

PHI 230
Law and Philosophy
Albright College
Fall 2021

Instructor: Dr. Yuval Abrams
Email: yabrams@albright.edu
Office: Chapel Philosophy Department

Class Meets: T, Th 1:00-2:20
Classroom: Chapel (MPK) 103
Office Hours: Tuesday 3:50-4:30, Th 12-1
(or by appointment)

COURSE DESCRIPTION

In this course, we will consider several philosophical issues that arise with respect to law. We will begin by surveying some of the prominent theoretical approaches to understanding the nature of law and legal interpretation. We will examine the relationship between law and morality, the nature and limits of some of our fundamental Constitutional rights and freedoms, and the concepts of equality and justice as reflected in the law. We will then explore the justifications for the laws of our criminal justice system and conclude by addressing a few issues of civil law. In our study, we will often utilize notable legal cases as a vehicle for discovering how certain lawmakers, namely judges, have reasoned about the law. Several recent or current legal controversies will be incorporated into our class discussions.

GENERAL EDUCATION DESIGNATION: CONNECTIONS-HUMANITIES

Connections courses embody the College's goal of preparing students for "Engaging the World," and becoming responsible, well-informed citizens.

To that end: The Connections portion of the General Education curriculum asks students to connect the range of knowledge they have acquired in [their] Foundations courses to the wider contexts of difference and interdependence within which knowledge is constructed and used. Students will also learn to situate their understanding and their actions within an increasingly interconnected world that routinely puts them into relation with other persons and communities, both locally and globally. By fostering an understanding of these issues among our students, we prepare them for their lives beyond Albright—making informed choices in their jobs and in their roles as responsible citizens.

In this course, we will emphasize two core elements of the Connections requirement: (1) examining "different perspectives on ways of relating to the world," and (2) recognizing "the importance of social and ethical engagement in a local and global context." In this way, we will pursue the primary aims of the Connections requirement by: (1) exploring distinct traditions of legal theory and jurisprudence (including the differences between the Anglo-American and Roman-Continental approach to law, precedent, and decision making, as well as other approaches, such as religious law or non-western law); (2) exploring different perspectives to the question of legality, including the formalist conception, the moralist conception, and conceptions informed by the study of history, sociology, economics, political science, and philosophy, identifying how these diverse perspectives interact and thereby inform contemporary legal debates, and in particular their moral and ethical standing; (3) identifying how these perspectives have interacted historically to shape these debates in their contemporary forms.

COURSE GOALS & OBJECTIVES:

1. To introduce historically influential legal theories and cases.
2. To introduce theoretical tools for the legal and philosophical analysis of individual and group behavior (e.g. civil liberties, rights, justice) and the behavior of courts.
3. To introduce a philosophical conceptual framework for the analysis and critique of the law, both as it currently is and as it ought to.

4. To apply the theoretical tools of goals 1-3 to contemporary ethical, political, and legal debates (e.g. constitutional interpretation, first amendment cases, theories of punishment and sentencing, rights in private law)
5. To evaluate proposed resolutions to those debates

STUDENT LEARNING OUTCOMES:

Students completing this course should be able to:

1. Define and summarize the key legal theories introduced in the course (e.g. Positivism, Natural Law Theory, Legal Realism, Originalism, etc.), and use these concepts to evaluate, for example, how different courts interpret cases and the constitution, and the interaction between the legal system and political-ethical discourse [Assessed via essay exams]
2. Apply the legal theories introduced (criterion 1) to contemporary controversies, and use them to evaluate, for example, the debates over eminent domain and property rights, the limits on the right to abortion, the propriety of mandatory sentencing, the potential conflicts between freedom (e.g. freedom of religion) and equality. [Assessed via exams and 4th hour]
3. Write cogent, well supported essays evaluating current applications of those theoretical resources to contemporary controversies, [Assessed via essay exams and 4th hour]

DEPARTMENTAL OBJECTIVES:

While this course is designated as a Connections course within the College's General Education Curriculum, it is further designated as a Connections-Humanities course. The humanities are academic disciplines that study human history and culture: its languages and literatures, its philosophical and religious systems, its values and ideals, and its artistic creations. As such, the humanities include ancient and modern languages and literature, religion and philosophy, classical studies, and the visual and performing arts. The humanities use methods that are primarily analytical – e.g. the close reading of texts, the logical analysis of arguments, the careful definition of disciplinary concepts and categories – and constructive – e.g. the writing of cogent, well-supported essays developing distinct theses and arguments, the development of novel theories for explaining broad, foundational human questions, and the creation of artistic works (e.g. paintings and sculptures; novels and films). This course resides within the discipline of Philosophy, which seeks to answer some of the most basic questions posed by all humanities subjects: e.g. what is the world really like, what are we doing here, how might we lead a good life, and what if anything might happen to us when we die?

As a course within the discipline of Philosophy, this class includes several objectives which complement those prescribed by the Connections requirement. As an academic discipline, Philosophy is reading and writing intensive, and aims to instill in its practitioners certain habits of mind, among them: (1) accuracy in reading, assessing, and applying abstract theories, (2) fairness and balance in reading, summarizing and evaluating ideas with which they may significantly or completely disagree, and (3) constructiveness in evaluating, responding to and possibly offering alternatives to the ideas, positions or theories with which they may disagree.

Thinking philosophically requires the ability to ask the right questions, as well as skill in answering those questions in a precise, balanced, thorough and well considered manner.

Legal Studies Interdisciplinary Minor Requirement

The interdisciplinary minor in Legal Studies is designed to help students develop a thorough understanding of our legal system. It provides preparation for careers as a lawyer or paralegal, or in the court or judiciary system. or those considering law school, it serves as excellent academic preparation. You study the place of the legal system among our civil institutions, and develop the ability to read, understand and assess critically Supreme Court cases. This minor is open to all students interested in studying our legal system regardless of concentration or career goal. This course satisfies the second elective cluster (from which you must select two courses to complete the Legal Studies minor). For more information on the Legal Studies minor, see <https://www.albright.edu/academic/undergraduate-programs/political-science/> or contact Suzanne Palmer, J.D. spalmer@albright.edu

TEXT

There is no required textbook in this course. All readings will be made available to you online.

I will assign readings for each week. In some cases, they will be required; in others they will be optional.

Additionally, the following three texts will be used throughout the course and are available online through Gingrich Library:

- Jeffrie G. Murphy and Jules L. Coleman (1989) *Philosophy of Law: An Introduction to Jurisprudence* ("Murphy & Coleman")
- Mark C. Murphy, *Philosophy of Law* (2007) <https://ebookcentral-proquest-com.felix.albright.edu/lib/alb-ebooks/reader.action?docID=697065> ("Murphy")
- Scott Shapiro, *Legality* (2011) <http://felix.albright.edu/login?url=http://site.ebrary.com/lib/alb/Doc?id=10456067> ("Shapiro")

COURSE REQUIREMENTS

Attendance and Classroom Participation

Although some of the material may be presented in lecture format, this course is intended to be primarily a discussion course. Therefore, the foremost requirement in this course is your active participation in class discussions. To participate effectively in these discussions, you must come to class prepared, i.e. having read and thought about the assigned readings prior to class, and be willing to contribute to our discussion of the course material. Your contributions to class discussions will be a significant factor in determining your participation grade.

At the beginning of each class an attendance sheet will be distributed. You will be asked to indicate on that sheet whether you are prepared for class and ready to participate in class discussion. Although I will mainly rely upon voluntary participation, if you have indicated that you are prepared for class, you may be called upon to share your views with the class.

Since participation requires your physical presence, absences will detrimentally affect your grade; more than two unapproved absences will result in a grade penalty. Any student with more than eight such absences will receive an automatic F in the course. Whenever possible, students are expected to notify the instructor prior to any absence so that arrangements can be made in advance to make up the work missed.

Canvas Usage

A Canvas site has been created for our course. The site can be accessed at <https://albright.instructure.com/> or through the link on the Albright College website (<http://www.albright.edu>). You are responsible for ensuring that your user information is correct and updating it when necessary. You are also expected to check the site regularly for announcements and supplemental course materials. If you experience any problems using Canvas, please see me or contact the library reference desk.

4th Hour of Quality / Written Papers

Albright, like a number of other liberal arts colleges and universities, uses a course unit system to support a greater depth of learning. Because each course unit is the equivalent of four credits, compared to the usual three credit course at schools using the credit system, classes that meet only three hours per week must also require 1 extra hour of learning over the 15-week term, totaling 15 hours of work outside the classroom that are above and beyond the usual course readings, homework, and examinations. These learning activities must result in something the faculty member can evaluate (paper, presentation, journal, reflection paper, problem set, etc.). Note also that federal guidelines expect approximately two hours of work outside class for each instructional hour of class.

The Fourth Hour requirement in this class will consist of two assignments each worth 10% of your grade.

1. The first assignment will consist of a paper on Lon Fuller's Case of the Speluncean Explorers. **This assignment must be completed by Midterm (Friday October 1st)**
2. The second assignment (**due on the final day of class, Tuesday November 23rd**) will consist of a paper on the docudrama film "Nuremberg", starring Alec Baldwin as Robert H. Jackson. The film is available on Youtube <https://www.youtube.com/watch?v=1s00-Dlpxb4>

Testing

There will be three take-home, open-book, mid-semester tests (as listed on the course schedule) as well as a final exam to be taken during finals week. Details regarding the format of the tests and guidance in preparing for them will be provided in class. Late tests will be accepted only in extraordinary circumstances, at the discretion of the instructor, and will receive a grade penalty. I will grade the stronger of your two mid-term exams as worth 25% of the grade (the weaker will count for 20% of the grade). The final will count for 25%. Pop quizzes may be given at any point during the course if deemed appropriate; grades on pop quizzes will be a component of your participation grade.

GRADING

Your grade will be determined as follows:

Attendance and Participation	10%
4 th Hour 1	10%
4 th Hour 2	10%
Stronger Mid-Term Test	25%
Weaker Mid-Term Test	20%
Final Exam	<u>25%</u>
TOTAL	100%

The final grade will be curved.

*There will be at least one Experience Event that I will be organizing this semester. Attendance at these is for extra credit.

Grade Distribution:

92.5-100 = A	79.5-82.4 = B-	66.5-69.4 = D+
89.5-92.4 = A-	76.5-79.4 = C+	62.5-66.4 = D
86.5-89.4 = B+	72.5-76.4 = C	60-62.4 = D-
82.5-86.4 = B	69.5-72.4 = C-	Below 60 = F

COVID-19 Policies

COVID-19 Absence policy:

Students are encouraged to work directly with their instructors regarding any absences. For absences related to COVID-19, please adhere to the following:

- **Do not come to class if you are sick.** Please protect your health and the health of others by staying home. Contact your healthcare provider or the [Gable Health Center](#) if you believe you are ill. In particular, if you have any [symptoms of COVID-19](#), please do not come to class.
- If you are absent from class as a result of a COVID-19 diagnosis or quarantine, you must email me to notify me of the absence and I will either an assignment for you, or send you a zoom link to attend class remotely. The final decision for approval of all absences and missed work is determined by the instructor.
- If your psychological health is compromised due to the pandemic and how it may affect other family members and other close associates, you are encouraged to contact the [counseling services](#) on campus and to discuss options for a modified assignment schedule similar to that outlined above.

Social distancing statement:

In class as well as on and off campus, maintain social distance of at least three feet; replace shaking hands, hugs and physical touching with verbal appreciation. Please be aware of social distancing with waiting for, entering, and exiting classes.

Statement on masks/face shields:

Wearing a mask/shield is **required** for the first two weeks of class, regardless of vaccination status. This will be subject to review at the end of the first two weeks.

Course format and changes:

This course is officially listed as hybrid. I did this in order to give us options if social distancing prevented us from meeting as a full class in a standard classroom. With current social distancing, this is not a problem, and thus **this course will be meeting as a fully in person class** until further notice. Please note that if we move online, there may be adjustments to the nature of our scheduled class meetings.

Academic Support

Students have academic support resources available to them at no charge. The Academic Learning Center offers course-specific tutoring, academic skills workshops, hands on learning strategies instruction, and academic counseling to supplement faculty advisement. The Writing Center offers tutoring to assist with writing and reading support for any class. The Student Accessibility and Advocacy office is the source for impairment-related accommodations consistent with the ADA and its amendments. Students who receive accommodations from the SAA office should meet with course instructors privately and in a timely manner to discuss the Academic Accommodation Letter (AAL) provided by that office. *Please note that IEPs and 504 plans do not apply to college level courses.* All three offices are in the administration building. For help or further information, contact the ALC at academiclearningcenter@albright.edu or 610-921-7662; the WC at writingcenter@albright.edu or 610-921-7540; and the Student Accessibility and Advocacy office at SAA@albright.edu or 610-929-6639.

Academic Learning Center

The Academic Learning Center (ALC) offers various resources to assist Albright students with their academic success at no charge. The ALC offers course-specific peer tutoring for many general education classes at the 100-200 level. You can schedule to meet with a tutor in person or online by selecting the 'ALC Subject Tutor Schedule' at this link: <https://alb.mywconline.com/>. For upperclass students, the ALC offers one-on-one academic coaching on study skills, time management, note-taking, and learning strategies. (The Office of Student Success offers academic coaching for first-year students.) To schedule a meeting with a staff member in the ALC, contact by phone at #610-921-7662 or email: academiclearningcenter@albright.edu. Visit the ALC main office in Teel Hall 309A.

Writing Center

You are encouraged to work with the Writing Center early and often to help build a strong foundation for writing in this course and in all of your courses. The center's peer tutors and director will work with you at any stage of the writing process, from developing and organizing ideas to revising and editing drafts. Tutors are also available to discuss and practice approaches to managing the college reading workload and reading more effectively. The center is located in the student Campus Center on the lower level near Jake's Place and can be reached at 610-921-7540 (phone) or writingcenter@albright.edu. (Note: For Fall 2021, the Writing Center will be in Teel 309-B until the Campus Center construction is completed). For the current schedule or to make an appointment for an in-person or online session, use our appointment system at <http://alb.mywconline.com>.

Services, Concerns, Student Services: Albright College welcomes students with disabilities into the College's educational programs. If you have an impairment-related need for reasonable academic adjustments in this course, please contact Sherry Young, the Director of Student Accessibility and Advocacy, by phone at 610-929-6639, via email at syoung@albright.edu or SAA@albright.edu, or in person on the first floor of the Administration Building on the Reading campus. For further information regarding services for students with disabilities, please visit the website at: <https://www.albright.edu/student-life/student-accessibility-advocacy/>. Students who use accommodations should meet with the course instructors privately and in a timely manner to discuss their Academic Accommodation Letter (AAL). *Please note that K-12 IEPs and 504 plans do not apply to college level courses.*

Academic Integrity: The policies of the College regarding academic dishonesty can be found on the College's website at <https://www.albright.edu/policies/academic-integrity-policy-acad/>. Please read these policies as it applies to all facets of this course. Please become aware as to what constitutes academic dishonesty.

OFFICE HOURS

If you have any questions or concerns about the course in general or about any of the course materials or assignments, please do not hesitate to speak with me. My office is located in the basement of the Chapel building in the Philosophy department. This semester I will have scheduled office hours on Tuesdays 3:50-4:30 and Thursdays from 12 to 1. You are welcome to drop by at any time, but I recommend that you make an appointment first to be certain that I am available. If my scheduled office hours are inconvenient or if I am occupied with another student when you drop by, please feel free to schedule an appointment to meet at an alternate time. You are also welcome to contact me via email (yabrams@albright.edu).

TENTATIVE COURSE SCHEDULE (subject to revision) Fall 2021

Note:

- **All Readings on Canvas, except for the Murphy, Murphy & Coleman, and Shapiro books, which are available through the library.**
- **Readings marked with an asterisk (*) are required**
- **All readings (including which are optional and which are required) are subject to revision**

Week 1 (8/17, 8/19), Course Introduction; Philosophy; Basics of Moral Theory

Read:

- *Adams, Philosophy and the Law
- *Murphy, "Introduction"
- Murphy & Coleman, Chapter 2

Watch:

- *Introduction to Philosophy
- *What is Ethics?

Week 2 (8/24, 8/26), The Nature of Law

Read:

- *Fuller, "The Problem of the Grudge Informer"
- *Adams "What is Law?"
- *Shapiro, Chapters 1-2
- *Murphy, Chapter 1

Week 3 (8/31, 9/2) Legal Positivism

Read:

- *Shapiro, Chapters 3-4
- Austin, Legal Positivism
- Hart, Positivism and the Separation of Law and Morals

Week 4 (9/9) Natural Law

Read:

- *Fuller, "The Morality that Makes Law Possible"
- *Aquinas, "What is Law?"
- *Martin Luther King, "Letter from Birmingham Jail"
- **The Antelope*
- Murphy, Chapter 1

Note: No Class on Tuesday September 7th

Week 5 (9/14) Natural Law (continued)

Read: (See week 4)

Note: No Class on Thursday September 16th

Exam 1 Due Friday September 17th at 11:59 PM

Week 6 (9/21, 9/23) Modern Theories of Law

Read:

- *Oliver Wendell Holmes, "The Path of the Law"
- *Ronald A. Dworkin, "Law as Integrity"
- **Riggs v. Palmer*
- Adams, "Modern Theories of Law"

Week 7 (9/28, 9/30), Interpretation, Interpreting the Constitution

Read

- **Smith v. U.S.*
- **Church of the Holy Trinity v. U.S.*
- *Antonin Scalia, *The Role of the U.S. Federal Courts in Interpreting the Constitution*
- *Ronald A. Dworkin, *Comment on Scalia*
- Murphy, Chapter 2
- Adams, "Legal Reasoning and Constitutional Interpretation"

Watch

- *3 Part video on Scalia and Dworkin
- Scalia lecture on CSPAN

MIDTERM FRIDAY October 1st (4th HOUR ASSIGNMENT 1 DUE)

Week 8 (10/7) Civil Disobedience

Read:

- *Warburton "Civil Disobedience" and "Criticisms of Civil Disobedience"

Note: No Class on Tuesday October 5th (Fall Break)

Week 9 (10/12, 10/14), Rights, Liberty, and the Enforcement of Morality

Read:

- *Adams, "Boundaries of the Law"
- *Murphy Chapter 3
- *Mill, *On Liberty* (excerpt)
- **South Florida Free Beaches, Inc. v. City of Miami, Florida*
- **Village of Skokie v. National Socialist Party of America*
- **Texas v. Johnson*
- **R.A.V. v. City of St. Paul*

Week 10 (10/19, 10/21) Criminal Law

Read:

- *Murphy, Chapter 4
- Adams "What Is a Crime?"
- *People v. Dlugash*
- Sanford H. Kadish, *The Criminal Law and the Luck of the Draw*
- *The Case of the Dog "Provetie"*
- Morse, "Excusing the Crazy: The Insanity Defense Reconsidered"

Week 11 (10/26, 10/28) Criminal Law (continued)

Read:

- *Murphy & Coleman, Chapter 3
- *David Dolinko, *The Future of Punishment*
- *Michael Moore, *The Argument for Retributivism*
- *Goldschmitt v. Florida
- *Payne v. Tennessee
- *Gregg v. Georgia

Week 12 (11/2, 11/4) Civil Law: Torts

Exam 2 Due Monday November 1st 11:59 PM

Read:

- *Murphy Chapter 5
- *Palsgraf v. Long Island Railroad
- *Holden v. Wal-Mart Stores, Inc
- *Summers v. Tice
- *McFall v. Shimp

Week 13 (11/9) Civil Law: Contracts

Read:

- *Murphy & Coleman Chapter 4
- Fried, *Contract as Promise*
- *Lochner v. New York*
- Schiffrin, *The Divergence of Contract and Promise*
- Barnett, *Consent Theory of Contract*

Note: No Class on Thursday November 11th

Week 14 (11/16, 11/18) Civil Law: Property; International Law

Reading: TBD

Week 15 (11/23) Evidence

Judith Jarvis Thomson, *Liability and Individualized Evidence*

Larry Laudan, *Is Reasonable Doubt Reasonable?*

David Enoch, et al *Statistical Evidence, Sensitivity, and the Legal Value of Knowledge*

LAST CLASS Tuesday Nov 23rd (4th HOUR ASSIGNMENT 2 DUE)

Final Exam After Thanksgiving (Date TBD)