

COURSE NUMBER: PHI 335
COURSE TITLE: Philosophy of Law
SEMESTER: Fall 2019
CREDITS: 3 Credits
PREREQUISITES: None
FOR WHOM PLANNED: For both advanced philosophy majors and students with no philosophical experience

INSTRUCTOR INFORMATION:

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Office Hours: M 3:15pm-4pm, W 9am-10am, and by appointment

DESCRIPTION:

This course is an introduction to the philosophy of law, which, if it were being taught in a law school—and this course is excellent preparation for law school, by the way—might also be called “jurisprudence” or “legal theory.” We will discuss the following questions, considering canonical answers to them and developing answers of our own. What is law? What does a society have to have in order to have a legal system? What is important about law? What is the relationship between law and morality? Are immoral laws really laws? When, if ever, is it right to break the law—to practice civil disobedience? How should the constitution and legal statutes be interpreted? The readings for this course include both works of philosophy and landmark U.S. legal cases.

STUDENT LEARNING OUTCOMES:

Upon successful completion of this course, students will be able to:

1. characterize and compare theories of law,
2. apply those theories to specific cases and legal systems, and explain how differences in their application bear on the theories themselves,
3. analyze a meta-philosophical issue,
4. distinguish the argument given for a philosophical position from the position itself,
5. assess and compare those arguments.

TEACHING METHODS:

The meetings of this class will not consist solely, or even mostly, of the instructor speaking and you quietly listening. Rather, you should come to class having read the material and prepared to participate in a discussion. Typically, I will begin class by recapping the material and explaining things, and we will transition into discussion. I will often call on students to share their thoughts, summarize part of the reading, or read a short passage out loud. Come prepared to participate.

The course begins with a focus on a central question in philosophy of law: what is law? Examining legal realism, positivism, and natural law theory allow students to understand how philosophical theories work and how they compare to one another (SLO 1). Interspersed among these philosophical readings will be landmark US court cases, from which students will glean insights into the theories of law, occasionally because they serve as counterexamples (SLOs 2, 4, & 5). Discussion of the cases also raises issues about the nature of the theories themselves and what sorts of modes of evaluation of those theories are appropriate (SLO 3).

EVALUATION AND GRADING:

Beginning-of-Lecture Quizzes (SLOs 1, 2, 3, & 4):

There will be an electronic reading quiz for every reading at the beginning of class.

Why?

Students can only learn how to have a philosophical discussion if their peers come prepared by having done the reading. These quizzes guarantee that everyone does the reading, so everyone can engage in a productive discussion.

What does “electronic quiz” mean?

The students go to b.socratic.com on any internet browser. Questions are displayed in the front of the class, and students input their answers on their devices. The responses are recorded and displayed—anonously—in front of the room. We then discuss the answers. Altogether, the quiz takes 10 minutes. We will do a practice quiz the first day.

What will the questions be like?

The questions are multiple choice. Most of them are designed to be very easy if you have done the reading and impossible if you have not. A small percentage of the questions require you to not only have done the reading, but to have understood it.

Are there other details that you could not naturally fit into this question-and-answer format?

The quizzes serve as a de-facto way to taking attendance. When calculating your final grade, your lowest 4 quiz grades will be dropped.

Exams:

There will be two exams that will take place over the course of the semester. These will be conducted through Canvas. More details about the exams will be distributed in class during the semester. (SLOs 1, 2, 3, 4, & 5).

Final Paper:

Toward the end of the semester, the course will pivot into a sort of philosophical writing workshop.

Why?

In order to learn how to write you must practice. A somewhat inefficient but very commonly available type of practice is this: write a philosophy paper, get feedback, then write a different philosophy paper. A much more efficient type of practice is this: write a draft of a paper, get

feedback, rewrite that same paper, get more feedback, rewrite again, etc. So that is what we are going to do.

How will this work?

Each student will write three drafts of the final paper. Only the third and final draft will receive an official grade, but you must complete each draft in order to get full credit. More details will be discussed in class.

Won't I be bored with my paper by the third draft?

Oh, yes. Three drafts may sound like too many. It is not. (Three is probably not enough.) We will revise your final paper until you are bored with it. Boredom is a good sign. It shows that you are working on the paper enough. We will fight through the boredom!

Anonymous Grading:

Your final papers will be graded anonymously.

Why?

Everyone is subject to unconscious biases, including me. But grading anonymously not only benefits the students who the grader might be biased against, it also benefits those who might benefit from the grader's biases. Perhaps, for example, you are a likeable person. You may never know how bad your writing really is. Anonymous grading is the solution to this problem.

What do I have to do?

When you submit a paper it must not have your name anywhere on it or in the electronic file name. You should put your student ID number at the top of the first page and in the file name.

Grade Breakdown:

1. Beginning-of-Lecture Quizzes¹ (35%)
2. Exams (35%)
3. Final Paper (30%)

Constructive, thoughtful, enthusiastic, and polite class participation will be used to 'bump up' borderline grades.²

Grading Scale:

A	93-100%
A-	90-92%
B+	87-89%
B	83-86%
B-	80-82%
C+	77-79%

¹ This is the average grade of all beginning-of-lecture quizzes, except for the 4 lowest grades, which are dropped when calculating this portion of the grade.

² In extremely rare instances, disruptive class participation will harm a student's grade.

C	73-76%
C-	70-72%
D+	67-69%
D	63-66%
D-	60-62%
F	0-59%

REQUIRED TEXTS:

Many of the readings for this course come from the seminal work of 20th century Anglophone philosophy of law: *The Concept of Law* by HLA Hart. You will need to purchase a copy of this book. You can purchase either the 2nd or 3rd edition. It is available at the UNCG bookstore for maybe \$40 new and less used, or you can order it on Amazon for maybe \$30 new and less used. Do not worry if it takes a week or two to get your hands on this book since the first chapter that we will be reading is included in your course packet. That brings us to the send required text: the 'course packet'. It contains all of the other readings for the course and it can be purchased from the UNCG bookstore, in the Elliott University Center, for somewhere in the neighborhood of \$15-\$20. You must have physical, printed copies of both the course packet and *The Concept of Law*, and you must bring them to class.

Why?

Because we will be referring to the readings in class, and you cannot use electronic devices during class. In particular, you need a printed copy of the first reading by the time we discuss it in class. If you are reading this on the first day of class, then that is soon!

Is there a lot of reading for this course?

Yes. Some of the readings for this course are long. Some of them are short. You might think that the short readings will not take a long time to complete. But almost all philosophical and legal writing is dense and much of it is written in difficult-to-understand prose. It is not unreasonable to read a text three or four times, put it aside, and later read it several more times. Passing this course will require a significant amount of time and effort.

Also, because the readings vary in length, you should plan ahead. Glance through the readings over a week in advance of the day when we will be discussing them. You don't want to look at the reading for the first time the night before class and discover that it is much longer than you anticipated.

COURSE SCHEDULE:

This schedule is subject to change. You should complete the reading assignments before the date associated with that assignment, and be prepared for the beginning-of-lecture quiz. Also, many of the readings are accompanied by reading guides. These are documents written by me, your instructor, to help make the readings easier to understand. They include definitions of obscure terms, and they tell you which sections of the reading are most important. The reading guides also

say which portions of the reading to read, and which portions should be skipped entirely. So they should be read first (i.e., before the readings that they are guides to). If a reading has an associated reading guide, it is followed by an asterisk (*).

W	Aug 21st	Introductory Meeting; no reading
M	Aug 26th	HLA Hart, <i>The Concept of Law</i> , Chapter 2* ³
W	Aug 28th	<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)* ⁴
M	Sept 2nd	Labor Day. No classes at UNCG.
W	Sept 4th	HLA Hart, <i>The Concept of Law</i> , Chapter 3* ⁵
M	Sept 9th	No class.
W	Sept 11th	<i>Korematsu v. United States</i> , 323 U.S. 214 (1944)* ⁶
M	Sept 16th	HLA Hart, <i>The Concept of Law</i> , Chapter 4* ⁷
W	Sept 18th	Joseph Raz on legal positivism* ⁸
M	Sept 23rd	<i>McFall v. Shimp</i> , 10 Pa. D. & C. 3d 90 (1978) ⁹
W	Sept 25th	HLA Hart, <i>The Concept of Law</i> , Chapter 5* ¹⁰
M	Sept 30th	No class. Rosh Hashana.

³ In this chapter, titled *Laws, Commands, and Orders*, Hart summarises John Austin’s command- and habit-based positivist theory of law.

⁴ This 1896 decision by the U.S. Supreme Court upheld the constitutionality of racial segregation, so long as segregated facilities were of equal quality. This doctrine became known as “separate but equal.” A Louisiana state law required separate train cars. Homer Plessy, a man of seven-eighths European descent and one-eighth African descent, was removed from a train for refusing to leave the white-only car.

⁵ In this chapter, titled *The Variety of Laws*, Hart objects to the command portion of Austin’s theory of law. Hart’s main objections, concern power-conferring rules, self-binding laws, and unconscious legislation.

⁶ This 1944 U.S. Supreme Court case concerned President Franklin D. Roosevelt’s Executive Order 9066, which ordered Japanese Americans, including those who were U.S. citizens, into internment camps during WWII. The 6-3 decision held that the executive order was constitutional. This case touches on many issues in philosophy of law, including the role of self-binding laws.

⁷ In this chapter, titled *Sovereign and Subject*, Hart objects to the habit-based sovereignty portion of Austin’s theory. Hart’s objections concern the persistence of law, the continuity of legal authority, and what Hart called the “internal point of view.”

⁸ This reading is Howard Davies & David Holdcroft, *Jurisprudence: Texts and Commentary*, Chapter 1, “Legal Positivism.” It also includes some discussion of Hart’s view of positivism.

⁹ This is a 1978 case from Alleghany County, Pennsylvania. The court held that an individual could not legally be forced to donate bone marrow, or any body part, even when the donation was necessary to save another person’s life.

¹⁰ In this chapter, titled *Law and the Union of Primary and Secondary Rules*, having already objected to Austin’s theory, Hart begins to present his own theory of law. Here he focuses on the distinction between primary and secondary rules, we well as what he confusingly calls the distinction between “having an obligation” and “being obliged.”

W	Oct 2nd	<i>Brown v. Board of Education of Topeka</i> , 347 U.S. 483 (1954) ¹¹
M	Oct 7th	HLA Hart, <i>The Concept of Law</i> , Chapter 6* ¹²
W	Oct 9th ¹³	No class. Yom Kippur.
M	Oct 14th	Fall Break. No classes at UNCG.
W	Oct 16th	<i>The Constitution of the United States of America</i> , selections* ¹⁴
M	Oct 21st	Scott Shapiro on the Rule of Recognition and the US Constitution ¹⁵
W	Oct 23rd	Ronald Dworkin's criticism of Hart ¹⁶
M	Oct 28th	
W	Oct 30th	<i>Riggs v. Palmer</i> , 115 N.Y. 506 (1889) ¹⁷
M	Nov 4th	Kimberley Brownlee, <i>Civil Disobedience</i>
W	Nov 6th	
M	Nov 11th	Martin Luther King Jr., <i>Beyond Vietnam</i>
W	Nov 13th	Antonin Scalia, <i>Common-Law Courts in a Civil-Law System</i>
M	Nov 18th	Ronald Dworkin, <i>Comment on Scalia</i>
W	Nov 20th	Antonin Scalia, <i>Response to Dworkin</i>
M	Nov 25th	TBD
W	Nov 27th	Thanksgiving Break. No Classes at UNCG.
M	Dec 2nd	Final Paper In-Class Workshop #1
W	Dec 4th	Final Paper In-Class Workshop #2

¹¹ You may have heard of this one. This 1954 U.S. Supreme Court case held, unanimously (9-0), that racially segregated public schools are unconstitutional, partly on the grounds that “separate educational facilities are inherently unequal.” This overturned the precedent set by *Plessy v. Ferguson*.

¹² In this chapter, titled *The Foundations of a Legal System*, Hart presents the remainder of his own theory of law. This chapter focuses on the one rule that Hart things is at the foundation of every legal system, which he calls the “rule of recognition.”

¹³ Oct 11th is the last day to withdraw from a course without incurring a WF grade (withdraw failing).

¹⁴ The supreme law of the United States.

¹⁵ This reading is an excerpt from Shapiro’s paper, “What is the Rule of Recognition (and Does it Exist?)”.

¹⁶ There are two parts to this reading. The first is selections from Howard Davies & David Holdcroft, *Jurisprudence: Texts and Commentary*, Chapter 4, “Positivism and adjudication: HLA Hart v Ronald Dworkin.” The second is an excerpt from Mitchell N. Berman’s paper, “Principled Positivism,” in which he summarizes one of Dworkin’s arguments against Hart.

¹⁷ The case, decided by the Court of Appeals of New York, concerned whether someone could inherit money from a relative who he murdered in order to receive that inheritance. Elmer Palmer, knowing that he is set to inherit a fortune from his grandfather, kills his grandfather. There is no legal statute prohibiting him from inheriting the estate. The legal punishment for murder does not include withholding of assets to which one is otherwise entitled. Dworkin discusses this case in a paragraph in the middle of Model of Rules I, p. 23 of *Taking Rights Seriously*.

ACADEMIC INTEGRITY POLICY: Students are expected to abide by the UNCG Honor Code. For all major assignments, students will be required to sign the university's academic integrity policy.

ATTENDANCE POLICY: I will not be taking attendance, but coming to class regularly is essential to success in this course. Moreover, the beginning-of-lecture quizzes function to impose an attendance policy of sorts. When calculating that portion of the final grade, each student's 4 lowest quiz grades will be dropped.

FINAL EXAMINATION: There will be no final exam for this course, but there will be a final paper, which you will revise several times before it is assigned a grade. For details about the final paper, see the subsection titled "Final Paper" above.

ADDITIONAL REQUIREMENTS:

Electronic Devices Policy:

Students are not permitted to use any electronic devices (e.g., laptops, tablets, smartphones, etc.) during class.

- *Why?*

Here is a list of *real things that I actually witnessed* students do on the internet during lecture:

- Browsed Facebook, Twitter, etc.
- Shopped for boots (did not make a purchase)
- Googled "how to focus in class"
- Booked round-trip ticket to Paris
- Read half of the Wikipedia entry on Plato
- Played first-person shooter game

No one comes to lecture planning to play a video game. What happens, I suspect is the following. Listening to a lengthy philosophical lecture is difficult and requires a good deal of focus. Inevitably, students zone out. This is the crucial moment: will they listen with even greater focus and figure out what they missed while continuing to take in the new information, or will they give up? Access to the internet makes giving up almost irresistible.

- *Are there any exceptions to this policy?*

Yes, the only exceptions are (a) if you have a relevant disability with official documentation by the UNCG Office of Accessibility and Services and (b) for the beginning-of-lecture quizzes, explained above.