

Course Syllabus
Philosophy of Law: Law and Social Order
PHIL 461, Fall, 2016

Instructor: Dr. Matt Zwolinski

Office Hours: MW: 9:45 AM – 10:45 AM; 2:30 PM – 4:00 PM

Office: F167A

Course Website: <http://ole.sandiego.edu> [Blackboard]

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Required Books:

Thomas Hobbes, *Leviathan* (Penguin, 1982)

Robert Axelrod, *The Evolution of Cooperation: Revised Edition* (Basic Books, 2006)

Bruce Benson, *The Enterprise of Law: Justice Without the State* (Independent Institute, 2011)

Robert Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Harvard, 1991)

Friedrich Hayek, *Law, Legislation and Liberty, volume 1: Rules and Order* (Chicago, 1973)

Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge, 2015)

Jonathan Rauch, *Government's End: Why Government Stopped Working* (Public Affairs, 1999)

James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale, 1999)

Core Requirements: This course fulfills the Core Curriculum requirement for a non-Ethics, non-logic philosophy course. It also fulfills the requirement for a “W” (Writing) course.

Content:

What would society be like if there weren't any laws? Asking this question forces us to think about the role of law in our lives, and particularly about the relationship between law and social order. A lawless society would seem almost by definition to be a chaotic society. And a chaotic society seems like it would be a very unhappy place to live.

But how important a role does the law actually play in facilitating social order? To a large extent, the answer to this question will depend on what we mean by “law.” Is “law” simply whatever rules the government creates and enforces by means of legislation? Or are there other sources of law beyond those created by the state? If there are, then what is the relative importance of governmental and non-governmental law in creating an orderly, peaceful, and prosperous society?

This course is an examination of the relationship between law and social order. Our primary methodology in conducting this examination will be philosophical, emphasizing conceptual clarity and rigorous argumentation. The sources from which we draw, however, will be highly interdisciplinary in nature – including not only philosophical works but studies from political science, economics, and anthropology.

A word of caution (or enticement, depending on your perspective): this course will involve reading a fairly large number of fairly difficult books. And most of our class time will be spent on open discussion of these books, rather than on me lecturing at you. It is therefore essential that you come to class having done the reading, and with something to say. That doesn't mean you have to have a brilliant original analysis of the text or a knock-down argument against the author's thesis. A question is something to say, too. But you need to show up ready to actively engage with the ideas. If that sounds interesting and exciting to you, then this should be a very rewarding class. If not, then you might wish to consider your alternatives.

Course Requirements:

Philosophical readings are dense and difficult. It will probably take longer than you expect to read them once, and it will probably be necessary to re-read most pieces at least once in order to come to an adequate understanding of the material. You should expect to spend at least **six hours per week** outside of class time reading and re-reading the material. If you do this, you will have a much easier time with the short writing assignments, which should probably take up an additional **five to six hours each** in preparation time. Use the study questions on Blackboard for help.

The requirements set out in this syllabus are subject to revision at the instructor's discretion.

- **Presentations** – Each class will begin with an introductory presentation by a student. The purpose of these presentations is not to provide a comprehensive overview of the material assigned for that class. Rather, it is to start a conversation. You should aim to provide a brief summary of the material – enough to remind your fellow students of the key points. In addition to summary, you should also do something to help students think critically about the material. Ask a question about it. Or, if you're up for it, make a short criticism. Aim for around 5-7 minutes. Each student will be required to make two presentations over the course of the semester.
- **Papers** – I will assign three writing assignments over the course of the semester.
 - **Short Papers:** The first two will be relatively short – **no less than two and no more than three pages** (typed, double-spaced, 1 inch margins and normal fonts) in length. I will assign a topic for these papers which will involve two tasks: 1) **reconstructing an argument** or arguments from one or more of the readings we have covered in class, and 2) providing an **original critical evaluation** of that/those argument(s). These papers are short not to make life easy for you but in order to force you to think carefully about what is essential to an argument and what is not. I will grade these papers with an eye to *detail* and *conceptual rigor*. Expect to be challenged.
 - **Term Paper:** The third writing assignment will be longer – between **12 and 15 pages** (typed, double-spaced, 1 inch margins and normal fonts) in length. For this paper, you will be free to choose from among a list of topics that I will provide to you. Your paper must be both *argumentative* and *philosophical*. It will be argumentative in that the primary purpose of your paper is to defend some thesis regarding a controversy in the field (rather than merely to issue a “book report” about what so-and-so said about such-and-such). It will be *philosophical* in that both the question you try to answer and the methodology you use in answering it will fall squarely within the discipline of philosophy (rather than, say, sociology, psychology, or history). This paper will be due on the day of your scheduled final (**December 16th**). As it will be submitted electronically via Turnitin.com (see below), you do not need to come in to campus for our final exam period.
 - **Topic Proposal:** You will be expected to clear your topic with me in advance, by submitting an approximately 1/2 page topic proposal no later than **November 4th**. The point of the proposal is to describe a **researchable question** about ideas related to the material covered in this course. Your question should be one that is theoretically *interesting*, one that has *not already been conclusively answered*, and one to which you think you can make a *reasonable contribution* toward answering in a 10-12 page paper.
 - **Working Bibliography:** By **November 11th**, you must submit a working bibliography of at least 7 sources related to your topic. This bibliography should include all relevant citation information, properly formatted. It should also include a 1-2 sentence summary of each article on the list. At least 5 of your sources must be *philosophical*. Philosophical sources are sources written by professional philosophers, and published in philosophical journals or books from academic presses.

- **Summary of Sources:** By **November 21st**, you must submit 1/2—3/4 page summaries of 3 of your philosophical sources (1 ½ – 2 ¼ pages total), setting out their topic, their thesis, and the basic structure of their argument, as well as any potential strengths and weaknesses that might be relevant for your own project.
- **Letter to a Friend:** On **December 9th**, you will be required to turn in a 3-4 page letter to a friend in which you engage that friend's interest with your research question, discuss the sources you have read, and partially explain your own answer to your question in reference to those sources. This letter will be given to another student in the class, and you in turn will receive a letter from one of your fellow students. You will have until **December 12th** to read the letter and write a **2-page peer evaluation**. Your grade will be determined by your success in submitting a completed letter on time, and on the quality of the feedback you provide to your fellow student.
- **Late papers:** Papers are due on Turnitin.com (see below) at the beginning of the class period on the day indicated on the schedule below. **Late papers will be penalized 5 percentage points per day**, without exception.
- **Participation** – Philosophy is best learned through active conversation with others. It is therefore important that you be a regular participant in classroom discussions. Your participation grade will be based on the quality and regularity of your contributions to our conversation. In addition, each class will end with a brief opportunity for written reflection. These will also count toward your participation grade.

Your Grade

Each activity in this class is worth a certain number of points. Your grade will be determined based on a straight (un-curved) analysis of percentage of points earned vs. total points possible.

2 Presentations @ 10 points each:	20
2 Short Papers @ 20 points each:	40
Term Paper Topic Proposal:	5
Working Bibliography:	5
Summary of Sources:	5
Letter to a Friend/Peer Review:	5
Term Paper:	40
Participation:	20
Total Points:	140

A+	97 - 100%
A	93 - 96.9
A-	90 - 92.9
B+	87 - 89.9
B	83 - 86.9
B-	80 - 82.9
C+	77 - 79.9
C	73 - 76.9
C-	70 - 72.9
D+	67 - 67.9
D	63 - 66.9
D-	60 - 62.9
F	59.9 or below

Learning Outcomes

By the end of this course...

- Students should be able to describe, in essay form, the Hobbesian theory of law and the empirical challenges to that theory presented by Axelrod, Ellickson, and Ostrom
- Students should be able to describe the legal theories of Hayek and Benson and contrast them with the Hobbesian theory
- Finally, students should be able to develop a substantial written term paper that both reconstructs and critically evaluates the arguments presented in the works covered in class.
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Academic Integrity

You are expected to know and follow University Policies on cheating and plagiarism. See the Code of Academic Integrity. Outside research is *a good thing* in philosophy. Just cite it! If it is determined that you have cheated, you will fail the course and I may recommend that you be expelled from the University.

Schedule for PHIL 461: Philosophy of Law
Fall, 2016
Professor Zwolinski

KEY DATES AT A GLANCE

Sept 5	-	No class: Labor Day
Sept 23	-	First short paper due
Oct 19	-	Second short paper due
Oct 21	-	No class: Fall Holiday
Nov 4	-	Topic Proposal Due
Nov 11	-	Working Bibliography Due
Nov 21	-	Summary of Sources Due
Nov 23-25	-	No class: Thanksgiving
Dec 9	-	Letter to a Friend Due
Dec 12	-	Letter to a Friend Feedback Due
Dec 16	-	Final Paper Due at 4:00 PM

Schedule of Readings

Week 1 (Aug 31 – Sept 2) – Hobbes on Life Without Law

Aug 31:

- Introduction to course

Sept 2:

- Thomas Hobbes, *Leviathan*, chapters 11, 13

Week 2 (Sept 5 – 9) – Hobbes on the Social Contract and Civil Law

No class September 5th (Labor Day)

Sept 7:

- Thomas Hobbes, *Leviathan*, chapters 15, 17, 18

Sept 9:

- Thomas Hobbes, *Leviathan*, chapters 21, 26

Week 3 (Sept 12 - 16) – Testing Hobbes' Hypothesis, Part 1: Computer Tournaments

Sept 12:

- Robert Axelrod, *The Evolution of Cooperation*, Preface and chapter 1

Sept 14:

- Robert Axelrod, *The Evolution of Cooperation*, chapters 2-3

Sept 16:

- Robert Axelrod, *The Evolution of Cooperation*, chapters 4, 9

Week 4 (Sept 19 - 23) – Testing Hobbes' Hypothesis, Part 2: Cattle Ranchers in Shasta County

First Short Paper Due Sept 23

Sept 19:

- Robert Ellickson, *Order Without Law*, chapters 1-2

Sept 21:

- Robert Ellickson, *Order Without Law*, chapters 3-4

Sept 23:

- Robert Ellickson, *Order Without Law*, chapters 5-6

Week 5 (Sept 26 - 30) – Testing Hobbes’ Hypothesis, Part 2: Cattle Ranchers in Shasta County

Sept 26:

- Robert Ellickson, *Order Without Law*, chapters 7-9

Sept 28:

- Robert Ellickson, *Order Without Law*, chapters 10-11

Sept 30:

- Robert Ellickson, *Order Without Law*, chapters 12-14

Week 6 (Oct 3 – 7) – Testing Hobbes’ Hypothesis, Part 3: The Non-Tragic Commons

Oct 3:

- Elinor Ostrom, *Governing the Commons*, chapter 1-2

Oct 5:

- Elinor Ostrom, *Governing the Commons*, chapter 3

Oct 7:

- Elinor Ostrom, *Governing the Commons*, chapter 4

Week 7 (Oct 10 - 14) – Testing Hobbes’ Hypothesis, Part 3: The Non-Tragic Commons

Oct 10:

- Elinor Ostrom, *Governing the Commons*, chapter 5

Oct 12:

- Elinor Ostrom, *Governing the Commons*, chapter 6

Oct 14

- James Scott, *Seeing Like a State*, Introduction and chapter 1

Week 8 (Oct 17 - 21) – Understanding the Limits of State Action

No class October 21 (Fall Holiday)

Second Short Paper Due October 19

Oct 17:

- James Scott, *Seeing Like a State*, chapter 2-3

Oct 19:

- James Scott, *Seeing Like a State*, chapter 4-5

Week 9 (Oct 24 – Oct 28) – Understanding the Limits of State Action, continued

Oct 24:

- James Scott, *Seeing Like a State*, chapter 6

Oct 26:

- James Scott, *Seeing Like a State*, chapter 7

Oct 28

- James Scott, *Seeing Like a State*, chapters 9-10

Week 10 (Oct 31 – Nov 4) – Two Kinds of Social Order

Topic Proposal Due November 4

Oct 31:

- Friedrich Hayek, *Law, Legislation, and Liberty, volume 1*, chapter 1

Nov 2:

- Friedrich Hayek, *Law, Legislation, and Liberty, volume 1*, chapter 2

Nov 4:

- Friedrich Hayek, *Law, Legislation, and Liberty, volume 1*, chapter 3

Week 11 (Nov 7 - 11) – Law vs. Legislation

Summary of Sources due November 11

Nov 7:

- Friedrich Hayek, *Law, Legislation, and Liberty*, volume 1, chapter 4

Nov 9:

- Friedrich Hayek, *Law, Legislation, and Liberty*, volume 1, chapter 5

Nov 11:

- Friedrich Hayek, *Law, Legislation, and Liberty*, volume 1, chapter 6

Week 12 (Nov 14 – 18) – From Private Law to Authoritarian Law

Nov 14:

- Bruce Benson, *The Enterprise of Law*, chapters 1-2

Nov 16:

- Bruce Benson, *The Enterprise of Law*, chapter 3

Nov 18:

- Bruce Benson, *The Enterprise of Law*, chapters 4-5

Week 13 (Nov 21) – A Public Choice Analysis of Authoritarian Law

No class November 23-25 (Thanksgiving)

Summary of Sources due November 21

Nov 21:

- Bruce Benson, *The Enterprise of Law*, chapters 6-7

Week 14 (Nov 28 – Dec 2) – The Re-emergence of Private Law

Nov 28:

- Bruce Benson, *The Enterprise of Law*, chapters 8-10

Nov 30:

- Bruce Benson, *The Enterprise of Law*, chapters 13-14

Dec 2:

- Jonathan Rauch, *Government's End*, chapters 1-2

Week 15 (Dec 5 - 9) – Public Law and Private Interests

Letter to a Friend Due December 9

Dec 5:

- Jonathan Rauch, *Government's End*, chapters 3-4

Dec 7:

- Jonathan Rauch, *Government's End*, chapters 5-6

Dec 9:

- Jonathan Rauch, *Government's End*, chapters 7-8

Week 16 (Dec 12) – Wrap-up

Letter to a Friend Feedback Due December 12

Dec 12:

- Wrap-up

Friday, December 16th, 4:00 PM - Final Paper Due