

**Phil 772: Seminar on Virtue and Law in Classical Greek,
Roman, and Chinese Philosophy**
Prof. Justin Tiwald & Jeremy Reid

Course and Contact Information

Meeting times: Monday 4–6:45pm

Location: TBD

Email: jtiwald@sfsu.edu, jwreid@sfsu.edu

Reid's Office: Humanities Building 360

Office hours: M 1–3pm

Tiwald's Office: Humanities Building 333 (but office hours will be on Zoom)

Office hours: Tu 11am-1pm

Course description

What is the relationship between law and the development of virtue? How might political systems be arranged so as to be conducive to virtue? How do virtuous people think about their legal obligations in inevitably non-ideal states? These questions are central to Greek, Roman, and Chinese ethical and political philosophy. The goal of this course is to give students an introduction to these discussions in their historical contexts, and to encourage students to consider how philosophers in different traditions approached similar problems.

On the Mediterranean side, we will discuss the dichotomy between nature and convention and the subsequent rejection of law; Plato's attempt to justify law through its connection with reason and the possibility for laws to cultivate virtue; Aristotle's discussion of justice, lawfulness, and stability in non-ideal states; and how these ideas were developed to shape republican ideals in Rome and formed the basis of the natural law tradition.

On the Chinese side, some Confucians propose that governing by law and litigation undermines virtuous motives and the cultivation of virtue. Some also suggest that when a state is well-governed, that is due primarily to the good character of the political authorities who make and enforce laws rather than the laws themselves. By contrast, Legalists think that when a state is well-governed that has more to do with the laws and general lawfulness of the political authorities and citizens than with the virtue of the ruling class. Both Confucians and Legalists are also concerned about the role of laws in keeping the peace and maintaining institutional stability in non-ideal political regimes.

Assessment

50% Weekly Writing Assignments, due Mondays at noon at the latest, no extensions. There are 14 writing assignments across the semester. We will take the grades for the highest 10, and drop the lowest 4. Assignments should not run onto a second page.

50% Final paper (5000–8000 words)—ideally, get this done by Fri May 20; if you do not submit a paper by then, you will automatically receive an incomplete; if your paper is not in by Mon Aug 15 (a week before the Fall semester starts), you will get a 0 for your paper.

Texts

All texts are provided as pdfs. For those who prefer hard copies, we will be reading all or large chunks of the following texts (Amazon links are provided for reference only and other suppliers are welcomed):

[Plato, *Laws*, trans. Griffith](#)

[Aristotle, *Politics*, trans. Reeve](#)

[Cicero, *On the Commonwealth \[Republic\] and the Laws*, trans. Zetzel](#)

[Julia Annas, *Virtue and Law in Plato and Beyond*](#)

[Xunzi, *Xunzi: The Complete Text*, trans. Hutton](#)

Schedule of Readings

Because this is a survey course, a ‘+’ symbol means extra optional reading for those who want a more in-depth understanding of particular issues and writers. Contemporary readings are often helpful for understanding obscure ancient texts and will allow you to get more out of our source texts. Those with an eye on PhD programs should know that it is standard in history of philosophy seminars to have around 100–150 pages assigned a week, i.e. *all* of what we have assigned each week (and often more than double that in Political Science!).

Jan 24, Week 1: Law, Nature, and Convention

Antiphon, *Truth* (Appendix A, pp. 183–188 of M. Gagarin, *Antiphon the Athenian: Oratory, Law, and Justice in the Age of the Sophists*)

Euripides/Critias [?], *Sisyphus Fragment*

Diogenes Laertius, *Lives of the Eminent Philosophers*, Book VI, “Lives of the Cynics”

Jan 31, Week 2: Rule by Knowledge and Rule by Law

Plato, *Statesman* 291a–end

+ all of the *Statesman*

+ Annas, *Virtue and Law in Plato and Beyond*, introduction and chapter 2, “Law in the Republic”

Writing Assignment 1: Why will a knowledgeable statesman have to make use of laws? On what basis will the statesman form laws? What are the benefits and limits of rule by law as described in the *Statesman*?

Feb 7, Week 3: The Goals of Legislation

Plato, *Laws*, Books I–III

+ *Laws* VII–IX

+ Annas, *Virtue and Law in Plato and Beyond*, chapter 3, “Changing from Within: Plato’s New Approach in the *Laws*”, and chapter 4, “Virtue in a Framework of Law”

Writing Assignment 2: Throughout *Laws* 1–3 Plato gives various formulations of what the law should aim at. List and describe each of these goals as precisely as you can, and end by speculating on what the relationship between them might be.

Feb 14, Week 4: Constitutionalism

Plato, *Laws*, Books IV–VI

+ *Laws* X–XII

+ Annas, *Virtue and Law in Plato and Beyond*, chapter 5, “Law and the Divine”, and chapter 6, “Citizen Virtue”

Writing Assignment 3: Different citizens of Magnesia appear to be motivated by different things. Identify and explain the different goals and goods you find in the text, and speculate about whether there is a unity to this political psychology.

Feb 21, Week 5: Good People and Good Citizens

Plato, *Crito*

Aristotle, *Nicomachean Ethics* V.1

Aristotle, *Politics* III.4

+ Aristotle, all of *Politics* III

+ Harte, “Conflicting Values in Plato’s *Crito*”

+ Lee, “Justice and the Laws in Aristotle’s Ethics”, in *Strategies of Argument: Essays in Ancient Ethics, Epistemology, and Logic*.

Writing Assignment 4: Why does Socrates not take the opportunity to escape prison? Critically evaluate the arguments that the Laws of Athens give, focusing on the ones you think are especially good or bad.

Feb 28, Week 6: Lawfulness and Justice Relative to the Constitution

Aristotle, *Politics* IV–VI

+ Aristotle, *Politics* VII & VIII

+ Destrée, “Aristotle on Improving Imperfect Cities”

Writing Assignment 5: Aristotle describes his ideal state in *Politics* VII & VIII, but the constitutions in Books IV & V seem to have different goals. What do you think the main political goals in Books IV & V are? Why might it be bad to try to make some existing states more like the ideal or unqualifiedly best state?

Mar 7, Week 7: The Mixed Constitution and the Roman Republic

Cicero, *On the Commonwealth* [*De re publica*], Books I–III

+ Annas, *Virtue and Law in Plato and Beyond*, chapter 7, “Cicero on Natural Law and Ideal Laws”

Writing Assignment 6: Cicero says monarchy, oligarchy, and democracy all have some good aspects and some bad aspects. Summarize (and tabulate) those aspects. Why does Cicero think the Roman republic combines the best and avoids the worst of these aspects?

Mar 14, Week 8: Divine Law and Natural Law

Cicero, *On the Republic* Book VI

Cicero, *On the Laws*

+ Philo, *On the Decalogue*

+ Annas, *Virtue and Law in Plato and Beyond*, chapter 8, “Philo on Virtue and the Laws of Moses”, and chapter 9, “Bringing Things Together”

Writing Assignment 7: Summarize as best you can the relationship between reason, virtue, divine law, and actual law in the authors we have covered so far. (If you think some philosophers have the same view, explain the views together; if you think there are some big disagreements or outliers, focus on the points of disagreement.)

[spring break, no class Mar 21]

Mar 28, Week 9: Confucians on ritual and law

Analects 2.3, 8.9, 12.7, 12.13, 12.17, 12.18, 12.19, 13.6, 13.12, 13.18

Hutton, "Ritual, Law, and the Treatment of the Dead in Early Confucianism and the Philosophy of Plato"

+ Tiwald, "Punishment and Autonomous Shame in Confucian Thought"

Writing Assignment 8: For Kongzi (Confucius), people with political authority are supposed to treat law-enforcement and litigation as something like a last resort. Other means of governing are supposed to be used first. How would you describe the preferred means of governing? And what, exactly, are Kongzi's objections to making too-quick recourse to laws and litigation?

Apr 4, Week 10: Xunzi on virtue, governance, and law

Xunzi, chapters 3, 9, 10, and 12

+ *Xunzi*, chapters 5, 8, and 11

+ Tiwald, "On the View that People and Not Institutions Bear Primary Credit for Success in Governance"

Writing Assignment 9: Option One: Xunzi is famous in Chinese intellectual history for proposing that there are two ways to earn the privilege of governing the Chinese empire: being a "true king" (which requires that one be a paragon of virtue) and being a "hegemon" (a position available to less-than-fully-virtuous rulers). What, exactly, is the basis for the hegemon's expansive political authority? How does this differ from the basis for the true king's expansive political authority? **Option Two:** In "The Way to Be a Lord" (ch. 12), Xunzi makes the oft-quoted remark that "there are men who create order; there are no rules creating order..." (and the translator adds "...of themselves"; *Xunzi* 12.2-3). The term being translated as "rules" is *fa* 法, best understood as referring to *institutional* rules or laws. What would be a charitable reconstruction of his argument for the claim that people and not institutional rules are the proper creators of social order?

Apr 11, Week 11: Xunzi on ritual and governance

Xunzi, chapters 19, 21, 22, and 23

+ *Xunzi* chapters 13, 14, 16, 18, and 24

+ Harris, "Xunzi's Political Philosophy"

Writing Assignment 10: According to Xunzi, what roles do rituals play in establishing or promoting social order? How are rituals supposed to aid the ruler in governing the people?

Apr 18, Week 12: Recent scholarship on Confucianism and law

Harris, "The Role of Virtue in Xunzi's Political Philosophy"

Harris, "Law and Virtue in Early Chinese Philosophy"

Tan, Sor-hoon, "The *Dao* of Politics (Rituals/Rites) and Laws as Pragmatic Tools of Government"

Writing Assignment 11: According to Harris and Tan, Confucians think that laws and rituals play complementary roles in government. How do they complement one another? Do you detect any differences between Harris and Tan on this issue?

Apr 25, Week 13: The Foundations of Legalism

Van Norden, "Han Feizi"

Shen Dao, *The Shenzi Fragments* (translated by Harris)

Shang Yang, *The Book of Lord Shang*, chapters 1, 9, 16, 17, 25 (translated by Yuri Pines)

+ Harris, "Shen Dao's Political Philosophy"

Writing Assignment 12: Shen Dao is remembered for contributing a better understanding the importance of "positional power" (*shi* 勢) in government. Lord Shang (also known as Shang Yang) is remembered for contributing a better understanding of the importance of law (*fa* 法) in government. What are the salient features of their accounts of these two things? Do you see any inconsistencies or tensions between their views?

May 2, Week 14: Han Feizi on Law and Morality

Han Feizi, *Han Feizi* (selections, translated by Harris)

Han Feizi, commentaries on the *Laozi* (translated by Hutton)

Van Norden, "Han Fei and Confucianism: Toward a Synthesis"

+ MacCormack, "The Legalist School and Its Influence upon Traditional Chinese Law"

Writing Assignment 13: By Van Norden's account, Han Feizi's most incisive critiques of Confucianism takes issue with (1) the Confucian ideal of rule by

virtue, and (2) Confucianism's "particularist approach" to governance. Describe the critiques of these two aspects of Confucianism. Do you agree with Van Norden that Confucians have the resources to respond to them?

May 9, Week 15: Constitutionalism and the rule of law in early Chinese thought?

Bárceñas, "Han Fei's Rule of Law and its Limits"

Huainanzi, ch. 9 "The Ruler's Techniques/The Art of Rulership" (translated by John Major *et al.*)

Ames, "Fa 法 (Penal Law)"

+ Turner, "Rule of Law Ideals in Early China?"

+ Ames, "Wu-wei 無為 (Nonaction/Doing Nothing/Acting Naturally)"

Writing Assignment 14: Both the *Han Feizi* and the *Huainanzi* are sometimes credited with endorsing the view that there should be institutional powers and procedures that constraint the power of the ruler himself, which some scholars take to be markers of early Chinese constitutionalism or an endorsement of the rule of law. What is the evidence for institutional constraints on the ruler in these two texts? Do you think that the evidence supports the claim that either text endorses the rule of law or constitutionalism? Why or why not?

Plagiarism

Plagiarism is a form of cheating or fraud; it occurs when a student misrepresents the work of another as his or her own. Plagiarism may consist of using the ideas, sentences, paragraphs, or the whole text of another without appropriate acknowledgment, but it also includes employing or allowing another person to write or substantially alter work that a student then submits as his or her own. Any assignment found to be plagiarized will be given an "F" grade. All instances of plagiarism in the College of Liberal & Creative Arts will be reported to the Dean of the College, and may be reported to the University Judicial Affairs Officer for further action.

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by email (dprc@sfsu.edu).

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