

PHIL 345: Philosophy of Law



Spring 2010
Prof. Anthony Reeves

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Office Hours: Thursday 2:00 - 4:00 PM

I will be in my office and available during office hours, but you can make appointments to see me at other times. My preference is that we make appointments by email, and have substantive discussions face-to-face.

Teaching Assistants: Mr. Nathaniel Lathrop (nlathro1@binghamton.edu)
Mr. Brandon Davis-Shannon (bdavisshannon@gmail.com)
Mr. Shoni Rancher (sranche1@binghamton.edu)

Course Description

In this course, we will examine recent reflection on some philosophical issues surrounding law and legal practice. Four questions in particular will be the focus of our investigation. First, what is law? Although law is now commonplace, it is surprisingly difficult to say what exactly makes for law. In thinking about this question, we will be paying close attention to whether law has any special relationship to morality. Second, what is the character of legal interpretation and legal reasoning? Our focus here will be with how we should identify, construe, and implement the law of a given legal system. Third, what is the value of the “rule of law”? We tend to think of the rule of law as a commendable thing – as an appropriate basis for distinguishing good and bad governance. We will consider how to make sense of and justify this belief, as well as some possible dangers of legal structures. Fourth, do we have a duty to obey the law? We will examine to what extent citizens have an obligation to abide by legal demands simply because those demands are legal.

Objectives

The student will:

- Be familiar with the central concerns and literature of legal philosophy
- Develop and be able to articulate cogent views regarding some of the central issues in philosophy of law
- Improve ability to write analytical papers
- Develop an ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently talk about complex problems generally

Readings

Doing the assigned reading will be necessary to successfully participate in discussion sections, complete writing assignments, and perform well on the exams. Some of the readings are quite difficult and will have to be read with care. For some of the more challenging passages, it may be worthwhile to read the material twice.

The required texts for the course (available in the bookstore) are:

H.L.A. Hart, *The Concept of Law* 2nd Ed. (Oxford U. Press, 1994)

Ronald Dworkin, *Law's Empire* (Harvard U. Press, 1986)

Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Routledge, 2007)

Wellman/Simmons, *Is There a Duty to Obey the Law?* (Cambridge, 2005)

Antonin Scalia/Amy Gutmann, *A Matter of Interpretation: Federal Courts and the Law* (Princeton, 1998)

In addition to these texts, many of the required readings will be available on Electronic Reserves [ER], which is accessible through Blackboard.

Requirements

In general, students are responsible for all material presented in **both** the assigned readings and the lecture. Some material in the reading may not be explicitly covered in the lecture. Also, some material presented in lecture, which students are responsible for, may not be in the reading. It will be important to get detailed notes from a classmate in case of a missed class.

Grade Breakdown:

Paper One	20%
Paper Two	25%
Midterm Exam	20%
Final Exam	25%
Participation	10%

Papers: Students will be required to write two short papers (4 - 6 pages). Paper topics for the short papers will be distributed at least two weeks before the due date. I will discuss my expectations for the papers in lecture when the first paper assignment is handed out. In general,

papers will be assessed on the basis of: (1) accuracy and completeness in portraying the material in question, and (2) the development of a well-reasoned assessment of that material.

Students are required to maintain a digital backup of all submitted work until the end of the semester. I reserve the right to request a digital copy of any work submitted by the student.

Exams: Students are responsible for all assigned material up to the day of the exam (i.e., the final exam is cumulative). Exams will consist of a mixture of short answer and essay questions.

Participation: Students will be assessed on their contributions in discussion section and class. The grade will be based on the frequency with which students provide valuable verbal contributions to the class. Such contributions include informed responses to instructor and TA questions, participation in discussions, and raising relevant and cogent questions.

Course Policies

Attendance: Attendance in class and discussion section is mandatory. Students should arrive promptly at the beginning of class with the assigned reading for the day in hand. Attendance will be taken at the beginning of class. Students are permitted up to three (3) unexcused absences per semester. After the third absence, each additional unexcused absence will result in the student's *final grade* being reduced by a third of a letter (e.g. a B will become a B-).

Exceptions will be made for documented absences due to otherwise sanctioned university activity, for observations of religious holidays, due to serious illness (the instructor reserves the right to request documentation from the student's doctor), or due to a family emergency. Students who miss classes for any of these reasons should consult me as far in advance as possible.

Late Papers: Late papers will be penalized a third of a letter grade per day of lateness. The first day of lateness starts immediately after class on the due date of the paper. Thus, a physical copy of your paper must be in your TA's hand by the conclusion of class on the due date of the paper. Papers more than ten days late ***will not be accepted***.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. The **Student Academic Honesty Code** can be found at: <http://bulletin.binghamton.edu/integrity.htm>. Students may be asked to submit written work to turnitin.

Schedule of Readings

The following plan is subject to revision - I will inform the class of any changes as we go. Listed on the left are the dates of the lectures, on the right are the readings that will be discussed on those dates. Items marked [ER] will be available on Blackboard. The final exam will be held in accordance with the university final exam schedule.

Date:	Reading:
Jan. 26	Introductory Lecture
Jan. 28	HLA Hart, <i>The Concept of Law</i> , 1-49
Feb. 2	Hart, <i>The Concept of Law</i> , 79-109
Feb. 4	Hart, <i>The Concept of Law</i> , 110-154
Feb. 9	Lon Fuller, "The Morality that Makes Law Possible," 33-44 [ER] Hart, <i>The Concept of Law</i> , 155-180
Feb. 11	Hart, <i>The Concept of Law</i> , 180-212
Feb. 16	Ronald Dworkin, "The Model of Rules I," in <i>Taking Rights Seriously</i> , 14-45 [ER]
Feb. 18	Ronald Dworkin, <i>Law's Empire</i> , 1-44 First Paper Assigned
Feb. 23	Dworkin, <i>Law's Empire</i> , 45-86
Feb. 25	Dworkin, <i>Law's Empire</i> , 87-113
Mar. 2	Dworkin, <i>Law's Empire</i> , 176-224
Mar. 4	Dworkin, <i>Law's Empire</i> , 225-271 First Paper Due
Mar. 9	Joseph Raz, "Authority, Law, and Morality" <i>The Monist</i> , 295-322 [ER]
Mar. 11	Jeremy Waldron, "Legislation, Authority, and Voting" in <i>Law and Disagreement</i> , 88-118 [ER]
Mar. 16	Larry Alexander/Emily Sherwin, "Interpreting Statutes and Other Posited Rules," in <i>Demystifying Legal Reasoning</i> , 131-166 [ER]
Mar. 18	Midterm Exam
Mar. 23	Dworkin, <i>Law's Empire</i> , 313-354
Mar. 25	Dworkin, <i>Law's Empire</i> , 355-399
Apr. 6	Antonin Scalia, <i>A Matter of Interpretation</i> , 3-47, 115-127, 144-149
Apr. 8	<i>Buck v. Bell</i> , <i>Skinner v. Oklahoma</i> , <i>Griswold v. Connecticut</i> ; <i>Eisenstadt v. Baird</i> ; <i>Roe v. Wade</i> (847-866 in Chemerinsky, <i>Constitutional Law</i>) [ER] Second Paper Assigned
Apr. 13	<i>Planned Parenthood v. Casey</i> (867-878 in Chemerinsky) [ER] David Lyons, "Basic Rights and Constitutional Interpretation," 185-201 [ER]
Apr. 15	Scott Veitch, <i>Law and Irresponsibility</i> , 1-60
Apr. 20	Veitch, <i>Law and Irresponsibility</i> , 60-92
Apr. 22	Veitch, <i>Law and Irresponsibility</i> , 92-145 Second Paper Due
Apr. 27	Wellman/Simmons, <i>Is There a Duty to Obey the Law?</i> , 1-54
Apr. 29	Wellman/Simmons, <i>Is There a Duty to Obey the Law?</i> , 55-92 Martin Luther King Jr., "Letter from Birmingham Jail" [ER]
May 4	Wellman/Simmons, <i>Is There a Duty to Obey the Law?</i> , 93-110
May 6	Wellman/Simmons, <i>Is There a Duty to Obey the Law?</i> , 150-196