

Meir Dan-Cohen  
786 Simon Hall

## 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 main topics discussed include the distinction between natural law and positivism, the relationship between law and morality, and the duty to obey the law. The other set of readings adopts 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 (posted on bCourses)*

Excerpts from Jeffrie Murphy and Jules Coleman, *The Philosophy of Law*.  
Robert Paul Wolff, *In Defense of Anarchism*.

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.

H.L.A. Hart, "Positivism and the Separation of Law and Morals"

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.

**(turn over)**

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

- "Defending Dignity," *Harmful Thoughts*, pp.150-71.
- "Law, Loyalty, and Citizenship," *Routledge Companion to Philosophy of Law* (2012).

### ***Requirements***

1. 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.
2. Students will be asked to take turns in introducing the weekly reading in class and in helping lead the discussion.
3. Attendance in **all** sessions of the seminar is mandatory.
4. Two take-home essays: a midterm (3 pages) and a final (5 pages).

***Grading:*** 30% class participation (includes the submission of weekly reports and class presentations)

30% midterm

40% final

### ***First assignment***

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

The entries on *Utilitarianism* in the *Routledge Encyclopedia of Philosophy* or the *Stanford Encyclopedia of Philosophy* (both available on the web), or some comparable source.

Excerpt from Jeremy Bentham: *The Principles of Morals and Legislation* (please bring to class).

**No written report is required for the next session.**