

Fall 2019  
Philosophy of Law  
Philosophy 315—001

**Professor:**

Charles Joshua Horn, Ph.D.

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Office Location: CCC 418

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Office Hours: MW, 1:00pm—2:00pm

<http://charlesjhorn.webstarts.com/index.html>

**Course Information:**

Class Time: MW, 11:00am—12:15pm

Class Location: CCC 126

**Course Description:**

Philosophy of law or jurisprudence is a branch of philosophy concerned with a general analysis of both law in itself and legal institutions, broadly conceived. Philosophy of law is further subdivided into at least three other main categories of thought: analytic jurisprudence, normative jurisprudence, and the critical analysis of the law. Analytic jurisprudence involves an analysis of how law differs from other norms, such as those in ethics. Normative jurisprudence examines the relationship between law and other issues such as freedom and punishment. Critical analysis of the law involves challenges to traditional forms of legal philosophy.

In this course, we will consider issues in both analytic jurisprudence and normative jurisprudence. Our focus will be on two fundamental questions: First, what is the foundation of the law? Put differently, what establishes the *force* of the law? And second, do we have an obligation to follow the law? While these questions derive from different parts of jurisprudence, they are related questions. Answers to the first question can help inform answers to the second. The course will cover both historical and contemporary responses to these interrelated questions encompassing thought from Plato and Sophocles in the Ancient world, to Hobbes and Leibniz in the 17<sup>th</sup> century, and to Austin and Dworkin in the 20<sup>th</sup> century.

During Unit IV of the course, students will have the opportunity to consider other issues in philosophy of law not covered earlier in the semester. Students may consider some of the following questions: those related to freedom, economics, punishment, constitutional interpretation, as well as critical responses to legal theory such as those found in Marxist and feminist theories. Topics will be chosen in consultation with Dr. Horn.

**Text:****Rental:**

- I. *Philosophy of Law: 9<sup>th</sup> Ed.*  
Feinberg, Coleman, and Kutz  
Cengage  
ISBN: 978-1133942962
- II. *Philosophy of Law: An Introduction*  
Tebbit  
Routledge  
ISBN: 978-0-415-82746-1

**Supplemental:**

- III. *Philosophy of Law: A Very Short Introduction*  
Wacks  
Oxford University Press  
ISBN: 978-0-19-968700-8
- IV. *The Three Theban Plays: Antigone; Oedipus the King; Oedipus at Colonus*  
Sophocles  
Penguin Random House  
ISBN: 0140444254

**Expectations:**

Students are expected to attend every class and remain for the entire time. Do not come late or leave early. Students must complete the necessary readings prior to class and be prepared for discussion and participation. Students will treat other students with respect. This means, turning off all electrical equipment, including cell phones, laptops, and tablets. Students must also address their peers in a respectful tone. It is important to note that the nature of this class will inevitably result in disagreements among colleagues; however, it is essential to maintain respect toward one another despite disagreement.

**Course Goals:**

- Demonstrate an ability to read carefully, speak clearly, think critically, and write persuasively about the nature of law and its relationship to other norms.
- Critically engage a variety of ideas and worldviews from both historical and contemporary sources so as to formulate reflective and informed moral, ethical, and legal judgments.

### Grading Criteria:

Late work will never be accepted unless an extension has been granted by Dr. Horn prior to the due date or a university approved excuse is given. Late work must be complete within one week of returning to the class. Extensions will only be granted in extreme circumstances. Additionally, this course will utilize the Canvas online system to facilitate certain aspects of the class. It is required that you check in with Canvas regularly to find class updates, submit work, check grades, etc. Final grades will be calculated based upon the following.

- a) Three In-Class Exams: 60% Total (20% Each)
  - i) Exams will be composed of several short answer questions.
  
- b) One Individual Presentation 20% Total (20% Each)
  - i) In each class period, one student will introduce the assigned reading for the day. The goal is *not* to offer a summary of the main claims from the text, but to raise questions, objections, and concerns for us to take up in the class. Students should prepare a handout in advance for the rest of the class to assist in the presentation. The presentation should last roughly 15-20 minutes.
  
- c) One Group Presentation 20% Total (20% Each)
  - i) During the last two weeks of class, groups will present on a topic in philosophy of law. Topics will be chosen by the group and approved by Dr. Horn.
  
- d) *Optional* Extra Credit 10% Total (5% Each)
  - i) After Unit I and Unit II, there will be an additional reading assignment. Students may write a one single-spaced page critical analysis of the paper for up to 5% to the overall grade. The extra credit is *not* a summary of the material, but instead is designed for students to identify substantive strengths and weaknesses of the paper.

Students will be permitted four unexcused absences. Any absence after four will result in a 5% deduction from the overall grade. Attendance is taken at the beginning of class, so if students are late, they will not be counted present for the day.

\*Grading will be anonymous when possible and will follow this scale:

<b>A Range (90—100%)</b>	<b>B Range (80—89%)</b>	<b>C Range (70—79%)</b>	<b>D Range (64—69%)</b>	<b>F Range (0—63%)</b>
	B+ (87—89)	C+ (77—79)	D+ (67—69)	F (<60)
A (94—100)	B (84—86)	C (74—76)	D (60—66)	
A- (90—93)	B- (80—83)	C- (70—73)		

### Academic Integrity:

Cheating, fabrication, plagiarism or helping others to commit these acts will not be tolerated. Academic dishonesty will result in severe disciplinary action including, but not limited to, failure of the student assessment item or course, and/or dismissal from the University. Additional information can be found at:

<http://www.uwsp.edu/stuaffairs/Documents/RightsRespons/SRR-2010/rightsChap14.pdf>

## Disability Information:

Students with disabilities should register with the ADA coordinator on campus and let me know at the beginning of the semester. I would be happy to accommodate you in any way that I can. Just let me know. More information can be found at:

<http://www.uwsp.edu/stuaffairs/Documents/RightsRespons/ADA/rightsADAPolicyInfo.pdf>

## Course Schedule:

September 4	Syllabus/Course Introduction	
<b>Unit I: Natural Law</b>		
September 9	Tebbit, Ch. 1—Morality, Justice, and Natural Law	II. 3
September 11	Wacks, Ch. 1—Natural Law	III. 1
September 16	Bentham, “Introduction to the Principles of Morals and Legislation”	I. 33
	Fuller, “The Case of the Speluncean Explorers”	I. 36
September 18	Aquinas, Selections from <i>On Law, Morality, and Politics</i>	I. 52
September 23	Finnis, “Natural Law and Natural Rights”	I. 57
September 25	Leibniz, <i>Nova Methodus II</i>	Canvas
September 30	Leibniz, <i>Elementa Juris Naturalis IV</i>	Canvas
October 2	Exam I	
<b>Unit II: Legal Positivism</b>		
October 7	Wacks, Ch. 2—Legal Positivism	III. 25
October 9	Tebbit, Ch. 2—From Common Law to Modern Positivism	II. 20
October 14	Tebbit, Ch. 3—Hart’s Legal Positivism	II. 35
October 16	Austin, “A Positivist Conception of Law”	I. 74
October 21	H.L.A. Hart, “Law as the Union of Primary and Secondary Rules”	I. 87
October 23	Wacks, “Dworkin, The Moral Integrity of the Law”	III. 49
October 28	Dworkin, “The Model of Rules I”	I. 103
October 30	Exam II	
<b>Unit III: Obedience to the Law and Radical Critiques</b>		
November 4	Tebbit, Ch. 8—Obedience and Disobedience	II. 121
November 6	Sophocles, <i>Antigone</i>	IV. 55
November 11	Plato, <i>Crito</i>	I. 251
November 13	Martin Luther King Jr., <i>Letter from Birmingham Jail</i>	I. 259
November 18	M.B.E. Smith, “Is There a Prima Facie Obligation to Obey the Law?”	I. 269
November 20	Tebbit, Ch. 11—Radical Critiques of Liberal Theories of Law	II. 175
November 25	Make Up	
November 27	Exam III	
<b>Unit IV</b>		
December 2	Presentation 1, Presentation 2	
December 4	Presentation 3, Presentation 4	
December 9	Presentation 5, Presentation 6	
December 11	Presentation 7, Presentation 8	
<b>Extra Credit Due:</b>		
October 9	Olsthoorn, “Grotius and Pufendorf”	Canvas
November 6	Coleman, “Negative and Positive Positivism”	I. 123