

PHIL 397 / PSC 375: Philosophy of Law

Fall 2021

T, Th 9.30-10.50 A.M.

HB Crouse 323A

Instructor:

Dr. Verena Erlenbusch-Anderson (she/her)

Office: 524 Hall of Languages

Student office hours (in person or by Zoom): T 11am-12pm and by appointment

Email: verlenbu@syr.edu

NOTE: I check email once per day M-F, usually in the late afternoon. Please keep in mind that you may receive a reply up to 24 hours after emailing me. I do not check email during weekends.

Course Information

Course Description

This course is an introduction to philosophical debates about the nature, source, and authority of law. The fundamental question we will explore is “what is law?,” but we will also consider how natural law theorists, positivists, realists, and critical legal scholars answer questions such as: Are there different kinds of law? Is law based on universal principles or does it depend on context? What is the relationship between law and justice? What is the source of law? Who is authorized to interpret law and what are the principles of its interpretation? When and why is punishment justified? When and why should individual rights be limited?

Course Goals

Upon completion of this course, you should be able to:

- I. summarize key positions in the philosophy of law and relate them to landmark court decisions;
- II. explain important legal decisions in the U.S. legal system and answer the philosophical questions that arise from them;
- III. critically interrogate your own beliefs about law and the beliefs and positions examined in class;
- IV. formulate philosophical questions about law and work both individually and collectively to answer them in speech and writing;

- V. assess your own progress, describe your achievements, and identify areas for improvement.

Course Materials

All texts are available electronically. Please have a printed or electronic copy of the reading available for class.

Access

To make sure the learning environment in this course is equitable and conducive to achievement and learning for all students, we will use a range of strategies.

Universal Design in Learning (UDL)

This course follows principles of Universal Design in Learning (UDL). This means, in the first place, that all required readings are available electronically and in accessible format; all videos are captioned; audio files include transcripts; alternative text is provided for all graphics. Assignments are designed to allow for flexibility in completion. **I encourage all students who require accommodations beyond those covered under UDL to contact me.**

If you need accommodations under the Americans with Disabilities Act (ADA), you should pursue them with the Office of Disability Services (ODS) as soon as you can. The approval process might take some time, so please also reach out to me to make sure I know what your needs are and that they are met. **If you're struggling for reasons that are not covered by the ADA, please reach out to me as well.**

Keep in mind that a whole range of things can be disruptive to your learning experience. If you're experiencing any form of harassment or discrimination based on your sex, gender, race, ethnicity, nationality, religion, or disability, or if you're the first in your family to go to college and need advice, please let me know!

If you face challenges securing basic needs such as food or a safe place to live and believe this may affect your performance, please notify me, if you are comfortable doing so. This will allow me to share any resources I may have.

Technology

Given the usefulness of technology to enhance accessibility, we will rely on electronic devices like laptops and smart phones as well as software available through SU. Such technology is not only an important part of our lives but also facilitates learning for people with different strengths and abilities as well as non-native speakers of English.

So I encourage you to explore which technologies and methods help you think and learn best.

Keep in mind, however, that we are creating a shared space for learning, and what works for you might not work for others. So let's be respectful of others' needs and mindful of how our use of technology might be a distraction for or simply unavailable to others. During discussion, this might mean that being tuned out because your device alerts you to new text messages, emails, tweets, or social media updates inhibits everyone's success because you're not doing your part in making this class as productive and interesting as it can be.

If you encounter a problem, please draw attention to it. Keep in mind that the problem is probably not being created intentionally and be generous in pointing out issues, obstacles, and challenges.

Student-centered learning

While I will do what I can to make this course an enjoyable, rewarding, and productive learning experience, I cannot do this by myself. **I will need your help**, so here are some of the things you should do to get the most out of our time together:

- **Take responsibility for your learning:** Be prepared, which not only means that you have completed the reading and annotated the text, have questions and comments about the reading, have a copy of the text in front of you, have your devices charged, but also that you had sufficient rest and nourishment to think. Take notes, participate, ask questions, seek clarification, engage with other students, complete assignments, and seek help. Explore the technologies we'll use, participate in activities, and familiarize yourself with the different ways in which you can access and enter into this course. Make use of office hours.
- **Share responsibility for creating and maintaining a space** in which we can try out ideas, graciously accept criticism, challenge each other, and push each other to become better thinkers and writers. We will need our collective creative energy to design useful and productive assignments, activities, and opportunities for learning.
- **Allow yourself to be frustrated** when you're distracted from learning by everything else going on around us, when the technology fails, or when we work through difficult material that is not immediately intelligible. But be gentle with yourself and others when frustration takes over. Thinking, like any other activity, requires practice to get better at it—especially when we engage in thinking under conditions of a global pandemic, even as we're slowly beginning to recover.

Communication

Any important announcements, advice, changes to the class schedule, etc. will be communicated by email and on Blackboard. Please get in the habit of regularly

checking your institutional email account (that's your username@syr.edu) as well as Blackboard.

If you have questions about the class, you can stop by or Zoom in for office hours or make an appointment with me.

Email is often not the best medium to discuss questions and concerns. But if you do, please make sure you follow basic rules of professional communication and allow for a 24 hour response time.

Grades and Assessment

This course centers your learning rather than the grade you will earn. To this end, this course is, for the most part, a grade-free zone. We will focus on qualitative rather than quantitative assessment, something we will discuss and develop over the course of the semester. While I will have to assign you a final grade at the end of the semester, I will not be grading your assignments. Instead, I will give you feedback and engage you in conversation about your work and your learning. You will also be reflecting carefully on your own work and the work of your peers. My hope is that removing the constraints of grades will allow you to identify what you want to accomplish in this course and then work towards your goals in a way that works best for you.

So how will you be graded at the end of the semester? At regular intervals during the term, you will write guided self-evaluations in which you reflect on your learning process, assess your achievements, and identify new goals and areas of improvement. At the end of the semester, I will ask you to grade yourself. Your self-evaluations, our conversations, and the grading rubric and course goals described in this syllabus will help you determine your grade.

Just in case, I reserve the right to change grades if necessary.

If this mode of assessment causes you anxiety instead of reducing stress:

- Please see me at any point during the semester to discuss your progress in this course.
- We will also talk about this approach, our expectations and assumptions, over the course of the semester.
- If you find that this mode of assessment does not work for you, let me know and we will find a solution together.

General grading rubric and scale:

94-100	A	Grades in the A range indicate excellent scholarship, mastery of the course material, and exceptional performance in class. Work at this level demonstrates thorough and critical understanding of the issues and subtly summarizes the major issues while also offering insightful interpretations
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90-93	A-	of the positions examined. Written assignments feature outstanding argumentation, organization, and writing (grammar, vocabulary, etc.) and only minor mistakes. Work at this level is clearly above and beyond expectations.
87-89	B+	Grades in the B range indicate above-average scholarship, proficiency with the course material, and good performance in class. Work at this level is not as creative or exegetical as A work, nor does it capture all the complexities of an issue. Written work features thorough recapitulation of the text and/or discussion, adequate argumentation, organization, and writing, with few mistakes. Overall, work at this level is adequate.
84-86	B	
80-83	B-	
77-79	C+	Grades in the C range indicate scholarship that meets the minimum requirements of college-level work, satisfactory command of the course material, and adequate performance in class. Work at this level demonstrates basic understanding of the material, marked by one or more significant errors or misreadings. Written work at this level may be confused and/or disorganized and may address lots of information without interpreting it.
74-76	C	
70-73	C-	
67-69	D+	Grades of D indicate inadequate or incomplete scholarship, unsatisfactory command of the course material, and poor performance in class. Work at this level demonstrates a very basic grasp of the course material, presented in a highly confused manner.
60-66	D	
< 60	F	The grade F is reserved for work that shows no comprehension of the material and/or wholly incomprehensible work.

Assignments

Assignments have an important purpose within the context of a course. They are intended to help you meet the course objectives and demonstrate how well you have done so. Since we will rely on qualitative assessment, we will distribute assignments evenly over the semester to make sure you receive feedback and have plenty of opportunity for improvement.

No busy work: This course has a “no busy work” policy. We will not work on assignments that keep us busy but don’t have much value for our learning and intellectual growth. Instead, we will work on assignments that have a clear purpose for your learning and progress in this course. This does not mean that every assignment you will complete will be electrifying, though ideally assignments should be interesting so you are motivated to work on them. At the very least, you should

always have a clear sense that there is a good reason for doing the work. If you find that any of the assignments for this course are mere busy work, please let me know.

Attendance and participation:

[course goals I, II, III, IV]

To have productive and interesting class meetings, all of us are expected to **prepare, attend, and participate.**

Because philosophy is not only a field of study but also an intellectual practice, you are expected to attend each class for the full duration of class and contribute to class discussions. To be able to do that, you will need to prepare for class by doing the readings, annotating the texts, bringing copies of the readings to class, and completing assignments.

Since we learn philosophy by doing it, lack of attendance and participation diminishes the quality of instruction and learning that can happen in this course—not just for you but for everyone!

Two position papers:

[course goals I, II, III, IV, V]

At the beginning of the semester, we will engage in an in-class writing exercise during which you will write a short, ca. 500-word position paper on the question, “what is law?” You will write this paper without the use of secondary sources. The aim is to articulate and develop your own position so you can gauge how your thinking changes over the course of the semester.

At the end of the semester, you will write a second position paper answering the same question. Now, you should draw on the course materials to make a convincing case for your position. You may draw on court decisions to illustrate your claims, and you should cite course material to support your view. Given that you should now have a more developed view about law, your paper should be around 1,500 words.

Mock trials:

[course goals I, II, III, IV]

We will have two in-class mock trials during the semester. You will be presented with a case brief and tasked with preparing arguments for either the prosecution or defense.

Final project:

[course goals I, II, III, IV]

Over the course of the semester, you will work (by yourself or in a group) on a final project. We will collaborate on an assignment description in week 4 of the semester.

Self-evaluations:

[course goals III, V]

To help you reflect on your learning and progress, you will complete self-evaluations at regular intervals throughout the semester and participate in peer-assessment and one-on-one meetings with me as appropriate.

Course Schedule

Changes to this schedule are to be expected and will be communicated via email and on Blackboard.

Introduction to the course

Aug 31 Read the syllabus carefully

What is law?

Sep 2 In-class writing and discussion exercise. Bring your favorite writing technology (pen, paper, laptop, etc.)

Sep 7 No class. Verena away for conference.

Framing the question

Sep 9 Ryan Deveraux, "Bodies in the Borderland"
<https://theintercept.com/2019/05/04/no-more-deaths-scott-warren-mi-grants-border-arizona/>

OPTIONAL: watch <https://youtu.be/Yumcsdcg5ME>

Sep 14 Elizabeth Ellis, The Border(s) Crossed Us Too
<https://hemisphericinstitute.org/en/emisferica-14-1-expulsion/14-1-essays/the-border-s-crossed-us-too-the-intersections-of-native-american-and-immigrant-fights-for-justice-2.html>

Natural law theory

Sep 16 St. Thomas Aquinas, selections from *Summa Theologiae*

Sep 21 Juan Ginés de Sepúlveda, "On the Reasons for the Just War among the Indians"

Richard Waswo, "The Formation of Natural Law to Justify Colonialism"

Sep 23 Martin Luther King, Jr., "Letter from A Birmingham Jail"

Legal positivism

Sep 28 Scott Shapiro, "Austin's Sanction Theory"

Sep 30 H.L.A. Hart, "Law as Coercive Orders" and "Law as the Union of Primary and Secondary Rules"

Morally abhorrent laws

- Oct 5 H.L.A. Hart, excerpts from “Positivism and the Separation of Law and Morals”
- Oct 7 Lon Fuller, excerpts from “Positivism and Fidelity to Law”
- Oct 12 Mock trial: in-class prep
- Oct 14 Mock trial: Ryan Deveraux, “Criminalizing Compassion”
<https://theintercept.com/2019/08/10/scott-warren-trial/>

Legal interpretivism

- Oct 19 Ronald Dworkin, excerpts from “Hard Cases”
- Oct 21 Donoghue v Stevenson (1932)

Legal realism

- Oct 26 Oliver Wendell Holmes, excerpts from “The Path of the Law”
- Oct 28 Derrick Bell, “Racial Realism”

Critical Legal Studies

- Nov 2 Pierre Schlag, “Critical Legal Studies”
Robert Gordon, “Unfreezing Legal Reality” (Part 1)
- Nov 4 Vokes v Arthur Murray, Inc. (1968)
Robert Gordon, “Unfreezing Legal Reality” (Part 2)

Critical Race Theory

- Nov 9 Plessy v Ferguson (1896)
Lone Wolf v Hitchcock (1903)
- Nov 11 Derrick Bell, “Brown v Board of Education and the Interest Divergence Dilemma”
- Nov 16 Brown v Board of Education (1954)
Derrick Bell, “Brown Reconceived”
- Nov 18 Rogers v American Airlines (1981)

Paulette Caldwell, "A Hair Piece"

Nov 23/25 Thanksgiving break

Nov 30 Mock trial: in-class prep

Dec 2 Mock trial: EEOC v Catastrophe Management Solutions (2016)

Dec 7/9 Final projects

Dec 13 Final self-evaluation and grade due