

# SYLLABUS

PHIL 4160  
Philosophy of Law  
Spring 2020

TR 9:30 PM – 10:45PM  
HUMN 1B80  
Scott Hill

Why and when should we obey the law? Should we ever disobey the law? On the one hand, if no one obeyed the law, one might think the consequences would be very bad. Many people believe that we are better off with a legal system in which judges, lawyers, and ordinary citizens defer to the law even when they think the law is mistaken. But does this give me, as an individual a good reason to obey the law. And even if it does, how much deference should be given to the law? When can that deference be trumped by other considerations? In this course, we will explore these questions. As we will see, many dimensions of these questions can all be understood as arising from collective action problems. In the last part of the course we will consider more general collective action problems arising in theoretical ethics and epistemology.

## *Required Readings*

*Limits of Legality: The Ethics of Lawless Judging* by Jeffery Brand-Ballard

Various other readings on Canvas

## *Grading*

Your grade will be determined by:

- Discussion: 10%
- 10 Reading Quizzes: 40%
- 2 Short Papers: 30%
- Long Paper: 20%

*Discussion:* Each member of the class will receive three color-coded single-use question cards with his or her name on them. The ranking of the cards will determine who is called on next. The ranking of the cards is as follows:

Red > Yellow > Green > hand with no card

If you want to ask a question or make a comment and would like to use a card, raise that card when attempting to get called on. Once called on, I'll collect your card. In order to get full credit in the participation category in a given two week period, each member of the class needs to use all of their cards. At the beginning of each two-week period, I'll redistribute your cards. No more than two cards can be used on a single day. Cards are not transferable.

If you lose your cards sometime during the two-week period, you won't be able to get full participation credit for that stretch of time. To use a card, the questions and comments need to be relevant and thoughtful. Also, to get credit for discussion over a two-week period, one must avoid use of electronic devices in class during that period. So remember to put away phones, computers, etc.

*Quizzes:* Quizzes will be about the readings and are do before we discuss them in class.

You may withdraw (although with a W on your transcript) until midsemester.

### *Excused Absences*

Students are granted excused absences from class for the following reasons: Illness of the student or serious illness of a member of the student's immediate family, the death of a member of the student's immediate family, trips for student organizations sponsored by an academic unit, trips for University classes, trips for participation in intercollegiate athletic events, subpoena for a court appearance, and religious holidays. Students who wish to have an excused absence from this class for any other reason must contact the instructor in advance of the absence to request permission. The instructor will weigh the merits of the request and render a decision. When feasible, the student must notify the instructor prior to the occurrence of any excused absences, but in no case shall such notification occur more than one week after the absence. Appropriate documentation for all excused absences is required. Please see the [Student Policy eHandbook](http://www.auburn.edu/student_info/student_policies/) for more information on excused absences([http://www.auburn.edu/student\\_info/student\\_policies/](http://www.auburn.edu/student_info/student_policies/)).

### *Make-Up Policy*

Arrangement to make up missed major examination (e.g. hour exams, mid-term exams) due to properly authorized excused absences must be initiated by the student within one week from the end of the period of the excused absences. Except in unusual circumstances, such as continued absence of the student or the advent of University holidays, a make-up exam will take place within two weeks from the time that the student initiates arrangements for it. Except in extraordinary circumstances, no make-up exams will be arranged during the last three days before the final exam period begins. The format of the make-up exam will be (*as specified by instructor*).

### *Disability Accommodations*

Students who need accommodations are asked to electronically submit their approved accommodations through AU Access and to arrange a meeting during office hours the first week of classes, or as soon as possible if accommodations are needed immediately. If you have a conflict with my office hours, an alternate time can be arranged. To set up this meeting, please contact me by e-mail. If you have not established accommodations through the Office of Accessibility, but need accommodations, make an appointment with the Office of Accessibility, 1228 Haley Center, 844-2096 (V/TT).

### *Classroom Behavior*

The AU Classroom Behavior Policy is strictly followed in the course; please refer to the Student Policy eHandbook at [http://www.auburn.edu/student\\_info/student\\_policies/](http://www.auburn.edu/student_info/student_policies/) for details of this policy.

### *Academic Honesty*

All portions of the Auburn University Student Academic Honesty code (Title XII) found in the Student Policy eHandbook at [http://www.auburn.edu/student\\_info/student\\_policies/](http://www.auburn.edu/student_info/student_policies/) will apply to this class. All academic honesty violations or alleged violations of the SGA Code of Laws will be reported to the Office of the Provost, which will then refer the case to the Academic Honesty Committee.

### *Emergency Contingency*

If normal class and/or lab activities are disrupted due to illness, emergency, or crisis situation (such as an H1N1 flu outbreak), the syllabus and other course plans and assignments may be modified to allow completion of the course. If this occurs, an addendum to your syllabus and/or course assignments will replace the original materials.

### *Office and Office Hours*

Scott's Office #: N210A, Kittredge Central, North Wing, 2nd Floor

Scott's Office Hours: Monday 12pm to 1:30pm and by appointment

Scott's Email: [scott.hill-1@colorado.edu](mailto:scott.hill-1@colorado.edu) . (Note: I don't check my email on evenings or weekends.)

### *Class Schedule*

*(Tentative: This schedule probably overestimates the number of readings we'll have)*

Week 1: 1/11

#### **Introduction**

Week 2: 1/16, 1/18

#### **Why Should Judges Rule According to the Law?**

'Introduction' *Limits of Legality*

Week 3: 1/23, 1/25

### **The Argument from Judicial Oath and Promising**

Federal Law 28 U.S.C. § 453.

David Lyons “Derivability, Defensibility, and the Justification of Judicial Decisions”

T.M. Scanlon “What is an Oath and Why Should a Physician Swear One?”

Joseph Raz “Promises in Morality and Law”

‘Judicial Oath’ in *Limits of Legality*

Week 4: 1/30, 2/1

### **The Argument from Legal Duty and Political Obligation**

Mark Murphy “Natural Law, Consent, and Political Obligation”

Christopher Heath Wellman “Liberalism, Samaritanism, and Political Obligation”

J.L. Mackie “Obligations to Obey the Law”

‘Legal Duty and Political Obligation’ in *Limits of Legality*

Week 5: 2/6, 2/8

### **Brand-Ballard’s Defense of Fallacious Ruling and Selective Optimization**

Part II of *Limits of Legality*

Week 6: 2/13, 2/15

Part II of *Limits of Legality*

Week 7: 2/20, 2/22

### **Must One Break Laws Unjustly Benefit One?**

‘The Problem of Rules’ in *The Rule of Rules: Morality, Rules, and the Dilemmas of Law* by Larry Alexander and Emily Sherwin

“Interpretation of Rules” in *The Rule of Rules*

Week 8: 2/27, 3/1

John Rawls “Legal Obligation and the Duty of Fair Play”

Candice Delmas 'Political Resistance as a Matter of Fairness'

Week 9: 3/6, 3/8

### **How Far Should a Lawyer Go In Defending a Client?**

Jane Frisch & Amy Waldman, Diallo 'Jurors Begin Deliberating in Murder Trial of Four Officers', N.Y. TIMES, Feb. 24, 2000

Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities* (selected passages)

Week 10: 3/12-3/16

Alan Dershowitz, "Reasonable Doubts: The OJ Simpson Case and the Criminal Justice System"

Abbe Smith, "Nice Work If You Can Get It": "Ethical" Jury Selection in Criminal Defense"

Week 11: 3/20, 3/22

Abbe Smith "The Difference in Criminal Cases and the Difference it Makes"

Abbe Smith "Defending Defending: The Case for Unmitigated Zeal on Behalf of People Who Do Terrible Things"

Week 12: 3/27, 3/29

### **Spring Break**

Week 13: 4/3, 4/5

### **Collective Action Problems Outside of the Law**

Alistair Norcross "Puppies Pigs and People"

Shelly Kagan "Do I Make a Difference?"

Week 14: 4/10, 4/12

Julia Nefsky "Consequentialism and the Problem of Collective Harm"

Week 15: 4/17, 4/19

David Lewis "Prisoner's Dilemma is a Newcomb Problem"

David Lewis "Why Ain'cha Rich?"

Week 16: 4/24, 4/26

Scott Hill "The Causal Impotence Problem is A Newcomb Problem"