Philosophy of Law (PHIL 311, CRN 71938)
George Mason University, Fall Semester 2016
Instructor: Jason Walker, PhD

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Office Hours:	Johnson Food Court (W 10am-12pm), and by appointment.
Course Time & Location:	MW 12:00pm-1:15pm, Nguyen Engineering Building 1110

Course Description
At first glance, the question of "What is law?" may seem too obvious to require much of an answer. "Law" refers to whatever rules are duly passed by a government. But this answer quickly becomes unsatisfying on reflection. After all, what do we mean by "duly" passed? Or when we consider the people who seem justifiably to be held legally accountable for actions that were "legal" when they carried them out, such as German and Japanese war criminals after World War II. There seem to be enforceable laws that were never even written down, as in the "common law" systems of the United States, United Kingdom and Commonwealth nations. In other instances, duly passed laws may not seem like "real" laws if they are unjust or immoral, such as Fugitive Slave codes, if they command contradictory or otherwise impossible action, or if they are rarely or only selectively enforced. Thus, the question of what law is becomes a philosophical question. Under what conditions may a rule be said to be a law? Traditional answers have varied wildly. One tradition in the west argues in favor of "natural" or "higher" law, which transcend and limit the scope of "artificial" law. The positivist tradition, in contrast, insists that since human laws are emphatically nothing like the laws of science (they can be broken, for example), that laws are necessarily artificial, and only exist as laws to the extent that the State chooses to create and enforce them. Still other traditions contend that law exists prior to government, with government itself being made possible with law. In this class, we will examine the questions of what law is, what law's connection to morality (and political ideology) may be, the rule of law (and how it may differ from "rule by law"), and even spend some time considering the nature of legal reasoning.

Required Texts
May, Larry & Brown, Jeff (ed.). *Philosophy of Law: Classic and Contemporary Readings*, 2009, Wiley-Blackwell, ISBN-13: 978-1405183871.
Supplemental PDF's distributed on Blackboard.
Recommended: Leoni, Bruno. *Freedom and the Law: Expanded 3rd Ed*. 1991, Liberty-Fund, ISBN-13: 978-0865970977. (Available as an optional purchase at the bookstore, but also available for free as a PDF online.)

Course Policies
It is the student's responsibility to know the contents of this syllabus and to stay informed of any changes or additions announced in class or via email. Students are expected to check email for announcements before each class. In bad weather or other possible emergencies, students should check email and the school website for announcements right up until class time.

Regular attendance is necessary for class participation credit. You cannot pass this course without *taking* the course, and that means attending regularly and getting to class on time. Students are responsible for material covered in class when they are absent.

Students are required to read each assigned text in its entirety by the date for which it is assigned, and to bring the assigned text to class. Assigned texts should be read carefully and critically. Students first should try to get clear on *what* the author is arguing for (what conclusions is the author trying to defend?), and *how* the author is arguing for it (what series of propositions does the author think support his or her conclusions?). Only then should the arguments be assessed for their persuasiveness, by examining whether the premises are true, and/or whether the

conclusions drawn legitimately follow from those premises. As I will explain in the introductory talk, this will be a course in philosophy, not philosophy appreciation, meaning that students should actively engage with the arguments put forward by the respective thinkers, not merely summarize or repeat them. Students should read the text again after it has been discussed in class.

The lecturer will occasionally lecture on the texts to place them in historical and philosophical context, but these lectures will generally comprise of about ½ of class time. Students should come to class with ideas (written down) about the texts, questions, comments, and points to discuss. All students are expected to take an active role in discussing the material. Learning the critical reasoning skills that are at the heart of academic writing require, at least in part, the give and take of Socratic dialogue, where ideas can be tested, scrutinized, and refined. Think of it this way: class discussion is the place to ask "silly" questions and take chances, not on the final draft of your term paper. No one becomes good at philosophy or critical reasoning generally without taking risks. Please understand, in my class, one does not lose face by admitting one is confused. To the contrary, this is how one grows and evolves as a thinker. *Confusions are inevitable for even the most intelligent amongst us*, and the whole point of meeting in person is to resolve any confusion, no matter how trivial. Thus, the key to maximizing value students gain from this class is by actively participating in class discussions.

Students are welcome and highly encouraged to email at any time with questions about the readings or other assignments. Students are also encouraged to take advantage of office hours. No appointments are necessary for office hour meetings, but meetings by appointment outside those hours are also available.

Grading: Written work is graded on accuracy (make sure you are quoting or paraphrasing the philosophers' texts accurately), clarity (make sure you are making your points in a way that a reader who can't see inside your mind can understand), comprehension (your writing must show that you understand what the philosophers are saying and what their reasons/arguments are for saying it), strength of argumentation (your arguments must be sound and refrain from fallacious reasoning) and creativity (special credit will be given to students who come up with novel ideas or arguments).

There will be a midterm exam and a final exam. The midterm is based on material discussed in the first half of the course. The final exam represents a compromise of sorts. Some instructors make the final exam inclusive of all material discussed, while others have it focused entirely on the second half of the course. My approach for the final is to have it focused mostly on the second half, but with significant references to material covered in the first. For example, some questions may ask for comparisons between ideas or thinkers covered in the second with an ancient or medieval philosopher.

Some students prefer to write a term paper to taking a final exam. I allow this, provided that such students meet certain requirements. Provided the student performs well on the midterm exam, students would propose a thesis (not just a topic), with a rough description of the general argument the student has in mind, explaining how the paper would demonstrate the truth of that thesis. The student would be given a deadline for a rough draft that I would see, with the final paper due at the day and time of the exam. Students interested in this should speak to me about further particulars. In general, I have very high standards for what I will accept as a thesis proposal, so this tends to be an exceptional undertaking. I will also take into consideration the student's quality of participation and performance on the midterm before accepting any proposal. Students who write term papers are also expected to keep up with regular reading assignments and class participation, even if they appear to have no direct bearing on the term paper's topic. Deadlines will be announced for thesis proposals shortly after the midterm.

Approximately 20% of the final grade will be based on participation and attendance. The frequency and quality of the student's participation in classroom discussion will also be factored into the final grade: If the student is a regular and active participant in discussions, "close" final grades, within a percentage point of a higher grade, will be bumped to that grade. The other 80% of the grade is divided evenly between the midterm and final exams.

Standards for Performance Evaluation:

93% and above	A	4.0	73% - 76%	C	2.0
90% - 92%	A-	3.67	70% - 72%	C-	1.67
87% - 89%	B+	3.33	67% - 69%	D+	1.33
83% - 86%	B	3.0	63% - 66%	D	1.0
80% - 82%	B-	2.67	Less than 63%	F	0.0
77% - 79%	C+	2.33			

Violations of the academic integrity, such as plagiarism in papers, will be referred to the Dean's office. To avoid plagiarism, remember: if you use someone else's words, you must put the words in quotation marks (or, for lengthy quotations, instead of quotation marks, indent from left and right margins) and give a full citation for them, showing author, title, publisher, date of publication, and pages; or website name and web address, and date of access. Note: even if unintentional, the lifting of text that you did not write and repurposing into your own work without citation is still plagiarism. If you heard the idea from someone, cite it as lecture or interview or personal conversation with so-and-so on such-and-such date. Even if you use someone else's thoughts in your own words, you still must give a citation indicating *whose* thoughts they are and *where* you got them. Engaging in academic writing certainly means that referring to, and relying upon, the writing of others is necessary. All that's asked for here is that the other writers students draw from are given their due credit. The general rule of thumb here is that if you find yourself wondering whether you've crossed the line, it's always better to err on the side of caution and give credit.

For questions regarding academic integrity generally, there are fairly universal standards of what is expected of students. GMU is an "honor-code" university, which the school articulates as the following:

The integrity of the University community is affected by the individual choices made by each of us. Mason has an Honor Code with clear guidelines regarding academic integrity. Three fundamental and rather simple principles to follow at all times are that: (1) all work submitted be your own; (2) when using the work or ideas of others, including fellow students, give full credit through accurate citations; and (3) if you are uncertain about the ground rules on a particular assignment, ask for clarification. No grade is important enough to justify academic misconduct. Plagiarism means using the exact words, opinions, or factual information from another person without giving the person credit. Writers give credit through accepted documentation styles, such as parenthetical citation, footnotes, or endnotes. Paraphrased material must also be cited, using MLA or APA format. A simple listing of books or articles is not sufficient. Plagiarism is the equivalent of intellectual robbery and cannot be tolerated in the academic setting. If you have any doubts about what constitutes plagiarism, please see me.

More can be read about GMU's Honor Code here: *http://oai.gmu.edu/the-mason-honor-code-2/*

Use of Electronic Devices in Class

While checking your e-mail is important for this course, you are required to refrain from using cell phones, PDAs, iPods, Zunes, MP3 players, or other such devices during class time. ***This means no texting, no instant messaging, no Facebook, no Twitter, no Pokemon, no internet use, no checking email, period.*** These devices are distracting to you, to other students and to the instructor. If you violate this policy, I may confiscate your electronic device for the duration of the class period. Exceptions will be made on a case-by-case basis only if an assistive device is required and approved for use by an individual student by the Dean's Office.

Note, however, that the use of laptops or tablet devices is permitted. These are acceptable ONLY as means of taking notes. Students who use such devices in lieu of handwritten notetaking are expected to limit their use to word processing applications exclusively. The instructor is of the belief that his students are adults and should be trusted to use such devices responsibly.

There are advantages and disadvantages to taking notes by hand and as typed. For many students, typing is faster, and certainly saves on paper clutter. It's easier to keep those notes organized. However, recent studies have suggested that, paradoxically, even though typed notes produce more quantity, students tend to retain more information on a qualitative level when they take notes by hand. Taking notes by hand requires us to be more thoughtful about what notes to take, so we process information more actively when we have to write it out than if we type. Typing can be more like taking dictation, and requires less active thought when performed. Whether writing or typing notes works better for you is a question only you can answer, so students are highly encouraged to experiment with both methods to see which works better for them.

PowerPoint policy: When this class was taught in China, your instructor reluctantly agreed to create a few PowerPoint slides for class discussions, since this method of presentation is dominant in Chinese universities. These were minimalistic, aimed primarily at saving time that would have had to be spent writing out lengthy things on the board, as well as for lengthier quotations from the text. These may occasionally be used for this class, but only sparingly so, because the class will depend more on discussion than straight lecturing. *Do not expect notetaking to involve merely transcribing PowerPoint slides.* Many discussions will lack them entirely, and others will only supplement, not guide, the discussion. As a wise academic once put it: "Power corrupts. PowerPoint corrupts absolutely."

Disability Accommodations

If you have a documented learning disability or other condition that may affect academic performance you should: 1) make sure this documentation is on file with Office of Disability Services (SUB I, Rm. 4205; 993-2474; http://ods.gmu.edu) to determine the accommodations you need; and 2) talk with me to discuss your accommodation needs.

TENTATIVE CLASS SCHEDULE AND ASSIGNMENTS

*Note: Dates, reading assignments and topics are subject to change. This is a **rough outline** of what we will attempt to cover, but modifications are always possible contingent upon how quickly we get through material, emergencies causing the cancellation of particular meetings, and other factors.*

DATE	TOPIC	ASSIGNMENT
Aug. 29 (M)	Introduction: Philosophy of Law	N/A
Aug. 31 (W)	Introduction: What Is Law?	Coleman PDF
Sept. 5 (M)	LABOR DAY, NO CLASS.	Labor Day Festivities
Sept. 7 (W)	What is Law? Natural Law, Law as Morality	Aquinas, Finnis PDF
Sept. 12 (M)	Introduction: Law vs Legislation	Leoni, pp. 3-25 (available as PDF)
Sept. 14 (W)	Law as Individual Claim	Leoni, pp. 189-203 (available as PDF)
Sept. 19 (M)	Legal Positivism: Law as What State Says	Hart
Sept. 21 (W)	Legal Positivism: Law as What State Says	Hart
Sept. 26 (M)	Law's Internal Conceptual Limits	Fuller
Sept. 28 (W)	Law: System of Rules	Fuller
Oct. 3 (M)	Legal Realism: Law as What Judge Says	Llewellyn, Holmes PDF
Oct. 5 (W)	Law as Integrity	Dworkin
Oct. 11 (TUE)	Law as Integrity	Dworkin
Oct. 12 (W)	Legal Realism Redux: Critical Legal Studies	Kennedy
Oct. 17 (M)	**MIDTERM**	n/a
Oct. 19 (W)	Law & Economics (a normative account)	Posner
Oct. 24 (M)	Legal Reasoning	Levi
Oct. 26 (W)	Formalism	Schauer
Oct. 31 (M)	Incomplete Theory	Sunstein
Nov. 2 (W)	Constitutional Cases	Dworkin
Nov. 7 (M)	Constitutional Meaning	Munzer & Nickel
Nov. 9 (W)	Constitutional Interpretation: On Originalism	Barnett PDF
Nov. 14 (M)	Ought Law Enforce Private Morality? No	Mill
Nov. 16 (W)	Ought Law Enforce Private Morality? Yes	Devlin
Nov. 21 (M)	Moral Obligations to Law & Civil Disobedience	Plato/MLK King PDF (Smith reccom.)
Nov. 28 (M)	Moral Obligations to Law & Civil Disobedience	Plato/MLK King PDF (Smith reccom.)
Nov. 30 (W)	Is International Law Law?	Hart
Dec. 5 (M)	The Nuremburg Trials	Jackson
Dec. 7 (W)	Rights Beyond Borders: The Case of China	Peerenboom
TBA	**Final Exam, Location TBA**	