

Course # | Philosophy of Law

Description

Is there a standing duty to obey the law? Can an immoral law be a valid law? How should judges interpret the constitution? Does the practice of judicial review compromise democratic values? When and in what manner may the state interfere with the conduct of its citizens? What justifies punishing someone who breaks the law? We will discuss these and other questions in this survey course on the philosophy of law. Significant attention will be devoted to questions that lie at the intersection of legal and political philosophy.

Assignments

- (1) *Reading Notes*: For each session's assigned readings, answer the questions identified in the provided "Reading Notes Template" and submit them to your online reading journal. The journals are ungraded, but their content may be used on the exams.
- (2) *First Response Essay*: The readings for each class are accompanied by two or three reflection questions. Sign up for one class from "Part 1" or "Part 2" of the course for which you will compose a 1000-word response paper to one question for that date. Papers are due by 11:59 PM one week after the class to which you are responding. Choices must be submitted by 5:00 PM Friday, [Date].
- (3) *Midterm Exam*: A closed-book, open-note exam will be held in class on [Date]. The exam will cover everything up to that point. It will be one-half text identifications and one-half essay questions. Identifications quote a passage from the readings and ask you to identify the source of the quote and explain its meaning and context. The essay questions will engage with the themes raised in the first half of the course.
- (4) *Second Response Essay*: Like the first assignment, sign up for one class from "Part 3" or "Part 4" of the course for which you will compose a 1000-word response paper to one question for that date. Papers are due by 11:59 PM one week after the class to which you are responding. Choices must be submitted by 5:00 PM Friday, [Date].
- (5) *Simulation*: An in-class simulation will take place [Date]. In addition to participating in this activity, you will be asked to respond to several short reflection questions.
- (6) *Final Exam*: A closed-book, open-note final exam will be held during the university's exam period. It will be one-half text identifications from the entirety of the course and one-half essay questions. The essay questions will focus on the grand themes of the course.

Course Schedule

1. The Obligation to Obey the Law

Introduction: The Obligation to Obey the Law

01. ▪ Simmons, A. John. 2005. "The Problem and Its Significance." In Christopher H. Wellman and John Simmons, *Is there a Duty to Obey the Law*, 93–101. New York: Cambridge University Press.

The Argument from Consent

02. ▪ Simmons, A. John. 2020. "The Argument from Tacit Consent." In *Moral Principles and Political Obligations*, 75–100. Princeton, N.J.: Princeton University Press.

The Argument from Fair Play

03. ▪ Excerpt from Rawls, John. 1958. "Justice as Fairness." *The Philosophical Review* 67 (2): 179–81.
 ▪ Excerpt from Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books: 90 – 95.
 ▪ Klosko, George. 1987. "The Principle of Fairness and Political Obligation." *Ethics* 97 (2): 353–62.

The Argument from Natural Duty

04. ▪ Simmons, A. John. 2020. "The Natural Duty of Justice." In *Moral Principles and Political Obligations*, 143–56. Princeton, N.J.: Princeton University Press.

The Argument from Associative Duties

05. ▪ Wellman, Christopher Heath. 1997. "Associative Allegiances and Political Obligations." *Social Theory and Practice* 23 (3): 181–204.

Civil Disobedience

06. ▪ Martin Luther King, Jr. 1963. *Letter from Birmingham Jail*.
▪ Rawls, John. 1999. *A Theory of Justice*. Revised ed. Cambridge, MA: Belknap Press of Harvard University Press: §§55–59, pp. 319–341.

Injustice and the Obligation to Obey the Law

07. ▪ Shelby, Tommie. 2007. "Justice, Deviance, and the Dark Ghetto." *Philosophy & Public Affairs* 35 (2): 126–60.

Injustice and the Obligation to Reform the Law

08. ▪ Pasternak, Avia. 2017. "Fair Play and Wrongful Benefits." *Journal of Moral Philosophy* 14 (5): 515–34.

2. What Is Law?

Classical Natural Law

09. ▪ Aquinas, *On Law, Morality, and Politics*, ch. 2: pp. 10 – 75.

Hart's Positivism

10. ▪ Hart, H.L.A. 1997. *The Concept of Law*. 2nd ed. Clarendon Law Series. Oxford, UK: Clarendon Press: pp. 79–123.

Formalism and Rule Skepticism

11. ▪ Hart, H.L.A. 1997. *The Concept of Law*. 2nd ed. Clarendon Law Series. Oxford, UK: Clarendon Press: pp. 124–154.

Law & Morality

12. ▪ Fuller, Lon L. 1969. *The Morality of Law*. Rev. ed. New Haven, CT: Yale University Press: pp. 95–144.

Modern Natural Law Theories

13. ▪ George, Robert P. 1999. "Natural Law and Positive Law." In *In Defense of Natural Law*, 102–12. Oxford, U.K.: Oxford University Press.

MIDTERM EXAM

3. Legal Interpretation, Constitutionalism, and Democracy

Formalism vs. Instrumentalism

14. ▪ Schauer, Frederick. 1988. "Formalism." *The Yale Law Journal* 97 (4): 509–48.
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15. **Judicial Decisionmaking**

- [In-class simulation]

Scalia's Originalism and the Rule of Law

16.
 - Scalia, Antonin. 1989. "The Rule of Law as a Law of Rules." *The University of Chicago Law Review* 56 (4): 1175–88.
 - Scalia, Antonin. 1989. "Originalism: The Lesser Evil," 57 *U. Cin. L. Rev.* 849-65.

The Moral Reading of the Constitution

17.
 - Dworkin, Ronald. 1996. "The Moral Reading of the Constitution." *New York Review of Books*, March.

Against Judicial Review

18.
 - Waldron, Jeremy. 2006. "The Core of the Case Against Judicial Review." *The Yale Law Journal* 115 (6): 1346-1406.

4. Liberty and Paternalism

The Harm Principle

19.
 - Mill, John Stuart. *On Liberty*. Chapters 1 & 2.

Liberty of Thought and Discussion

20.
 - Mill, John Stuart. *On Liberty*. Chapters 3 & 4.

Beyond the Harm Principle

21.
 - Ripstein, Arthur. 2006. "Beyond the Harm Principle." *Philosophy & Public Affairs* 34 (3): 215–45.

Paternalism

22.
 - Dworkin, Gerald. 1972. "Paternalism." *The Monist* 56 (1): 64–84.

Freedom of Expression

23.
 - Scanlon, Thomas M. 1972. "A Theory of Freedom of Expression." *Philosophy & Public Affairs* 1 (2): 204–26.

Hate Speech

24.
 - West, Caroline. 2012. "Words That Silence? Freedom of Expression and Racist Hate Speech." In *Speech and Harm*, edited by Ishani Maitra and Mary Kate McGowan, 222–48. Oxford, UK: Oxford University Press.

Dangerous Speech

25.
 - Howard, Jeffrey W. 2019. "Dangerous Speech." *Philosophy & Public Affairs* 47 (2): 208–54.

5. Punishment

Consequentialism

26.
 - Wood, David. 2010. "Punishment: Consequentialism." *Philosophy Compass* 5 (6): 455–69.
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27. **Non-Consequentialism**

- Wood, David. 2010. "Punishment: Nonconsequentialism." *Philosophy Compass* 5 (6): 470–82.

28. **Abolition and Alternatives**

- McLeod, Allegra M. 2015. "Prison Abolition and Grounded Justice." *UCLA Law Review* 62 (5): 1156–1239.
