

## LGLS 443 – LEGAL ETHICS

Spring 2017

Andrea Boggio

Suite F - Room 414

+1 (401) 232-6455

[aboggio@bryant.edu](mailto:aboggio@bryant.edu)

### Meeting Times

Hours: 2:00 pm - 3:15 pm

Day: Tuesday, Thursday

Room: AIC 237 A

### Office hours

Tuesday and Thursday | 3:30pm-5:00pm

By appointment

### Course description

Thinking deeply about the nature of "the Good" is the starting point for investigating the purposes of law. To this end, Legal Ethics introduces the student to the leading ethical systems that have guided human thought about the Good. Using various legal issues as case studies, the course helps the student to integrate an understanding of ethical systems and theories of moral development into the study of law broadly considered. This semester, the class focuses on how current policies issues are debated. In particular, we will discuss unsettled legal and policy issues with the aim of fostering student's understanding of how and why these issues are debated and on possible policy solutions. To this end, we will spend a substantial amount of class time debating issues and reflecting on these debates. Some of the issues are selected by the instructor; some by students.

Be aware that we will discussed sensitive and difficult topics. To do so, we must all come to class with an open mind and willingness to engage with people who hold different ideas. On the one hand, this means that all students should all make an effort to respect other students' point of view and no offend peers in any way. On the other hand, anybody should feel sufficiently safe to express ideas freely in debating issues. Communication is a two-way street: hear and be heard.

### Course Objectives

Students will emerge from this course with a better understanding of the relationship between law, morality and society. They will also acquire knowledge of several areas of substantive law as well as the ability to research and integrate this knowledge into their analysis, using the materials of various nature.

Course objectives, both in breadth and detail are as follows:

1. To define and describe key legal concepts, specific facts and critical issues in law and correctly apply this information to particular examples; and
2. To use conceptual legal models and theories to analyze legal events and case decisions; and
3. To apply law and legal theories to make convincing arguments supported by evidence and reasoning

### Learning Goals

- Demonstrate knowledge of the legal issues discussed throughout the semester
- Assess existing legal arrangements based on their relationship to morality
- Develop deep reading skills
- Ability to develop an empirically informed argument
- Communicate knowledge effectively
- Effectively participate in active learning

### Course Structure

The class mixes lectures, discussions and active learning. Students work, independently or in groups, to generate carefully researched and creative analyses of the relationship between morality and law. A good part

of work done in class is structured as group work. All assignments associated with the reading group are graded individually. The instructor will communicate timely the schedule as well as roles and assignments for each reading group session.

### **Course Materials**

Because of the nature of the subject matter and the pedagogical choice to focus on a variety of issue, no comprehensive textbook is available. Also no complete reading list is made available at the beginning of the semester because some classes will be based exclusively on current events. Assigned readings/videos/handouts are posted progressively during the semester on Blackboard.

### **Time Expectation**

This is a three-hour course. The expectation is 9 hours of preparation outside class each week. The course is structured to require 9 hours of readings and project work per week.

NOTE ON EXTRA CREDIT: I ordinarily do not assign extra credit work. If you have concerns about your grade, you should talk to me early in the semester. Only under exceptional circumstances, I allow students to retake an exam or make up for missed work.

### **Attendance Policies**

Class preparedness and participation are essential to success in this course, especially because the course relies heavily on active learning, that is, on active participation of students in class. According to the Bryant University Student Handbook ([https://intranet.bryant.edu/resources/files/student\\_handbook.pdf](https://intranet.bryant.edu/resources/files/student_handbook.pdf)), "the academic experience takes priority over all other activities. Accordingly, full attendance and participation in classes are expected of all students and is the responsibility of all students."

Attendance is incorporated in the grade of the weekly quizzes or the reading group assignments.

- If a student is not in class, he/she receives a 0 on a weekly quiz or the regain group assignment.
- If a student turns in some work but he/she is not in class, the grade is lowered (usually 1 point out of 3).
- Full credit is given only to students who are in class.
- **Justified absence.** In the event of a justified absence (such as to attend a Bryant-sponsored event, military duty, jury duty, illness or injury sufficient to prevent class attendance; or death or serious illnesses in the family), the student must request that I assign make-up homework to make up the absence within one week after the absence. If you anticipate missing a test, you must contact me prior to the scheduled test, either in person, by phone, or by e-mail. Failure to do so will result in an automatic grade of zero for that exam.
- **Prolonged absences:** According to the Bryant University Student Handbook, students must contact the Registrar's Office in the event of situations requiring prolonged absences. In addition, please provide independent notice to me in advance of the absence.

### **Grading Policies**

The final grade is calculated as follows:

- Written assignments and participation in debates: 33%
- Attendance: 14%
- Closed book midterm: 20%
- Open note take-home exam: 33%

Remember that some of the theories and basic concepts will only be discussed in class. Attendance and note take are therefore important part of the learning process.

Makeup Exam Policy: Students with a legitimate excuse are allowed to take a makeup exam. If you anticipate missing a quiz, you must contact me prior to the scheduled quiz, either in person, by phone, or by e-mail.

Failure to do so will result in an automatic grade of zero for that exam.

### **Letter grades**

- 93-100%: A

- 90-92%: A-
- 87-89%: B+
- 83-86%: B
- 80-82%: B-
- 77-79%: C+
- 73-76%: C
- 70-72%: C-
- 67-69%: D+
- 60-66%: D
- 59% or below: F

**Take home final**

Due on Monday, May 15, by 12:30 pm

## Week 1

### Topic

- Analyzing problematic cases

### Learning goals

- Framing an issue in ethical terms (how things ought to be rather than how things are)
- Understand what ethics is
- Relationship between ethics and law
- Applying different conceptual approaches to the speluncean explorers case
- Identifying useful principles to analyze and resolve the speluncean explorers case
- Appreciate the power of (competing) narratives in framing a policy issue
- Understand what considerations come into play when federal prosecutors decide to prosecute a criminal offender
- Apply these considerations to the Snowden case
- Be familiar with Snowden's indictment

### Cases

- The speluncean explorers
- Edward Snowden

### Readings

- [Boston Globe article.pdf](#)
- [Speluncean case.pdf](#)
- Handout: [Introduction to morality and ethics.pdf](#)
- Moral reasoning, ethical theories and law (see attached PDF)
- US Attorneys' Manual, Section 9-27.230 (Initiating and Declining Charges—Substantial Federal Interest), <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.230>
- Gladwell, Daniel Ellsberg, Edward Snowden, and the Modern Whistle-Blower, <http://www.newyorker.com/magazine/2016/12/19/daniel-ellsberg-edward-snowden-and-the-modern-whistle-blower>
- Savage, Was Snowden a Russian Agent? <http://www.nybooks.com/articles/2017/02/09/edward-snowden-russian-agent/>
- U.S. vs. Edward J. Snowden, Criminal complaint, <http://apps.washingtonpost.com/g/documents/world/us-vs-edward-j-snowden-criminal-complaint/496/>

## Week 2

### Topic

- Utilitarianism

### Learning goals

- Distinguish between principles (such as respect for life) and consequences (such as deterrent effect) implicated in policy choices
- understand the current policy of the US government, which allows the family of a person kidnapped by a terrorist group to pay ransom
- Apply a utilitarian framework to a policy issue
- Understand what utilitarianism is
- Understand why utilitarianism is a consequentialist approach to morality
- Explain the difference between act utilitarianism and rule utilitarianism
- Understand the role of impartiality in judging human actions

- Understand the kinds of "utility" that are valuable and some of its key components (intensity, duration, fruitfulness, likelihood)

#### Cases

- Should the U.S. government allow families to pay ransom money?
- Organ allocation

#### Readings

- Handout: Utilitarianism.pdf
- <https://obamawhitehouse.archives.gov/the-press-office/2015/06/24/fact-sheet-us-government-hostage-policy> (as amended in 2015)
- <http://www.cbsnews.com/videos/the-hostage-policy/> (interview with family members and gov't officials)
- US Dep't of State Foreign Affairs Manual. <https://fam.state.gov/FAM/07FAM/07FAM1820.html>
- <https://www.bloomberg.com/view/articles/2016-08-05/paying-ransom-for-hostages-isn-t-always-bad>(op-ed)
- <https://www.theguardian.com/world/2016/jun/17/governments-pay-ransoms-hostages-kidnappers-terrorists-complicated-canada-us>(op-ed)
- <https://www.newamerica.org/international-security/policy-papers/pay-ransom-or-not/>(some data)

### Week 3

#### Topic

- Deontology

#### Learning goals

- Understand the difference between consequentialist and nonconsequentialist approaches to ethics
- Understand that motives are central to deontology (we are responsible for our intention to do good or bad, and thus it is for this that we are held morally accountable)
- Understand what categorical imperative is
- Understand the idea that a person should never be treated as a means but always as an end
- Connect the idea of that it is in human nature to be rational beings to the categorical imperative (rationality as a source of human dignity)

#### Case:

- Truth telling

#### Readings

- Handout: [Natural law and human rights.pdf](#)
- Handout: [Natural law slides.pdf](#)

### Week 4

#### Topic

- Natural law and human rights
- The moral limits of markets

#### Learning goals

- Understand the idea of natural law and how it relates to the idea of human rights
- Explain the importance of teleology (= apparent purpose or goal for which things exist) for thinking about natural law
- Understand the idea of self-evident moral principles and basic goods
- Clarify how natural law arguments are grounded in claims about the essence of human nature
- Analyze how the three ethical theories resolve the problem
- Appreciate the difference between action and omission and how this difference is incorporated by the three ethical theories

- Understand what a "market" is and how it can be regulated
- Understand how Iran regulates its market for organs
- Apply the moral theories to idea of creating a market for organs

#### Cases

- Trolley problem
- Footbridge problem
- Selling organs

#### Readings

- <https://www.theatlantic.com/magazine/archive/2012/04/what-isnt-for-sale/308902/>
- The Sale of Human Organs Is Unethical
- Iran's Organ Vending System Is Beneficial
- The Selling of Body Parts Does Not Benefit the Poor
- The Selling of Body Parts Could Benefit the Poor
- The Sale of Human Organs Should Be Allowed
- China's Organ Market Is Unethical

### Week 5

#### Topics

- Death Penalty
- Convicted felons' voting rights

#### Learning goals

- Understand why the death penalty raises constitutional issues ("cruel and unusual punishment")
- Appreciate how the death penalty is regulated at the federal level and the state level
- Understand at what conditions is the death penalty constitutional
- Ability to label an argument as consequentialist or nonconsequentialist
- Identify consequentialist and nonconsequentialist arguments in favor and against the death penalty
- Understand the current laws on convicted felons' voting rights
- Understand variation among state laws
- Identify arguments in favor and against allowing felons who have completed their sentence (Incarceration, Probation, and Parole) to be allowed to vote
- Ability to label these arguments as consequentialist or not
- Understand the three main purposes of punishment (retribution, deterrence, and rehabilitation) and how they impact the analysis for felons' voting rights

#### Readings

- [https://www.law.cornell.edu/wex/death\\_penalty](https://www.law.cornell.edu/wex/death_penalty)
- [https://en.wikipedia.org/wiki/List\\_of\\_United\\_States\\_Supreme\\_Court\\_decisions\\_on\\_capital\\_punishment](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_decisions_on_capital_punishment)
- <https://www.aclu.org/other/case-against-death-penalty>
- [http://www.bbc.co.uk/ethics/capitalpunishment/against\\_1.shtml](http://www.bbc.co.uk/ethics/capitalpunishment/against_1.shtml)
- [http://www.bbc.co.uk/ethics/capitalpunishment/for\\_1.shtml](http://www.bbc.co.uk/ethics/capitalpunishment/for_1.shtml)
- <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>
- <http://felonvoting.procon.org/>
- <https://exoffenders.net/felon-voting-rights/>
- <http://www.businessinsider.com/maps-on-fbis-uniform-crime-report-2013-9>

### Week 6

#### Topics

- Fundamental rights: what they are and their significance

- Democracy and self-government

#### *Learning goals*

- Understand what fundamental rights are
- Be familiar with how Supreme Court reviews state laws that limit have these rights (standard of review)
- Be able to define what constitutes the core of the right to privacy (abortion) and the right to bear arms
- Understand the concept of self-governance
- Appreciate how democracy can be a source of legitimacy for law
- Be familiar with various systems of governance (democracy, plutocracy, epistocracy, ...)
- Appreciate the various perspective on citizenship and voting rights
- Understand critiques of democracy

#### *Readings*

- Judicial review (1):  
[https://nationalparalegal.edu/conLawCrimProc\\_Public/EqualProtection/images/Fundamental1.jpg](https://nationalparalegal.edu/conLawCrimProc_Public/EqualProtection/images/Fundamental1.jpg)
- Judicial review (2):  
[https://nationalparalegal.edu/conLawCrimProc\\_Public/EqualProtection/images/History1.jpg](https://nationalparalegal.edu/conLawCrimProc_Public/EqualProtection/images/History1.jpg)
- Privacy (Abortion): <http://law.justia.com/constitution/us/amendment-14/31-abortion.html>
- Bearing Arms: <http://law.justia.com/constitution/us/amendment-02/>
- Voting: <http://www.lawschool.cornell.edu/research/JLPP/upload/Douglas.pdf>
- Ball & Dagger The Democratic Ideal(background information)
- <http://www.hoover.org/research/self-government>
- Rationallyspeaking Podcast: RS 176 - Jason Brennan on "Against democracy"
- <http://foreignpolicy.com/2016/11/10/the-dance-of-the-dunces-trump-clinton-election-republican-democrat/>
- <http://www.thecritique.com/articles/against-epistocracy/>

#### *Additional resources*

- <http://www.newyorker.com/magazine/2016/11/07/the-case-against-democracy>
- <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/09/03/democracy-vs-epistocracy/>
- <https://newrepublic.com/article/137068/voting-wrongs>

## **Week 7**

### *Topic*

- Constitutional Interpretation and Judicial Philosophies

### *Learning goals*

- Understanding what constitutional interpretation is
- Learn the following concepts: Judicial Restraint, Judicial Activism, Originalism, The "Living Constitution" Approach, Strict Constructionism, Textualism
- Applying various modes of constitutional interpretation
- Identify weaknesses and problems with the various modes of constitutional interpretation
- Reflecting on the value of having stable and predictable legal rules
- Fuller, The Case of the Speluncean Explorers (1949). <http://www.nullapoenade/stud/explorers.html>
- D'Amato, The Speluncean Explorers--Further Proceedings (2010). <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1097&context=facultyworkingpapers>

### *Case*

- The Speluncean Explorers Revisited

### *Readings/resources*

- The Modes of Constitutional Interpretation (see PDF) (skim)

- Glossary of Judicial Philosophies, <http://chooseyourjudges.org/facts-2/glossary-of-judicial-philosophies/>
- Video: C-SPAN: Supreme Court Justices Breyer and Scalia discussed their views on interpreting the Constitution. <https://www.c-span.org/classroom/document/?5013>
- Podcast/transcript: Conservatives Have 'Originalism'; Liberals Have...? <http://www.npr.org/templates/story/story.php?storyId=105439966>
- Cumberland, Originalism, in a Nutshell (2010) (see PDF)
- Strauss, The Living Constitution  
( ), <http://www.law.uchicago.edu/alumni/magazine/fall10/strauss> OR <http://ebookcentral.proquest.com/lib/bryant/reader.action?ppg=31&docID=510307&tm=1489887462480>
- Williams, Right Into the Mainstream (2017). <https://www.usnews.com/news/the-report/articles/2017-02-09/originalism-unlikely-to-torpedo-neil-gorsuchs-supreme-court-nomination>

#### *Non-mandatory*

- Selected writings on constitutional interpretation: <http://www.fed-soc.org/publications/detail/the-great-debate-interpreting-our-written-constitution>
- More multimedia Originalism vs The Living Constitution. <https://sites.google.com/site/laboratoriesofdemocracy/introduction---setting-the-table-of-american-government/the-charters-of-freedom/originalism-vs-the-living-constitution>
- *US v. Jones* (GPS tracking devices) <https://www.oyez.org/cases/2011/10-1259>
- *King v. Burwell* (omission of the "federal" exchanges from the ACA statute): <https://www.oyez.org/cases/2014/14-114>

### **Week 8**

Midterm

Guest speaker: [Jack Beemann](#), Professor of Law, Boston University School of Law

### **Week 9**

*Topic*

- First Amendment
- Politicians and lies

*Readings*

- Kathleen Ann Ruane, Freedom of Speech and Press: Exceptions to the First Amendment (Congressional Research Service 2014). <https://fas.org/sgp/crs/misc/95-815.pdf>
- Kathleen M. Sullivan, Two Concepts of Freedom of Speech, <http://harvardlawreview.org/2010/11/two-concepts-of-freedom-of-speech/> Summary is sufficient. The web page has link to full article in PDF
- Analysis of defamation cases: <http://bit.ly/2nC2GZg>
- Freedom of Speech Infographic: <http://www.brendanconley.com/barexam/wp-content/uploads/2013/09/Freedom-of-Expression.jpg>

### **Week 10**

*Topic*

- Freedom of speech on campus
- The renaming of campus buildings

*Readings*

- Lukianoff and Haidt, "The Coddling of the American Mind." The Atlantic (Sep. 2015), <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>



- ACLU on hate speech on campus: <https://www.aclu.org/other/hate-speech-campus>
- ACLU on right to protest: <https://www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest>
- [http://president.yale.edu/sites/default/files/files/CEPR\\_FINAL\\_12-2-16.pdf](http://president.yale.edu/sites/default/files/files/CEPR_FINAL_12-2-16.pdf)
- <https://www.princeton.edu/vpsec/trustees/Wilson-Committee-Report-Final.pdf>
- Background reading: <https://www.insidehighered.com/news/2017/02/13/yale-removes-calhoun-name-residential-college-name-remains-other-colleges>
- <https://www.umass.edu/newsoffice/article/umass-becomes-first-major-public>
- <http://news.stanford.edu/2016/04/25/stanford-climate-change-statement-board-trustees/>
- <http://www.harvard.edu/president/news/2013/fossil-fuel-divestment-statement>

## Week 11

### Topic

- Should we manipulate the human genome?

### Readings

- NAS 2017 Summary.pdf
- Manipulating the Human Genome\_ CQR.pdf

## Week 12

### Topic

- The Malheur National Wildlife Refuge case: patriots or criminals?

### Readings

- Websites with legal briefs and commentary
  - <http://www.libertyunderattack.com/cliven-bundybundy-standoff/>
  - <http://www.libertyunderattack.com/citizens-for-constitutional-freedom/>
  - <http://www.thefogbow.com/forum/viewforum.php?f=94>
- Occupiers
  - Motion to dismiss (Oregon): [http://www.libertyunderattack.com/wp-content/uploads/Documents/160509%20-%20Defendant%20Ammon%20Bundy's%20Motion%20to%20Dismiss%20for%20Lack%20of%20Subject%20Matter%20Jurisdiction%20\(United%20States%20v.%20Ammon%20Bundy%20et%20al\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160509%20-%20Defendant%20Ammon%20Bundy's%20Motion%20to%20Dismiss%20for%20Lack%20of%20Subject%20Matter%20Jurisdiction%20(United%20States%20v.%20Ammon%20Bundy%20et%20al).pdf)
  - <https://www.scribd.com/document/314040160/5-24-16-ECF-3-CLIVEN-BUNDY-v-NAVARRO-et-al-Amended-Complaint-pdf> (case was very weak and dismissed but it's worth looking at it)
- Government
  - Criminal complaint (Nevada): [http://www.libertyunderattack.com/wp-content/uploads/Documents/160211%20-%20Arrest%20Warrant%20and%20Criminal%20Complaint%20\(United%20States%20v.%20Cliven%20Bundy\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160211%20-%20Arrest%20Warrant%20and%20Criminal%20Complaint%20(United%20States%20v.%20Cliven%20Bundy).pdf)
  - Criminal complaint (Oregon): [http://www.libertyunderattack.com/wp-content/uploads/Documents/160127%20-%20Redacted%20Criminal%20Complaint%20\(U.S.%20v.%20C4CF\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160127%20-%20Redacted%20Criminal%20Complaint%20(U.S.%20v.%20C4CF).pdf)
  - Gov't memorandum in support of pretrial detention (Oregon): [160129 – Government's Memorandum in Support of Pretrial Detention \(U.S. v. C4CF\)](#)
  - Plea bargaining agreement (Oregon): [http://www.libertyunderattack.com/wp-content/uploads/Documents/160707%20-%20Plea%20Agreement%20Letter%20\(United%20States%20v.%20Blaine%20Cooper\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160707%20-%20Plea%20Agreement%20Letter%20(United%20States%20v.%20Blaine%20Cooper).pdf)

- Court
  - Nevada  
Indictment: [http://res.cloudinary.com/bdy4ger4/image/upload/v1455767370/Bundy\\_Cliven\\_et\\_al\\_Indictment\\_ooenru.pdf](http://res.cloudinary.com/bdy4ger4/image/upload/v1455767370/Bundy_Cliven_et_al_Indictment_ooenru.pdf)
  - Oregon Indictment: [http://www.libertyunderattack.com/wp-content/uploads/Documents/160309%20-%20Superseding%20Indictment%20\(Under%20Seal\)%20\(United%20States%20v.%20C4CF\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160309%20-%20Superseding%20Indictment%20(Under%20Seal)%20(United%20States%20v.%20C4CF).pdf)
  - Oregon order dismissing certain counts: [http://www.libertyunderattack.com/wp-content/uploads/Documents/160610%20-%20Order%20Granting%20Motion%20to%20Dismiss%20and%20Dimissing%20Count%203%20\(United%20States%20v.%20C4CF\).pdf](http://www.libertyunderattack.com/wp-content/uploads/Documents/160610%20-%20Order%20Granting%20Motion%20to%20Dismiss%20and%20Dimissing%20Count%203%20(United%20States%20v.%20C4CF).pdf)

## Week 13

### Topic

- Freedom of religion
- *Trinity Lutheran Church of Columbia, Inc. v. Pauley*

### Readings

- Background: <https://www.theatlantic.com/politics/archive/2017/04/trinity-lutheran/523542/>
- All relevant briefs: <http://www.scotusblog.com/case-files/cases/trinity-lutheran-church-of-columbia-inc-v-pauley/>
- Petitioner's brief:
  - <http://www.scotusblog.com/wp-content/uploads/2016/04/TrinityLutheranPetitionersBrief.pdf>
  - <http://www.scotusblog.com/wp-content/uploads/2016/08/15-577-petitioner-reply-brief-merits.pdf>
- Respondent's brief: <http://www.scotusblog.com/wp-content/uploads/2016/07/15-577-respondent-merit-brief.pdf>
- Court: Oral argument
  - audio: [https://apps.oyez.org/player/#/roberts8/oral\\_argument\\_audio/24273](https://apps.oyez.org/player/#/roberts8/oral_argument_audio/24273)
  - pdf: [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2016/15-577\\_l64n.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-577_l64n.pdf)