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LEGAL THEORY SEMINAR

Description

In this seminar we'll discuss a number of texts that cover a wide range of issues in legal theory. They fall into two main categories. Some of the readings look at law from the outside, posing the question, What is law and what is the source of its authority? The answers proposed concern the distinction between natural law and positivism, and the relationship between law and morality. The other set of readings adopt an internal perspective, focusing primarily on theoretical underpinnings of substantive legal areas, such as criminal law, constitutional law, and contracts. The main normative orientation that will be brought to bear on these areas is provided by two contrasting strands in liberal moral theory, utilitarianism and Kantianism. The aim is to identify salient ideas and values that shape legal discourse and inform legal policy.

Readings

The main text for the seminar is Jeffrie Murphy and Jules Coleman, *The Philosophy of Law*.

I have also ordered another short book: Robert Paul Wolff, *In Defense of Anarchism*.

In addition we'll read articles which I expect to be mostly from the following list:

David Lyons, Utility and Rights, in *Ethics, Economics and the Law: NOMOS XXIV*, J.

Roland Pennock and John W. Chapman, eds., pp. 110-36.

Herbert Morris, "Persons and Punishment", in *On Guilt and Innocence: Essays in Legal Philosophy*, pp. 31-59.

Joseph Raz, "Legitimate Authority," in *Authority*, Joseph Raz, ed., pp. 3-27

■ "The Obligation to Obey the Law," in *The Authority of Law: Essays on Law and Morality*, pp. 233-49.

■ "Respect for Law," in *The Authority of Law*, pp. 251-61.

Thomas Scanlon, "A Theory of Freedom of Expression," *Phil. & Public Affairs*,
1(1972):204-26.

Ronald Dworkin, "Do We Have a Right to Pornography?" *Oxford J. Leg. Stud.* 1(1981):
177-212.

■ "Hard Cases," 88 Harv. L. R. (1975), 1057.

Meir Dan-Cohen, "In Defense of Defiance", *Harmful Thoughts*, pp. 94-121.

■ "Defending Dignity," *Harmful Thoughts*, pp.150-71.

(turn over)

Requirements

Before each session students will submit a short report on the weekly assignment. The reports will consist of a one-page outline of the argument, followed by 3 short questions for discussion/clarification, and one brief objection to some point/argument made in the reading. The reports have to be emailed to me by Sunday at noon. These reports will form the basis for class discussion, which will consist in part in students explaining various parts of the reading, and raising their questions and objections.

In addition there will be two take-home exams/essays: a midterm (4 pages) and a final (5 pages).

Attendance in **all** sessions of the seminar is mandatory.

Grading : 30% class participation (includes the submission of weekly reports)
30% midterm
40% final

First assignment

Murphy and Coleman, *The Philosophy of Law*, pp. 68-82.

The entries on *Utilitarianism* and on *Immanuel Kant's moral theory*, in the *Routledge Encyclopedia of Philosophy* or the *Stanford Encyclopedia of Philosophy* (both available on the web), or some comparable source.

No written report is required for the next session.