

GPOL 6309: Morality and Law

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Politics G53:3101: Morality and Law

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This course is a discussion seminar. The course will focus on positive or legal rights and on legal institutions for regulating various interactions. Readings will address justifications for various institutional arrangements as these depend on strategic and normative considerations. The course will begin with discussion of the strategic structures of social interactions. Our discussion will rely on essentially verbal game theory, not on abstract mathematical theory, and all the theory we use will be developed in class without need of prior background. Given this background understanding of the problems law must handle, we will then consider various arguments for the morality of law. Throughout, we will focus on particular problems in the difference between institutional and individual level justifications in the law, including alternative rights assignments.

Course assignments are a term paper of 20-25 pages and two papers of no more than 5 pages each on any topic suitable for a particular session. The term paper should be written as a research paper and should therefore not merely tell what some author has said but should focus on an analytical problem, a class of laws, or a set of cases. The paper should include an ABSTRACT of about 100 words. The short papers are intended to help spur class discussion and each paper must therefore be submitted at the time of the session for which it is written. The short papers can be exegetical, critical, or applied. They can also be trial runs on final paper topics.

Books ordered for the course, all available at the Stanford Bookstore, all but Posner in paperback:

Guido Calabresi, Ideals, Beliefs, Attitudes, and the Law (Syracuse University Press, 1985)

Lon L. Fuller, The Morality of Law (Yale University Press, 1969 revised edition)

Russell Hardin, Morality within the Limits of Reason (University of Chicago Press, 1988)

H. L. A. Hart, The Concept of Law (Oxford University Press, 1961)

H. L. A. Hart, Law, Liberty, and Morality (Stanford University Press 1963)

Richard Posner, The Problematics of Moral and Legal Theory (Harvard University Press, 1999)

Ronald Dworkin, Freedom's Law (Harvard University Press, 1996)

Dworkin's book has discussions of recent cases and issues that you might wish to refer to in writing your own views of these. Pre-law students should read more than what is assigned; in particular, they should read the recommended readings and more of Dworkin. Other readings of interest can generally be downloaded from the web, either from Jstor or directly from journals for which Stanford subscribes to the electronic versions. Some law reviews are directly available on the web, commonly under the home page of the relevant law school. Cases related to topics in which you might be interested are also generally available on the web. Ask each other how to

find things and give each other the URLs for various items. The law librarians might be especially helpful in finding cases on various topics.

Reading Assignments (the last three weeks are heavy to make up for President's Day):

Jan 24: Overview and Outline of strategic account

The basic strategic problems: conflict, coordination, cooperation in exchange
How do values enter?

Christine Jolls, Cass R. Sunstein, and Richard H. Thaler, "A Behavioral Approach to Law and Economics," in Sunstein, ed. Behavioral Law and Economics (Cambridge University Press): 13-58

Jan 31: Limits of Reason

Fuller, The Morality of Law, ch. 1, pp. 3-32

Calabresi, Ideals, Beliefs, Attitudes, and the Law, ch. 1-2, pp. 1-44

Hardin, Morality within the Limits of Reason, pp. xv-xx and ch.1, pp. 1-30 [103 pp.]

Feb 7: Law and Social Order

Fuller, The Morality of Law, ch. 2, pp. 33-94

Hardin, Morality within the Limits of Reason, ch. 2, pp. 31-74 [106 pp.]

Recommended:

Joseph Raz, The Morality of Freedom (Oxford University Press, 1986), pp. 1-105

Feb 14: The Authority of Law

H. L. A. Hart, The Concept of Law, chs. 1-4, pp. 1-76

Fuller, The Morality of Law, ch. 3, pp. 95-151 [132 pp.]

Recommended:

Raz, The Authority of Law, chs. 3, 5, 7-8, pp. 37-52, 78-102, 122-159

Feb 21: Presidents Day, no class

Feb 28: The Contemporary Debate I

Richard A. Posner, Problematics, pp.3-68, skim pp. 68-90

Ronald Dworkin, "Darwin's New Bulldog," Harvard Law Review 111 (May 1998): pp. 1718-1738. (A response to an earlier version of Problematics. There are also responses by Fried, Kronman, Noonan, and Nussbaum, which you might skim if you have time.)

Reply by Posner, Harvard Law Review 111 (May 1998): 1796-1823 [112 pp.]

Recommended:

Polinsky, An Introduction to Law and Economics, chaps. 6-14, pp. 39-118

Mar 7: The Contemporary Debate II

Dworkin, Freedom's Law, pp. 1-38

Dworkin, Law's Empire, pp. 190-95

Posner, The Problematics of Moral and Legal Theory, pp. 91-144

Posner, "Wealth Maximization and Judicial Decision-Making," *International Review of Law and Economics* (1984), 131-135.

Elizabeth Kolbert, "The Calculator: How Kenneth Feinberg Determinesthe Value of Three Thousand Lives," *The New Yorker*, Nov. 25, 2002, 42-49.

Mar 14: SPRING BREAK

Mar 21: Institutions and Individuals I

Hardin, Morality within the Limits of Reason, pp. 75-126, 137-160

Fuller, The Morality of Law, ch. 4, pp. 152-186

Posner, Problematics, pp. 227-65

John Rawls, "Two Concepts of Rules," Philosophical Review 64 (1955): 3-32 [144 pp.]

Recommended:

Jules L. Coleman, Markets, Morals and the Law (Cambridge University Press, 1988), pp. 133-150

Raz, Authority of Law, pp. 103-121

Mar 28: Institutions and Individuals II

Posner, Problematics, pp. 185-265, 280-310 [110 pp.]

Apr 4: The Internal morality of the law

Hart, Concept of Law, chs. 8 and 9, pp. 151-207

Fuller, The Morality of Law, ch. 5, pp. 187-242

Dworkin, Freedom's Law, 72-116 [137 pp.]

Apr 11: Conflicting values

Calabresi, Ideals, Beliefs, Attitudes, and the Law, chs. 3-5 & Conclusion, pp. 45-117

Hardin, Morality within the Limits of Reason, pp. 126-137, 160-178, 205-207 [105 pp.]

H. L. A. Hart, Law, Liberty and Morality [83 easy pages]

Recommended:

Hardin, Morality within the Limits of Reason, pp. 191-205

Apr 18: Positive Law

H.L.A. Hart, "Positivism and the Separation of Law and Morals, in Dworkin, ed., The Philosophy of Law: 17-37

Ronald Dworkin, "Is Law a System of Rules?" in Dworkin, The Philosophy of Law: 38-65

Richard Posner, "The Economic Approach to Law," in Arthur and Shaw, Readings in the Philosophy of Law: 177-82

Altman, "Law and Economics: An Analysis and Critique," in Arthur and Shaw, Readings in the Philosophy of Law: 183-95

Cass Sunstein, "The Myth of Laissez Faire," The Second Bill of Rights: 17-34

Sunstein, "Citizenship, Opportunity, Security," The Second Bill of Rights: 175-229

Apr 25: Constitutional Values

Sunstein, The Partial Constitution: 17-39, 162-94

May 3: Presentations