

PHILOSOPHY 358 SYLLABUS

JOHN DOUARD, INSTRUCTOR

OFFICE HOURS BY APPOINTMENT

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Texts: *Is There a Duty to Obey the Law (For and Against)*, Wellman & Simmons, Cambridge University Press. ISBN: 9780521537841.

The Legalization of Drugs (For or Against), Husak & Naneffe, Cambridge University Press ISBN: 9780521546867.

Coercion, by Alan Wertheimer, Princeton University Press (Legacy Edition), ISBN: 9780691608747.

I will also distribute via email other documents over the course of the semester.

Do we have a duty to obey the law? Is the law coercive, and, if so, does it violate deeply held liberty values? In fact, are there specific laws we have a duty of civil disobedience to violate? Do marijuana laws violate principles of liberty, thereby opening up a space for justifiable civil disobedience? Are punishment and the threat of punishment justifiable coercion? Do "necessity" and "excuse" diminish law's coercive character? Is a promise that results in a legally binding contract a kind of coercion? When is an offer a threat? Above all, what does "coercion" mean?

In this course we will examine these and other questions related to the concept of coercion, with a view towards arriving at a better understanding of law and its relationship to morality; certain issues in criminal law (including legal punishment, plea bargaining, entrapment, criminal intent, legal responsibility); similar issues in civil law (including the extent to which promises create a contract compelling us to perform); and related issues in constitutional law (the right to privacy, the right not to testify against oneself, and the right to an attorney); and major issues in legal reasoning (including the interpretation of statutes, the role of common law, and stare decisis).

COURSE LEARNING OBJECTIVES

- Students will learn to identify the structure of philosophical – to identify premises, inferences, and conclusions.
- Students will learn to distinguish between valid and invalid arguments, and between sound and unsound arguments, and how to evaluate arguments for validity and soundness.
- Students will learn to distinguish between normative and descriptive claims, and will learn to distinguish between different kinds of normative claims (moral, legal, prudential, etc.)

- Students will learn certain important concepts in moral philosophy and jurisprudence.
- Students will learn how to write clearly and precisely, how to present arguments in a paper, and how to support their arguments with relevant textual evidence.
- Students will learn how to engage in rigorous, but respectful, philosophical debate.
- Students will develop a critical understanding of the history of debate over the nature of the law and a legal system, as well as an understanding of major issues in criminal law, civil law, and constitutional law, and the interpretation of the U.S. Constitution.
- Students will learn in some measure how to "think like lawyers."

PARTICIPATION

Students are expected to attend all classes; if you expect to miss one or two classes, please use the University absence reporting website <https://sims.rutgers.edu/ssra/> to indicate the date and reason for your absence. An email is automatically sent to me. Your attendance will contribute to your overall Participation grade.

Material to be read for the subsequent class will be assigned in the previous class. The assigned reading will follow the Class Schedule (see below). Students are required to do all of the assigned reading before class. A prepared student will not only have read the material assigned but will have reflected upon the claims and arguments made therein. Students should plan on making notes while reading the material, since it may be difficult and may require more than one reading.

Students will be called upon to answer questions on the day's reading, and will be expected to spontaneously contribute to the class discussions. Students are expected to listen to their classmates and the professor carefully and respectfully. This entails, of course, NOT web-surfing, e-mailing, texting, etc., during class. None of this is allowed during class. Laptop computers are also not allowed in class, and notes are to be taken by hand. Phones are to be switched off or placed on silent mode.

Students may also discuss the readings, assignments, and paper topics with me outside of class by e-mailing me or by meeting with me after our Saturday class, but only by appointment. All participation in class discussion and outside-of-class discussion counts towards the Participation grade.

Students will be awarded an overall grade for their participation in class.

CURRENT ACADEMIC INTEGRITY POLICY: Cheating and Plagiarism

Short version: Don't cheat. Don't plagiarize.

Longer version: Cheating on tests or plagiarizing materials in your papers deprives you of the educational benefits of preparing these materials appropriately. It is personally dishonest to cheat on a test or to hand in a paper based on unacknowledged words or ideas that someone else originated. It is also unfair, since it gives you an undeserved advantage over your fellow students who are graded on the basis of their own work. In this class we will take cheating very seriously. All suspected cases of cheating and plagiarism will be automatically referred to the Office of Judicial Affairs, and we will recommend penalties appropriate to the gravity of the infraction. The university's policy on Academic Integrity is available at <http://academicintegrity.rutgers.edu/academic-integrity-policy>. I strongly advise you to familiarize yourself with this document, both for this class and for your other classes and future work.

Since what counts as plagiarism is not always clear, I quote the definition given in Rutgers' policy:

Plagiarism: Plagiarism is the use of another person's words, ideas, or results without giving that person appropriate credit. To avoid plagiarism, every direct quotation must be identified by quotation marks or appropriate indentation and both direct quotation and paraphrasing must be cited properly according to the accepted format for the particular discipline or as required by the instructor in a course. Some common examples of plagiarism are:

- Copying word for word (i.e. quoting directly) from an oral, printed, or electronic source without proper attribution.
- Paraphrasing without proper attribution, i.e., presenting in one's own words another person's written words or ideas as if they were one's own.
- Submitting a purchased or downloaded term paper or other materials to satisfy a course requirement.
- Incorporating into one's work graphs, drawings, photographs, diagrams, tables, spreadsheets, computer programs, or other nontextual material from other sources without proper attribution.

A SPECIAL NOTE: Students often assume that because information is available on the Web it is public information, does not need to be formally referenced, and can be used without attribution. This is a mistake. All information and ideas that you derive from other sources, whether written, spoken, or electronic, must be attributed to their original source. Such sources include not just written or electronic materials, but people with whom you may discuss your ideas, such as your roommate, friends, or family members. They deserve credit for their contributions too!

Judgments about plagiarism can be subtle. If you have any questions, please feel free to ask me for guidance.

STUDENT-WELLNESS SERVICES:

Just In Case Web App

<http://codu.co/cee05e>

Access helpful mental health information and resources for yourself or a friend in a mental health crisis on your smartphone or tablet and easily contact CAPS or RUPD.

Counseling, ADAP & Psychiatric Services (CAPS)

(848) 932-7884 / 17 Senior Street, New Brunswick, NJ 08901/ rhscaps.rutgers.edu/

CAPS is a University mental health support service that includes counseling, alcohol and other drug assistance, and psychiatric services staffed by a team of professional within Rutgers Health services to support students' efforts to succeed at Rutgers University. CAPS offers a variety of services that include: individual therapy, group therapy and workshops, crisis intervention, referral to specialists in the community and consultation and collaboration with campus partners.

Violence Prevention & Victim Assistance (VPVA)

(848) 932-1181 / 3 Bartlett Street, New Brunswick, NJ 08901 / vpva.rutgers.edu/

The Office for Violence Prevention and Victim Assistance provides confidential crisis intervention, counseling and advocacy for victims of sexual and relationship violence and stalking to students, staff and faculty. To reach staff during office hours when the university is open or to reach an advocate after hours, call 848-932-1181.

Disability Services

(848) 445-6800 / Lucy Stone Hall, Suite A145, Livingston Campus, 54 Joyce Kilmer Avenue, Piscataway, NJ 08854 / <https://ods.rutgers.edu/>

The Office of Disability Services works with students with a documented disability to determine the eligibility of reasonable accommodations, facilitates and coordinates those accommodations when applicable, and lastly engages with the Rutgers community at large to provide and connect students to appropriate resources.

Scarlet Listeners

(732) 247-5555 / <http://www.scarletlisteners.com/>

Free and confidential peer counseling and referral hotline, providing a comforting and supportive safe space.

The add/drop policy can be found at this URL:

<https://webmail.rci.rutgers.edu/src/webmail.php>

Your course grade will be an average of the following, and to receive a passing grade you must complete all of the work:

2 papers, each worth 30 points: due on March 5 and April 30, for a total of 60 points.

Final examination on finals day: May 7. Room and time TBA. Worth 30 points

Participation grade: I will give you a grade up to 10 points for class participation.

READING AND WRITING ASSIGNMENTS SCHEDULE

January

- 23 Duty to Obey the Law: *R. v. Dudley & Stephens*: a lifeboat exception?
- 30 What is "law"?
 Bix on Austin
 Theories of Hart & Dworkin
 Hart's Rule of Law
 Bix on constructing theories

February

- 6 We Have a Duty to Obey the Law:
 Wellman & Simmons, pp. 3-89.
- 13 We Do Not Have a Duty to Obey the Law:
 Wellman & Simmons: PP. 93-196.
- 20 Justification, Excuse, and Civil Disobedience:
 Greenawalt: Distinguishing Justification from Excuses;
 Wertheimer: pp. 144-170;
 M.L. King: Letter from Birmingham Jail.
- 27 Social Context:
 Coates: Black Family in Age of Mass Incarceration, Pt. 1. & 2

March

- 5 First Paper Due.
 Miranda v. Arizona; Minnesota v. Dickerson
 Summary of first half of course.

- 12 & 19 Spring Recess

- 26 Coercion: The Problem, Confessions & Searches
 Wertheimer: pp. 3-15; 104-123.
 Stuntz: Miranda's Mistake

April

- 2 Coercion: Plea bargaining:
 Wertheimer pp. 122-143.
 Article: Rakoff: Why Innocent People Plead Guilty
 Article: Stuntz: Plea Bargaining and Law's Disappearing Shadow
- 9 Coercion: Threats or Offers; right to work:

Lockner v. New York
Article: *Union fees in jeopardy*
Wertheimer: pp. 9-53.

- 16 Philosophical issues of coercion
Wertheimer: pp. 179-241
- 23 Wertheimer: 242-310
- 30 Last day of regular classes: course summary
- May
- 7 Final exam