

**LAW AND JUSTICE (Phil. 146)**  
**Course Description and Requirements**  
John Arthur \ Fall 2005

The war in Iraq is in many ways a war over ideas: the purposes of government, women's equality, democracy, and human rights. Some have said that means it is in reality a culture clash between Western values and non-Western ones in which there can be no right or best answer. Others think the issues at stake are universal and transcend cultural, religious and other differences. That question - of the purpose of law and the nature of justice - is the heart of this course.

We begin with Thomas Hobbes, who famously said that law and force are necessary to escape a state of nature in which war would be constant and life would be "solitary, poor, nasty, brutish and short." Where there is no absolute sovereign power, said Hobbes, "there is no law" and "where there is no law there can be no justice." Others have thought differently, of course, claiming that people have rights that governments ought to respect. But how can we know what rights people have, whether democracy is better than its alternatives, and if oppression of women really is wrong? What is the purpose of governments, if not just to prevent a war of all against all as Hobbes thought? What rights do people actually have? Is the ultimate purpose of government respecting the rights of persons? Is law a servant of human happiness and well-being, or is justice grounded in some form of compact or social contract? What form?

Along with these theoretical questions that lie at the foundation of law and politics we will also discuss a range of more specific questions about individual rights and how they are linked with the deeper questions about law and justice. These topics include war, school prayer, multiculturalism, abortion, property rights, internment of Japanese during WW II, markets and work, freedom and drugs, free speech, and sexual equality.

We will cover one numbered section from the outline per class, **which you must read before coming to lecture**. Any changes in assignments will be announced in class. You should not be misled by the fact that some of the readings are only a few pages long. It is sometimes necessary to study material very carefully, reading it over many times and taking notes as you read. Sometimes you may take half an hour on a page, just as you would in a calculus textbook. Although the anthology of readings for this class is designed for college students, the tradition in philosophy is to study primary sources - that is - actual philosophers. The material we will be studying is therefore not a textbook in the usual sense. (The best way to test whether you understand an article or a section is to summarize it in your own words and to take careful notes.) Most readings were written by professional philosophers for other philosophers and for the educated public. Some of the readings are taken from the great classics of political philosophy - Hobbes, Locke, Mill, and Hume as well as Madison and Hamilton. Others are contemporaries, many living today.

Lectures won't really be lectures. Instead, I will employ a form of the Socratic method typical of law schools, in which students are called on to explain or discuss material that we have read or to respond to comments of others. You will not be expected necessarily to have understood everything in the readings, but **I will expect you to have studied the material**. If you were not able to do the reading for reasons beyond your control then you may give me a note at the beginning of class explaining why you could not do the reading and I will not call on you that day. If you do not give me a note then you are saying you have done the reading and are prepared to answer questions about it. Besides learning about the issues and problems we will consider, I also hope you will improve in your ability to read, understand and analyze complex arguments and write clear, precise, and well organized essays in correct English

Final course grades will be determined by four factors, each worth 25%.

**A. Attendance, Participation and Section (25%)** This is an essential part of the course. One helpful way to prepare for class is to write answers to the study questions at the end of each reading, especially ones asking you to explain the essay. Your TA may ask those same or similar questions in sections. Sections are not review sessions. They will be discussions in which you are given the opportunity to raise questions and objections about the reading and lectures and to pursue some of the issues in greater depth. Grades will be determined by attendance at lectures and by other work you do in section. **Attendance grades (10%)** will be assigned by me, based on the number of unexcused absences. Excused absences are ones that are beyond your control such as illness, death in the family or religious obligations. Grades for attendance will be assigned as follows: 0 unexcused absences = A+; 1 = A; 2 = B; 3 = C; 4 = D; 5+ = F. If you must miss your section on a given day, you may attend another without penalty. Be sure to tell your TA if you do this. **Section grades (15%)** will be based on three factors: quality of participation in discussions, short quizzes over the assigned material given in lecture or section, and a few writing assignments for sections. This 15% will be assigned by your teaching assistant. You will discuss more about this part of the course in section meetings.

**B. Two exams (25% each)** These exams will test your mastery of the assigned readings and lectures. They will include both essay and short answer questions. The final examination will be comprehensive.

**C. Term Paper (25%)** The format and topic of the term paper will be provided after the mid-term.

Please feel free to speak with either me or your TA about any aspect of the course, at any time. (**I mean that!**) My office is HN 120-B, and my regular hours are Thursdays from 2-4. I am also available by appointment. Your TA's office location and office hours will be announced in sections.

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**Course Outline and Syllabus**

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- I. SOCIAL CONFLICT, LAW AND JUSTICE
  - A. Introduction to the course
  - B. Hobbes, *Leviathan: Morality and Rational Advantage*, p 1
  - C. Wasserstrom, *On the Morality of War*, p 100
  - D. Locke, *A Letter Concerning Toleration*\* Madison and Hamilton, *Federalist Papers Nos. 10, 51, 78\**
  - E. *School Prayer: Engel v. Vitale\** and Dworkin, *On Not Prosecuting Civil Disobedience*, p 438
  - F. Cohen, *The Arc of the Moral Universe*, p 396
- II. IS JUSTICE UNIVERSAL? MULTICULTURALISM AND CULTURAL CRITIQUE
  - A. Midgley, *Trying out One's New Sword* p 33 and Raz, *Multiculturalism: A Liberal Perspective* Parts I and II only, pp 590-94
  - B. Raz, *Multiculturalism: A Liberal Perspective* Parts III-IV, pp. 594-602
- III. JUSTICE AND NATURAL RIGHTS
  - A. Locke, *The Second Treatise of Government*, p 342
  - B. Nozick, *The Entitlement Theory*, p 469
  - C. *The Constitutional Right to Abortion: Roe v. Wade*, p 179 and Thomson, *A Defense of Abortion*, p 184
  - D. **MID-TERM EXAM**
- IV. JUSTICE AND UTILITY
  - A. Hume, *Why Utility Pleases*, pp 44-45 only and Mill, *Utilitarianism*, p 65
  - B. Raz, *The Duties of Well-being*, Sections I-V and IX, pp 371-381 and 384-5 only
  - C. ~~Mill, *On Representative Government*, p 366 and *Civil Liberties in the Time of War: Korematsu v. United States*, p 111~~
  - D. Harris, *The Survival Lottery*, p 262
  - E. Dworkin, *Taking Rights Seriously*, p 423

← makes everyone happy, what makes each of us well-being?
- V. JUSTICE AND THE SOCIAL CONTRACT
  - A. Rawls, *A Theory of Justice*, pp 386-392 only
  - B. Rawls, *A Theory of Justice*, pp 392-396 and Rawls, *Civil Disobedience and the Social Contract*, pp 429-432 only
  - C. Rawls, *Civil Disobedience and the Social Contract*, pp 432-437
- VI. MARKETS AND WORK
  - A. Hume, *Of Justice*, p 449 and Posner, *Selling Babies* p 323
  - B. Rachels, *What People Deserve*, p 483 and Rachels, *Reverse Discrimination*, p 644
  - C. Walzer, *Markets and Hard Work*, p 489
- VII. LEGAL PATERNALISM
  - A. Mill, *On Liberty*, p 358; *Requiring Medical Treatment: JFK Memorial Hospital v. Heston*, p. 237
  - B. Goodin, *The Ethics of Smoking*, p 506 and Shapiro, *Addiction and Drug Policy*, p 515
- VIII. FREE SPEECH AND EQUALITY
  - A. Mill, *Of the Liberty of Thought and Discussion*, p 521; *Flag Burning as Constitutionally Protected: Texas v. Johnson*, p 408; *Nazi Marches: Village of Skokie v. National Socialist Party*, p 524; Lawrence and Gunther, *Prohibiting Racist Speech on Campus: A Debate*, p 527
  - B. Singer, *Sexual and Racial Equality*, pp 146-148 only and Mill and Taylor, *The Subjection of Women*, p 548

\*Available as course pack and in *Readings in Philosophy of Law*  
Texts: *Morality and Moral Controversies* Seventh Edition ed. John Arthur and course pack