

**PHILOSOPHY OF LAW**  
**Philosophy 077**  
Fall 2012  
MW 12:00-12:50pm  
David Rittenhouse Lab A6

**Professor: Alexander Guerrero**

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**COURSE DESCRIPTION**

This course is an introduction to the philosophy of law. No background is assumed—either in philosophy or in law. The central question of the course is this: why have law? Answering that question requires engaging with another question: what is law? We will approach those two questions in a variety of ways, and with greater and lesser degrees of directness, throughout the semester.

In the first section of the course, we will begin by discussing one important feature of law: its close—perhaps even conceptual—connection to coercion and punishment. Many have argued that the close relationship between law and coercion creates a demand for justification: what can or does justify law, given that law involves coercion? We will explore answers to that question. We will also consider a more general question: what good is law? (If we didn't have law, why might we want it?)

The first section of the course is pitched at a relatively abstract level. The second section of the course engages with these same issues but in more concrete settings: the areas of criminal law and property law. We will consider what, if anything, is distinctive about those two areas of law, and we will consider whether the purported purpose(s) of law in general that we discuss in the first section make more or less sense when we consider these two specific areas of law. We will also consider distinctive aspects of the *sources* of law in these two areas of law—democratically enacted statutes, in the case of criminal law, and judge-made common law, in the case of property law.

The third and final section of the course will consider an unusual and particularly significant kind of law: constitutional law. We will consider the purpose(s) of constitutions, how constitutionalism relates to democracy, and how constitutions ought to be understood and interpreted, in light of our answers to these first two questions.

**REQUIRED TEXT**

Philosophy of Law: Classic and Contemporary Readings  
edited by Larry May and Jeff Brown (2010)

available at      Penn Book Center  
130 South 34th Street  
Philadelphia, PA 19104

## COURSE REQUIREMENTS

### **Three Papers** (75% of grade)

First Paper, 1000 words	(15% of course grade; due 10/8)
Second Paper, 1500 words	(25% of course grade; due 11/12)
Third Paper, 2000 words	(35% of course grade; due 12/12)

- Please double-space papers and include the word count for your paper under your name.
- Do not exceed the word count, but do come close to it.
- Except in extreme circumstances (as judged by us), extensions on papers must be granted well before the due date and only at our discretion. Late papers will be downgraded 1/3 letter grade per day late.
- Failure to submit a paper may result in a failing grade for the course.

### **Attendance and Participation in Lecture and Section** (15% of grade)

- You must attend every lecture and section.
- If you cannot attend lecture or section:
  - (1) email Professor Guerrero and TA Justin Bernstein in advance of the lecture or section that you will miss;
  - (2) provide the reason that you cannot attend; and
  - (3) submit a 250 word short response to one of the readings assigned for the class that you will miss (do this within 1 week of your absence).
- When in attendance, participate in an informed and thoughtful way, having done the reading before class.
- I will call on students who volunteer and students who do not (employing “cold-calling,” as law students refer to it).

### **Response Questions** (10% of grade)

- I will post 3 study questions on Blackboard by Friday at 5pm of each week. These questions will concern the material for the upcoming week, and are intended to help you focus your reading and to provide some sense of what will be emphasized in class.
- On *ten* occasions over the course of the semester, you will be expected to submit a 150-200 word response to one of these questions by Thursday at 5pm (of the week after the questions were posted).
- Each response is worth 1% of your overall course grade, for a maximum possible total of 10% of your course grade.
- No late response will be counted. Note that you are not required to submit a response every week.

## PLAGIARISM AND ACADEMIC INTEGRITY

You are expected to be familiar with and to abide by Penn’s policy on academic and intellectual integrity: <http://www.upenn.edu/academicintegrity/index.html>

### PLAN FOR COURSE AND READINGS

All readings will be posted on Blackboard under the relevant course meeting folder under the heading “Course Documents,” except for those readings from the required text (referred to as “Reader” below).

Day	Topic	Reading
9/5	Law: What is it? Why have it?	<ul style="list-style-type: none"> <li>•Constitutional Preambles</li> <li>•Lon Fuller, “Eight Ways to Fail to Make Law”</li> </ul>
<b>I. Why Have Law? What Can Justify Law?</b>		
9/10	The Need to Justify Law: Coercion, Obligation, and Political Legitimacy	•Allen Buchanan, excerpts from “Political Legitimacy and Democracy” (first 24 pages only)
9/12	Law, Obligation, and Coercion	• <u>Reader Chapter 7</u> : H.L.A. Hart, excerpt from <u>The Concept of Law</u>
9/17	Hart’s Distinctions	•H.L.A. Hart, continued
9/19	Avoiding the State of Nature	<ul style="list-style-type: none"> <li>•Thomas Hobbes, excerpts from <u>Leviathan</u> (Chapters 13, 14, 17, &amp; 18)</li> <li>•Kent Nerburn, excerpts from <u>Neither Wolf Nor Dog: On Forgotten Roads with an Indian Elder</u> (pp. 153-159)</li> </ul>
9/24	Promoting Utility	•Jeremy Bentham, excerpts from <u>An Introduction to the Principles of Morals and Legislation</u>
9/26	<b>First Paper Topic Distributed</b>	
9/26	Promoting Efficient Activity	• <u>Reader Chapter 10</u> : Richard Posner, “The Economic Approach to Law”
10/1	Preventing Harm	• <u>Reader Chapter 37</u> : John Stuart Mill, excerpt from <u>On Liberty</u>

<b>10/3</b>	Collective Action, Public Goods, and Free-Riding	<ul style="list-style-type: none"> <li>•Russell Hardin, entry on “The Free Rider Problem” from the <u>Stanford Encyclopedia of Philosophy</u></li> <li>•Optional: Garrett Hardin, “The Tragedy of the Commons”</li> </ul>
<b>10/8</b>	<b>First Paper Due</b>	
<b>II. Why Have Law? From General Views to Specific Issues</b>		
<b>10/8</b>	Criminal Law: Crime and Punishment	<ul style="list-style-type: none"> <li>•Antony Duff, entry on “Legal Punishment” from the <u>Stanford Encyclopedia of Philosophy</u></li> </ul>
<b>10/10</b>	Criminal Law: Enforcement of Morals	<ul style="list-style-type: none"> <li>•<u>Reader Chapter 38</u>, Patrick Devlin, excerpt from <u>The Enforcement of Morals</u></li> <li>•Gregory Bassham, “Legislating Morality: Scoring the Hart-Devlin Debate after Fifty Years”</li> </ul>
<b>10/15</b>	Criminal Law: Mens Rea	<ul style="list-style-type: none"> <li>•<u>Reader Chapter 40</u>, Anthony Kenny, “The Mind and the Deed”</li> <li>•People v. Jaffe</li> <li>•People v. Rizzo</li> </ul>
<b>10/17</b>	Criminal Law: Contractarian Punishment	<ul style="list-style-type: none"> <li>•Claire Finkelstein, “Punishment as Contract”</li> </ul>
<b>10/24</b>	Criminal Law: Restorative Justice and Economics of Crime	<ul style="list-style-type: none"> <li>•Heather Strang and Lawrence Sherman, “Repairing the Harm: Victims and Restorative Justice”</li> <li>•Alternatives to Incarceration Fact Sheet</li> <li>•Darren Bush, “Law and Econ. of Restorative Justice”</li> <li>•Steven Levitt and Sudhir Venkatesh, “An Economic Analysis of a Drug-Selling Gang’s Finances”</li> </ul>
<b>11/5</b>	Property: Locke	<ul style="list-style-type: none"> <li>•<u>Reader Chapter 23</u>, John Locke, “On Property,” excerpt from <u>Second Treatise of Government</u></li> <li>•Ghen v. Rich</li> </ul>
<b>11/7</b>	Property: Nozick’s response to Locke	<ul style="list-style-type: none"> <li>•<u>Reader Chapter 24</u>, Robert Nozick, “Locke’s Theory of Acquisition,” excerpt from <u>Anarchy, State, Utopia</u></li> </ul>

11/9	Property: Alternatives	<ul style="list-style-type: none"> <li>• <u>Reader Chapter 25</u>: A. M. Honoré, “Property, Title, and Redistribution”</li> <li>• Kent Nerburn, excerpts from <u>Neither Wolf Nor Dog: On Forgotten Roads with an Indian Elder</u> (pp. 39-51, pp. 73-81)</li> </ul>
<b>III. Why Have a Constitution? Democracy, Constitutions, and “Constitutional Democracy”</b>		
11/12	Why Have a Constitution?	<ul style="list-style-type: none"> <li>• Wil Waluchow, entry on “Constitutionalism” from the Stanford Encyclopedia of Philosophy</li> </ul>
11/14	Constitutions and Precommitment	<ul style="list-style-type: none"> <li>• Janos Kis, “Constitutional Precommitment Revisited”</li> </ul>
11/19	<b>Second Paper Due</b>	
11/19	Constitutions and Process Theory	<ul style="list-style-type: none"> <li>• John Hart Ely, “Toward a Representation-reinforcing Mode of Judicial Review”</li> <li>• NYT obituary for Chief Justice Earl Warren</li> </ul>
11/21	Constitutions and Judicial Review	<ul style="list-style-type: none"> <li>• Jeremy Waldron, “The Core of the Case Against Judicial Review”</li> </ul>
11/26	Constitutions, Concepts, and Conceptions	<u>Reader Chapter 52</u> : Ronald Dworkin, “Constitutional Cases,” from <u>Taking Rights Seriously</u>
11/28	<b>Third Paper Topic Distributed</b>	
11/28	Interpretation: Statutes and Constitutions	<ul style="list-style-type: none"> <li>• Antonin Scalia, excerpts from <u>A Matter of Interpretation: Federal Courts and the Law</u></li> <li>• Ronald Dworkin, “Comment” from <u>A Matter of Interpretation: Federal Courts and the Law</u></li> <li>• Antonin Scalia, “Reply” from <u>A Matter of Interpretation: Federal Courts and the Law</u></li> </ul>

<b>12/3</b>	Interpretation: New and Semantic Originalism	•Lawrence Solum, excerpts from <u>Semantic Originalism</u>
<b>12/5</b>	Constitutional Legitimacy and Constitutional Interpretation	•Jed Rubenfeld, “Legitimacy and Interpretation” ▪DC v. Heller
<b>12/12</b>	<b>Third Paper Due</b>	