

**PHIL245: PHILOSOPHY OF LAW**  
**MAG104, MW 9:30-10:45 AM**

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***Course description***

This is a seminar-style course on philosophy of law. We will focus on the role that the law's *authority* ought to play in our proper understanding of law. The first, longer part of the course is concerned with analytical jurisprudence. Here we will be considering various theories of the nature of law using the idea of law's authority as a guidepost. Thus, we will be asking: What is authority? What are the various ways that persons, or institutions, can bear authority? What sorts of authority, if any, are essential to law? And how should our account of the nature of law be shaped by the constraint that law be authoritative in these particular ways? The second, shorter part of the course is concerned with normative jurisprudence. Here we will be asking whether law really bears legitimate authority over those subject to it; and if so, how far that authority extends; and how whatever authority the law has is to be explained. Thus, we will be asking: What are the various ways in which claims to authority can be made good? Does the law show itself to be authoritative by any of these ways? How, then, should we understand the scope and limits of legitimate legal authority? Requirements include two course papers (a draft of one of which will be presented and discussed in the seminar) and faithful, prepared, and active attendance.

***Course objectives***

Through active participation in this seminar, you will

- become aware of deep theoretical problems involved in understanding law
- become aware of deep practical problems involved in responding to law
- see new relationships between seemingly distinct philosophical and legal issues

***Course format***

The format of the course is a combination of lecture and discussion, with discussion dominating. Students will always be expected to have done the reading in advance and to have initial takes on the issues we will be dealing with.

### ***Course requirements and grading***

Students will be graded on two criteria: the quality of their course paper(s) and the quality of their seminar presentation / participation.

#### ***Course papers***

Students will write two papers, the first 2500-3000 words, the second 3000-4000 words. The first paper is due March 3; the second paper is due May 9. With my permission, you can substitute one long paper (5500-7500 words) for the two shorter papers; the long paper will come due when the second paper would be due. You must get permission for the longer paper by February 24, so that if permission is denied, you still have time to get the first paper written.

#### ***Presentation***

Each student will present a draft of his or her second (or long) paper in class and comment on another student's final paper draft. The draft will be circulated by e-mail at least 48 hours in advance of the presentation.

#### ***Participation***

Prepared and active attendance is mandatory. (Preparation includes doing the reading carefully and thoughtfully and coming to class with preliminary thoughts on it.) It will be a small class, and there will be plenty of opportunity for close argument. On the other hand, inadequate preparation or lack of attendance will make the experience excruciating. Students are *always* required to be present for class, and this requirement will be backed up with sanctions for unexcused absences for the classes in which presentations are taking place.

#### ***The final grade***

The first paper counts for 40%, the second 50%, and presentation / participation for 10%.

#### ***Texts***

You have to buy H. L. A. Hart's *The Concept of Law* (third edition) and A. John Simmons's *Moral Principles and Political Obligations*. The rest of the readings will be available on electronic reserve through Lauinger.

#### ***Consulting***

I'm around on Mondays, Wednesdays, and usually Fridays. I'm almost never around on Tuesdays and Thursdays. I also check e-mail frequently.

## SCHEDULE

<i>Date</i>	<i>Topic</i>	<i>Reading</i>
1/11	Method and aim in philosophy of law	Hart, CL, ch. 1; Raz, “Can There Be a Theory of Law?”
1/18	The nature of authority	Murphy, “Authority” (ER)
1/23	Austinian positivism	Austin, “A Positivist Conception of Law,” from <i>The Province of Jurisprudence Determined</i> (ER)
1/25	Hart’s critique of Austin	Hart, CL, chs. 2-4
1/30	Hartian positivism	Hart, CL, ch. 5
2/1	Hartian positivism	Hart, CL, ch. 6
2/6	<i>NO CLASS— INSTRUCTOR OUT OF TOWN</i>	
2/8	Legal realism, and Hart’s critique	John Chipman Grey, “A Realist Conception of Law,” from <i>The Nature and Sources of Law</i> ; Hart, CL, ch. 7
2/13	Formal and substantive natural law theory	Fuller, “Eight Ways to Fail to Make Law” (ER); Aquinas, “Concerning the Nature of Law,” from <i>Summa Theologiae</i> (ER); Murphy, “Natural Law Theory” (ER)
2/15	Dworkin’s challenge	Dworkin, “The Model of Rules I” (ER)
2/22	Exclusive positivism	Raz, “Authority, Law, and Morality” (ER)
2/27	Inclusive positivism	Hart, CL, Postscript
3/1	Neoclassical natural law theory	Murphy, “The Explanatory Role of the Weak Natural Law Thesis” (ER)
3/13	Analytical to normative jurisprudence	Simmons, MP, chs. 1-2
3/15	The Normal Justification Thesis	Raz, “Authority and Justification” (ER); Darwall, “Authority and Reasons” (ER)
3/20	Consent theory	Simmons, MP, chs. 3-4

**SCHEDULE (continued)**

3/22	Fair play	Rawls, “Legal Obligation and the Duty of Fair Play” (ER); Simmons, MP, ch. 5
3/27	The natural duty of justice	Simmons, MP, ch. 6, Waldron, “Special Ties and Natural Duties” (ER)
3/29	Gratitude	Simmons, MP, ch. 7
4/3	Consequences of authority skepticism	Simmons, MP, ch 8.
4/5	Associational accounts	Gilbert, “Group Membership and Political Obligation” (ER)
4/10	Samaritanism	Wellman, “Samaritanism and the Duty to Obey the Law” (ER)
4/12	Wrapup of normative jurisprudence	None
4/19	Presentations	Each others’ work
4/24	Presentations	Each others’ work
4/26	Presentations	Each others’ work
5/1	Presentations	Each others’ work