

Philosophy of Law – Summer Session II, 2016

Mon-Thurs. 11:30am – 1:05pm
5 Washington Place, Room 202

Instructor:

Chelsea Rosenthal
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5 Washington Place
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office hours:

Wednesdays 2-3pm
or by appointment

Accessing Readings:

All course readings will be posted on the course's NYU Classes page (available at newclasses.nyu.edu).

Course Requirements:

- Two 3-5 page papers (due 7/15 and 7/27)
- One 7-8 page final paper (due 8/9)
- Reading and active participation
- Short, reading response assignments
Please submit a short assignment for one reading in each unit (five total) by 11:59pm the night before we will be discussing the reading. At least two of these short assignments should be argument maps, and at least two should consist of two critical questions replying to a reading.
- Paper meetings
All students must meet with me about their plans for the final paper, and students new to philosophy must meet with me about their plans for the first paper. Students are, of course, welcome and encouraged to meet with me about papers, even when it is not required.

Grading:

- The course grade will be determined by the first paper grade (20%); the second paper grade (20%); attendance, short assignments, and quality of participation (25%); and the final paper (35%).
- Participation may also be taken into consideration in deciding borderline cases.
- In order to pass the course, all three papers must be completed.

Readings:

Is there a Duty to Obey the Law?

Tues. 7/5: A. John Simmons, “The Problem and Its Significance” from *Is There a Duty to Obey the Law?* + George Klosko, “Presumptive Benefit, Fairness, and Political Obligation”

Wed. 7/6: excerpts from Christopher Wellman, “Doing One’s Fair Share” and A. John Simmons, “Natural Duties and the Duty to Obey the Law” in *Is There a Duty to Obey the Law?*

Thurs. 7/7: excerpt from A. John Simmons, *Moral Principles and Political Obligations*

Mon. 7/11: David Lefkowitz, “On a Moral Right to Civil Disobedience”

Criminalization, Policing, and Punishment:

Tues. 7/12: excerpt from Douglas Husak, *Overcriminalization*

Wed. 7/13: excerpt from Michelle Alexander, *The New Jim Crow*

Thurs. 7/14: excerpt from Michelle Alexander, *The New Jim Crow* + “Two police shootings, two videos, two deaths” (CNN.com) + Jason Lee Steorts, “When Should Cops Be Able to Use Deadly Force?” (*The Atlantic*)

Mon. 7/18: excerpt from Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* + excerpt from Michael S. Moore, “The Moral Worth of Retribution”

Tues. 7/19: excerpt from Don Scheid, “Constructing a Theory of Punishment, Desert, and the Distribution of Punishments”

Wed. 7/20: Erin Kelly, “Criminal Justice Without Retribution”

Thurs. 7/21: Alan Wertheimer, “The Equalization of Legal Resources”

Mon. 7/25: excerpt from Naomi Murakawa and Katherine Beckett, “The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment” + excerpt from *Richmond v. Croson Co.*

Interpretation of Legal Texts:

Tues. 7/26: excerpt from Antonin Scalia, *A Matter of Interpretation* + excerpt from Christopher Green, “Originalism and the Sense-Reference Distinction” + excerpt from *Church of the Holy Trinity v. U.S.*

Wed. 7/27: excerpt from Ronald Dworkin, *Law’s Empire*

Thurs. 7/28: excerpt from Jack Balkin, *Living Originalism*

Mon. 8/1: excerpt from Jeremy Waldron, “The Core of the Case Against Judicial Review”

Morality and the Nature of Law:

Tues. 8/2: excerpt from Scott J. Shapiro, *Legality*

Wed. 8/3: excerpt from H.L.A. Hart, *The Concept of Law*

Thurs. 8/4: excerpt from Ronald Dworkin, *Law’s Empire*

Ethics and Legal Professionals:

Mon. 8/8: excerpt from Monroe Freedman and Abbe Smith, *Understanding Lawyers’ Ethics* + excerpt from Bradley Wendel, *Lawyers and Fidelity to Law* + Selections from the ABA Model Rules of Professional Conduct + excerpt from David Luban, “The Adversary System Excuse”

Tues. 8/9: FINAL PAPER DUE

Wed. 8/10: excerpt from Monroe Freedman and Abbe Smith, *Understanding Lawyers’ Ethics*

Thurs. 8/11: excerpt from Robert Cover, *Justice Accused* + Ronald Dworkin, “The Law of the Slave-Catchers” (*Times Literary Supplement* review of *Justice Accused*)

Rationale Software:

In this course, we will be using Rationale software for argument mapping. The use of this software is for educational purposes only. This is a 3rd party software, which means that it is not an NYU-supported service that has data privacy and security protections in place (like your NYU Gmail, NYU Classes, etc.). We will structure assignments so that no highly sensitive information is needed to use the tool, but please note that we are subject to the terms of use set by the platform's developer (<https://www.rationaleonline.com/terms>). If you have any concerns about the platform, please let your professor know as soon as possible.

Disabilities and Accommodations: If you will need accommodations for a disability, please make arrangements via NYU's Moses Center for Students with Disabilities, and let me know as soon as possible.

Lateness:

- All students have 2 free late days, permitting them to submit work late without excuse or explanation. These days may be distributed across the three papers in any combination, but may not be used for the short assignments.
- With special permission, extensions may be granted in cases of family or medical emergencies. Please contact me *in advance* of the due date to discuss this if at all possible.
- Lateness that is not excused through special extensions or the use of free late days will result in grade reductions on the following schedule:
 - up to 2 days late: 1/3 grade reduction (e.g., a B+ becomes a B)
 - 2-4 days late: 2/3 grade reduction (e.g., a B+ becomes a B-)
 - 4-7 days late: one grade reduction (e.g., a B+ becomes a C+)
 - > 7 days late: please get in touch with me to discuss the particular situation
- Short assignments may *not* be submitted late without special permission.
- All late work must be submitted by August 12**, unless other arrangements have been made.

Academic Honesty: Issues of academic dishonesty will be taken very seriously. If you are uncertain how to properly avoid plagiarism, please ask.

Expectations for Discussion:

- When you do the reading, think critically about it (see “Reading Like a Philosopher,” below), and be prepared to discuss it. Bring the reading to class.
- You’re allowed to be unsure or confused. Bring your questions! Feel free to arrange to meet with me to discuss questions as well.
- Participate – this course is supposed to be a conversation, and active discussion is crucial to learning how to do philosophy.
- Be prepared to disagree respectfully. Worry less about “winning” and more about working together to get better insight into an issue, in part by giving reasons and arguments supporting your views, and in part by listening when other people do this for their own views. People who disagree with you can give you information about how others see a problem and can help point out potential weaknesses in your arguments. This can help you get a clearer understanding of an issue and of your own reasons. When I ask people who disagree with me to listen to an argument of mine, I expect that they’ll do this and that it will allow me to write a better paper. So I thank them for it.
- You’re encouraged to talk with me about your plans for papers, and I can look at outlines or drafts.
- Many issues we discuss may be controversial, and you will be asked to examine seriously arguments that you may disagree with. Please keep in mind:
 - Discussing a point of view, and trying to find the best arguments for it, doesn’t mean endorsing that view.
 - The quality of political discourse is improved when people have a better understanding of their opponents’ views.
 - It’s intellectually, and politically, more responsible to be willing to give at least some attention to views you might dislike.
 - As noted above, mistaken arguments can still lead to insights and better understanding of your own views. For example, they might cause you to notice shortcomings of your views and to adopt revised versions of them, even if you reject the conclusions of these other arguments.
 - Focus on discussing the arguments and ideas that others in the class put forward – not their characters.
 - Give others the benefit of the doubt – assume that they are operating in good faith. But still let them know if they are saying something hurtful or that you think is mistaken.

Suggestions for Reading Like a Philosopher:

Many of our readings will make an argument or discuss arguments made by other authors. So, as you read, keep in mind that you're not just looking for facts – you're looking for reasons and steps in arguments.

- Ask what the conclusion of the argument is – what is being argued?
- How is this claim supported? What are its premises and how are those premises supposed to lead to the conclusion? If you're working through a complicated argument, try writing yourself an outline of it, identifying its premises and going through the steps to the conclusion. And remember that some important premises may not have been stated explicitly.
- Is the argument any good? Is it valid – if you accept its premises, does its conclusion really follow? Should you accept its premises?
- If you disagree with the argument, remember to “be charitable.” Interpret the argument in the way that makes it strongest. For example, you might think that an author is basing her argument on one of two assumptions, and one is plausible, while the other is not. In cases like this, be sure *not* to assume she is basing her argument on the implausible assumption.
- If someone disagreed with your assessment of the argument, why might that be? What reasons would they give?
- What else might follow from this argument, and is it plausible?
- Does this argument overlook anything important?
- What can this argument tell us about other readings we've done, and vice versa?