

**PHIL425: Philosophy of Law
MW 9:30-10:45; WAL392**

Professor: Mark Murphy
Office: 235 New North
Office Hours: M 11-12, W 12:30-1:30,
and by appointment

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Course description

This is a high-level seminar-style course on philosophy of law. We will focus on the role that the law's *authority* ought to play in our proper understanding of law. The first, longer part of the course is concerned with *analytical* jurisprudence. Here we will be considering various theories of the nature of law using the idea of law's authority as a guidepost. Thus, we will be asking: What is authority? What are the various ways that persons, or institutions, can bear authority? What sorts of authority, if any, are essential to law? And how should our account of the nature of law be shaped by the constraint that law be authoritative in these particular ways? The second, shorter part of the course is concerned with *normative* jurisprudence. Here we will be asking whether law really bears legitimate authority over those subject to it; and if so, how far that authority extends; and how whatever authority the law has is to be explained. Thus, we will be asking: What are the various ways in which claims to authority can be made good? Does the law show itself to be authoritative by any of these ways? How, then, should we understand the scope and limits of legitimate legal authority? Requirements include two course papers (a draft of one of which will be presented and discussed in the seminar) and faithful, prepared, and active attendance.

Course objectives

Through active participation in this course, you will . . .

- . . . become aware of deep theoretical problems involved in understanding law
- . . . become aware of deep practical problems involved in responding to law
- . . . see new relationships between seemingly distinct philosophical and legal issues

Course format

The course format will typically be a combination of lecture and discussion, with discussion dominating. Students will always be expected to have done the reading in advance and to have initial takes on the issues we will be dealing with.

Course requirements and grading

Students will be graded on two criteria: the quality of the course paper(s) and the quality of their seminar presentation/participation.

Course papers

Students will write two papers, each 3000-4000 words. The first paper is due Friday, 10/19, by 5 PM; the second is due on Friday, December 14, by 5 PM. Both should be submitted by e-mail. (An early draft of the second paper is required, for this will be discussed in seminar; a schedule for presentations of drafts will be produced later in the semester, and I will try to accommodate student preferences as far as I can.) With my permission, students can substitute one long paper (6000-8000 words) for the two shorter papers; the long paper will come due when the second paper would be due. *Permission must be secured well in advance of the due date of the first paper, so that if it is not granted there will be adequate time to write the first short paper and turn it in on time. The burden is on the student to show that it would be a good idea to do the longer paper rather than the standard two shorter papers.*

Graduate student enrollment

The only difference in course requirements for graduate students taking this seminar is that they must do the long paper option. They will be assessed in accordance with standards appropriate for graduate-level work.

Seminar presentation / Participation

Prepared and active attendance is mandatory. (Preparation includes doing the reading carefully and thoughtfully and coming to seminar with preliminary thoughts on it.) It will be a small class, and there will be plenty of opportunity for close argument. On the other hand, inadequate preparation or lack of attendance will make the experience excruciating. Students are required always to be present for class, and this requirement will be backed up with sanctions for unexcused absences during the classes at the end of the semester when presentations are taking place. During presentations part of one's participation will be to deliver a comment on another student's paper draft, and to respond to comments, questions, and criticism concerning one's own paper draft.

The final grade

The course papers count for 75%; the presentation / participation for 25%.

Texts

We are using H. L. A. Hart's *The Concept of Law*, Scott Shapiro's *Legality*, and A. John Simmons's *Moral Principles and Political Obligations*. These are available at the bookstore but you can also get them from Amazon or Barnes and Noble. The rest of the readings are available through electronic course reserve. Have either a hard or an electronic copy available to look at during the classes in which we are discussing them.

Consulting

I'm around Mondays (during office hours, 11-12), Wednesdays (during office hours, but generally from 11 to about 3), and usually Fridays (before 1 PM). I am almost never around on Tuesdays and Thursdays. I also check e-mail frequently.

TOPIC SCHEDULE (do the reading *before* that day's class)

Date	Topic	Reading
8/29	Method and aim in philosophy of law	Hart, CL, ch. 1; Shapiro, L, chs. 1-2; Raz, "Can There Be a Theory of Law?" (ER)
9/5	The nature of authority	Raz, "Legitimate Authority" and "The Claims of Law" (ER); Murphy, "Authority" (ER)
9/10	Austinian positivism	Austin, from <i>Province of Jurisprudence Determined</i> (ER)
9/12	Critique of Austinian positivism	Hart, CL, chs. 2-4, Shapiro, L, ch. 3
9/17	Hartian positivism	Hart, CL, ch. 5
9/19	Hartian positivism	Hart, CL, ch. 6
9/24	Hartian positivism	Hart, CL, ch. 7
9/26	Formal natural law theory	Fuller, "The Morality that Makes Law Possible," from <i>The Morality of Law</i> (ER)
10/1	Substantive natural law theory	Aquinas, "Treatise on Law," from the <i>Summa Theologiae</i> (ER); Murphy, from "Natural Law Theory" (ER)
10/3	Dworkin's challenge	Dworkin, "The Model of Rules I" (ER)
10/10	Exclusive positivism I	Raz, "Authority, Law, and Morality" (ER)
10/15	Inclusive positivism	Hart, CL, Postscript; Waluchow, chs 4 and 5, from <i>Inclusive Legal Positivism</i> (ER)
10/17	Neoclassical natural law theory I	Finnis, from "Evaluation and the Description of Law," from <i>Natural Law and Natural Rights</i> (ER); Dickson, "Methodology in Jurisprudence" (ER)
10/22	Exclusive positivism II	Shapiro, L, chs. 4-5
10/24	Exclusive positivism II	Shapiro, L, chs. 6-7

10/29	Neoclassical natural law theory II	Murphy, “Defect and Deviance in Natural Law Jurisprudence” and “The Explanatory Role of the Weak Natural Law Thesis” (ER)
10/31	Analytical to normative jurisprudence	Simmons, MP, chs. 1-2
11/5	The Normal Justification Thesis	Raz, “Authority and Justification” (ER), Darwall, “Authority and Reasons” (ER)
11/7	Consent*	Simmons, MP, chs. 3-4
11/12	Fair play	Rawls, “Legal Obligation and the Duty of Fair Play” (ER); Simmons, MP, ch. 5
11/14	The natural duty of justice	Simmons, MP, ch. 6; Waldron, “Special Ties and Natural Duties” (ER)
11/19	Gratitude / Associative obligations	Plato, from the <i>Crito</i> (ER); Simmons, MP, ch. 7
11/21	Wrapup on normative jurisprudence	Simmons, ch. 8
11/26	Presentations	Each other’s work
11/28	Presentations	Each other’s work
12/3	Presentations	Each other’s work
12/5	Presentations	Each other’s work

*I am out of town on this day. There will be a guest lecturer/discussion leader.

STUFF ON ACADEMIC INTEGRITY

Cheating of any form is wrong. It damages the cheater, those whose work is assessed alongside the cheater's, and the institution in which cheating takes place. Because a campuswide honor system is in place, any case of suspected academic dishonesty will be reported to the Honor Council. Anyone found in violation of the honor code for cheating in this class in a premeditated fashion will receive a failing grade for the semester.

The form of cheating to which there seems to be the greatest temptation in introductory philosophy courses is plagiarism. For your information, the university's Honor System brochure describes plagiarism in the following way: "Plagiarism is the act of passing off as one's own the ideas or writings of another" (p. 4). It also emphasizes that "plagiarism can be said to have occurred without affirmative showing that a student's use of another's work was intentional" (p. 4). This means that plagiarism can occur through sloppiness as well as through malice: failure to cite one's sources is plagiarism even if one just forgot to cite it. This means that the burden of care is on **you**.

General guidelines:

If it is a direct quotation, **cite it**.

If it is a paraphrase, **cite it**.

If it is an idea that you got from a particular source — whether a publication or a person — **cite it**.

If you are in doubt about whether it should be cited, **cite it**.

The only items that are not cited are those that one thought up on one's own or those that belong to general knowledge.