middle of making a point). I also do my best to hear from a variety of voices during lecture - so if you are usually the first student to raise their hand, you might have to wait

until other students have had a turn first. (And later in the semester, if you haven't made points throughout the semester, I'm likely to push you to the front of the queue.)

- You can write in the chat at any time (though please keep things professional). I won't be able to respond to everything said there, or even necessarily keep track of every contribution there, but at a minimum I will look at it at the end of lecture.
- Quality also matters for the sake of awarding participation points: clearly low-effort or off-topic contributions may not receive any points, while very thoughtful contributions may receive additional points. On the message board, you should aim to write in paragraphs. Single sentence questions or contributions will typically not count for points.
- Note that you are still allowed to contribute more than three times per lecture or twice per tutorial, you just won't receive participation points for it.
- At my discretion, there may be other opportunities for participation points (e.g. group activities) throughout the semester.
- At the end of the semester, everyone will receive two additional participation points to account for points that we may have missed throughout the semester.
- We will post interim participation point totals at the end of weeks 2 and 4 of the course.

Regrades: If you do not understand why your essay received the grade that it did, you should seek further clarification from your TA at office hours. If you are not able to reach a resolution, you may request a regrade of your assignment from Steve (within one week of the assignments being handed back). The regrade, whether higher or lower, will replace the first assigned grade.

Note: The 'total' column in the grades section on Quercus does not reflect your current or total grade in the course.

Missed Tests and Late Assignments

Steve will handle requests for special consideration on the quizzes and papers. If you miss a quiz, get in touch with Steve as soon as possible. In general, unless you have spoken with me before the test, I will expect you to have completed a declaration of absence on ACORN in order to be eligible to submit a quiz late or take a make-up test. Extensions on the papers can be granted *in advance* for good reasons, but otherwise, late submissions will lose 1% of the assignment grade per day, to a maximum of 10%. Papers that are significantly late may not receive comments.

Accessibility

If you have a disability or health consideration that may require accommodation, please get in touch with me and Accessibility Services (www.accessibility.utoronto.ca).

Plagiarism and Course Conduct

Assignments: Aside from the course materials, the two essay assignments are designed so that there is no need to external resources like websites or articles to successfully complete them. (In fact, we would substantially prefer for you to *not* lean on external resources.) If you do use any external resources, you must provide both page number citations *and* a full bibliographical entry. Remember that any use of an external source (whether directly quoting it, paraphrasing it, or using an idea taken from it) must be credited, otherwise it is plagiarism. Please do not plagiarize. I am required by the code of conduct to report all instances of plagiarism to administration, who may impose a serious penalty on you.

Turnitin.com: Normally, students will be required to submit their course essays to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com website.

Anonymous Feedback

I've set up a google poll for you to send me anonymous feedback during the course. Please make use of it if there's anything I can do to better facilitate your learning in the course.

Course Schedule

(Readings subject to change.)

| Unit 1: What is the Nature of Law? | |
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| Monday, May 3 <i>Positivism</i> | <ul style="list-style-type: none"> H.L.A. Hart, <i>The Concept of Law</i>, various excerpts |
| Wednesday, May 5 <i>Dworkin's Critique of Positivism</i> | <ul style="list-style-type: none"> Ronald Dworkin, 'Model of Rules I' |
| Monday, May 10 <i>The Rule of Law</i> | <ul style="list-style-type: none"> Lon Fuller, 'The Morality of Law' Joseph Raz, 'The Rule of Law and its Virtue' |
| Unit 2: How Should Judges Decide Cases? | |
| Wednesday, May 12 <i>Positivist Adjudication</i> | <ul style="list-style-type: none"> H.L.A. Hart, 'Positivism and the Separation of Law and Morals' (short excerpt) Antonin Scalia, 'Common-Law Courts in a Civil Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws' |
| Sunday, May 16 | <i>Quiz 1 due at 10:00PM – covers unit 1</i> |
| Monday, May 17 <i>Dworkin's Theory of Adjudication</i> | <ul style="list-style-type: none"> Ronald Dworkin, 'Reply to Scalia' (in the same file, above) Ronald Dworkin, 'Law's Ambitions for Itself' |
| Unit 3: What Should the Law Be? | |
| Wednesday, May 19 <i>Legal Moralism</i> | <ul style="list-style-type: none"> Patrick Devlin, 'Morals and the Criminal Law' Adrian Vermeule, 'Common Good Constitutionalism' |
| Thursday, May 20 | <i>Paper 1 due at 10:00PM</i> |
| Sunday, May 23 | <i>Quiz 2 due at 10:00PM – covers unit 2</i> |

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| Wednesday, May 26 <i>The Harm Principle</i> | <ul style="list-style-type: none"> • John Stuart Mill, <i>On Liberty</i>, chapter 1 • Wayne Sumner, 'In Harm's Way?' |
| Monday, May 31 <i>Feminist Challenges to the Harm Principle</i> | <ul style="list-style-type: none"> • Catherine MacKinnon, <i>The Liberal State</i> (excerpt) • Ronald Dworkin, 'Postscript on Pornography' • Ronald Dworkin, 'Women and Pornography' |
| Unit 4: The Duty to Obey the Law and Civil Disobedience | |
| Wednesday, June 2 <i>The Duty to Obey the Law</i> | <ul style="list-style-type: none"> • M.B.E. Smith, 'Is there a Prima Facie Duty to Obey the Law?' |
| Friday, June 4 | <i>Quiz 3 due at 10:00PM – covers unit 3</i> |
| Sunday, June 6 | <i>Paper 2 due at 10:00PM</i> |
| Monday, June 7 <i>Civil Disobedience</i> | <ul style="list-style-type: none"> • John Rawls, 'The Definition and Justification of Civil Disobedience' • Piero Moraro, 'On (Not) Accepting the Punishment for Civil Disobedience' |
| Wednesday, June 9 <i>Jury Nullification</i> | <ul style="list-style-type: none"> • Paul Butler, 'Racially Based Jury Nullification: Black Power in the Criminal Justice System' |
| Saturday, June 12 | <i>Quiz 4 due at 10:00PM – covers unit 4</i> <i>Message Board closes at 10:00PM</i> |
| Friday, June 18 | Last Day for Submission of Late Work |