

PHIL 345: Philosophy of Law

Spring 2018

Prof. Tony Reeves

Office Hours: Thursdays 1:00 – 3:00 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. My office is at Library Tower 1217. My email is (areeves@binghamton.edu).

Teaching Assistants:	Courtney Miller	(cmille19@binghamton.edu)
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Course Description

The course concerns the philosophical foundations of law and legal practice. Philosophers are interested in several questions about law: what is it, what is law's relationship to morality, how does it bind, what gives law meaning, how ought we construe that meaning, what should law require, how should a legal system be ordered, how is the rule of law valuable, what are its special dangers, should law be obeyed, how ought we respond to legalized injustice. These and other questions continue to divide legal philosophers and practitioners, so we will not aim at consensus. Rather, we will attempt to understand what is at stake in the questions, how to think through the problems they raise, and how to offer a cogent response to them. Students are expected to learn the theories and their arguments, and to become capable of offering well-reasoned defenses of their own positions on at least some of these questions.

Learning Objectives

The student will:

- Be familiar with some 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 (W)
- Develop ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently talk about complex issues
- Demonstrate an understanding of the human experience through the study of philosophy (H)

Readings

Doing the assigned reading is 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, among other places) are:

H.L.A. Hart, *The Concept of Law* Any edition (Oxford U. Press)
Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering*
(Routledge, 2007)

In addition to these texts, many of the required readings will be available on Electronic Reserves [ER], which is accessible under “Content” on 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 may not be in the reading.

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 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) how far an accurate and adequate portrayal of the material is given, and (2) how far a well-reasoned assessment of that material is developed. Concerning (2), it would be insufficient, for a good grade, to simply state an opinion. Students will be expected to offer arguments for their views, and those arguments will be assessed according to standards of good reasoning. Students must submit both a hard copy of their paper to their TA on the due date, and an electronic copy to Turnitin on Blackboard. A guide to writing philosophy papers will be posted on blackboard.

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. Blue books for the exam will be provided, you need simply bring reliable writing utensils. Instructions will be provided on exam days about how to keep your exam anonymous – exams will be graded double blind (you will not know who will grade your exam, and the grader will not know who’s exam is being graded).

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

Electronics: Without special permission, the use of electronic devices, including computers, is not permitted during class time.

Attendance: Attendance in class and discussion section is mandatory. *Attendance is defined as: present and alert in assigned seat without a computer or other similar electronic device.* Seat assignments will be determined during the third week of classes, and attendance will be monitored from that point forward. Students are permitted up to three (3) unexcused absences per semester. These absences are for the unexpected contingencies of life (e.g., an undocumentable illness, a need to return home, a transportation issue). 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 only be made for documented absences due to otherwise sanctioned university activity, for observations of religious holidays, due to serious illness, or due to a family emergency. Students who miss classes for any of these reasons should consult their TA or myself as far in advance as possible. Documentation will normally be required.

Class Etiquette: Please do not consume prepared food during class. It is distracting to, and unpleasant for, your classmates.

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 TAs hand by the conclusion of class on the due date of the paper (and an electronic version must be submitted to Turnitin). 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 must submit their papers to Turnitin on Blackboard.

Schedule of Readings

The following plan is subject to revision - I will inform the class of any changes. On the left are the dates of the lectures, on the right are the readings that will be discussed on those dates. "ER" refers to electronic reserves, available under "Content" on Blackboard.

Date:	Reading:
Jan. 16	Introductory Lecture
Jan. 18	Philip Pettit, selections from <i>Just Freedom</i> (2014) [ER] Federalist Papers 48 & 51 [ER]
Jan. 23	Jeremy Waldron, "The Core of the Case Against Judicial Review" <i>Yale Law Journal</i> (2006) [ER]
Jan. 25	Jean Hampton, "The Moral Education Theory of Punishment" <i>Philosophy and Public Affairs</i> (1984), 208-221, 235-238 [ER] Herbert Morris, "Persons and Punishment" [ER]
Jan. 30	R.A. Duff, "Responsibility, Restoration, and Retribution" (2003) [ER] Doug Husak, selections from <i>Overcriminalization</i> (2008) [ER]
Feb. 1	Michelle Alexander, "The Color of Justice" <i>The New Jim Crow</i> (2010) [ER] John Pfaff, selections from <i>Locked In</i> (2017) [ER] <i>McCleskey v. Kemp</i> [ER] First Paper Assigned
Feb. 6	Benjamin Yost, "What's Wrong with Differential Punishment?" <i>Utilitas</i> (2016) [ER]
Feb. 8	"Life in the Plume: IBM's Pollution Haunts a Village" <i>The Post Standard</i> [link on Blackboard] <i>Blaine v. IBM</i> [ER] Andrew Altman, "The Efficiency of the Common Law", 156-161 [ER] <i>United States v. Carroll Towing Company</i> [ER] George P. Fletcher, "Fairness and Utility in Tort Theory" <i>Harvard Law Review</i> , 537-569 [ER]
Feb. 13	Stephen R. Perry, "Loss, Agency, and Responsibility for Outcomes" [ER] <i>Palsgraf v. Long Island Railroad Co.</i> [ER] <i>Summers v. Tice</i> [ER]
Feb. 15	HLA Hart, <i>The Concept of Law</i> , 1-13, 18-33, 42-49, 79-91 First Paper Due
Feb. 20	Hart, 91-110, 124-136, 185-186, 193-212
Feb. 22	David Lyons, "The Legal Entrenchment of Illegality" in <i>The Legacy of HLA Hart</i> (2008) [ER]
Feb. 27	A. John Simmons, "The Theories" in <i>Is There a Duty to Obey the Law</i> (2005), 102-120 [ER] Simmons, "Philosophical Anarchism" in <i>Justification and Legitimacy</i> (2001), 102-121 [ER]
Mar. 1	Midterm Exam
Mar. 8	Christopher Heath Wellman, "Toward a Liberal Theory of Political Obligation" <i>Ethics</i> (2001) 735-759 [ER]
Mar. 13	Martin Luther King, Jr., selections from "Letter from Birmingham Jail" [ER] Kimberley Brownlee, "Responsibilities" in <i>Conscience and Conviction</i> (2012) [ER]
Mar. 15	Candice Delmas, "Political Resistance: A Matter of Fairness" <i>Law and Philosophy</i> (2014) [ER]
Mar. 20	Ronald Dworkin, "Model of Rules I" <i>Taking Rights Seriously</i> (1977) 14-44 [ER]
Mar. 22	Dworkin, "'Natural'" Law Revisited" <i>University of Florida Law Review</i> (1982) 165-173, 178-188 [ER] Dworkin, selections from <i>Law's Empire</i> (1986), 23-30, 240-250 [ER] Second Paper Assigned
Mar. 27	Dworkin, "Integrity" <i>Law's Empire</i> , 176-206, 213-214 [ER]

Mar. 29	Antonin Scalia, "Common-Law Courts in a Civil-Law System" [ER] Dworkin, "Response to Scalia" [ER] <i>Buck v. Bell; Skinner v. Oklahoma; Griswold v. Connecticut; Eisenstadt v. Baird</i> [ER]
Apr. 10	<i>Roe v. Wade; Planned Parenthood v. Casey; Whole Woman's Health v. Hellerstedt</i> [ER] David Lyons, "Basic Rights and Constitutional Interpretation," in <i>Moral Aspects of Legal Theory</i> (1993) 185-201 [ER]
Apr. 12	A.M. Honore, "Ownership" (1961) [ER] Locke, selections from <i>Second Treatise of Government</i> [ER] Morris Raphael Cohen, selections from "Property and Sovereignty" <i>Cornell Law Quarterly</i> (1927) [ER] Second Paper Due
Apr. 17	Margaret Jane Radin, "Property and Personhood" <i>Stanford Law Review</i> (1982) [ER] <i>Kelo v. City of New London</i> [ER]
Apr. 19	Christopher Essert, "Property and Homelessness" <i>Philosophy & Public Affairs</i> (2016) [ER]
Apr. 24	Cohen, selections from "The Basis of Contract" <i>Harvard Law Review</i> (1933) [ER] Seana Valentine Shiffrin, selections from "The Divergence of Contract and Promise" <i>Harvard Law Review</i> (2007) [ER]
Apr. 26	Scott Veitch, <i>Law and Irresponsibility</i> , 1-34, 42-52
May 1	Veitch, 52-107, 134-144
May 3	Elizabeth Ashford, "The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights" <i>Canadian Journal of Law and Jurisprudence</i> 19, 2 (2006) 217-235 [ER]
	Final Exam will be held in accordance with University Final Exam Schedule