

PHIL 609: Authority, Law, and Practical Reason

“The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state.” – Robert Paul Wolff, *In Defense of Anarchism*

Fall 2011

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Office Hours: Tuesday 2:00 – 4:00 PM, or by appointment

Course Description

The apparent conflict between moral autonomy and political authority will serve as an entry point into a more general issue of legal authority. To put it roughly, we will seek to understand the sense in and circumstances under which law generates moral reasons to comply with its demands *because it is law*. In other words, we will be interested in the character of legal authority, both the authority it claims and the authority it can have. This inquiry will hopefully illuminate how legal norms ought to figure into the practical reasoning of those falling under their jurisdiction. How does law change the moral situation of its subjects? How ought they regard law when deciding how to act?

These issues are not new, but our focus will be on contemporary theory (work written in the past 50 years). Quite a lot of attention has been devoted to issues of political obligation and authority in recent years, and part of the aim of the course will be to provide a picture of that theoretical terrain. The first several weeks will be devoted to understanding the motivations and argumentative strategies of philosophical anarchists. Here we will also attempt to get a strong grip on the highly influential Razian account of authority, an account developed partially in response to one kind of anarchist argument. We will then look at several attempts to resuscitate the notion of a general obligation to obey the law. Finally, we will (at various points) take up new approaches to what it is to be a political authority, several of which challenge Raz's.

Objectives

You will:

- Be familiar with some of the central recent philosophical work on the topics of legal authority and political obligation
- Be able to explicate the basic concerns that have driven legal and political philosophers to write on these topics
- Develop and be able to articulate cogent and defensible views on these topics
- 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

As a graduate seminar, there will be a focus on in-class discussion rather than lecture. Careful and reflective reading of the texts prior to our meetings, then, is essential.

The texts for purchase are:

Robert Paul Wolff, *In Defense of Anarchism* (Any edition)

A. John Simmons, *Moral Principles and Political Obligations* (Princeton, 1979)

Joseph Raz, *The Authority of Law* (Oxford, 1979)

George Klosko, *The Principle of Fairness and Political Obligation* (Rowman, 2004)

Mark C. Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge, 2006)

In addition to these texts, many of the readings will be available on Blackboard (marked “[BB]” on reading schedule).

Requirements

Grade Breakdown:

Participation	35%
Topic Proposal	5%
Paper	60%

Paper and Topic Proposal: You will be required to write a 20 to 25 page paper. You must develop, in collaboration with me, a topic to write on. To that end, you will write a one to two page topic proposal that indicates the overall thesis you will be

advocating, the texts you will rely on, and the basic argumentative strategy. I will review the topic proposal and then we will meet in person to discuss it.

After you submit your topic proposal, you will have several weeks to write the first draft of your paper. The first draft should be polished, as if you were turning it in for a final grade. After you hand it in, I will provide detailed comments for revision. You will then get your paper back and have about two weeks to submit a final draft. *Failing to hand in a draft, or handing in an inadequate or incomplete draft, will result in an automatic 1/3 letter grade reduction on the final paper.*

You will be asked to submit both an electronic and a paper copy (preferably double-sided) of all written work.

Participation: Regular and informed participation on the part of everyone is essential. A large part of your grade will be based on your contributions in seminar. The grade will be based on the frequency and quality of your verbal contributions to the class. Such contributions include informed responses to my questions, participation in classroom discussions, responding to your peers, and raising relevant and cogent questions. Familiarity with the readings is, again, crucial.

Course Policies

Attendance: Attendance in class is mandatory. Each unexcused absence beyond one will result in a 1/3 letter grade reduction in the final grade.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. You will, at minimum, fail the course. The **Student Academic Honesty Code** can be found at: <http://bulletin.binghamton.edu/integrity.htm>.

Schedule of Readings

The following plan is subject to revision – I will let you know of any changes as we go. Listed on the left are the dates of the meetings, on the right are the readings that will be discussed on those dates. Items marked [BB] are available on Blackboard.

Date	Reading
Sep 1	Introductory Discussion <i>Suggested Reading: David Lefkowitz, “The Duty to Obey the Law” <i>Philosophy Compass</i> 1/6 (2006), 571-598 [BB]</i>
Sep 8	1. Robert Paul Wolff, <i>In Defense of Anarchism</i> , 1-82 2. Wolff, “A Reply to Reimann” (1976) [BB]

Sep 15	<ol style="list-style-type: none"> 1. Joseph Raz, <i>The Authority of Law</i>, 3-33 2. Raz, "The Justification of Authority," in <i>The Morality of Freedom</i> (1986), 38-80 [BB] 3. Heidi Hurd, "The Indefensibility of Practical Authority" in <i>Moral Combat</i> (1999), 62-94 [BB] 4. Raz, "The Problem of Authority: Revisiting the Service Conception" <i>Minnesota Law Review</i> 90 (2006), 1003-1044 [BB]
Sep 22	<ol style="list-style-type: none"> 1. Raz, <i>The Authority of Law</i>, 232-249 2. Raz, "The Obligation to Obey: Revision and Tradition," in <i>Ethics in the Public Domain</i> (1994), 341-354 [BB] 3. A. John Simmons, <i>Moral Principles and Political Obligations</i>, 1-74 <p><u>Suggested:</u></p> <ol style="list-style-type: none"> 4. Raz, <i>The Authority of Law</i>, 210-229
Oct 6	<ol style="list-style-type: none"> 1. Simmons, <i>Moral Principles and Political Obligations</i>, 75-156, 191-201 2. Simmons, "Philosophical Anarchism" in <i>For and Against the State</i> (1996), 19-39 [BB] 3. Simmons, "Justification and Legitimacy," <i>Ethics</i> 109/4 (1999), 739-771 [BB]
Oct 13	<ol style="list-style-type: none"> 1. Nancy J. Hirschmann, "Freedom, Recognition, and Obligation: A Feminist Approach to Political Theory," in <i>The Duty to Obey the Law</i> (1999), 243-267 [BB] 2. Jeremy Waldron, "Special Ties and Natural Duties," <i>Philosophy & Public Affairs</i> 23 (1993) [BB] 3. Pauline Kleingeld, "Kantian Patriotism," <i>Philosophy & Public Affairs</i> 29 (2000), 313-341 [BB]
Oct 20	<ol style="list-style-type: none"> 1. George Klosko, <i>The Principle of Fairness and Political Obligation</i>, 16-26, 33-107 2. Simmons, "Fair Play and Political Obligation: Twenty Years Later", in <i>Justification and Legitimacy</i> (2001), 27-42 [BB]
Oct 27	<ol style="list-style-type: none"> 1. Christopher Heath Wellman, "Toward a Liberal Theory of Political Obligation," <i>Ethics</i> 111 (2001), 735-759 [BB] 2. Wellman, "Doing One's Fair Share" in <i>Is There a Duty to Obey the Law?</i> (2005), 30-53 [BB] 3. Massimo Renzo, "Duties of Samaritanism and Political Obligation," <i>Legal Theory</i> 14 (2008), 193-217 [BB]
Nov 3	<ol style="list-style-type: none"> 1. Ronald Dworkin, "Integrity" in <i>Law's Empire</i>, 176-216 [BB] 2. Samuel Scheffler, "Relationships and Responsibilities," <i>Philosophy & Public Affairs</i> (1997), 189-209 [BB] 3. Margaret Gilbert, "Reconsidering the "Actual Contract" Theory of Political Obligation," <i>Ethics</i> 109 (1999), 236-260 [BB] <p><u>Suggested:</u></p> <ol style="list-style-type: none"> 4. Margaret Gilbert, "Joint Commitment and Obligation" in <i>A Theory of Political Obligation</i> (2006), 125-164 [BB] <p>Paper Proposal Due – Schedule Time to Meet to Discuss Topic</p>

Nov 10	<ol style="list-style-type: none"> 1. Stephen Darwall, "Authority and Reasons: Exclusionary and Second-Personal," <i>Ethics</i> 120 (2010), 257-278 [BB] 2. Waldron, "Legislation, Authority, and Voting" in <i>Law and Disagreement</i> (1999), 88-118 [BB] 3. Thomas Christiano, "The Authority of Democracy," <i>The Journal of Political Philosophy</i> 12 (2004), 266-290 [BB]
Nov 17	<ol style="list-style-type: none"> 1. David Estlund, "Political Authority and the Tyranny of Non-consent," <i>Philosophical Issues</i> 15 (2005), 351-367 [BB] 2. Estlund, "Original Authority and the Democracy/Jury Analogy" in <i>Democratic Authority</i> (2009), 136-158 [BB] 3. Daniel Koltonski, "Normative Consent and Authority" (2011) [BB] 4. Arthur Isak Applbaum, "Legitimacy Without the Duty to Obey," <i>Philosophy & Public Affairs</i> 38 (2010), 215-239 [BB]
Nov 22	Paper Draft Due
Dec 1	<ol style="list-style-type: none"> 1. Mark C. Murphy, <i>Natural Law in Jurisprudence and Politics</i>, 1-7, 61-132 2. Jon Garthoff, "Legitimacy is Not Authority," <i>Law & Philosophy</i> 29 (2010), 669-694 [BB] Paper Draft Returned
Dec 8	<ol style="list-style-type: none"> 1. Reeves, "Judicial Practical Reason: Judges in Morally Imperfect Legal Orders," <i>Law & Philosophy</i> 30 (2011), 319-352 [BB] 2. Reeves, "Practical Reason Under Law" (In Progress), will distribute to class
Dec 15	Final Draft of the Paper Due at 4 PM