

# Philosophy of Law (PHIL S182)

---

**Instructor:** Juan S. Piñeros Glasscock

**E-mail:** [juan.pineros@yale.edu](mailto:juan.pineros@yale.edu)

**Office hours:** TBD (arranged on the basis of students' availability).

**Classroom:** TBD

**Class time:** MWF 9-11:15am

---

## COURSE DESCRIPTION

---

What is law? What is its function? How does it relate to morality? What does it take for someone to be responsible for a crime? What are reasonable punishments? What is a threat? What is free speech and what are its limits? These are some of the questions we shall study in this course, through an examination of legal documents as well as critical work that philosophers have written about it.

We begin with questions in the theory of legal responsibility: What does it take to engage in certain crimes? And what kind of evidence is needed to hold someone legally accountable? We then move on to the topic of punishment. After examining some of the central theories of its function and justification (and the role they have played in judicial decisions), we consider the question of whether it is ever correct to punish someone ahead of their committing a crime (as in *Minority Report*). Only some people are liable to be punished, but what are the grounds for such restrictions? We consider this question by examining two controversial proposed restrictions, one on the basis of addiction, the other on the basis of social circumstances. Next, we examine the question of the origin of legal obligation, to set up the discussion of a central question in philosophy of law, namely: what is the relation between law and morality? We close with two important contemporary issues, examining the nature of free speech and commodification from the standpoint of the law.

## INTENDED AUDIENCE AND PREREQUISITES

---

There are no prerequisites for this course. In addition to studying specific questions in the philosophy of law, the course also aims to equip students with the critical reading and writing tools they will need if they pursue their interests in philosophy or legal scholarship beyond this course (e.g. tools of logical analysis, identification of types of arguments, etc.). As such, part of the course will be spent on activities designed to provide students with such tools.

I am committed to ensuring that the class is accessible to all students. If you have a disability that requires special accommodations, please get in touch with me so we can discuss ways to ensure that you can get the most out of the class.

*All readings will be available online or through canvas, but students are required to print them and bring them to class.*

## GRADING SCHEME AND EXPECTATIONS

---

<b>Assignment</b>	<b>Final grade %</b>
Quizzes (x3)	20% (7% each)
Short paper (3-4 pages)	15%
Final Paper (5-6 pages)	35% (5% abstract)
In-Class Presentation	15%
Participation (including attendance and activities)	15%

*Late penalty:* 3% of the assignment grade will be deducted for each day of lateness. Extensions require a dean's excuse.

### *Expectations*

Students enrolled in the course should bear in mind the following points:

1. The reading will not be extensive. On average, you will be asked to read around 50 pages per class session. This is to give you time to read (and re-read!) texts that are difficult. Throughout the semester, I shall provide guidance about how particular reading assignments should be approached. Finally, in some cases class preparation will involve a mix of reading and other media (e.g. podcasts).
2. There will be 3 short quizzes to be written in class on weeks where no assignments are due. These quizzes will test you on material from the readings, as well as the critical tools we will be studying in class. If you do the readings carefully and attend every class, you should be able to get full marks for these quizzes and it will be an easy way to boost your grade!
3. Regular participation in class discussions is crucial to engaging fully with the material. Our goal is to establish a seminar environment in which all of you feel comfortable asking questions, expressing opinions, making observations, pointing out connections, and thinking about issues that excite you intellectually and matter to you personally. Your job is to come to class prepared, interested, and ready to engage.
4. You will be asked to submit a short essay and a long essay in which you address a freely-chosen topic at somewhat greater length. For the final essay, I also request a short (>500 word) abstract, that will enable me to provide you with feedback on your ideas in advance of submitting the paper. Detailed instructions concerning these assignments will be distributed during the semester. It goes without saying that academic integrity is of the utmost importance in completing these assignments. Please familiarize yourself with the discussion at: <http://www.yale.edu/bass/writing/sources/plagiarism/index.html>

## READINGS

---

### Week 1

**May 27**

#### **Introduction (Elonis v. United States (What is a Threat?))**

*We will look at a recent Supreme Court case (Elonis v. United States) by way of introducing some of the central questions of the course.*

#### Readings:

- (1) <https://www.nytimes.com/2014/11/30/magazine/do-online-death-threats-count-as-free-speech.html>.
- (2) <https://www.youtube.com/watch?v=f5WqTZvA8-s>
- (3) Selections from Supreme Court Opinions (will be available on canvas)

Reading instructions for the first class: (1) and (2) will give you a good background on the case. Our discussion will center on the opinions in (3). Make sure you come prepared having read them.

**May 29**

#### **Responsibility 1: Accomplice Liability (Rosemond v. United States)**

*For certain crimes, you can be convicted even if you did not yourself directly committed them, if you were simply an accomplice. But what does it take to be an accomplice? We consider this question in light of a recent Supreme Court case, and we look at the debate about whether accomplices need to be causally involved in the crime.*

#### Readings:

- (1) Selections from Supreme Court Opinions (on canvas).
- (2) John Gardner, “Complicity and causality”.
- (3) Christopher Kutz, “Causeless complicity”.

**May 31**

#### **Evidence**

*What kind of evidence is needed to convict someone of a crime? Is merely statistical evidence enough? Why or why not?*

#### Readings

- (1) Sindell v. Abbott Laboratories (selections).
- (2) Judith Jarvis Thomson, “Liability and Individualized Evidence”.
- (3) David Enoch, Levi Spectre, and Talia Fisher, “Statistical Evidence, Sensitivity, and the Legal Value of Knowledge.

Week 2

**June 3**

**Punishment 1: Retributivism**

*What is the function and nature of punishment? What justifies legal entities to enact punishments, and what are their limits.*

Readings

- (1) Michael S. Moore, “Justifying Retributivism”.
- (2) Selections from courts decisions.

**June 5**

**Punishment 2**

*Continues the topic from last week, moving from retributivist to restorative theories.*

Readings

Jean Hampton, “The Moral Education Theory of Punishment”.  
Heather Strang and Lawrence W. Sherman, “Repairing Harm: Victims and Restorative Justice”.

**June 7**

**Punishment 3: Pre-Punishment and Pre-Crime Investigations**

*We prosecute and punish people after they have committed a crime. Would it ever be right to punish someone before they did? What about investigation: what are legitimate methods of investigation to prevent crime?*

Readings

- (1) Christopher New, “Time and Punishment”.
- (2) Saul Smilansky, “The Time to Punish”.
- (3) Christopher New, “Punishing Times: Reply to Smilansky”.
- (4) <https://hiphination.org/season-3-episodes/s3-episode-1-the-precrime-unit/> [podcast-48mins].

Week 3

**June 10**

**The limits of responsibility 1: Addiction**

*The law recognizes certain conditions (such as insanity) that prevent a person from being held criminally responsible for a crime. In this class we will explore whether addiction might be such a condition as well.*

Readings:

- (1) Douglas N. Husak, “Addiction and Criminal Liability”.
- (2) Gideon Yaffe, “Lowering the Bar for Addicts”.

**June 12**

**The limits of responsibility 2: Social Failures**

*Certain members of the population are not given their proper due by society. Can such members be held legally accountable in equal terms as members who are given their due?*

Readings

- (1) Tommie Shelby, “Justice, Deviance, and the Dark Ghetto”.

**June 14**

**Why Obey the Law?**

*What reasons do we have to obey the law? We consider two views, one on which it rests on duties of gratitude, another on which it rests on a duty of fair play.*

Readings

- (1) Plato, *Crito* (available online).
- (2) John Rawls, “Legal Obligation and the Duty of Fair Play”

Week 4

**June 17**

**Law and Morality 1: Legal Positivism**

*Is there an intrinsic connection between law and morality?*

Readings

- (1) Regina v. Stevens (selections).
- (2) H.L.A. Hart, *The Concept of Law* (selections).

**June 19**

**Law and Morality 2: Natural Law**

*We continue our inquiry into the nexus between law and morality*

Readings

- (1) Thomas Aquinas, *Summa Theologiae* (selections)
- (2) John Finnis, *Natural Law and Natural Rights* (selections)

**June 21**

**Law and Morality 3: Judicial Review**

*What role (if any) should moral views play in judges’ decisions?*

Readings

- (1) Riggs v. Palmer (selections)
- (2) Ronald Dworkin, *Taking Rights Seriously* (selections)

Week 5

**June 24**

**Consent and Commodification**

*What sorts of things can be the subject of monetary contracts? We consider this question partly in terms of a Supreme Court case where the matter came up.*

Readings

- (1) Matter of Baby M, 537 A.2d 1227 (selections)
- (2) Debra Satz, *Why Some Things Should Not be For Sale* (selections)

**June 26**

**Freedom of Speech**

*What is the scope and nature of our freedom of speech?*

Readings

- (1) R.A.V. v. City of St Paul (selections)
- (2) Seana V. Shiffrin, “Speech, Death, and Double Effect”

**June 28**

*TBD based on students’ interests.*

\*\*\*

**N.B. The readings and assignments are subject to change at the instructors’ discretion.**

---Last updated 3/18/19---

\*\*\*