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)

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?

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
   Recommended:

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
   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.)
   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

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

Apr 25: Constitutional Values
May 3: Presentations