

PHIL 345: Philosophy of Law

Spring 2023

Prof. Tony Reeves

Office Hours: Wednesday 11:00 AM – 1:00 PM

I will be available in my office (Library Tower 1208) during these hours. You do not need to make an appointment to drop by during this time, but you can make appointments to see me at other times. My preference is that we have substantive discussions face-to-face, rather than by email. My email is (areeves@binghamton.edu).

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| Teaching Assistants: | Kyle Cornell | (kcornel3@binghamton.edu) |
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Course Description

The course concerns the philosophical foundations of law and legal practice. Philosophers are interested in a variety of questions about law: what is law, what is law's relationship to force and morality, in what sense is it binding, what gives law a particular meaning, how ought we construe that meaning in legal practice, 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 matters.

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 follow the lecture, 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 – you should give yourself time. You should read an assigned reading before the lecture discussing the reading.

Most of the readings will be available on Brightspace. There is only one required text besides:

H.L.A. Hart, *The Concept of Law* Any edition (Oxford U. Press)

Expectations and Requirements

This course is a 4-credit course, which means that in addition to the scheduled lectures/discussions, students are expected to do at least 9.5 hours of course-related work each week during the semester. This includes carefully completing assigned readings prior to relevant lectures and sections, making note of central theses and arguments in the readings, studying for tests, and preparing written assignments.

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 will not be in the reading.

Grade Breakdown:

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| Paper One | 20% |
| Paper Two | 20% |
| Midterm Exam | 20% |
| Final Exam | 20% |
| Participation | 20% |

Papers: Students will be required to write two short papers (5 - 6 standard pages, 1250 - 1500 words; the word count should be indicated on first page). 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 independent 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 in class on the due date, and an electronic copy to the link on Brightspace.** A guide to writing philosophy papers will be posted on Brightspace.

Exams: Students are responsible for all assigned material up to the day of the exam (i.e., the final exam is technically cumulative). Exams are closed book, and in person, unless the university requires classes to go remote on the day of an exam. If the exam is held in person, I

will provide blue books. I will advise you on the format of the exam as the exam date approaches.

Participation: Students will be assessed on their contributions in discussion section. The grade will be based on the frequency with which students provide valuable verbal contributions. Such contributions include informed responses to TA questions, participation in student-to-student discussions, and raising relevant and cogent questions. **The baseline participation grade is a C-, that's the grade you receive if you just show up for every section.** If you actively participate, in addition to attending regularly, your grade will be higher. If your attendance in discussion is spotty, *or* inattentive, you should expect to do worse. If you miss many, most, or all of your section meetings, this grade could be as low as 0. You are permitted one absence in discussion sections.

Discussion Section Grades

A: Arrives prepared for discussion; participates multiple times in a responsive and informed way; does not dominate conversation; listens to comments from others and responds; engages in any classroom activities.

B+: Arrives prepared for discussion; participates at least once; demonstrates knowledge of the reading and lecture material.

C+: Is present and attentive, but does not contribute meaningfully to the discussion; sometimes fails to pay attention to others.

C-: Attends, but not always engaged.

D: Attends, but quite disengaged.

F: Fails to attend or contribute at all.

Course Policies

Attendance: Attendance at lecture is expected, and lectures will afford you an opportunity to participate and engage with the material, and help enable you to participate successfully in discussion sections. Also, a significant quantity of course content will only be available through the lecture, i.e., many important concepts, arguments, distinctions, background ideas, etc., will not be explicitly covered in the readings. The slides in class, moreover, *will not* be posted on Brightspace. We will not, though, be tracking individual attendance in lecture. *Attendance will be taken in discussion sections*, and regular/active engagement in discussion sections will be necessary to earn a decent participation grade. *See above regarding participation.*

Computers: The use of computers during lecture or discussions *is not permitted*. Please do not use your phone. It is distracting, and bad for learning (not just yours, but that of those around you as well). You should take notes using older technology.

Classroom Decorum: An atmosphere of respect will be maintained at all times. We will be discussing controversial issues, on which you may disagree sharply with some of your peers. Nonetheless, it is fundamental to our enterprise that we preserve an open forum for discussion that recognizes the dignity of all participants. Uncivil or disruptive behavior and/or comments will not be tolerated.

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, your paper must be submitted to Brightspace before the start of class to avoid penalty. Papers more than **five** business days late normally *will not be accepted*.

Academic Honesty: Don't cheat. Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. At minimum, a case of academic dishonesty will involve a 0 on the assignment, though normally it would involve failing the class. As a note, I have had numerous cases of academic dishonesty in previous years that have resulted in delayed graduation and consequently not insignificant personal cost to the offending students. I do not relish this fact, but I will enforce the policies. The **Student Academic Honesty Code** can be found on the University Bulletin:

<https://www.binghamton.edu/bulletin/2022-23/academics/all-students/index.html>

Students must submit their papers through Brightspace, in addition to submitting a draft to their TA.

General Help: *If you are experiencing undue personal or academic stress* at any time during the semester or need to talk with someone about a personal problem or situation, I encourage you to seek support as soon as possible. There is a wide range of campus resources, including:

1. Dean of Students Office: 607-777-2804
2. Decker Student Health Services Center: 607-777-2221
3. University Police: On campus emergency, 911
4. University Counseling Center: 607-777-2772
5. Interpersonal Violence Prevention: 607-722-4256
6. Harpur Advising: 607-777-6305
7. Office of International Student & Scholar Services: 607-777-2510

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. **You will want to pay attention to page numbers, when they are indicated. When page numbers are not indicated, read the entire piece.** All material aside from the readings from *The Concept of Law* will be available on Brightspace.

| Date: | Reading: |
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| Jan. 18 | Introductory Lecture |
| Jan. 23 | <ol style="list-style-type: none"> 1. Joseph Raz, selections from "The Rule of Law and Its Virtue" from <i>The Authority of Law</i> (1979) 2. Lon Fuller, selections from <i>The Morality of Law</i> (1964) 3. Larry Alexander, selections from "Constrained by Precedent" <i>California Law Review</i> (1989), 3-8, 16-19, 25-28 |
| Jan. 25 | <ol style="list-style-type: none"> 1. Philip Pettit, selections from <i>Just Freedom</i> (2014) 2. Rousseau, selections from <i>On the Social Contract</i> (1762) |
| Jan. 30 | John Lawless, "Against the Managerial State: Preventive Policing as Non-Legal Governance" <i>Law and Philosophy</i> (2020) |
| Feb. 1 | Jeremy Waldron, "The Core of the Case Against Judicial Review" <i>Yale Law Journal</i> (2006), 1369-1395 Paper One Assigned |
| Feb. 6 | HLA Hart, <i>The Concept of Law</i> , 1-13, 18-33, 42-49, 79-91 |
| Feb. 8 | Hart, <i>The Concept of Law</i> 91-117, 124-136, 185-186, 193-212 |
| Feb. 13 | Ronald Dworkin, "Model of Rules I" <i>Taking Rights Seriously</i> (1977) 14-44 |
| Feb. 15 | <ol style="list-style-type: none"> 1. Dworkin, "'Natural' Law Revisited" <i>University of Florida Law Review</i> (1982) 165-173, 178-188 2. Dworkin, selections from <i>Law's Empire</i> (1986), 176-190 3. <u>Optional</u>: Reeves, "Ronald Dworkin's Legal Philosophy" <i>Encyclopedia of Law and Social Philosophy</i> (2017) Paper One Due |
| Feb. 20 | <ol style="list-style-type: none"> 1. Antonin Scalia, "Common-Law Courts in a Civil-Law System" 2. Dworkin, "Response to Scalia" 3. Solum, "Progressives Need to Support Justice Ketanji Brown Jackson's Originalism" |
| Feb. 22 | PPL Visiting Scholar class visit, Justin Driver (Yale Law) To read: Justin Driver, "Freedom of Expression within the Schoolhouse Gate" <i>Arkansas Law Review</i> (2020) |
| Feb. 27 | Due Process Cases: <i>Buck v. Bell</i> ; <i>Skinner v. Oklahoma</i> ; <i>Griswold v. Connecticut</i> ; <i>Eisenstadt v. Baird</i> ; <i>Roe v. Wade</i> |
| Mar. 1 | <i>Dobbs</i> , Majority Opinion (Alito) 1 – 39 |
| Mar. 6 | Midterm Exam |
| Mar. 8 | <ol style="list-style-type: none"> 1. Scott Veitch, selections from <i>Law and Irresponsibility</i> (2007) |

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| | 2. Leif Wenar, “The Oil Curse: Go Deeper” (2017) |
| Mar. 13 | 1. David Lyons, “Normal Law, Nearly Just Societies, and Other Myths of Legal Theory” in <i>Confronting Injustice: Moral History and Political Theory</i> (2013) 2. A. John Simmons, “Philosophical Anarchism” in <i>Justification and Legitimacy</i> (2001), 102 – 121 |
| Mar. 15 | Christopher Heath Wellman, “Toward a Liberal Theory of Political Obligation” <i>Ethics</i> (2001), 735-759 |
| Mar. 20 | Candice Delmas, “Political Resistance: A Matter of Fairness” <i>Law and Philosophy</i> (2014) |
| Mar. 22 | 1. Martin Luther King, Jr., “Letter from Birmingham Jail” 2. David L. Chappell, “Martin Luther King: Strategist of Force” in <i>African American Political Thought</i> (2021) |
| Mar. 27 | J.P. Messina, “Freedom of Expression and the Liberalism of Fear: A Defense of the Darker Mill” <i>Philosophers’ Imprint</i> (2020) |
| Mar. 29 | Robert Mark Simpson, “‘Won’t Somebody Please Think of the Children?’: Hate Speech, Harm, and Childhood” <i>Law and Philosophy</i> (2019) Paper Two Assigned |
| Apr. 1 – 10 | Spring Break |
| Apr. 12 | Hélène Landemore and Isabelle Ferreras, “In Defense of Workplace Democracy: Towards a Justification of the Firm-State Analogy” <i>Political Theory</i> (2016) |
| Apr. 17 | 1. Fyodor Dostoevsky, selection from <i>The Brothers Karamazov</i> 2. Michael Moore, selection from <i>Placing Blame: A Theory of the Criminal Law</i> (1997) 3. Herbert Morris, selections from “Persons and Punishment” <i>The Monist</i> (1968) Paper Two Due |
| Apr. 19 | Areti Theofilopoulou, “Punishment as Moral Fortification and Non-Consensual Neurointerventions” <i>Law and Philosophy</i> (2019) |
| Apr. 24 | 1. Carissa Byrne Hessick, selections from <i>Punishment Without Trial</i> (2021) 2. John Pfaff, selections from <i>Locked In</i> (2017) 3. Michelle Alexander, selections from <i>The New Jim Crow</i> (2010) 4. <i>McClesky v. Kemp</i> |
| Apr. 26 | 1. Alice Ristroph, “The Curriculum of the Carceral State” <i>Columbia Law Review</i> (2020), 1631-1639 2. Christopher Lewis, “Inequality, Incentives, Criminality, and Blame” <i>Legal Theory</i> 22 (2016), 153-180 |
| May 1 | 1. Cheryl I. Harris, selections from “Whiteness as Property” <i>Harvard Law Review</i> (1993) 2. Locke, selections from <i>Second Treatise of Government</i> 3. Morris Raphael Cohen, selections from “Property and Sovereignty” <i>Cornell Law Quarterly</i> (1927) |
| May 3 | Christopher Essert, “Property and Homelessness” <i>Philosophy & Public Affairs</i> (2016) |

Final Exam will be held in accordance with university schedule.