

**IDH 3005/4007
HONORS SEMINAR: OBSERVING OURSELVES
A PRIMER FOR LIFE AFTER HONORS
FALL TERM 2009**

THE HONORS COLLEGE
AT FLORIDA INTERNATIONAL UNIVERSITY

CLASS DAY AND TIME:

MONDAY
3:00 p.m. to 5:50 p.m.

CLASS LOCATION:

UNIVERSITY PARK CAMPUS, PC-241

COURSE CREDIT HOURS:

THREE (3)

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COURSE SYLLABUS

OBSERVING OURSELVES:

***On Bartlet, Baseball, Billy Joel,
the Business of Liberty,
and The Present Moment***

A Primer For Life After Honors

~ ~ ~ ~

H. SCOTT FINGERHUT

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INSPIRATION

It is perfectly proper ... to disagree about what the Constitution requires. But it is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live.

~ *United States v. Kras*, 409 U.S. 434, 460 (1973)
(Justice Thurgood Marshall, dissenting)

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Professor: H. SCOTT FINGERHUT
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Course Bullet

As you turn the corner and head toward graduation, this seminar seeks to have you slow down, be quiet, and define your character – what is deeply and fundamentally true, for you, distinct from that which is true based on what others think, or expect – and then, to write about it.

We will accomplish this task primarily by observing ourselves – *honestly* – which is not as easy, or as pleasant, as it might appear.

Our foundational text is the Bill of Rights – realized and not – in conjunction with the Supreme Court’s vision of what is fundamentally fair, primarily in the lives of people accused of crime: for how a society treats its outcasts, the *least* among it, says perhaps the most about the type of society it is, and yearns to become.

In this sense, criminal law and procedure, and justice, strike at the core of our studies together. Indeed, the United States Constitution was written over 200 years ago. It is the single document that permits the grace of freedom and privilege of liberty that are yours in this country. It is about who we are and what we want. This *course*, whether you realized, is about just that – individually, and as a nation:

Who we are, and what we want.

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But there's more.

We shall also observe ourselves across contexts *not* purely legal – but contexts historical, philosophical, sociological, spiritual, temporal, musical – and by doing so become attuned to “other shoes”: for “while it is perfectly proper to disagree about what the Constitution requires,” Justice Marshall advised, what we may not do is disgrace ourselves by interpreting the Constitution based upon “unfounded assumptions about how people live.”

What does it mean to “have it made”? *Where* is the soul? Does freedom evolve? Would you travel with Einstein's brain? Or talk dirty to influence people? Is there virtue in selfishness? Can I handle going to jail? Quantitative or qualitative? Determinism or freedom? Evolution or Creation? Can I bridge the racial divide?

All of this, and more, we shall consider, together, as our readings, discussion, projects, and assignments build upon each other; as you mark the Present Moment at this phenomenal crossroad in your life.

Course Description

People who work in the business of liberty – civil and criminal, political, economic, and social – make thousands of important, life-altering decisions every day. In order to promote, and to ensure, that justice is done, these decisions must be fair and even-handed. Yet it is tempting, even human nature, to think or act as if we are free to define what is legal and what is not; to decide who is inherently good and who is bad. Doing “justice” is more than simply obeying the law, or acting “lawfully.” Our guidepost is, and must be, to act “ethically”.

As such, this course is devoted to increasing your understanding of society, the law, and, ultimately, yourselves. How? Well, in this arena, inquiry, training, and scholarship are too often comprised of lists of do's and don'ts. We're braver than that.

And so, instead, we will examine the bases of modern and historical thought, rules, regulations, institutions, policies, and limitations – with a focus on criminal justice and the United States Constitution.

In turn, this course will encourage you to reflect on your moral beliefs; to examine and defend them; perhaps even to discover their shortcomings; and to open your minds to new ones.

The study of law as a means of social control, intertwined with doses of ethics and civility, baseball and music, as markers, popular culture and jurisprudence, and, foremost, to allow the realization of the value in the Present Moment, will, in the end, serve our larger goals – the micro, to foster a criminal justice system that truly serves justice, and the macro, to learn to treat ourselves well enough to treat those around us well.

To the horizon is your life beyond The Honors College. Wherever that may lead, wherever you may

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land, this course is all about you and providing you with the tools you'll need – the tools you deserve – to make positive substantial change in the world.

Not bad for book learnin'.

Course Objectives and Learning Outcomes

In this course, we shall describe and come to understand the realities of life and the general principles of law, in particular, criminal procedure, and then critically examine the application of these realities and principles to real-life problems – to ourselves.

“Critically” does not mean “*negatively*”, and Criminal Procedure is not aimed at “bashing the system.” Instead, we will toil to find consensus, and focus our energies on reaching workable solutions. The spirit of optimism and reform are thus at the heart of our course of study, as is learning to help people you have not met before, or perhaps even want to help at all. This necessarily involves your ability to understand human beings and their environment at a rather sophisticated and open-minded level. To do so, you must have a fairly firm grasp on your own place in the universe – your **respect of Self**. But more on that later.

Course objectives will be achieved through an intensive analysis of great writings, including United States Supreme Court decisions. Among other things, students will: (1) Acquire a working knowledge of the United States Constitution and the structure and procedures of the United States Supreme Court; (2) understand how the criminal justice system is influenced by Supreme Court decisions which primarily balance the rights of individuals to be free from unwarranted intrusions into personal liberties against the compelling need for public peace through law enforcement; (3) study the Court's influence on principles of federalism, the organization of criminal court structures, and the shaping and implementation of criminal procedure; (4) effectively analyze Supreme Court opinions and the Court's shifts in constitutional interpretation; and (5) examine the roles of politics, public sentiment and the media in influencing the Court's decisions. To achieve these goals, this course in part takes a case study approach. The cases selected are explicative of the Constitution and representative of the types of critical decisions faced by criminal justice professionals working in the criminal justice system. Students should envision themselves in all roles, to best absorb and apply the course material most deeply and coherently – be it officer, prosecutor, defense counsel, defendant, victim, witness, legislator, or judge. Perhaps more importantly, this course provides students with the opportunity to improve problem-solving and decision-making skills, in criminal justice and in life.

Major Topics of the Course

The United States Constitution, notably The Bill of Rights; Due Process; Equal Protection; State Constitutions; Precedent; Judicial Review; Criminal Law; Criminal Procedure; Power; Ends and Means; Angels and Monsters; Remedies; Balance; Perspective; Discretion; Critical Thinking; Ethical Reasoning; Auto-Animosity; Human Dignity; Mercy; and Respect of Self.

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Major “Vehicles” of the Course – Across Semesters

Fall Term

During our first semester together, our “field trip” is a **jail tour**, which promises to be eye-opening for all. Then, our class “project” takes the form of a **Constitutional Convention**, with you, assuming roles of the executive and various constituencies, endeavor to amend the Constitution to your own choosing.

Thereafter, you will be assigned a **final paper** which will call upon you not only to synthesize the semester’s materials, but to begin to identify what will become the focus of your spring semester writing: a “thesis” marking time, identifying yourself, and observing, perhaps answering, that which is fundamentally true for you at this time in your life.

Spring Term

In the spring, as our reading and discussions continue upon observing ourselves, each of you will work hard to propose “the question” you seek most to answer – about yourself, about yourself in the world. There will be drafts, outlines, more drafts ... you get the idea. And, by the close of the semester, you will have produced a piece of journal-quality writing very much like a **thesis** (only “lighter”) – your ultimate “observation” of yourself; something which you may reflect upon, long down the road, for who and where you were, and the who, where, and what you yearn to become.

Our second semester “field trips” include a **courthouse visit** together. And a **ball game**, together. Then, later on, our “project” is **Big Block of Cheese Day**. Never heard of Big Block of Cheese Day? Well, it’s about Andrew Jackson, and, yes, a big block of cheese that he once received and placed in the White House for all to eat. For us, Big Block of Cheese Day will mark our recognition of those less fortunate, those that normally would not get very much attention from “folks like us,” and to meet with them, to provide for them, to listen to them, to “pay it forward,” if you will – in sum, to provide access, to whatever degree we are able, to those unable otherwise to attain it.

Course Format and Requirements

The presentation of this course, though predominantly in lecture format, incorporates a modified Socratic Method and is thus very much an *interactive* class. This means that we speak to, and with, each other. Thus, while the course will be conducted with the professor providing leadership and acting as a facilitator in the presentation of course materials, significant contribution to the learning process will emerge from student participation and the input of individual class members. **Class participation is strongly encouraged.** You are responsible for, and may be tested upon, **everything** we cover in class – including lectures, discussions, video presentations, and supplemental materials. You are **also** responsible for assignments based on readings and may be tested thereupon **whether the material is covered in class.** In addition, specific assignments may be made to students for purposes of required classroom discussions and presentations. You are expected to complete all reading assignments prior to each class session.

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Course Material

You will read, thoroughly comprehend, and have with you at all times relevant during class, the following (reading marked with an asterisk (“*”) is “carryover reading” for the Spring Term as well):

- *1. Jordan, Terry L., “The \$3.00 Book”, also known as
The U.S. Constitution, And Fascinating Facts About It
Oak Hill Publishing Co., ISBN 1-891743-00-7 (Copyright 2003; Seventh Edition,
Sixth Printing)
- *2. Babbie, Earl, *Observing Ourselves: Essays in Social Research*
Waveland Press, Inc., ISBN 1-57766-019-6 (Copyright 1986; Reissued 1998)
- *3. Godman, David (ed.), *Papaji: Interviews*
Avadhuta Foundation, ISBN 0-9638022-0-8 (Copyright 1993)
4. Robinson, Jackie, *I Never Had It Made: The Autobiography of Jackie Robinson*
The Ecco Press, ISBN 0-88001-544-6 (Originally Published 1972; Copyright 1995)
5. Rosenbaum, Thane, *The Myth of Moral Justice: Why Our Legal System Fails
to Do What’s Right*
Harper Collins, ISBN 0-06-018816-2 (Copyright 2004)
6. Stoppard, Tom, *Rosencrantz & Guildenstern Are Dead*
Grove Press, ISBN 0-8021-3275-8 (Copyright 1967)
7. Sunstein, Cass, R., *The Second Bill of Rights: FDR’s Unfinished Revolution
and Why We Need It More Than Ever*
Basic Books, ISBN 0-465-08332-3 (Copyright 2004)
8. This Course Syllabus

If the particular edition/ISBN above is unavailable, you may purchase other editions.

Additional reading materials, videotapes, internet reference sites, information on ongoing trials, and handouts will be made available to the class and distributed during the course of the semester.

Note: Our Spring semester together will include the reading below:

1. Bruce, Lenny, *How to Talk Dirty and Influence People*
First Fireside Edition (a division of Simon & Schuster Inc.), ISBN 0-671-75108-5
(Copyright 1992)
2. Dennett, Daniel, C., *Freedom Evolves*
Viking, ISBN 0-142-00384-0 (Copyright 2003)

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3. Du Bois, W.E.B., *The Souls of Black Folk*
Bantam Books (Bantam Classic Edition), ISBN 0-553-21336-9 (Copyright July 1989)
4. Friedman, Thomas, L., *The World is Flat, 3.0*
Picador (a trademark used by Farrar, Strauss and Giroux), ISBN 978-0-312-42507-4
(Copyright 2007)
5. Kinsella, W.P., *Shoeless Joe*
First Mariner Books Edition, ISBN 0-395-95773-7 (Copyright 1999)
6. Paterniti, Michael, *Driving Mr. Albert*
The Dial Press (a division of Random House), ISBN 0-385-33303-X (Copyright 2000)
7. Rand, Ayn, *The Virtue of Selfishness*
Quality Paperback Book Club (a division of Penguin Putnam, Inc.), ISBN 0-451-16393-1
(Copyright 1998)

Class Seating

Seating will be assigned after our first meeting together.

Grading Criteria

Your course grade will be determined by your performance in class and out, as described more fully below. Your task, essentially, will be to apply the doctrines and principles we study to answer questions and to solve problems, explaining how you reached your conclusions.

Thus, it is critically important for you to **know why you know what you know**, and to be able to express yourself accordingly. Your grade can only be enhanced by your writing style, punctuation, grammar, spelling, and syntax – provided the substance of your responses are discernible and intelligent, even inspiring. With that said, as you well know, an “A” will reflect outstanding achievement; a “B”, above average achievement; and a “C”, average achievement.

Your fall semester course grade will be earned based upon the following:

Final Assignment/Paper	50%
In-Semester Assignments (including class notes)	30%
Group Project	10%
Quality (not quantity) Class Participation	5%
Honors College Citizenship	5%

Written work shall be assessed based upon the following non-exclusive criteria:

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Content and Organization (analysis that is clear, detailed, and compelling; writing demonstrates focus, clarity, coherence, and flow in thought);

Quality of advocacy and expression (evidenced in the document);

Sensitivity to ethical issues (also as evidenced in the document);

How well-grounded the document is (in common sense, as well as the governing law and procedure);

Research and resources (narrative that conveys case theme and theory, where appropriate, and an understanding of the topic; incorporates useful and appropriate references to outside research; evidence of critical thinking, ethical reasoning and problem-solving skills);

Mechanics (sentence structure, spelling, punctuation, grammar, word choice, detail);

Originality and creativity (in the context of responding to the assignment); and

Use of designated format and style (unless otherwise specified or excused by the professor: Times New Roman 14; text double-spaced, captions and footnotes may be single-spaced; one-inch margin on top, one half-inch margin on bottom, with page number at bottom center; justify text full; minimum page requirements shall vary, as determined by the professor).

Grading Scale

A	=	93-100	(Excellent Achievement)
A-	=	90-92	
B+	=	87-89	
B	=	83-86	(Above Average Achievement)
B-	=	80-82	
C+	=	77-79	
C	=	73-76	(Average Achievement)
C-	=	70-72	
D+	=	67-69	
D	=	63-66	(Below Average Achievement)
D-	=	60-62	
F	=	59 & Below	(Failing)

The instructor expressly reserves the right to modify the grading scale and criteria at his discretion.

Class Notes

No later than noon on the date of each class session, students shall submit to the professor, by e-mail,

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“class notes” – that are original, titled, labeled (with your name and Panther ID), typed, double-spaced, proofread, no more than two (2) pages long – and which reflect your understanding of, and, importantly, synthesize, assigned readings. “Class notes” must also end with two questions, based on the reading assigned, that are intended to (seriously and significantly) foster deep thought, and discussion, in accord with our core course themes, as they develop throughout the semester.

Honors College Citizenship

Of students in the Honors College is expected much, generally. *This* professor expects that you be involved as an active citizen in our University community. As such, at a minimum, each student is expected to participate in both the Honors College Parade and Honors College Convocation, as well as attend (if not present at) SRAI. University involvement beyond this threshold shall be taken into consideration upon the professor’s arriving at this component of your course grade.

Make-Up Assignments/Examinations

Please note that this course is offered pursuant to the dates and times prescribed herein. The professor is under no obligation to administer assignments or examinations otherwise. However, in the event the professor *does* accommodate a special request, students may be assessed an appropriate penalty, whether the student prepares the assignment/sits for the examination before or after the remainder of the student body.

Extra Credit

Barring extraordinarily compelling circumstances, there will be **no** opportunity to submit materials beyond the course syllabus for extra credit. Students are therefore strongly encouraged to maximize the portions of the course grade accorded for quality class participation, Honors Leadership and Honors Citizenship, which, as explained more fully below, envisions more than merely showing up.

Class Roll

It is the obligation of each and every student to ensure your presence on the class roll. The class roll will be made available for your inspection; it is also available upon request. Absent express authorization by the instructor, students who do not appear on the class roll will not be permitted to sit for this course.

SRAI Fourth-Year Option

Third-Year students who choose the SRAI Fourth-Year Option will be enrolled in IDH 4905 (for six credits total) during the Fall and Spring semesters in which the project is being completed. SRAI

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projects must be presented at the annual Honors College Research Conference and students must complete other requirements as stated by the Director of the SRAI Program.

Students who wish to conduct a SRAI project for the fourth year option must submit an application signed by the SRAI Research Affiliate with a 250-word abstract describing the project **no later than May 2010**. No extensions will be made to this deadline. Incomplete proposals will not be approved. Only projects that comply with these procedures will be applied toward the fourth year requirements for graduation through the Honors College.

Attendance

Because success in our course of study together is based upon demonstration of your comprehension of the materials presented and your performance based thereupon, regular and punctual attendance is critical, and thus **MANDATORY**.

Any student who is absent for more than 15% of the class hours this semester shall be deemed not to have “regularly attended class” and places him- or herself in jeopardy of receiving a grade of F for the course. In extraordinary circumstances, the professor may grant exceptions to this policy. The professor may also lower a student’s grade for excessive absence from class not crossing the 15% threshold.

An “**excused absence**” **MUST** be sought in all events, and will be considered only when:

- (a) a **legitimate reason** exists for the class missed,
- (b) the absence is **approved by the professor *in advance***, and
- (c) **the student submits, by the next class meeting, a written outline of the assigned reading.**

Excessive tardiness or class disruptions (repeated late arrivals, early departures, *etc.*) may also be penalized, on a case-by-case, by as much as a full letter grade.

Students are therefore directed to come to class and to come to class on time. In the event you miss a session, it is your responsibility to secure notes from a classmate. The professor will neither repeat missed lectures nor provide students with lecture notes.

Case Briefing

Whenever a case is assigned in your syllabus, a “case brief” will be due that class. An example of a case brief – which may be compared to a short “book report” – is provided at the close of this syllabus. Briefs should be written individually by the student; no published outlines or “canned” briefs are permitted. After briefing a case properly, you should be able to recite for the class in concise fashion the relevant facts, the issue(s) to be decided, the rule(s) of law announced and the

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court's reasoning therefor. As with any assignment, students who fail to hand in a case brief when directed may receive a reduced grade.

Courtesy

Our learning time together is limited, and important, and each class session is designed to provide maximum impact – on you, and thus, on the world around you. Class begins on time, packs a wallop, and ends on time. Arriving late, leaving early, and mid-lecture trips out of and back into the classroom are to be kept to an absolute minimum. Overall, you must be conscious of your disruptive effect – on fellow classmates, the material, and the instructor. In other words, do not slam doors; take your seat promptly; and ease into the session with as little fuss as possible.

Video Presentations

An integral portion of our study together – perhaps the part that will make the strongest and longest-lasting impact on you – are video presentations. Some you will recognize, and some you may not. **In either event, these presentations are every bit a part of the course curriculum as reading and lecture and discussion.** Whether you have seen a particular presentation before is of no moment, for you have not beared witness **together** – in the context of working through our course materials. Students are therefore expected to remain and be attentive until the conclusion of all video presentations absent authorization by the professor otherwise.

Laptop Computers and Other Communication Devices

Ours is a serious learning environment. As such, **no laptop computers are permitted**, absent extraordinary circumstances and prior, written approval by the professor. Additionally, please be courteous and turn off all cellular, paging, instant-messaging, and text-messaging devices. Only in an emergency should your communications device even be set to vibrate.

Performance Measure – Critical Thinking

Every one of you “thinks”. It is your nature to do so. But much of our thinking, left to itself, is biased, distorted, partial, uninformed, or just down-right prejudiced. As humans, we live with the unrealistic but confident sense that we have fundamentally figured out the way things actually are, and that we have done so objectively. Absent training, we do not naturally recognize our assumptions, the way that we use information, the way we interpret data, the sources of our concepts and ideas, and the implications of our thought and of our self-serving perspectives. “Poor” thinking is costly – mostly to the quality of life. Not surprisingly, then, “excellence” in thought, and in intellectual standards in thinking, is something that must be systematically cultivated. The quality of our *lives*, and that of what we create and build, depends precisely on the quality of our *thought*. See The Foundation for Critical Thinking at www.criticalthinking.org.

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Critical thinking is self-corrective thinking, a mode of thinking – about anything – in which the thinker improves the quality of thought by skillfully taking charge of the structures inherent in thinking and imposing intellectual standards upon them. Critical thinking presupposes assent to rigorous standards of excellence and mindful command of their use. It entails effective communication, problem-solving abilities and, importantly, a commitment to train ourselves to overcome our native **egocentrism** (the unfortunate fact that humans do not naturally consider the rights and needs of others or naturally appreciate the point of view of others, let alone appreciate the limitations in their *own* points of view) and **sociocentrism** (the assumption that the dominant beliefs within groups to which we belong are true, even though the bases for many of these beliefs go unquestioned).

Since humans are naturally prone to assess thinking in a vacuum, it is not uncommon that we, as a species, have not developed a significant interest in establishing – and teaching – legitimate intellectual standards. It is also not uncommon that our thinking is often flawed, for we are truly a “self-deceived animal.”

There are essentially three different kinds of questions one may ask – those that call for a definitive answer, those that entail a subjective choice, opinion or preference, and others that require the consideration of competing answers. We shall work together to pose questions which probe our thinking, questions which hold us accountable for our thinking, questions which, through consistent use, become internalized as questions we *need* to ask ourselves. Ultimately, our goal is for such questioning to become infused in our way of thinking, to form part of our inner voice, which will then guide us to **better and better reasoning**.

Critical thinkers achieve better and better reasoning by routinely applying:

INTELLECTUAL STANDARDS to

ELEMENTS OF REASONING in order to develop

INTELLECTUAL TRAITS.

INTELLECTUAL STANDARDS include:

Clarity	This is the gateway standard. If a statement is unclear, we cannot determine whether it is accurate or relevant.
Accuracy	A statement can be clear but not accurate or true.
Precision	A statement can be both clear and accurate, but not precise, specific or exact.
Relevance	A statement can be clear, accurate and precise, but not relevant or helpful to the question at issue.
Depth	A statement can be clear, accurate, precise and relevant, but superficial.
Breadth	A line of reasoning may be clear, accurate, precise, relevant and deep, but lack breadth or perspective.
Logic	When the combination of thoughts are mutually supporting and make sense in combination, when they “fit”, when what you say follows from the evidence, the

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thinking is logical.
Significance Is this the most important problem to consider, or central idea to focus on?
Fairness Do you have any vested interest in the issue? Are you sympathetically representing the viewpoints of others?

Intellectual standards must be applied to ELEMENTS OF REASONING. All reasoning:

has a **purpose**, or central aim;
is an attempt to figure something out, **settle a question** or solve a problem;
is based on **assumptions**, taking things for granted;
is done from some **point of view**;
is based on **information**, data and evidence;
is expressed through, and shaped by, **concepts** and **ideas**;
contains **inferences** or interpretations;
from which we are able to draw **conclusions** and give meaning to data; and which leads somewhere, having **implications** or **consequences**.

Intellectual standards are applied to elements of reasoning in order to develop INTELLECTUAL TRAITS, notably:

Humility not arrogance;
Courage not cowardice;
Empathy instead of close-mindedness;
Autonomy instead of conformity;
Integrity over hypocrisy;
Perseverance over laziness;
Confidence of reason and evidence, not distrust; and
Fair-mindedness rather than intellectual unfairness.

Ultimately, the well-cultivated, critical thinker:

Raises vital questions and problems, formulating them clearly and precisely; **gathers and assesses relevant information**, using abstract ideas to interpret it effectively; **comes to well-reasoned conclusions and solutions**, testing them against relevant criteria and standards; **thinks open-mindedly within alternative systems of thought**, recognizing and assessing, as need be, their assumptions, implications and practical consequences; and **communicates effectively with others** in **figuring out solutions to complex problems**.

Performance Measure – Ethical Reasoning

In *The Gulag Archipelago*, Alexander Solzhenitsyn writes:

If only there were evil people somewhere insidiously committing evil deeds and it were necessary only to separate them from the rest of us and destroy them. But the

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line dividing good and evil cuts through the heart of every human being.

The development of ethical reasoning abilities is vitally important – both for living an ethical life and creating an ethical world. Most people confuse ethics with behaving in accordance with social conventions, religious beliefs, and the law. Ethics however is a domain unto itself, a set of concepts and principles that guide us in determining what behavior helps or harms sentient creatures. Living an ethical life emerges from the fact that people are capable of either contributing to or damaging the quality of their lives, fostering rather than undermining the well-being of others, behaving ethically so that innocent persons and creatures thrive, seeing the world as a place full of humans obligated to respect themselves and those around them. See The Foundation for Critical Thinking at www.criticalthinking.org.

Nearly everyone gives at least lip service to a common core of general ethical principles.

Unfortunately, verbal agreement on ethical principles alone will not accomplish important moral ends or change the world for the better. Ethical principles mean something only when manifested in *behavior*; they have force only when embodied in *action*.

To put them into action requires both intellectual skills and ethical insights.

The ultimate basis for ethics is clear: Human behavior has consequences for the welfare of others. Stated another way, we are capable of acting in such a way as to increase or decrease the quality of life; we are capable of helping or harming. The proper role of ethical reasoning is thus to highlight these two kinds of acts: Those which enhance the well-being of others – that warrant our praise – and those which harm or diminish the well-being of others – and thus warrant our criticism. What is more, we are theoretically capable of understanding when we are doing the one, and when the other. This is because we have the capacity to put ourselves imaginatively in the place of others and recognize how we would be affected if someone were to act toward us as we are acting toward them.

Still, the study of ethical reasoning becomes crucial given the powerful human tendency toward egotism, prejudice, self-justification and self-deception. To develop ethically, these tendencies must be resisted and diminished. To be sure, we can never eliminate our egocentric tendencies entirely. But we can actively combat them as we learn to develop as ethical persons. Whenever we base ethical conclusions on religious or cultural standards, for example, we separate ourselves from those who hold contrary religious or cultural beliefs. It is critical, therefore, that we use **shared ethical concepts** and principles as guides in reasoning through **common ethical issues**. The essential meanings of these terms are not dependent on either theology or social convention. Indeed, religious, conventional, political and legal thinking are commonly confused with ethical thinking. These forms of thought, locked as they are in endless conflict, cannot provide foundations for **universal ethical principles**.

The foundations themselves are not difficult to understand. Ethical concepts and principles are universally defined, through such documents as the United Nations' Declaration of Human Rights (December 10, 1948) – which recognizes inherent dignity and the equal and inalienable rights of all members of the human family as the foundations of freedom, justice and peace in the world.

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Universal ethical principles are transcultural and trans-religious; one need not appeal to a religious belief or social or cultural variant practice, convention or taboo to recognize that slavery, genocide, torture, sexism, racism, murder, assault, fraud, deceit and intimidation are all ethically wrong. In each case, when conflict arises with ethical principles, ethical principles should prevail.

The difficulty lies in the interplay of egocentric individuals with sociocentric groups.

Our task shall include developing **ESSENTIAL ETHICAL TRAITS** – like **humility** (awareness of the limits of one's ethical insight), **courage** (the willingness to face and assess fairly ethical ideas, beliefs and viewpoints to which we have not otherwise given serious hearing or consideration), **empathy** (remaining conscious of the need to imaginatively put oneself in the place of others in order to genuinely understand them), **integrity** (recognizing the need to be true to one's own ethical thinking), **perseverance** (the willingness to pursue ethical insights and truths despite difficulties, obstacles and frustrations) and **fairmindedness** (entertaining all ethical viewpoints sympathetically and assessing them with the same intellectual standards without reference to one's own feelings or vested interests).

Few have thought much about the difficulty of getting ethically relevant facts about the world. Few are skilled in tracing the implications of the facts they *do* have. And few can identify their own moral contradictions, or clearly distinguish their self-interest and egocentric desires from what is genuinely ethical. Few have thought deeply about their own ethical feelings and judgments, few have tied these judgments together into a coherent ethical perspective, and few have mastered the complexities of moral reasoning. As a result, everyday ethical judgments are often a subtle mixture of pseudo and genuine morality; ethical insight and moral prejudice; ethical truth and moral hypocrisy.

The critical mind consciously seeks the truth in accordance with self-correcting maxims. Through example and encouragement, we are able to cultivate important intellectual traits – primarily learning to respect the rights of others and not simply focus on fulfilling our own desires. **Our main obstacle is not so much distinguishing between helping and harming, but overcoming our natural propensity to attend almost exclusively to ourselves and those closely connected with us.** Ethical persons, however strongly motivated to do what is ethically right, can do so only if they *know* what is ethically right. And this they cannot know if they systematically confuse their sense of what is ethically right with self-interest, personal desires, or social taboos.

Together, then, we will strive to learn to recognize the difference between ethical reasoning and its counterfeits: Religious thinking (based on theology), conventional thinking (based on social folkways and taboos), political thinking (based on ideology) and, finally, legal thinking (based on political processes and social pressures). Any law student and lawyer interested in developing ethical reasoning abilities should be able to differentiate ethics and the law: What is illegal may or may not be a matter of ethics. What is ethically obligatory may be illegal. Conversely, what is unethical may be legal. There is no essential connection between ethics and the law. Examples of confusing the two include any system of governance or form of unjust treatment or punishment based on racial, religious, gender, age, and sexual orientation discrimination.

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We will strive to analyze ethical reasoning into its structural components: **Purpose, question, information, inferences, concepts, assumptions, implications, and point of view.** We will learn to assess ethical reasoning for its clarity, accuracy, relevance, depth, breadth, logic, significance, and fairness. We will learn to use ethical terms with care and precision. We will develop ethical reasoning abilities. And, in the end, we *will* develop ethical traits.

The transformation to insightful ethical reasoners possessed of ethical traits takes time and practice. But it is an integral part of becoming an educated person and a critical thinker.

A Note on Class Participation

Participation is essential to the success of the course and to your development as a professional. Students should come to class prepared to discuss all reading assignments and to answer all discussion questions – whether taking on the role of “lead discussant” or “devil’s advocate”. In short, students are expected to become fully involved in the learning endeavor. In creating this opportunity to bring you into the classroom as responsible partners, “grading” should be perceived by students as part of a motivational structure that encourages you to focus on **deep learning**.

By the same token, student feedback about the content, presentation and evaluation of course materials, examinations and grading process is also encouraged and comprises an element of class participation as well. Students help teach what does and does not work in class; what they have trouble understanding; and what they want to know more about.

In essence, this class is premised upon an active, student-centered learning community. Student involvement in how their work is assessed results in **increased empowerment**. By students regularly voicing their hopes and concerns about the curriculum, they help shape large scale visions of learning while, at the same time, decrease the adversarial walls that can build up between student and instructor.

The result is a classroom in which there are **no surprises** and **no excuses**; and, of course, the creation of trusting relationships between faculty and students.

A Note on “Incompletes”

An “Incomplete” grade is a temporary symbol given at the professor’s sole discretion for a serious interruption in course work that is not the result of the student’s fault, negligence, or other avoidable conflict. An “Incomplete” must be made up as quickly as possible, and by no means not later than two (2) semesters from the close of the course, or the “Incomplete” will default to the grade that the student otherwise earned. There is no extension of this two-semester time frame, and the student may not re-register for the course to make up the “Incomplete”. Students who receive an “Incomplete” grade and have applied for graduation at the end of that term must complete the course work no later than the end of the third week of the following term. Failure to do so will result in the cancellation of the student's graduation application and the student will need to reapply for

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graduation altogether.

Mental Health and Safety

Your decision to partake in this University community is surely a sign of progress and health. Still, the move into an academic environment can sometimes be very stressful, and there may be moments when circumstances cause you to become anxious or angry. It is important that you recognize in you signs of emotional states of imbalance and understand what actions to take in order to maintain health. Without question, it is an act of strength to ask for help. Students seeking to contact the ***Counseling and Psychological Services Center*** may call 305.348.2424 (University Park Campus) or 305.919.5305 (Biscayne Bay Campus). To reach ***Judicial and Mediation Services***, students may call 305.348.3939. The ***Victim Advocacy Center*** may be reached at 305.348.1215 (University Park) and 305.919.5324 (Biscayne Bay Campus). ***Public Safety*** (for situations where someone is in imminent danger) may be reached at both the University Park Campus (information, 305.348.2626; emergencies, 305.348.2911) and Biscayne Bay Campus (information, 305.919.5559; emergencies, 305.919.5911).

Reading, Writing and Test-Taking: The University Learning Center

The course work at this level of your educational journey is intended not only to challenge you but to refine your reading, writing and, yes, your test-taking skills. Beyond the significance of any individual curriculum, the development of your ability to express yourself, and to understand the expressions of others, is a societal imperative. Become aware of your professor's expectations. Thereafter, conduct a meaningful self-assessment of your strengths and weaknesses. If you need help, or if you *think* you need help, ask for it, and go get it. This University has terrific resources at your disposal. The ***University Learning Center***, with its Reading and Writing (and Mathematics) Labs, is a place where you can work to improve your **note taking, basic grammar, vocabulary, reading comprehension (including speed reading), test-wiseness, research, writing, documentation, reference, studying and memory skills; you can even reduce test anxiety**. The Center is not merely for remedial learning. You may be surprised to know that many students who use the Learning Center have high GPAs and are simply interested in sharpening their skills. What is more, the Center is also a vital resource for referrals to University services to better assist you in other areas. The Learning Center is located on both campuses (at University Park, PC-247, 305.348.2436; and Biscayne Bay, AC1-160, 305.919.5927). You may reach the Writing Lab directly, at 305.348.6671; the Reading Lab, at 305.348.2295; and the Testing Lab, at 305.248.2840. The Learning Center's website is ***w3.fiu.edu/ulc***. All students are welcome, with or without referrals by a professor or advisor.

Disability Services

The main purpose of FIU's Office of Disability Services (and Disability Resource Center) is to advance the express choices of students with disabilities by providing the necessary support and

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advocacy to successfully complete their college education. The Office and Center promote dignity, equality, independence and self-determination – and ultimately seek students’ full inclusion into the mainstream of University life as well as into larger society. FIU offers a large array of services, including course and testing modifications, classroom accommodations, legal information, a scholarships database, a guide to using note-takers and various other adaptive technologies and physical access infrastructures. For more information, you may visit the Disability Services Office in GC-190 (305.348.3532) or at www.fiu.edu/~disser/.

Policies to Prohibit Discrimination and Sexual Harassment

The professor reaffirms Florida International University’s commitment to ensure that each member of the University community shall be permitted to work and study in an environment free from any form of illegal discrimination – be it race, color, religion, age, disability, sex, national origin, and marital and veteran status – as well as in an atmosphere free from sexual overtures or innuendoes that are unsolicited and unwelcome. Both discrimination and sexual harassment undermine the integrity of the academic environment and prevent its victims, as well as peers, from achieving their full potential. In sum, the University recognizes its obligation to work toward a community in which diversity is valued and opportunity is equalized. For more information on the University’s policies, grievance procedures and equal opportunity programs, visit www.fiu.edu/~eop/EOPSexH.pdf.

Religious Holidays

The professor abides by the University’s policy and will assess no penalty for absence from class due to the observance of a religious holy day. Accordingly, each student shall, upon notifying the professor, be excused from class to observe a religious holy day of his or her faith. Students shall nevertheless be held responsible for material covered in their absence and permitted a reasonable amount of time to make up any work missed. No major examination, class event, or University activity will be scheduled on a major religious holy day.

Academic Integrity

A University is a learning community following a tradition more than 1,000 years old. Florida International University is such a community, dedicated to generating and imparting knowledge through excellent teaching and research, the rigorous and respectful exchange of ideas, and community service. **All** students should respect the right of others to have an equitable opportunity to learn and to honestly demonstrate the quality of their learning. Therefore, students are expected to conduct themselves in accordance with the University’s Standards and Code of Student Conduct, which address three (3) major areas of moral integrity: Academic Honesty, Respect for the Law and, most importantly, **Respect of Self** and Others (including fellow students and the educational mission of our University). You are to respect the tradition of academic inquiry, the University’s rules of conduct and its mission; you shall also respect the opinions and differences of all members of the FIU community, as well as the rights and property of the University and its members; you shall

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pledge to practice civility and avoid behavior that undermines the normal functioning of the University; and you will be diligent and honest in your personal and academic endeavors.

In sum:

- (1) Be honest, with yourself and others;
- (2) do not represent someone else's work as your own; and
- (3) do not cheat or aid in another's cheating.

All students are deemed by the University to understand that any act in contravention thereof – including cheating (*i.e.*, without limitation, the unauthorized use of books, notes, aids, electronic sources; or assistance from another person with respect to examinations, course assignments, field service reports, class recitations; or the unauthorized possession of examination papers or course materials, whether originally authorized), plagiarism (*i.e.*, without limitation, the use and appropriation of another's work without any indication of the source and the representation of such work as the student's own; any student who fails to give credit for ideas, expressions, or materials taken from another source, including internet sources, is responsible for plagiarism), misrepresentation, or facilitating academic dishonesty in any fashion – any of which may be discovered, documented, or authenticated by *turnitin.com* and like resources, may be referred to the appropriate authority for review and possible sanction, as outlined in the Student Handbook.

In this class, students who violate the University's Standards and Code of Student conduct may, in the professor's discretion, be dismissed from the course and receive a failing grade.

You are strongly encouraged to familiarize yourself with these important principles by reviewing the University's Standards and Code of Student Conduct as contained in your Student Handbook.

Ambition

This an ambitious syllabus in that it endeavors to cover a significant amount of material in a relatively short period of time. There is every possibility, therefore, that once we dive in, and our discussions focus on special interests or presentations, we will simply "carry over" any uncovered material or, if need be, omit any part of the curriculum we cannot reasonably and intelligently tend to.

Caveat

This outline is not a contract. With fair and adequate notice to enrolled students, the professor retains the right to change the course syllabus, *i.e.*, the substance of and order in which materials are presented and the manner in which class assignments and grades are assessed. Modifications to the

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syllabus shall not be arbitrary or capricious, however, and students shall not be unfairly disadvantaged by mid-semester changes to grading criteria, attendance standards, or performance measures. Indeed, any and all forms of student assessment, whether amended, are to be constructed to establish fair, clear criteria that reveal to students precisely what is expected of them and are to be applied consistently to student work and participation.

Course Schedule

Come to class **well-read, well-written, well-rested, and well-prepared to engage** in the subjects presented below.

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COURSE SCHEDULE

<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
August 24	Introductions, Expectations, Course Overview, SRAI, and Cheese Planning	None, yet
~ ~ ~ ~		
August 31	<u>Justice Basics</u> American Government “101” On Inquiry, Answers, and Questions	“The \$3.00 Book” Babbie/Preface, Introduction, and Chapter 1
~ ~ ~ ~		
September 7	NO CLASS – LABOR DAY HOLIDAY	
~ ~ ~ ~		
September 14	<u>Soul and The Law I</u> <i>The Myth of Moral Justice</i> Plunge Into Eternity	Rosenbaum/To Page 178 Papaji/Chapter 2
~ ~ ~ ~		

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COURSE SCHEDULE

<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
[TBA]	Field Trip: To the Jail, Together	
	~ ~ ~ ~	
September 21	<u>Soul and The Law II</u>	
	<i>The Myth of Moral Justice</i>	Rosenbaum/Page 178 to End
	Who's Asking the Questions Here?	Papaji/Chapter 3
	~ ~ ~ ~	
[September 22]	Honors College Colloquium at BBC	
	~ ~ ~ ~	
September 28	<u>"Toaster" Matters</u>	
	<i>Mapp v. Ohio</i>	(Handout)
	Truth, Objectivity, and Agreement	Babbie/Chapter 2
	~ ~ ~ ~	
[October 1]	Honors College Colloquium	
	~ ~ ~ ~	

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<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
October 5	<u>Better Questions, Better Answers</u> <i>Rosencrantz & Guildenstern Are Dead</i> Paradigms	Stoppard/All Babbie/Chapter 3
~ ~ ~ ~		
October 12	<u>Privacy Matters</u> <i>Katz v. United States</i> No Building in the Transit Lounge	(Handout) Papaji/Chapter 5
~ ~ ~ ~		
[October 15]	Honors College Convocation	
~ ~ ~ ~		
October 19	<u>Back to the “Real” World for a Moment</u> On “Having it Made” Determinism Versus Freedom	Robinson/All Babbie/Chapter 4
~ ~ ~ ~		

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<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
October 26	<u>Still in the “Real” World?</u> <i>Illinois v. Wardlow</i> Concepts, Indicators, and Reality	(Handout) Babbie/Chapter 5
	~ ~ ~ ~	
[October 29]	Honors College Excellence Lecture	
	~ ~ ~ ~	
November 2	<u>Affecting Change in the “New” World I</u> <i>The Second Bill of Rights</i>	Sunstein/Part 1
	~ ~ ~ ~	
November 9	<u>Affecting Change in the “New” World II</u> <i>The Second Bill of Rights</i>	Sunstein/Part 2
	~ ~ ~ ~	
November 15	Honors College Study Abroad Program/ Deadline for Priority Deposits	
	~ ~ ~ ~	

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COURSE SCHEDULE

<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
November 16	<u>Affecting Change in the “New” World III</u> <i>The Second Bill of Rights</i> Making Distinctions No Questions, No Answers	Sunstein/Part 3 Babbie/Chapter 6 Papaji/Chapter 6
	~ ~ ~ ~	
[November 19]	Honors College Colloquium	
	~ ~ ~ ~	
November 23	<i>A Constitutional Convention</i>	
	~ ~ ~ ~	
November 30	Last Class Session: Semester Wrap Final Paper Assigned	
	~ ~ ~ ~	
[December 4]	Honors College Graduation Awards Assembly	
	~ ~ ~ ~	

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<u>Class Meeting</u>	<u>Subject</u>	<u>Reading Assignment</u>
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December 7	NO CLASS – EXAMINATION WEEK	
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~ ~ ~ ~

[December 12]	Final Paper Due	
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~ ~ ~ ~

AND TO THE HORIZON ...

January 4, 2010	First Class, Spring Semester	
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[TBA]	Field Trip: To the Courthouse, Together	
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[March 30, 2010]	SRAI Conference	
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April 5, 2010	Big Block of Cheese Day	
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[TBA]	Field Trip: To the Ballpark, Together	
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April 12, 2010	Last Meeting of Our Seminar, Together	
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[April 24, 2010]	Final Paper Due	
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~ ~ ~ ~

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SAMPLE CASE BRIEF

Style:¹ *Duncan v. Louisiana*,
391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968)

Nature of Case:² United States Supreme Court grants certiorari review of defendant's appeal of conviction for battery, upon denial of review by the Supreme Court of Louisiana.

Facts:³ Duncan was convicted after a bench trial of misdemeanor battery in Louisiana state court. The crime carried a maximum punishment of 2 years in prison and a \$300.00 fine, or both. Duncan was sentenced to serve 60 days in jail and pay a \$150.00 fine. His request for a jury trial had been denied by the trial judge, because the Louisiana Constitution grants jury trials only in cases in which the crime is punishable by death or "imprisonment at hard labor."

¹ After the title of the case you will see a string of letters and numbers. All of this is called the case "citation" or "style". The style of the case consists of the names of the parties involved ("A" versus "B") along with the case citation (which is comprised of the volume number and page number of the reporter or reporters in which the case is published, as well as the year the Court handed down the decision). The party bringing the complaint is referred to as the Appellant or Petitioner (the party appealing). The party defending against the complaint is referred to as the Appellee or Respondent (the party appealed against).

² The "nature of the case" (sometimes called the "history of the case") refers to the procedural posture, or history, of the litigation (meaning how it made its way from the trial court, through the appellate courts, to the United States Supreme Court). This part of your brief puts what is to follow in its correct place, so that you will know where the case has been and what decisions were made.

³ The "facts" of the case are just that: The important facts and factors which gave rise to the appeal that the United States Supreme Court is considering. You cannot understand the principles and policies of a case unless you know the facts of the case. Every case you read applies principles to facts; principles alone have no meaning without applying them to facts. Keep in mind two important types of facts in criminal cases – (1) acts by government officials (and the circumstances surrounding those acts), usually listed in chronological order, and (2) the objective basis (or quantum of proof) for the government's actions.

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Issue:⁴ Was Duncan deprived of – and does the Due Process clause of the Fourteenth Amendment guarantee to state citizens – the right to a jury trial as provided to defendants in federal prosecutions under the Sixth Amendment?

Holding:⁵ Yes. Because the crime alleged was “serious”, Duncan’s request for a jury trial should have been granted. Conviction reversed and case remanded for a new trial.

Rationale:⁶ (White, J.)⁷ Jury trials by one's peers in “serious criminal cases” are an “inherent and invaluable right” of every citizen, as the federal constitution, each original state constitution and every state constitution entering the union thereafter have recognized. Jury trials had long been in existence by the time our Constitution was even written. Indeed, their protection against “arbitrary rule”, government oppression and “unchecked power” were a foundation of the Declaration of Independence. A crime which carries a potential sentence of 2 years in jail, as here, constitutes a “serious” crime and thus warrants a jury trial upon a defendant's request. States are free, however, to deny jury trials for “petty crimes”, such as those punishable by no more than six (6) months in jail. And of course, a defendant is free to waive the right to a jury trial altogether.

⁴ The “issue” is the ultimate question (or questions) that the Supreme Court has chosen to answer. Think of the cases you will read as stories with a point. The facts tell the story; the point of the story raises a question. In your “issue”, make sure to identify (1) the type of government official involved, (2) the specific action(s) taken by the official and (3) the provision (constitutional, statutory or rule) that is in question.

⁵ The “holding” is the Court's answer to the “issue” (or question), followed by a brief statement of the status (or “disposition”) of the case thereafter (*i.e.*, the defendant's conviction is affirmed, reversed, reversed and remanded, *etc.*). Sometimes a *very* brief statement of the “Rule of Law” is included as well, as in this example (*see* n. 8).

⁶ The “rationale” (or “reasoning” or “opinion”) is simply the Court's detailed explanation for its answer (the “holding”) to the question posed (the “issue”). The rationale embodies the Court's “majority opinion”, *i.e.*, the one where at least five (5) justices agree (with the framing of the issue, the holding and the rationale). The “majority opinion” is the law. All “opinions” (majority, concurrence, dissent and/or plurality) should state in simple English the reason(s) given to support the decision. [*Note:* Language in the majority opinion that does not specifically address or explain the holding is called “dicta” and contains no precedential value.]

⁷ The Justice writing an opinion is noted in parenthesis before you begin your summary. The “J” refers to “Justice”.

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Rule of Law:⁸ The Sixth Amendment right to a federal jury trial for “serious crimes” is “fundamental to the American scheme of justice” and is thus “selectively incorporated” to apply to the states through the Due Process clause of the Fourteenth Amendment.

Concurrence:⁹ (Black, Douglas, JJ.)¹⁰ The justices urge “total incorporation” because the Fourteenth Amendment, taken as a whole, makes the entire Bill of Rights applicable to the states. “Due process” must have some permanent meaning, so that judges do not tinker with it based on their individual sense of values, ethics or morals. Principles of federalism aside, the states should not be able to experiment with the types of fundamental protections afforded through the Bill of Rights. However, “selective incorporation” as an alternative is better than nothing. In any event, the Court has already held that most of the specific Bill of Rights' protections applicable to the states to the same extent that they apply to the federal government anyway.

Concurrence: (Fortas, J.) Agrees with the majority in *this* instance, but does not accept that the “bag and baggage” of the Sixth Amendment, namely *all* of the rights associated with a jury trial, must be incorporated to apply to the states as well. To do so would “inflict a serious blow upon the principle of federalism.” The Court may very well decide later that things like unanimity, or 12-person juries, are *not* essential to due process – and thus not obligatory upon the states. The Court should thus allow “the greatest latitude for state differences.” While “total incorporation” was fine for the First Amendment

⁸ The “Rule of Law” is a concise statement of the general legal proposition for which the Court's opinion may now be cited. This is also referred to as the “precedent” for which the case stands.

⁹ Sometimes Justices agree with the decision reached in another opinion but write separately to give their own reasons. Opinions that agree with another opinion – whether in majority or dissent – are called “concurrences” (or “concurring opinions”). Most frequently, when you read a concurring opinion it will be an opinion agreeing with the majority. However, as stated, a Justice may concur with the majority, plurality, a dissent, or even another concurrence. A concurring opinion is, of course, optional; a Justice need not write one if he or she does not wish to. [Note: A “plurality opinion” is something different. If a majority of the Justices agree with the result in a case but cannot agree on the reasons for the result, the opinion with the reasoning agreed to by the largest number of Justices is called the “plurality opinion”. For example, with nine (9) Justices on the bench, suppose that seven (7), a majority, agree with the result – but four (4) give one set of reasons, three (3) give another; and two (2) dissent. The opinion to which the 4 subscribe is the “plurality opinion”. A “plurality opinion” is not the law.]

¹⁰ If more than one Justice joins in an opinion, the notation “JJ”, for “Justices”, is used.

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freedoms of speech and religion; the Fourth Amendment prohibition of unreasonable searches and seizures; the Fifth Amendment privilege against self-incrimination; and the Sixth Amendment's rights to counsel and confrontation, "the same conclusion need not be superimposed upon the jury trial right."

Dissent:¹¹

(Harlan, Stewart, JJ.) The majority decision is illogical. The key whether to incorporate is not that certain rights are found word for word in the Bill of Rights but rather, upon consideration, whether our American standards of justice deem them essential to "fundamental fairness." How can it justify its supposed "selective incorporation" approach without examining whether Duncan's trial was actually *unfair*? Isn't the majority really engaging in "total incorporation", "jot for jot", which has never been accepted by the Court? Who's to say that the states cannot proscribe alternative, equally-fair methods of law enforcement, especially for relatively minor crimes? A jury trial is a "good means, but it is not the only fair means" to do justice. Certainly "a single courageous state may, if its citizens choose, serve as a laboratory," and the courts, and the political process, are available to correct any fundamental errors. "Due process of law" is an "evolving concept," and history indicates we were never intended to be limited by "mid-19th century conceptions of 'liberty.'" "[O]ld principles are subject to re-evaluation in light of later experience," and any overlap between the federal Bill of Rights and the development of state procedures is purely "accidental."

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¹¹ If a Justice or Justices do not agree with the majority decision and/or reasoning, they can write their own "dissent" (or "dissenting opinion") explaining why they do not agree. Dissents too are optional, meaning that a Justice who finds him or herself in the minority may, but need not, write in dissent.