

## PHIL 3130 – Philosophy of Law

G0111 Moore Hall

Wed. 3:00-5:30

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**Required Text:** *The Concept of Law* (Hart)

All other readings will be made available at [homepages.wmich.edu/~jnk5408](http://homepages.wmich.edu/~jnk5408).

**Course Description:** This course is an introduction to some of the classic problems of general jurisprudence. Our guide for the majority of the semester will be the work of H.L.A. Hart, the most important legal philosopher of the 20<sup>th</sup> century. Hart's most influential work, *The Concept of Law*, which we will study closely, asked and gave answers to questions that have driven the field since its publication in 1961. The first part of the course will survey central questions such as: (i) What is a law? And how do laws differ from conventional or customary rules, the dictates of morality, and threats? (ii) What criteria must be met for a rule to be a law? In particular, must it be morally good? Non-contradictory? Free from vagueness? and (iii) What kind of compliance do laws demand? Are our obligations to follow the laws moral obligations? Or is there a special kind of legal normativity that obliges us to follow the laws? We'll then spend the final few weeks focusing on the details of several major theories of adjudication—theories that attempt to describe (or prescribe) how judges do (or should) decide cases. We'll briefly study the theories of the legal formalists before moving on to Ronald Dworkin's "constructivist" theory as well as the theories proposed by the American Legal Realists.

### Schedule and Readings:

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| Week 1 | Sept. 9  | Introduction   |
| Week 2 | Sept. 16 | What is law? Can it be defined?<br>— <i>The Concept of Law</i> , Ch. 1, Postscript §1  |
| Week 3 | Sept. 23 | Legal systems and coercion<br>— Austin, <i>The Province of Jurisprudence Determined</i> , excerpt<br>— <i>The Concept of Law</i> , Ch. 2 & 3 |
| Week 4 | Sept. 30 | Legal systems as systems of rules (FIRST PAPER DUE)<br>— <i>The Concept of Law</i> , Ch. 4 & 5<br>— Dworkin, <i>The Model of Rules I</i>     |
| Week 5 | Oct. 7   | The legality of morally bad laws<br>— <i>The Concept of Law</i> , Ch. 6<br>— Gardner, <i>Legal Positivism: 5½ Myths</i>                      |

- Week 6 Oct. 14 Are there customary or conventional laws?  
 — Postema, Coordination and Convention at the Foundations of Law  
 — Green, Positivism and Conventionalism
- Week 7 Oct. 21 Can legal rules compel? Taking an “internal view”  
 — Raz, Kelsen’s Theory of the Basic Norm  
 — Finnis, On the Incoherence of Legal Positivism
- Week 8 Oct. 28 The ideal of the rule of law  
 — Fuller, *The Morality of Law*, Ch. 2  
 — Raz, The Rule of Law and its Virtue
- Week 9 Nov. 3 An anarchist challenge to the authority of law (SECOND PAPER DUE)  
 — Wolff, *In Defense of Anarchism*, Ch. 1  
 — Raz, Legitimate Authority
- Week 10 Nov. 10 Is there a moral obligation to obey the law?  
 — Finnis, The Authority of Law in the Predicament of Contemporary Social Theory  
 — Raz, The Obligation to Obey: Revision and Tradition
- Week 11 Nov. 17 Is there moral right to disobey the law?  
 — Raz, A Right to Dissent? I & II  
 — Dworkin, Civil Disobedience and Nuclear Protest
- Week 12 Nov. 24 The “open texture” of law  
 — *The Concept of Law*, Ch. 7  
 — Dworkin, Hard Cases
- Week 13 Dec. 1 How should judges decide cases? Dworkin’s Constructivism  
 — Dworkin, Integrity  
 — Leiter, Objectivity, Morality, and Adjudication
- Week 14 Dec. 8 How do judges decide cases? Legal Realism (FINAL PAPER DUE)  
 — Oliphant, A Return to *Stare Decisis*  
 — Radin, The Theory of Judicial Decision: or How Judges Think

**Assignments:**

Paper 1	20%	Short expository paper	Due: Sept. 30
Paper 2	25%	Medium length critical paper	Due: Nov. 3
Paper 3	40%	Final paper for the course	Due: Dec. 8
Participation	15%	This is necessary for a course that meets only once a week	

**Accommodations:** Any student with a documented disability who needs to arrange reasonable accommodations must contact me and the appropriate Disability Services office at the beginning of the semester. The two disability service offices on campus are: Disabled Student Resources and Services (269) 387-2116 and the Office of Services for Students with Learning Disabilities (269) 387-4411.

**Academic Honesty:** You are responsible for making yourself aware of and understanding the university's [policies and procedures](#) that pertain to Academic Honesty. If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with me if you are uncertain about an issue of academic honesty prior to the submission of an assignment.