

Philosophy of Law, Fall 2008

Mondays and Wednesdays 2:45 – 4:00
Bauer Centre, Room 24

Professor Endre Begby

(ebegby@cmc.edu)

Office: F12 (Modular offices by the tennis courts)

Office hours: Mondays and Wednesdays, 10-12

Phone: 909-607-3358 (email preferred)

In this class we will investigate several central topics in law and legal theory from a distinctively philosophical point of view. We will explore both large-scale theoretical questions about law as such (e.g., what is law? what is the source and scope of legal authority?), as well as several topics of legal controversy (e.g., affirmative action, the right of free speech, theories of punishment).

The textbook for this class is *The Philosophy of Law: Classic and Contemporary Readings with Commentary*, edited by Frederick Schauer and Walter Sinnott-Armstrong, Oxford University Press, 1996. (There is only one edition of this book, so you should feel free to buy a used copy.)

Your grade in this class will be based on the following:

- 3 papers, 6-8 pp. (the first worth 20%, the next two worth 25%)
- Midterm exam (20%)
- In-class participation (10%)

You will not receive a final grade in this class if you do not complete all the written requirements. You will be graded along the familiar scale from A to F. I expect the average grade in the class to around B, but I reserve the right to employ the entire scale. In other words, you should not simply expect an A (or a B) in this class. Receiving a good grade requires doing all the work, and doing it well.

Papers that are turned in late without a valid excuse will be penalized by one-third of a letter grade per day. That is, a paper turned in one day late can at best achieve an A-, a paper turned in two days late can best achieve a B+, and so on. All calendar days count. This entails that no unexcused late assignment will be given higher than an F if it is turned in more than ten days after the assigned due date, and that late penalties continue to accrue over weekends and holidays.

Late work is not penalized if you have a College-recognized excuse—e.g., illness, family or personal emergency. I reserve the right to request proof of any such excuse. Always keep any documentation—e.g., plane tickets, doctors notes, traffic tickets—that can verify your excuse. Actively seek out such documentation (e.g., by doing to a doctor when sick) if you wish to ensure that your excuse will be accepted.

Academic dishonesty: The college policies on cheating and plagiarism will be followed strictly. These policies – particularly the policies on plagiarism – may be more complex than you realize, and you are responsible for familiarizing yourself with them. Note that I count as plagiarism not just word-for-word copies of other people’s writings, but also unthinking paraphrases of such sources. I reserve the right to consult plagiarism-detecting software such as turnitin. As little as a single paragraph lifted or paraphrased from an outside source can be enough to get you into trouble, so if you are at all uncertain whether you are about to turn in a plagiarized paper, you should ask me first.

This class has a Sakai page (log on through sakai.claremont.edu). This page will be my main venue for disseminating messages, assignments, syllabus updates, comments on the readings, and so on. It is your responsibility to make sure that you receive these messages. The Sakai page also has a discussion board, which I strongly encourage you to use for sharing questions, concerns, and insights about our readings and classroom discussions. I will monitor this forum and post as needed. Thoughtful contributions to the Sakai discussion forum will count toward your participation grade for this class.

College resources:

Statement of Academic Policy and Statement of Academic Integrity (containing some useful information on how to avoid plagiarism): <http://registrar.claremontmckenna.edu/acpolicy>

Dean of Students’ Guide to Student Life: <http://dos.claremontmckenna.edu/cmguide>

CMC Writing Center: 909-607-4142

Student Health Services: 909-621-8222

Health Education Outreach Program (providing, among other things, nutrition information, sexual health information, free and anonymous HIV testing, wellness counseling, referrals to helplines, and earplugs): 909-607-3602

Women’s Health Center (providing, among other things, gynecological exams, pregnancy and STD testing, and counseling about contraceptives): 909-621-8222

Monsour Counseling Center (providing, among other things, counseling, crisis intervention, emergency services after hours, and support and self-exploration groups): 909-621-8202

Interfaith Chaplain’s Office: 909-621-8685

Office of Black Student Affairs: 909-607-3669

Chicano/Latino Student Affairs: 909-621-8044

Department of Campus Safety: 909-621-8170

Campus Security: 909-607-2000

Tentative schedule:

(Note: most of the chapters in the textbook are preceded by an Editor's Introduction. These are not assigned readings, but are nonetheless highly recommended.)

Introductory

1. W 9/3 (No readings)

Theories of law

2. M 9/8 Aquinas, excerpts from *Summa Theologica* (pp. 12-14)
Finnis, excerpts from *Natural Law and Natural Rights* (pp. 14-18)
3. W 9/10 Fuller, excerpts from *The Morality of Law* (pp. 18-28)
Hart, excerpts from *The Concept of Law* (pp. 40-49)
4. M 9/15
5. W 9/17 Dworkin, excerpts from *Taking Rights Seriously* (pp. 74-89)

Legal reasoning and the interpretation of law

6. M 9/22 *First paper due.*
Schauer, "Formalism" (pp. 124-130)
Brest, "The Misconceived Quest for the Original Understanding" (pp. 137-141)
7. W 9/24 Dworkin, "Natural Law Revisited" (pp. 142-149)
Posner, "Legal Formalism, Legal Realism ..." (pp 151-155)
8. M 9/29

Law and morality

9. W 10/1 Mill, excerpts from *On Liberty* (pp. 310-313)
Feinberg, "Offense to Others" (pp. 320-325)
10. M 10/6 Dworkin, "Paternalism" (pp. 331-337)
Devlin, excerpts from *The Enforcement of Morals* (pp. 338-344)
11. W 10/8 Hart, excerpts from *Law, Liberty and Morality* (pp. 344-347)
Case study: *Bowers v. Hardwick* (pp. 347-352)
12. M 10/13
13. W 10/15 *Second paper due.*
Summary of first section of class. No readings.

(Fall break Monday 10/20 – no class)

Free speech

14. W 10/22 Mill, excerpts from *On Liberty* (pp. 356-361)
Case study: *Paris Adult Theatre I v. Slaton* (pp. 373-375)
Case study: *American Booksellers Assoc. v. Hudnut* (pp. 380-383)
15. M 10/27 MacKinnon, “Pornography, Civil Rights, and ‘Speech’” (pp. 376-379)
Dworkin, “Women and Pornography” (pp. 383-388)
16. W 10/29 Delgado, “Campus Antiracism Rules” (pp. 390-392)
Lawrence, “If He Hollers, Let Him Go” (pp. 392-393)
Strossen, “Regulating Racist Speech on Campus” (pp. 393-396)
Case study: *Collin v. Smith* (388-390)
17. M 11/3 ***Midterm exam***

Affirmative action and preferential treatment

18. W 11/5 Case study: *Regents of University of California v. Bakke* (pp. 589-598)
Dworkin, “Why Bakke has no Case” (pp. 572-580)
19. M 11/10 Cohen, “Why Racial Preference is Illegal and Immoral” (pp. 580-589)
20. W 11/12 MacKinnon, “Reflections on Sex Equality Under Law” (pp. 609-615)
Epstein, “Forbidden Grounds” (pp. 616-624)
21. M 11/17 Case study: *California Federal Savings v. Guerra* (pp. 624-627)
Case study: *Meritor Savings Bank v. Vison et al.* (pp. 628-631)

Crime and punishment

22. W 11/19 Kant, “On the Right to Punish” (pp. 701-704)
Bentham, excerpts from *Introduction to the Principles of Morals and Legislation* (pp. 674-681)
23. M 11/24 Rawls, “Two Concepts of Rules” (pp. 683-689)
Davis, “Harm and Retribution” (pp. 705-715)
24. W 11/26 Haag, “The Collapse of the Case against Capital Punishment” (pp. 731-744)
25. M 12/1 Reiman, “Justice, Civilization, and the Death Penalty” (pp. 744-750)
Case studies on capital punishment (pp. 761-779)
26. W 12/3
27. M 12/8 Morris, excerpts from *Madness and the Criminal Law* (pp. 899-905)
Bonnie, “The Moral Basis of the Insanity Defense” (pp. 906-911)
28. W 12/10 Summary. No readings.

(W 12/17 Third paper due)