

# PHILOSOPHY OF LAW

PHIL 1450

Spring 2025

**Lecture:** Mondays and Wednesdays, 1:45pm – 2:45pm EST | Williams 218

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**Office Hours:** Thursdays 12:30-1:30 PM

## I. Course Description

In all likelihood, the society you were born into has some form of legal system. But that is not an essential feature of a human society. Most human societies that have ever existed lacked any law or legal system. Likewise, the society you were born into likely structures many if not most areas of social interaction—the use of inanimate objects, the making of commercial agreements, the use of physical coercion by parents over their natural offspring, to name just a few—in accordance with law. But, historically, the scope of legal systems has been greater or smaller.

If having law is a contingent feature of a human society, and if the law's scope is up for grabs, any society faces two important questions: Should we have law at all? And if we should, what sorts of human relationships should be brought under its scope? You've probably never thought about the first question, and it's likely that you think the answer is obviously, 'yes.' But consider the second question. Even if it is obvious that we should want *some* spheres of human interaction to be governed by law, it isn't obvious that we should want *every* sphere to be under its scope. And if we want to know when that would make sense and when it wouldn't, we need to know what law is. What, in other words, are its essential features: Is it necessarily coercive? Is its content always fully determinate? Does it have any necessary relationship to morality?

The inquiry into these and other questions concerning the nature of law is traditionally known as “analytical jurisprudence,” and it will form the first half of this course. We pursue this inquiry by focusing on one of the most influential works of Western legal philosophy, H. L. A. Hart's *The Concept of Law*, as well as on the views of some of its critics.

Now consider something else. Even when we think it is appropriate for the law to govern some sphere of human interaction, human history presents us with a rather diverse menu of options for doing so. Some systems allow widespread private property; others severely limit the scope of what can be owned privately. Some legal systems give parents near absolute authority over their natural offspring; others constrain that authority in various ways. In some legal systems, the legislature has final say over what the law is on all questions; in others, a supreme judge or panel of judges gets to decide whether the lawmaking acts of the legislature constitute valid law.

We don't determine what features law has by nature: law has those features whenever it exists. But we do determine which of the many contingent features of a legal system our own legal system

will adopt. And so we can ask yet a further question: How ought we structure this or that area of our own legal system? The inquiry into this question (which is really many questions in one) is traditionally known as “normative jurisprudence,” and it will be the focus of the second half of this course. With the help of some classic texts, we will ask what justifies private property and how extensive its scope should be, whether judges ought to enjoy the power of judicial review, and what, if anything, justifies the institution of criminal punishment.

## II. Course Objectives

The goals of the course are to:

- Develop your philosophical skills, chief among which is the ability to identify, charitably reconstruct, and critically evaluate arguments.
- Develop your expository and critical writing skills.
- Investigate the nature of law, and thereby to allow you to better appreciate what is involved in governing our common affairs by means of law and not in some other way.
- To give you the intellectual tools to evaluate some of the central legal institutions of our society.

## III. Teaching Method

Instruction will consist of two weekly class meetings. These class meetings will be a mixture of short lectures, discussions, and group activities. Each class meeting will be centered around a handout, but we will often pursue interesting lines of inquiry that stray from the lesson plan.

## IV. Evaluation Method

1. *Assignments* – Your final grade will consist of the components described briefly in the following table.

Assignment	Value	Tentative length	Description/Comments
First paper	15%	5-6 pages	A critical philosophy paper on analytical jurisprudence.
Second paper	15%		A paper on normative jurisprudence.
Exam 1	15%	1 hour	Timed assessment based on readings and philosophical skills discussed and practiced in class.
Exam 2	15%	1 hour	Timed assessment based on readings and philosophical skills discussed and practiced in class.
Attendance	20%	-	See attendance policy below.
Participation	20%	-	See participation policy below.

2. *Grading scale* – We will use the standard grading scale on Canvas:

<b>A</b>	94-100%
<b>A-</b>	90-93%
<b>B+</b>	87-89%
<b>B</b>	84-86%
<b>B-</b>	80-83%
<b>C+</b>	77-79%
<b>C</b>	74-76%
<b>C-</b>	70-73%
<b>D+</b>	67-69%
<b>D</b>	64-66%
<b>F</b>	<64%

3. *Pass/fail*. In order to earn a passing grade in the course, you must complete each of the assignments above in good faith. This includes the attendance and participation component of the course grade.

4. *Extra credit*. No extra credit will be offered in this course.

## V. Course Materials

There is only one required book for this course:

<b>Author</b>	<b>Title</b>	<b>Edition</b>	<b>Publisher and year</b>	<b>ISBN</b>
H. L. A. Hart	<i>The Concept of Law</i>	3rd edition	Oxford: Oxford University Press, 2012	978-0199644704

Additional readings will be posted on Canvas, under Files>Readings.

## VI. Course Policies

1. *Attendance* – Attendance will be recorded at the beginning of each meeting. If you are 15+ minutes late with no legitimate excuse that will count as an absence (you can still get participation points for that day). You are granted two unexcused absences (no questions asked, you don't need to notify me or make a CAN). Any absences beyond this will result in -2% from your attendance grade. For excused absences, you will be required to submit an Excused Absence Form (accessible on Canvas) and make a CAN.

2. *Participation* – Participation is evaluated based on the frequency and quality of your contributions to discussion during class. This is not a “gimmie”, and you will be evaluated on participation as if it is a normal assignment. Participation also includes preparedness (e.g., having done the reading and come to class ready to learn). Consistent use of laptops or technology for activities unrelated

unrelated to class will significantly affect your participation grade. After each class I will grade your participation on a scale of 1-3.

3. *Readings* – I expect you to read the material assigned for each date *before* the given lecture or (when applicable) recitation. As with all academic texts, you will find that you may sometimes have to read a text twice to get a working grasp of the arguments the author is advancing. Have your copies of the textbook and any other assigned texts handy during lectures and recitations so we can consult passages together with ease.
4. *Extensions and late assignments* – Individual requests for extensions on writing assignments will be granted only in truly exceptional cases, such as hospitalizations, or family emergencies..
5. *Etiquette* – In order to ensure safe, fruitful, and civil philosophical engagement, please observe the following guidelines:
  - a. *Discussion*. You are welcome (even encouraged!) to disagree with one another, with the TA, and with me, but always do so respectfully and in terms that stimulate rather than stifle discussion. In particular, I expect you to listen to what others have to say, let others speak, and address all participants courteously.
  - b. *Charity* – I expect you to be a charitable interpreter of your interlocutors, be they your peers, the TA, myself, or the authors we will be reading throughout the semester. Assume at all times that your interlocutors are after the truth—just as you are—and that their efforts to get at it are in good faith. If some statement you read or hear seems obviously false, attempt to find some interpretation of it on which it seems at least plausible, even if you do not ultimately accept it.
6. *Distractions* – During class, I ask that you set your phone to vibrate or silent and keep it out of reach. I also ask that you refrain from laptop use, except when this is part of some special accommodation or when you need your laptop to refer to an electronic copy of a text. Whenever those conditions are satisfied, I ask that you refrain from online shopping, checking social media, and so on. Research suggests that we are worse at multitasking than we think we are, and that laptops impair not just your own learning in the classroom but also that of classmates around you who can see your screen.

## **VII. Accommodations**

1. *Documented disability* – Any student with a documented disability who needs accommodations is requested to speak directly to Weingarten’s Disability Services *and* with me as early as possible in the term (*preferably within the first two weeks*). All such discussions will remain strictly confidential.
2. *Religious observance* – If you require accommodation due to religious observance, please contact me *within the first two weeks of the course* in order to set up alternative arrangements. All absences due to religious observance are excused.

## **VIII. Contact Policy**

I will reply to emails within 48 hours (though expect a longer response time over weekends or breaks). If I do not reply within 48 hours, please send me a reminder (on some weeks I receive an overwhelming amount of email and some messages fall through the cracks). I will only answer simple, specific questions over email, or any question pertaining to the logistics of the course not already answered in this syllabus. For all other matters, (and, in particular, to discuss substantive philosophical questions) please talk to me after class or come to my office hours.

When in doubt, use the following heuristic: If it would take me more than 2 or 3 sentences to answer your question, it would be more efficient to speak after class or during office hours.

Tip: If you use the Canvas inbox feature, it is more likely I will see your message than a normal email, because it will stand out more than a normal email.

## **IX. Office Hours**

If you are planning on attending my office hours during a given week, *write me ahead of time to let me know*. I ask that you do this so I can apportion my office hours equitably among all those who contact me ahead of time and arrange for separate meetings on weeks in which there is high demand. But I also do this to find out whether anyone is planning on attending on a given week. If I have not received any emails by the beginning of office hours, I will cancel them for that week.

I will be holding office hours both in person and on Zoom. If you plan to attend office hours, please let me know whether you would like to meet in person or virtually.

## **X. Writing Assignments**

1. *General* – There are two writing assignments in this course. Detailed instructions for both papers will be distributed in a separate document well in advance of the due dates. I encourage you to reach out to me with any questions or concerns about writing a philosophy paper.
2. *Expectations* – Philosophical writing is difficult, particularly if you have never done it before, but even if you have. That said, it is a skill like any other: it gets easier the more you work at it. For that reason, *you should not despair if you do not obtain the grade you were hoping for on your first writing assignment*. The assignments in this course are structured so that you can learn from your mistakes early on without paying a significant penalty in terms of your final grade. Provided that you learn from and implement the feedback you receive, you should see an increase in the quality of your written work (and, therefore, in your grade) with each subsequent writing assignment.

## **XI. Academic Integrity**

All written work in this course will be submitted through Turnitin, a plagiarism-detection software integrated into Canvas. We will not accept submissions through any other medium (e.g. in hard copy or by email). All written work will also be checked for AI-assisted plagiarism.

It goes without saying that all written work in the course must be your own. Please familiarize yourself with the university's Code of Academic Integrity. Academic integrity violations will result in a failing grade for the assignment. Serious violations will be reported to the Center for Community Standards and Accountability (formerly the "Office of Student Conduct") and may result in a failing grade for the course.

## **XII. Additional Resources**

- For general information on philosophers, philosophical concepts, or philosophical approaches, consult the *Stanford Encyclopedia of Philosophy* at <http://plato.stanford.edu>
- For additional guidance on reading philosophy, consult <http://www.jimpryor.net/teaching/guidelines/reading.html>
- I will give you some guidance on philosophical writing, but if you want additional guidance, consult <http://www.jimpryor.net/teaching/guidelines/writing.html>
- For hands-on help with your writing, take advantage of the Marks Family Writing Center. For information on writing consultations, see <http://writing.upenn.edu/critical/wc/>
- For guidance on how to avoid plagiarism, consult the Purdue Online Writing Lab's resources, which you will find on their website ([https://owl.purdue.edu/owl/purdue\\_owl.html](https://owl.purdue.edu/owl/purdue_owl.html)) under "Avoiding Plagiarism."

## **XIII. Course Schedule**

All the information below can be found on Canvas (mostly under "Modules" and "Assignments"),

but it is presented here in tabular form for ease of reference. *Canvas will always have the most up-to-date information on course readings and assignment deadlines.*

Material assigned for a given date is revisable in light of unforeseen circumstances or the natural progression and specific needs of the course. The same holds for assignment deadlines. Readings marked with an \* will be available on Canvas, under Files>Readings. All other readings are in the assigned books.

Recommended readings will allow you to deepen your understanding of the topic we are discussing on a given class meeting. I will sometimes discuss these in class, but you are not expected to engage with them for anything other than your own edification.

Date	Topic	Readings and other media	Assignments
Class 1	Introduction to the course and syllabus	No reading	
	<b>Analytical jurisprudence</b>		
Class 2	Introduction to analytical jurisprudence	H. L. A. Hart, <i>The Concept of Law</i> , Chapter 1 (also on Canvas) C. J. Pereira Di Salvo, “Arguments”*	
Class 3		Starlee Kine, “Two Words You Never Want To Hear From Your Doctor” ( <i>This American Life</i> , “Apology,” Act 3)*	
Class 4	The imperative theory of law	Thomas Hobbes, <i>Leviathan</i> , Chapter 26, pp. 183- 92* Hart, <i>The Concept of Law</i> , Chapter 2	
Class 5	Hart’s critique of the imperative theory	Hart, <i>The Concept of Law</i> , Chapter 3 <i>Course selection period ends</i>	
Class 6		Hart, <i>The Concept of Law</i> , Chapter 4 <i>Recommended: “USS Callister” (Black Mirror, Series 4, Episode 1)*</i>	
Class 7	A partial defense of the imperative theory	Frederick Schauer, “What Austin Right After All? On the Role of Sanctions in the Theory of Law”*	
Class 8	Hart’s positivism	Hart, <i>The Concept of Law</i> , Chapter 5 <i>Recommended: H. P. Grice, “Meaning”*</i>	
Class 9		Hart, <i>The Concept of Law</i> , Chapter 6	

Class 10		Hart, <i>The Concept of Law</i> , Chapter 7, sections 1 and 4  “Kittens Kick The Giggly Blue Robot All Summer” ( <i>More Perfect</i> , Season 1, Episode 5)*	
Class 11	Dworkin’s critique of Hart’s positivism	Ronald Dworkin, <i>Taking Rights Seriously</i> , Chapter 2*	
Class 12		Re-read Dworkin, <i>Taking Rights Seriously</i> , Chapter 2*	
Class 13		Dworkin, <i>Law’s Empire</i> , Chapter 1, pp. 1-11 and 15-30*  <i>Recommended</i> : John Searle, “Literal Meaning”*	
Class 14		<i>Riggs v. Palmer</i> *  Dworkin, <i>Law’s Empire</i> , Chapter 1, 31-44*	
Class 15		Hart, <i>The Concept of Law</i> , Postscript	
Class 16		“How to Structure Your Paper”*  “Some Guidelines on Writing a Philosophy Paper”*	
	<b>Normative jurisprudence</b>		
Class 17	Property: Introduction	Jaron Lanier, “Jaron Lanier Fixes the Internet” ( <i>The New York Times</i> )*  Anemona Hartocollis, “Who Should Own Photos of Slaves? The Descendants, not Harvard, a Lawsuit Says” ( <i>The New York Times</i> )*  Hartocollis, “Images of Slaves Are Property of Harvard, Not a Descendant, Judge Rules” ( <i>The New York Times</i> )*  Thomas Merrill and Henry Smith, <i>Property</i> , pp. 1- 11*  <i>Recommended</i> : Gregory Alexander and Eduardo Peñalver, <i>An Introduction to Property Theory</i> , Introduction*	
Class 18	“Utilitarian” theories of property	C.J. Pereira Di Salvo, “Utilitarianism and Fellow-Traveling Theories”*  Richard Posner, “Economic Analysis of Law” (excerpts)*	



Class 19	Libertarian theories of property	John Locke, <i>Second Treatise of Government</i> , Chapter 5*  Robert Nozick, <i>Anarchy, State, and Utopia</i> , pp. 174- 82*	
Class 20	Republican theories of property	Kyla Ebels-Duggan, "Moral Community: Escaping the Ethical State of Nature," pp. 1-8*	
Class 21	Personhood theories of property	Alan Patten, <i>Hegel's Idea of Freedom</i> , Chapter 5*  Margaret Jane Radin, "Property and Personhood" (excerpts)*	
Class 22	A democratic argument against judicial review	Jeremy Waldron, "The Core of the Case Against Judicial Review," 1346-76	
Class 23		Waldron, "The Core of the Case Against Judicial Review," 1376-1406	
Class 24	A democratic defense of judicial review	Cristina Lafont, "The Democratic Case for Judicial Review"	
Class 25	Punishment: Introduction and the utilitarian theory	<i>Breaking the Cycle</i>  Igor Primoratz, "What is punishment?"*  Jeremy Bentham, Introduction to the Principles of Morals and Legislation, Chapter 1, sections I and II, and Chapters 13 and 14*	
Class 26	Against the utilitarian theory	Igor Primoratz, "Arguments Against the Utilitarian Theory"*  <i>Recommended:</i> Paul Robinson, "The Difficulties of Deterrence as a Distributive Principle"*	
Class 27	Unfair advantage retributivism	Herbert Morris, "Persons and Punishment"*	
Class 28	Against retributivism	Russ Shafer-Landau, "The Failure of Retributivism"*	
Class 29	The expressive theory of punishment	Joel Feinberg, "The Expressive Function of Punishment"*	