

PHIL3XX: Philosophy of Law

Time: TuTh

Instructor: Aaron Ancell

Office:

Place:

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Office Hours:

What is law? Is it a set of eternal truths discoverable through reason? The commands of a government? A system of social rules and conventions? Does law *as it is* depend on law *as it ought to be*? How far may the law go in enforcing morality, or in pursuit of morally desirable ends? These are the central questions we will ask together in this course. We will begin by retracing a classic debate in philosophy of law about the nature of law and its relation to morality. This will lead us into questions about standards of judicial reasoning and the job of judges. Towards the end of semester, we will shift our focus to questions about the limits of law. We'll ask whether there is a principled line beyond which the law should not intrude. By the end of the course, we'll find ourselves engaged with a cutting edge debate about the merits of crafting laws that use insights from psychology to subtly influence our choices. Throughout the course, we'll look at several cases that reflect different philosophical approaches.

Required Texts

The only required text is:

H.L.A. Hart, *The Concept of Law*, 3rd Ed. (Oxford University Press, 2012)

All other course readings will be available as PDFs via the course website.

Assignments and Grading

Seven Short Writing Assignments: 35%

Six Quizzes: 30%

Final Paper: 35%

Percentage grades will be converted to final letter grades using the following scale:

97-100 = A+

77-79 = C+

93-96 = A

73-76 = C

90-92 = A-

70-71 = C-

87-89 = B+

67-69 = D+

83-86 = B

65-66 = D

80-82 = B-

0-65 = F

Tentative Schedule of Topics and Readings			
Week	Day	Topic	Reading
1	Tuesday	Welcome to Philosophy of Law	<ul style="list-style-type: none"> • Case: <i>Whitely v. Chappel</i> (1868) • Case: <i>Riggs v. Palmer</i> (1889)
	Thursday	Natural Law: "An unjust law is no law at all."	<ul style="list-style-type: none"> • Excerpts from St. Thomas Aquinas, <i>Summa Theologica</i> • Martin Luther King, Jr. "Letter from a Birmingham Jail" • Case: <i>Calder v. Bull</i> (1798)
2	Tuesday	Austin's Positivism: Law is the Commands of the Sovereign	<ul style="list-style-type: none"> • Excerpts from J.L. Austin, <i>The Province of Jurisprudence Determined</i>
	Thursday	Kelsen's Pure Theory of Law	<ul style="list-style-type: none"> • Andrei Marmor, "The Pure Theory of Law" • Hans Kelsen, "The Pure Theory of Law and Analytical Jurisprudence"
3	Tuesday	Hart's Critique of Austin 1: The Variety of Laws	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 2 & 3
	Thursday	Hart's Critique of Austin 2: Sovereignty Depends on Law	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 4
4	Tuesday	Hart's Positivism 1: Rules, Obligations, and Points of View	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 5
	Thursday	Hart's Positivism 2: The Rule of Recognition	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 6
5	Tuesday	Legal Realism and Skepticism about the Role of Rules	<ul style="list-style-type: none"> • Oliver Wendell Holmes, Jr., "The Path of the Law" • Jerome Frank, "The Basic Myth" from <i>Law and the Modern Mind</i>
	Thursday	Hart's Response: On the "Open Texture" of Law	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 7
6	Tuesday	Hart's Distinction Between Moral Rules and Legal Rules	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 8
	Thursday	Hart on the Separation Between Law and morals	<ul style="list-style-type: none"> • Hart, <i>The Concept of Law</i> Ch. 9 • H.L.A. Hart, "Positivism and the Separation of Law and Morals" (Sections 1, 4, 5, 6 only)
7	Tuesday	Fuller: Law Contains an Internal Morality	<ul style="list-style-type: none"> • Lon Fuller, "Positivism and Fidelity to Law: A Reply to Professor Hart" • Lon Fuller, "Eight Ways to Fail to Make Law" from <i>The Morality of Law</i>
	Thursday	A Fictional Case Study: The Speluncean Explorers	<ul style="list-style-type: none"> • Lon Fuller, "The Case of the Speluncean Explorers"

8	Tuesday	Dworkin: The Law Consists of More than Rules	<ul style="list-style-type: none"> • Ronald Dworkin, "The Model of Rules"
	Thursday	Dworkin: Judge Hercules and the Rights Thesis	<ul style="list-style-type: none"> • Ronald Dworkin, "Hard Cases"
9	Tuesday	Dworkin: The Semantic Sting	<ul style="list-style-type: none"> • Excerpts from Dworkin, <i>Laws Empire</i> Ch. 1 & 2
	Thursday	Dworkin: Integrity and the Chain of Law	<ul style="list-style-type: none"> • Excerpts from Dworkin, <i>Law's Empire</i> Ch. 6 & 7 • Ronald Dworkin, "Natural Law Revisited"
10	Tuesday	The Legacy of the Hart-Dworkin Debate	<ul style="list-style-type: none"> • Scott Shapiro, "The 'Hart-Dworkin' Debate: A Short Guide for the Perplexed"
	Thursday	Raz: Making Sense of the Authority of Law	<ul style="list-style-type: none"> • Joseph Raz, "Authority, Law, and Morality"
11	Tuesday	To What Extent Should Law Enforce Morality? Mill, the Wolfenden Report, and Lord Devlin's Challenge	<ul style="list-style-type: none"> • Excerpts from J.S. Mill, <i>On Liberty</i> • Excerpts from "The Wolfenden Report" • Excerpts from Patrick Devlin, <i>The Enforcement of Morals</i>
	Thursday	Hart's Response to Devlin	<ul style="list-style-type: none"> • Excerpts from H.L.A. Hart, <i>Law, Liberty, and Morality</i>
12	Tuesday	Feinberg's Millian Principles	<ul style="list-style-type: none"> • Excerpts from Joel Feinberg, <i>The Moral Limits of Criminal Law</i> • Judith Thomson, "Feinberg on Harm, Offense, and the Criminal Law"
	Thursday	A Different Dworkin on Paternalism	<ul style="list-style-type: none"> • Gerald Dworkin, "Paternalism"
13	Tuesday	Feinberg on Paternalism	<ul style="list-style-type: none"> • Joel Feinberg, "Legal Paternalism" • Case Study: NYC Health, "Sugary Drink Portion Cap Rule: Fact vs. Fiction"
	Thursday	Shiffrin on Paternalism and Unconscionable Contracts	<ul style="list-style-type: none"> • Seana Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation"
14	Tuesday	A New Kind of Paternalism: Nudges and the Law	<ul style="list-style-type: none"> • Excerpts from Richard Thaler and Cass Sunstein, <i>Nudge: Improving Decisions about Health, Wealth, and Happiness</i> • Cass Sunstein, "Behavioral Economics and Paternalism"
	Thursday	Course Wrap Up	