

Politics G53.XXX: Morality and Law  
Spring 2007, Mondays 4:00-6:00

Russell Hardin  
Room 330 19 West 4th Street  
email: [russell.hardin@nyu.edu](mailto:russell.hardin@nyu.edu)

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, for example, alternative rights assignments. Our interest is not in whether, e.g., some law on abortion is morally right or wrong according to some moral theory but with whether there is any general moral principle underlying a legal system.

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 NYU Bookstore, should all be 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, Law, Pragmatism, and Democracy (Harvard University Press, 2003)  
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. Other readings of interest can generally be downloaded from the web. 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, e.g., at FindLaw. Share with each other the URLs for various items.

Reading Assignments:

Jan 17: Overview and Outline of strategic account

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

Jan 22: 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 [104 pp.]

Jan 29: 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 5: 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.]

Feb 12: The Contemporary Debate I

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

Feb 19: The Contemporary Debate II

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

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

Dimitri Landa and

Feb 26: Institutions and Individuals

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

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

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 5: Pragmatism

Posner, Law, Pragmatism, and Democracy, pp. 1-129, 384-7

Mar 12: SPRING BREAK

Mar 19: 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.]

Mar 26: 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.]

Apr 2: Positive Law I

Hart, Concept of Law, chs.5-7 & Postscript, pp. 79-154, 238-76

[111 pp.]

Apr 9: Positive Law II

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

Apr 16: Liberty I

H. L. A. Hart, Law, Liberty and Morality

Posner, Law, Pragmatism, and Democracy, pp. 250-91

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

[138 pp.]

Apr 23: Liberty II

Dworkin, Freedom's Law, 165-260

Posner, Law, Pragmatism, and Democracy, pp. 357-84

[123 pp.]

Apr 30 [Presentations of term papers]