

PHIL 325: Philosophy of Law



Spring 2009
Meeting Times: MWF 12:30 – 1:20 PM

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Office Hours: Mon. 10:30 – 11:30 AM; Tues. 11:00 AM – Noon; Wed. 10:30 – 11:30 AM

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.

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.

Readings

Students are expected to show up to class prepared to discuss, and answer questions concerning the assigned reading. The classroom format will resemble a law school classroom in that there will be an emphasis on instructor to student and student to student dialogue. The class discussion will center on students addressing the issues raised by the texts. Successful participation in class, then, requires familiarity with the readings for the course.

With that said, I have tried to keep readings fairly short – usually around 15 to 25 pages depending on the difficulty of the reading. This should permit you to read through the material with care, and perhaps twice should a reading be particularly challenging.

The required texts for the course 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)

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

Requirements

Grade Breakdown:

Short Paper One	15%
Short Paper Two	20%
Long Paper	25%
Final Exam	25%
Participation	15%

Papers: Students will be required to write two short and one longer paper. Paper topics for the short papers will be distributed at least two weeks before the due date. Possible paper topics for the longer paper will be distributed at least three weeks before the due date. Students are encouraged to develop their own topic for the longer paper – though any topic *must* be approved by me. If you are interested in developing your own topic, we should meet outside of class to discuss it.

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.

Final Exam: Students are responsible for all assigned material up to the day of the exam (i.e., the final exam is cumulative).

Participation: Students will be assessed on their contributions in 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 questions, participation in classroom discussions and raising relevant and cogent questions.

Course Policies

Attendance: Attendance in class is mandatory. Students should arrive promptly at the beginning of class with the assigned reading for the day in hand. Students are permitted up to five (5) unexcused absences per semester. After the fifth absence, each successive class missed will result in the student's *final grade* being reduced by a third.

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.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Xavier's policies. All cases will be reported to the dean.

The Xavier University Catalog states: "The pursuit of truth demands high standards of personal honesty. Academic and professional life requires a trust based on integrity of the written and spoken word. Accordingly, violations of certain standards of behavior will not be tolerated at Xavier University. These include theft, cheating, plagiarism, unauthorized assistance in assignments and tests, unauthorized copying of computer software, the falsification of results and materials submitted in reports or admission and registration documents, and the falsification of any academic records including letters of recommendation.

"All work submitted for academic evaluation must be the student's own. Certainly, the activities of other scholars will influence all students. However, the direct or unattributed use of another's efforts is prohibited as is the use of any work untruthfully submitted as one's own.

"Penalties for violations of this policy may include one or more of the following: a zero for that assignment or test, an 'F' in the course, and expulsion from the University. The dean of the college in which the student is enrolled is to be informed in writing of all such incidents."

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.

Date:	Reading:
Jan. 12	Introductory Lecture
Jan. 14	Hart, <i>The Concept of Law</i> , 1-25
Jan. 16	Hart, 26-49

- Jan. 21 Hart, 79-99
- Jan. 23 Hart, 99-123
- Jan. 26 Hart, 123-154
- Jan. 28 Lon Fuller, "The Morality that Makes Law Possible," [ER] 33-44
- Jan. 30 Hart, 155-180
- Feb. 2 Hart, 180-212 **[First Paper Assigned]**
- Feb. 4 Ronald Dworkin, "The Model of Rules I" [ER] 14-39
- Feb. 6 Ronald Dworkin, "The Model of Rules I" [ER] 39-45
Dworkin, *Law's Empire*, 1-20
- Feb. 9 Dworkin, 20-44
- Feb. 11 Dworkin, 45-62
- Feb. 13 Dworkin, 62-86
- Feb. 16 Dworkin, 87-101 **[First Paper Due]**
- Feb. 18 Dworkin, 101-113, 176-184
- Feb. 20 Dworkin, 225-250
- Feb. 23 Dworkin, 250-271 **[Second Paper Assigned]**
- Feb. 25 Dworkin, 313-337
- Feb. 27 Dworkin, 337-354
- Mar. 9 Dworkin, 355-379
- Mar. 11 Dworkin, 379-399
- Mar. 13 Antonin Scalia, "Common-Law Courts in a Civil Law System," and Dworkin's "Comment" [ER] 151-169
- Mar. 16 David Lyons, "Basic Rights and Constitutional Interpretation," [ER] 185-201
[Second Paper Due]
- Mar. 18 *Buck v. Bell*, *Skinner v. Oklahoma*, *Griswold v. Connecticut*; *Eisenstadt v. Baird*; *Roe v. Wade* (847-866 in Chemerinsky, *Constitutional Law*) [ER]
- Mar. 20 *Planned Parenthood v. Casey* (867-878 in Chemerinsky) [ER];
Optional: Reeves, "Legal Justification as Legitimacy" [Course Website]
- Mar. 23 Tom Campbell, "The Roles of Rules," from *The Legal Theory of Ethical Positivism*, [ER] 41-67
- Mar. 25 Tom Campbell, "Positivist Ideals," [ER] 69-94
- Mar. 27 Tom Campbell, "The Ethics of Positivism," [ER] 95-124 **[Third Paper Assigned]**

- Mar. 30 David Lyons, selections from *Ethics and the Rule of Law* [ER] 78-87, 92-109
Apr. 1 Veitch, *Law and Irresponsibility*, 1-27
Apr. 3 Veitch, 28-60
- Apr. 6 Veitch, 60-92 [**Topics for Third Paper Due**]
Apr. 8 Veitch, 92-121
- Apr. 15 Veitch, 121-145
Apr. 17 Wellman/Simmons, *Is There a Duty to Obey the Law?*, 3-29
- Apr. 20 Wellman/Simmons, 30-53
Apr. 22 Wellman/Simmons, 54-89
Apr. 24 Wellman/Simmons, 93-120
- Apr. 27 Wellman/Simmons, 121-142 [**Third Paper Due**]
Apr. 29 Wellman/Simmons, 142-165
May. 1 Wellman/Simmons, 166-196

Final Exam: 1:00 – 2:50, Wednesday May 6th