

Philosophy of Law

Phil 11 | Spring 2023

M/W 1:30 - 2:45 @ Emerson 108

Professor: Emilio Mora

Office: Emerson

Email: emiliomora@fas.harvard.edu

Office Hours: Monday 3:30-5:30 @ Emerson 313 or Zoom (<https://harvard.zoom.us/j/8221295124> [Links to an external site.](#))

Office Hour Appointments: It is preferable that you use the following link to make a fixed 20 minute appointment: <http://bit.ly/2sJCBYi> ([Links to an external site.](#)) ([Links to an external site.](#)). Strictly speaking, you do not need to make an appointment to see me, however, you should note that in the case of conflicts I will defer to the student who has made an appointment.

***Special Note:** If you have any questions about the course, please feel free to reach out via email. I am happy to correspond or set up a zoom meeting with you to field any questions you may have.

Teaching Fellow: Ryan Sirk

Office: Emerson

Email: sirk@g.harvard.edu

You can expect emails to be turned around by me *within 36 hours ordinarily*, or *within 24 hours* if you include the term "urgent matter" or "emergency" in your email's subject line.

Office Hours: 3-5pm Wednesdays [Signup sheet: tinyurl.com/57wxnusy]

Office Hour Location/Link: <https://harvard.zoom.us/j/8357483533> or Emerson 003

[Group Office Hours 11:50am-1:50pm 03/04/2023 will use the same link above.]

Office Hour Appointments: Like Prof. Mora, I will use an appointment system for office hours. Unlike Prof. Mora's system, however, I will be *requiring all office hour visits to be made by appointment only*. You can expect there to be several extra hours of appointments in the weeks immediately leading up to deadlines for major assignments - the precise timings of these extra appointments will always be made known to you at least one week in advance.

Live Discussion Handouts: <https://tinyurl.com/2n4whkfm> [Google Drive mirror link]

Course Description:

Is there a standing duty to obey the 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? 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. The final part of the course will be determined in consultation with course participants and will be devoted to philosophical puzzles arising in the law.

Course texts:

All class readings will be posted in pdf format on the Canvas course website. ***NOTE*** that there is an reading for the first meeting on Monday 23rd of January. The readings for the final course topic will be set after the class has decided on the subjects it wishes to explore. Also note that readings may be subject to change throughout the semester. I will let you know about any changes through email and in class announcements but do check the course website for updates to the Syllabus.

Course Requirements (subject to moderate revision)

1. You **must** do the reading. Carefully. And in advance of the relevant class. In most lectures we will closely engage with the readings and there will be interactive elements that will require you to have formed an understanding of the text.
2. An informal 15-minute meeting with Dr. Mora at the beginning of semester. (Instructions on how to sign up for these meetings will be given in class). The purpose of this meeting is simply to get to know you, your learning objectives for the course, and your interests. The meeting will not be a component of the course grade.
3. Regular attendance. You must inform me in advance if there are any classes you will miss. On this note, there will be an undisclosed number of (at least 2) unannounced in-lecture quizzes throughout the semester. The quizzes will be comprised of simple expository questions concerning the reading assigned for the day of the lecture. Anyone who has completed the reading will be able to easily answer the questions. Quizzes will be equally weighted and, taken jointly, will count towards 5% of your final grade. In making this calculation your lowest grade on one of the quizzes will be discarded.
4. One short writing exercise (900-1200 words). Worth 20% of Grade.
5. One short paper (1500-2200 words) worth 30% of Final Grade.
6. One long paper (2300-2800 words). Must be on a different topic to the short paper. 35% of final Grade.
7. Class participation. 10% of final grade. The class participation component can be fulfilled by contributing in either the lecture, discussion sections, or in office hours. You cannot lose points for your contributions.

Due Dates (in Chronological Order):

1. Short Writing Exercise Due: March 5th
2. Short Paper- Due: April 7th
3. Long Paper- Due: May 9th

Grading Scheme

A: 100-94

A- : 94-90

B+ : 90-87

B: 87- 84

B- : 84 - 80

C+: 80 - 77

And so on...

*Grades on the border take the higher value (so a 94 is an A).

Quiz Grading Scheme

Check Plus: 100

Check: 93

Cross: 74

Reading and Writing Resources

Writing and reading philosophy is hard. It can take a while to get familiar with the mechanics, style, and expectations of philosophical writing. In particular, if this is your first time with philosophy, don't be discouraged by initial grades that don't meet your expectations. In this course, you will have plenty of

opportunity to improve your philosophical writing (and grade) throughout the semester. Feel free to come talk to me about any difficulties you are having. There are also several resources that are available to you to help with your reading and writing.

- The Department Writing Fellow website has a number of resources that can assist you in improving your philosophical writing. The link to this page is <https://projects.iq.harvard.edu/phil-dwf>.
- More generally, the philosopher Jim Pryor has some excellent resources for learning how to read and write philosophy papers. You can find them at: <http://www.jimpryor.net/teaching/index.html> ([Links to an external site.](#))

Expectations:

You may expect of me that:

- I will treat each of you with respect and take your ideas and contributions seriously.
- I will be prepared for classes.
- I will give you useful and constructive feedback on your assignments.
- I will be readily available outside of class to discuss any issues or difficulties you are having in the class.

I will expect of you that:

- You will treat one another with courtesy and respect.
- You will come to class well prepared and having done the requisite readings. You will have genuinely engaged with those readings and you will have formed views about the success or failure of their arguments.
- You will observe all the specified class policies.
- You will seek my help with respect to any concerns or problems you are having in class.

Course Policies

Extensions:

Extensions may be requested up until 2 days (48 hours) before papers are due.

Two-day extensions will be given without question.

Longer extensions will be given at my discretion. Given the current circumstances and the likelihood you will experience disruptions over the semester, I will endeavor to be accommodating in granting longer extensions.

Absences for religious observance:

See the Harvard College Handbook (<https://handbook.fas.harvard.edu/book/attendance-absences-reading-period-examinations-and-extensions>)

Submitting work and Penalties:

The writing exercises, short paper, and long paper must be submitted online (through the course website) by 11:59 PM on the due date. Papers submitted after the deadline will incur an immediate penalty of one "grade step"™ per day (e.g. B+ to B), and a further "grade step"™ every 24 hours. Errors in the submission process will be your responsibility (e.g. missing file attachments, lost emails, corrupted files, etc.). All assessment must be completed to receive your final grade.

Academic Dishonesty

Plagiarism or cheating will be reported. Please refer to the Harvard Student Handbook for information on academic dishonesty and its associated penalties. You should also feel free to ask me for clarification on any questions you may have regarding what constitutes plagiarism.

Accommodations for Students with Disabilities

If you need course accommodations for a disability, please contact the Accessible Education Office (AEO). I will do my utmost to help in any way I can. To help me do this, please notify me as soon as possible about

any accommodation instructions that AEO have made.

Readings

Introduction

Class 1: Class Introduction and Introduction to Topic 1: The Obligation to Obey the Law

-John Simmons, "The Problem and Its Significance" in Christopher H. Wellman and John Simmons, *Is there a Duty to Obey the Law*, New York: Cambridge University Press, 2005.

Topic 1: The Obligation to Obey the Law

Class 2: The Argument from Consent/Tacit Consent

-John Simmons, 'The Argument from Tacit Consent' in *Moral Principles and Political Obligations?*, Princeton: Princeton University Press, 1979.

Class 3 and 4: The Argument from Fairplay

-Excerpt from Robert Nozick, *Anarchy, State, and Utopia*, USA: Basic Books, 1974, pp. 90-95

-George Klosko, "Presumptive Benefit, Fairness, and Political Obligation," in William A. Edmundson (ed.) *The Duty to Obey the Law*, London: Rowman & Littlefield Publishers, 1999.

Class 5 and 6: The Argument from Natural Duty

-Excerpt from Christopher Wellman, 'Doing One's Fair Share' in John Simmons and Christopher H. Wellman, "The Problem and Its Significance" from *Is there a Duty to Obey the Law*, New York: Cambridge University Press, 2005.

-Excerpt from John Simmons, 'Natural Duties and the Duty to Obey the Law' in John Simmons and Christopher H. Wellman, *Is there a Duty to Obey the Law*, New York: Cambridge University Press, 2005.

Class 7: The Argument from Associative Duties

-Excerpt from Ronald Dworkin, *Law's Empire*, Cambridge: The Belknap Press of Harvard University Press, 1986.

-Excerpt from Christopher Wellman 'Associative Allegiances and Political Obligations', *Social Theory and Practice*, 23, No. 2, 1997, pp. 181-204.

Class 8: The Argument from Associate Duties continued/Arguments in Philosophy and Essay Writing

-No new reading.

Class 9: Civil Disobedience

-John Rawls, 'The Justification of Civil Disobedience' in Frederick Schauer and Walter Sinnott-Armstrong (eds.) *The Philosophy of Law*, New York, 1995.

Class 10: Injustice and the Obligation to Obey the Law

-Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy and Public Affairs*, 35, no.2, 2007.

Topic 2: Legal Interpretation, Constitutionalism, and Democracy

Class 11: Judicial Decision-Making

- Excerpt from Ronald Dworkin, 'Law's Empire'

Class 12 and 13: Scalia vs. Dworkin on Statutory Interpretation

- Antonin Scalia, 'Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws' (For class 13)
- Ronald Dworkin, 'Comment' (For class 14)

Class 14: Judicial Review and Democracy.

- Ronald Dworkin, 'Equality, Democracy, and Constitution', *Atlanta Law Review*, vol. 28, no. 2, 1989-90.

Class 15: Against Judicial Review

- Jeremy Waldron, 'The Core of the Case Against Judicial Review', *The Yale Law Journal*, Vol. 115, No. 6, 2006, pp. 1346-1406.

Topic 3: State Interference and the Boundaries of the Law

Class 16 and 17: Utilitarianism and Mill's Harm Principle (03/27 and 03/29)

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

*I will not be posting a pdf of the reading. *On Liberty* is in the public domain, and you can easily access the reading through the internet. For instance:

-<http://www.gutenberg.org/ebooks/34901> (Links to an external site.) (Links to an external site.)

-<https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/mill/liberty.pdf> (Links to an external site.) (Links to an external site.)

Class 18: Mill on Liberty of Thought and Discussion (4/3)

- Chapters 3-4

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-<http://www.gutenberg.org/ebooks/34901> (Links to an external site.) (Links to an external site.)

-<https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/mill/liberty.pdf> (Links to an external site.) (Links to an external site.)

Class 19: Paternalism (4/5)

- Gerald Dworkin, 'Paternalism', *The Monist*, Vol. 56, No. 1, *Philosophy and Public Policy*, pp. 64-84.

Class 20 and 21: Freedom of Expression (4/10 and 4/12)

- Thomas Scanlon, 'A Theory of Freedom of Expression', *Philosophy and Public Affairs*, Vol. 1, No. 2, 1972, 204-226.

Class 22: Hate Speech (4/17)

- Ronald Dworkin, 'Foreword' in *Extreme Speech and Democracy*, Oxford University Press: Oxford, 2009.
- David Boonin, 'Why I Used to Hate Hate Speech Restrictions' in *Should Race Matter: Unusual Answers to the Usual Questions*, Cambridge University Press, 2011.

Class 23 Hate Speech (4/19)

- Caroline West, 'Word that Silence? Freedom of Expression and Racist Hate Speech', in Ishani Maitra and Mary Kate McGowan (eds) *Speech & Harm*, Oxford University Press: Oxford, 2012.

Class 24: Free Speech and Incitement (4/24)

-Jeffrey W. Howard, “Dangerous Speech”™, *Philosophy and Public Affairs*, Vol. 47, No. 2.

Topic 4: TBD

Class 25: TBD (04/26)