

**Philosophy of Law**  
**PHIL 311-001**  
**Syllabus**

**Instructor:** Dr. Shannon Fyfe  
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**Class Meetings:** MW 12:00 pm – 1:15 pm in Krug Hall 19

**Office Hours:** Wednesdays 10:00 am – 12:00 pm and by appointment  
Robinson Hall B456

**Course Description:**

*What gives the state the authority to punish criminals?  
How does a judge know which way to rule in a case?  
Is an unjust law still a law?*

In this course, we will look at how we should ask these fundamental philosophical questions about the law and how we should answer them. We will consider three broad areas of inquiry: the nature and value of law, criminal law and punishment, and constitutional law.

You will be evaluated based on your ability to articulate and critique arguments from the readings, through in-class discussion, critical response papers, quizzes, and one analytic paper.

**Texts:**

- Culver and Guidice, *Readings in the Philosophy of Law*, 3<sup>rd</sup> ed. (2017)
- Handouts and Excerpted Readings. You must download and print each reading and bring it to class – you may not access the readings on your laptop or tablet during class.

**Grades:**

Participation:	10%
Response Papers (2, 5% each):	10%
Quizzes (5, 10% each)	50%
Final Paper Introduction	5%
Final Paper (6-8 pages):	25%

**Grading Scale:**

A = 93-100	B- = 80-82	D+ = 67-69
A- = 90-92	C+ = 77-79	D = 63-66
B+ = 87-89	C = 73-76	D- = 60-62
B = 83-86	C- = 70-72	F = 0-59

## **Communication:**

As noted throughout the rest of the syllabus, you must *communicate* with me if you are experiencing circumstances that are preventing you from meeting any of the course requirements. I do not need to know details about your life but I cannot accommodate you if I don't know that you need accommodations.

Advice for this class (and your future careers):

1. Please check the syllabus and Blackboard to make sure that your question hasn't already been answered before you send an email.
2. Emails are not text messages. Please do not send emails that read like text messages and/or do not contain your name.

## **Attendance:**

Attendance is mandatory and necessary for performing well in this course. Here are some reasons why:

1. Your participation grade (10% of your final grade) will be negatively impacted by excessive unexcused absences, or failure to participate in in-class discussions, assignments, and activities.
2. Handouts will only be made available in class or if you have an excused absence. Handouts are not a substitute for the readings, but they are a helpful study aid and should make it easier to focus on discussion (rather than copying down definitions) during class.
3. If you miss class, you will not benefit from the ideas of your colleagues or your instructor.

## **Quizzes:**

If you read the assignments, come to class, and study the handouts, you will be prepared to take each quiz. Quizzes will consist of short answer questions and short essay questions. Each quiz is designed to allow you to demonstrate your grasp of the material we have covered during each section. I do not design them to test your memorization skills, but I do require that you provide *precise* definitions and explanations. Why? Because you can only do philosophy well through clear thinking, and you can only demonstrate clear thinking through clear writing. I will not try to surprise you or trick you. But you must prepare for each quiz as indicated above. You should ask questions in class that come up during the readings, and you are encouraged to meet with me during office hours to discuss your questions further.

Quizzes will be given during the first 30 minutes of class on the dates noted on the syllabus. If you have a conflict with a quiz, please let me know as soon as possible so that I can try to accommodate you. In the interest of impartiality, I do not give make-up quizzes without prior approval except in extenuating circumstances. Students requesting accommodation/makeup quizzes due to extenuating circumstances must (i) communicate with me and (ii) provide a note from the Dean's office.

## **Response Papers:**

The first two papers each contribute 5% to your final grade. You may choose any reading prior to November 6 and write a two-page response to the argument. A hard copy of the response paper must be turned in at the beginning of class on the day listed on the syllabus for discussion of that reading. The goal of these response papers is to prepare for the critical aspect of your final papers. I will provide feedback on these response papers. You must keep track of the requirement that you complete two response papers before the deadline. I will provide feedback on up to five response papers, although you will only receive credit for two.

## **Final Paper:**

- The final paper (6-8 pages) contributes 25% to your final grade. Details regarding the format and substance of the final paper will be distributed in November.
- You must submit the introduction to your paper, noting the opinion you intend to critique and your general plan for how you will critique it, by midnight on November 24. This should be submitted via Blackboard and contributes 5% to your final grade.
- I strongly suggest that you submit a rough draft of your final paper. All drafts emailed to me by December 1 will be returned promptly with comments and suggestions.
- Late papers will not be accepted.
  - a. Plan ahead. Save and back up your work.
  - b. In the interest of impartiality, I will only accept late papers due to extenuating circumstances. Such circumstances *require* communicating with me.
- All final papers must be submitted by 10 PM on the day that they are due (December 12). They must be submitted:
  - a. On Blackboard via the link under “Assignments ” and
  - b. Via email to me in Word document format.
- Philosophical writing may be very different from other writing you have done or read. I will provide handouts and in-class assignments to help familiarize you with my expectations. Please meet with me outside of class if you have questions about philosophical writing or about comments you receive on your papers.
- I strongly encourage you to take advantage of the Writing Center at George Mason.

## **Agreement for Books and Articles:**

Selections of certain works will be supplied to each student via the link below, but students remain subject to all the rights and restrictions of the publisher, and students are to honor those. Each student’s copy of these works is to be used solely for purposes of this class; they are not to be distributed, sold, or employed for any other commercial purpose. Each student’s participation in the class will indicate his or her explicit agreement to be bound by these limitations.

## **Commitment to Diversity:**

The Philosophy Department seeks to create a learning environment that fosters respect for people across differences. We welcome and value individuals and their differences, including gender expression and identity, race, economic status, sex, sexuality, ethnicity, national origin, first language, religion, age and ability. We encourage all members of the learning environment to engage with the material personally, but to also be open to exploring and learning from experiences different than their own.

This does not mean not being critical: respecting others’ views means taking them seriously, and taking them seriously means thinking about their strengths and weaknesses, asking questions, and offering constructive criticisms or alternative viewpoints where appropriate. It also means thinking about where the views of others challenge our own, and being open to what they have to teach us. Valuing diversity is not just an attitude – it is a matter of developing an active practice. Amongst other things, this practice involves:

- learning to listen to other perspectives;
- being open to criticism of one’s own views;
- being willing to evaluate different positions while being unsure where one stands;
- having good reasons for one’s views, but being willing to change one’s mind;

- not rushing to judgment;
- basing critical comments or questions on as good an understanding of another person (or text or theory) as one can manage;
- *and* being willing to accept that there will always be things one cannot see or understand;
- learning to express criticisms and differences of opinion in ways that are not personal or hurtful and that leave space for other voices.

Never be afraid to ask a question or to risk saying something that might be wrong – that is how we learn. But equally, never be afraid to listen to the questions and answers of others, and to let their views challenge and change how you think.

### **Academic Honesty:**

George Mason University has an Honor Code, which requires all members of this community to maintain the highest standards of academic honesty and integrity. Cheating, plagiarism, lying, and stealing are all prohibited. All violations of the Honor Code will be reported to the Honor Committee. See [honorcode.gmu.edu](http://honorcode.gmu.edu) for more detailed information.

### **Student Support:**

**Counselling and Psychological Services (CAPS):** (703) 993-2380; <http://caps.gmu.edu/>

**Office of Disability Services:** If you are a student with a disability and you need academic accommodations, please see me within the first 2 weeks of the semester and contact the Office of Disability Services (ODS) to ensure you receive the required support: 703-993-2472. All academic accommodations must be arranged through ODS: <http://ods.gmu.edu/>

**University Libraries:** <http://library.gmu.edu/>

**Writing Center:** <http://writingcenter.gmu.edu/>

### **Sexual Misconduct and Interpersonal Violence:**

George Mason University is committed to providing a learning, living and working environment that is free from discrimination, and we are committed to a campus that is free of sexual misconduct and other acts of interpersonal violence in order to promote community well-being and student success. We encourage students who believe that they have been sexually harassed, assaulted or subjected to sexual misconduct to seek assistance and support. [University Policy 1202 Sexual Harassment and Misconduct](http://universitypolicy.gmu.edu/policies/sexual-harassment-policy/) (<http://universitypolicy.gmu.edu/policies/sexual-harassment-policy/>) speaks to the specifics of our process, our resources, and the options available to you.

Confidential student resources are available on campus at the Student Support and Advocacy Center (<http://ssac.gmu.edu/>), Counseling and Psychological Services (<http://caps.gmu.edu/>), and Student Health Services (<http://shs.gmu.edu/>).

All other members of the University community (including faculty, except those noted above) are **not** considered confidential resources and are **required** to report incidents of sexual misconduct to the University Title IX Coordinator. For a full list of resources, support opportunities, and reporting options, contact Dr. Jennifer Hammat, Title IX Coordinator, at <http://diversity.gmu.edu/title-ix>, at 703-993-8730, or in the Compliance, Diversity, and Ethics office in the Aquia Building, Suite 373.

**ASSIGNMENTS**  
(subject to change)

You should do the assigned reading before class. Everything other than *Readings in the Philosophy of Law* (RPL) will be posted on Blackboard (BB).

<b>Date</b>	<b>INTRODUCTION</b>
August 26	Syllabus; Course Introduction; Arguments; Introduction to Jurisprudence
	<b>UNIT ONE: THE NATURE AND VALUE OF LAW</b>
August 28	Natural Law Theory <b>Reading:</b> Aquinas, “Treatise on Law” from <i>Summa Theologica</i> (RPL 27); Finnis, selection from <i>Natural Law and Natural Rights</i> (RPL 41)
September 2	<b>Labor Day (NO CLASS)</b>
September 4	Legal Positivism <b>Reading:</b> Austin, selection from <i>The Province of Jurisprudence Determined</i> (RPL 68); Hart, “Positivism and the Separation of Law and Morals” (RPL 84)
September 9	NO CLASS
September 11	Legal Positivism <b>Reading:</b> Hart, “Law as the Union of Primary and Secondary Rules” (RPL 106); Hart, “The Foundations of a Legal System” (RPL 118)
September 16	Dworkin/Law as Integrity <b>Reading:</b> Dworkin, “The Model of Rules I” (RPL 133); <i>Riggs v. Palmer</i> , 115 N.Y. 506 (1889) (BB)
September 18	Legal Realism <b>Reading:</b> Oliver Wendell Holmes, “The Path of Law” (RPL 177) <b>*Quiz #1 In Class*</b>
September 23	Critical Approaches to Law: Critical Race Theory <b>Reading:</b> Delgado, “About Your Masthead: A Preliminary Inquiry into the Compatibility of Civil Rights and Civil Liberties” (RPL 236)
September 25	Critical Approaches to Law: Feminist Jurisprudence <b>Reading:</b> MacKinnon, “Toward Feminist Jurisprudence” (RPL 227)

	<b>UNIT TWO: CRIMINAL LAW AND PUNISHMENT</b>
September 30	<p>Is There an Obligation to Obey the Law?</p> <p><b>Reading:</b> Plato, <i>Crito</i> (BB); Martin Luther King, Jr., “Letter from Birmingham Jail” (BB)</p>
October 2	<p>Law and Limits on Individual Liberty</p> <p><b>Reading:</b> Mill, selections from <i>On Liberty</i> (RPL 329)</p>
October 7	<p>Law and Limits on Individual Liberty</p> <p><b>Reading:</b> Devlin, “Morals and the Criminal Law” (RPL 342); Hart, selections from <i>Law, Liberty, and Morality</i> (RPL 357)</p> <p><b>*Quiz #2 In Class*</b></p>
October 9	<p>Moral Responsibility</p> <p><b>Reading:</b> Aristotle, <i>Nicomachean Ethics</i>, Book III.1-5 (BB); Strawson, P., selection from “Freedom and Resentment” (BB)</p>
October 14	<b>Fall Break</b> (NO CLASS)
October 15	<p>Moral Responsibility</p> <p><b>Reading:</b> Strawson, G., selection from “The Impossibility of Moral Responsibility” (BB); Nagel, “Moral Luck” (BB)</p>
October 16	<p>Criminal Responsibility</p> <p><b>Reading:</b> Duff, “Choice, Character, and Action” (RPL 392); Kenny, “The Mind and the Deed” (BB)</p>
October 21	<p>Punishment</p> <p><b>Reading:</b> Kant, “The Right to Punish” (BB); Feinberg, “The Classic Debate” (BB)</p>
October 23	<p>Punishment</p> <p><b>Reading:</b> Morris, “Persons and Punishment” (BB)</p> <p><b>*Quiz #3 In Class*</b></p>
October 28	<p>Punishment and International Law</p> <p><b>Reading:</b> Justice Jackson, “Opening Statement at Nuremberg” (BB); Drumbl, “Atrocity, Punishment, and International Law” (BB)</p>
	<b>UNIT THREE: CONSTITUTIONAL LAW</b>
October 30	<p>Legal Interpretation</p> <p><b>Reading:</b> Dworkin, “Integrity in Law” (RPL 155)</p>

November 4	<p>Constitutional Interpretation</p> <p><b>Reading:</b> Scalia, “Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws” (BB); Dworkin, “Comment” (BB); Scalia, “Response to Dworkin” (BB)</p>
November 6	<p>Constitutional Interpretation</p> <p><b>Reading:</b> Dworkin, “Constitutional Cases” (BB)</p> <p><b>*Last Day to Submit a Response Paper*</b></p>
November 11	<p>Constitutional Law Case Study: Equal Protection Under the Law – Race</p> <p><b>Reading:</b> <i>Brown v. Board of Education</i> (1954), <i>Grutter v. Bollinger</i> (2003); <i>Fisher v. Texas</i> (2016) (selections) (BB)</p> <p><b>*Quiz #4 In Class*</b></p>
November 13	<p>Constitutional Law Case Study: Equal Protection Under the Law – Sex</p> <p><b>Reading:</b> <i>Craig v. Boren</i> (1976); <i>United States v. Virginia</i> (1996) (selections) (BB)</p>
November 18	<p>Constitutional Law Case Study: Equal Protection Under the Law – Sexual Orientation</p> <p><b>Reading:</b> <i>Bowers v. Hardwick</i> (1986); <i>Lawrence v. Texas</i> (2003); <i>Obergefell v. Hodges</i> (2015) (selections) (BB)</p>
November 20	<p>Constitutional Law Case Study: Speech and the Law – Limits of Free Speech</p> <p><b>Reading:</b> <i>Schenck v. United States</i> (1919); <i>Chaplinsky v. New Hampshire</i> (1942); <i>Texas v. Johnson</i> (1989); <i>Matal v. Tam</i> (2017) (selections)</p>
November 25	<p>Constitutional Law Case Study: Speech and the Law – Hate Speech</p> <p><b>Reading:</b> <i>Brandenburg v. Ohio</i> (1969); <i>R.A.V. v. St. Paul</i> (1992); <i>Virginia v. Black</i> (2003) (selections)</p>
November 27	<b>Thanksgiving Break (NO CLASS)</b>
December 2	<p>Constitutional Law Case Study: Speech and the Law – Academic Speech</p> <p><b>Reading:</b> <i>West Virginia v. Barnette</i> (1943); <i>Tinker v. Des Moines</i> (1969); <i>Morse v. Frederick</i> (2007) (selections); University of Chicago letter</p>
December 4	<p>Wrap-Up</p> <p><b>*Quiz #5 In Class*</b></p>
December 12	<b>*Final Papers Due* 10 PM</b>