

## PHIL 347: Philosophy of Law

Instructor: Cindy Phillips; cindywoo@umd.edu

University of Maryland, College Park - Fall 2014

Lectures: T, TH 2:00-03:15, SQH 2120

Office hours: T, TH 11:00-12:00pm Skinner 1108B, and by appointment

This is an upper-division course on philosophy of law. A theoretical understanding of the law looks at the core features of law. The most salient feature of law is that it has ultimate authority within a territory. This begs the following questions to be asked: Is the state's authority legitimate? Is there an obligation to obey the state's authority? What's the nature of law's authority? Is there a connection between legality and morality? The major goal of this course is to get you to think critically and carefully about these questions.

Through active participation in this course, you will become aware of deep theoretical problems involved in understanding law. You will see new relationships between seemingly distinct philosophical and legal issues. You will gain a high-level ability to develop well-sustained arguments. You will also gain skills to read very dense writing.

The course format will typically be 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.

Here are answers to some questions concerning the course.

***How do I obtain the required readings?*** All the required readings will be posted on ELMS.

***What are the grading requirements of this class?***

Assignments: 25%

Quizzes: 10%

First Paper: 5% (1000 words due **Nov. 25<sup>th</sup> @ 2pm**)

Second Paper: 30% (3000-4000 words due **Dec. 12<sup>th</sup> by midnight**)

Final Exam (Oral Exam will be scheduled individually): 10%

Discussion Posts (on Elms): 10% (due before each class starting Sep. 9<sup>th</sup>)

See undergraduate catalogue for description of grades, e.g., A+, A, A-, etc.:

<http://www.umd.edu/catalog/index.cfm/show/content.section/c/27/ss/1584/s/1534>

***Will I be able to use a laptop in class?*** No. No electronic devices are permitted in class. I have two reasons for this policy. (1) Cell phones are a gross distraction to me. (2) A study has found that students perform better by taking hand-written notes. This is because, when taking handwritten notes, people are forced to process the material in order to judiciously write something down. And people who use laptops simply

transcribe the lecture without processing the material. This is the link to the study: (<http://www.theatlantic.com/technology/archive/2014/05/to-remember-a-lecture-better-take-notes-by-hand/361478/>)

***How important will my participation in the class be?*** Prepared and active attendance is mandatory. Preparation includes doing the reading carefully and thoughtfully and coming to seminar 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 required always to be present for class, and this requirement will be backed up with sanctions for unexcused absences.

***What happens if I turn an assignment in late?*** It will be marked down by a full grade for one day late, then a third of a grade for subsequent days, unless arrangements have been made in advance. Papers will not be accepted more than a week late.

***What happens if I miss the midterm or the final?*** You will get zero points. You cannot miss the midterm or final for any reason (except as noted in official University regulations concerning documented emergencies). <http://www.umd.edu/catalog/index.cfm/show/content.section/c/27/ss/1584/s/1540>

***What if I'm unclear about whether I'm correctly citing a text?*** If you're using a direct quote from a text, you must add quotation marks and cite the author. If you're simply paraphrasing part of a text, you simply cite the author in a footnote. If you're in doubt, just cite the author. You must observe academic integrity; I will check for plagiarism and other forms of dishonesty and forward all instances to the Honor Council. <http://www.shc.umd.edu>.

***Do I have to do the reading before the class?*** Yes.

\*\*Please note that the grading requirements and reading list is subject to change.

### **Reading Schedule**

<b>Date</b>	<b>Topic</b>	<b>Reading</b>
Sep 2 <sup>nd</sup>	Introduction	None

### **How To Do Philosophy**

Sep 4 <sup>th</sup>	Philosophical Methodology	Alan Hájek, "Philosophical Heuristics and Philosophical Methodology" <i>continued</i>
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### **The Challenge of Philosophical Anarchism**

Sep 9 <sup>th</sup>	The Problem of Political Obligation	Jonathan Wolff, "What Is the Problem of Political Obligation?"
Sep 11 <sup>th</sup>	Philosophical Anarchism ( <i>a priori</i> )	Robert Paul Wolff, <i>In Defense of Philosophical Anarchism</i> (pp. 5-25)
Sep 16 <sup>th</sup>	Philosophical Anarchism ( <i>posteriori</i> )	John Simmons, "Philosophical Anarchism" in <i>Justification and Legitimacy</i> (pp. 102-121)

### **Political Legitimacy**

Sep 18 <sup>th</sup>	Overview	Peter Fabienne, <i>Political Legitimacy</i> (pp. 1-27)
Sep 23 <sup>rd</sup>	Distinction Between Justification and Legitimacy	John Simmons, "Justification and Legitimacy" in <i>Justification and Legitimacy</i> (pp. 122-157)
Sep 25 <sup>th</sup>	Legitimacy and Democracy	Allen Buchanan, "Political Legitimacy and Democracy"
Sep 30 <sup>th</sup>	Samaritan Account	Christopher Wellman, "Liberalism, Samaritanism, and Political Legitimacy"
Oct 2 <sup>nd</sup>	Consent Theory	John Simmons, "A Consent Theory for Libertarians"

### **Authority of Law**

Oct 7 <sup>th</sup>	Legitimacy Authority	Joseph Raz, "Legitimate Authority" in <i>The Authority of Law</i>
Oct 9 <sup>th</sup>	The Claims of Law	Joseph Raz, "The Claims of Law" in <i>The Authority of Law</i>
Oct 14 <sup>th</sup>	The Normal Justification Thesis	Joseph Raz, "Authority and Justification"
Oct 16 <sup>st</sup>	Authority and Coercion	Arthur Ripstein, "Authority and Coercion"

### **The Obligation To Obey the Law**

Oct 21 <sup>st</sup>	State of the Art	William Edmundson, "State of the Art: The Duty To Obey The Law"
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Oct 23 <sup>rd</sup>	Fairness Account	John Rawls, “Legal Obligation and the Duty To Fairplay”
Oct 28 <sup>th</sup>	Fairness Account	John Simmons, “The Principle of Fairplay”
Oct 30 <sup>th</sup>	Associative Obligations	Stephen Perry, “Associative Obligations”
Nov 4 <sup>th</sup>	Associative Obligations	John Simmons, “Associative Political Obligations” in <i>Justification and Legitimacy</i> (pp. 65-92)
Nov 6 <sup>th</sup>	Promises	David Owens, “A Simple Theory of Promises” & Listen to Podcast: <a href="http://sms.cam.ac.uk/media/1503447">http://sms.cam.ac.uk/media/1503447</a>

### The Nature of Law

Nov 11 <sup>th</sup>	The Concept of Law	H.L.A. Hart, Ch. 5., in <i>The Concept of Law</i>
<b>Nov 13<sup>th</sup></b>	The Concept of Law	H.L.A. Hart, Ch. 6., in <i>The Concept of Law</i> <b>Paper Topic is due @ 2pm (email <a href="mailto:cindywoo@umd.edu">cindywoo@umd.edu</a> with “Paper Topic 347” in the subject line)</b>
Nov 18 <sup>th</sup>	Dworkin’s Challenge	Ronald Dworkin, “The Model of Rules I”
Nov 23 <sup>th</sup>	Inclusive Positivism	W.J. Waluchow, Ch. 4., in <i>Inclusive Legal Positivism</i>
<b>Nov 25<sup>th</sup></b>	Exclusive Positivism I	Scott Shapiro, Ch. 5., <i>Legality</i> <b>First Paper is due @ 2pm (email <a href="mailto:cindywoo@umd.edu">cindywoo@umd.edu</a> with “First Paper 347” in the subject line)</b>
Dec 2 <sup>th</sup>	Exclusive Positivism II	Scott Shapiro, Ch. 6., <i>Legality</i>
Dec 4 <sup>th</sup>	Exclusive Positivism III	Scott Shapiro, Ch. 7., <i>Legality</i>
Dec 9 <sup>th</sup>	Neo-classical Natural Law	Murphy, “Defect and Deviance in Natural Law Jurisprudence” and “The Explanatory Role of the Weak Natural Law Thesis”
Dec 11 <sup>th</sup>	Catch-Up Day	None