INTRODUCTION

Philosophy of law is concerned with a number of very different theoretical issues arising in connection with law. Such issues range from the abstract and conceptual (e.g., what properties must something have to count as a law in a legal system?) to more substantive and normative (e.g., why is it morally permissible for the state to punish people for disobeying certain rules). This course surveys a number of these issues, which might (or might not) include: (1) How should the Constitution be interpreted? (2) Is the doctrine of judicial supremacy legitimate? (3) What acts are legitimately criminalized by the law? (4) What justifies the state’s use of force to inflict discomfort on people in the form of institutionalized punishment? (5) To what extent should the law protect property rights, if at all, and why? (6) Do judges have lawmaking authority? And should they? (7) Should the law of contract be grounded in moral principles concerning promises? (8) Is it legitimate for the state to tax people for the purpose of redistributing income? Grading will be by final examination, or by paper, at the student's option.

Materials

Primary Text: The anthology for this course is Arthur and Shaw (Eds.), Readings in the Philosophy of Law (5th Ed.); Wadsworth, 2014

Additional Text: Please see schedule of assignments below. All additional material will be posted on the course webpage.

COURSE POLICIES AND EXAMINATION

Course Requirements

It is important that you take charge of the following in order to meet the requirements of this course:
Class Participation: Class participation is vital to success in this class and is strongly recommended. You can earn up to .3 of a grade point for class participation (equivalent to a move from a G- to a G, a G to a G+, and so on.

Term Paper: The principal requirement for the course is a 15- to 20-page research paper on a topic related to the subject of the course. The paper should include an introduction (including a statement of the thesis, along with a brief outline of the argument you will make in support of your thesis); an exposition of the issue and argument with which you are concerned (if responding to another author’s argument); and your own argument supporting your thesis. You must submit a brief (200 words or less) proposal by February 11, which should be transmitted to me by email; this will count as 5% of your total grade. You may and should (but are not required to) submit one draft for comments prior to submitting your final paper. But the submission must be made by no later than May 17th. After the 8th, I shall set aside some time for student presentations – for those students who would like class feedback on their drafts. Students have the option of submitting a draft for my comments and presenting a draft to the class for feedback. Neither is required but doing both is strongly recommended.

It is your responsibility to be fully prepared for each class, including by being prepared to analyze and discuss each of the discussion questions in the assigned reading. Should you elect to take the final exam, I encourage you to take your exam by computer if at all possible. While you are not required to do so, typing your exams greatly improves their legibility and helps to ensure that they will be graded in an expeditious and accurate manner. (What one cannot read one cannot grade). If you are using a computer to take an exam, you will be required to use Extigirity’s Exam 4. You may need to register with Academic Services in advance.

Disability-Related Needs:
To request accommodations due to a disability, please contact Disability Resources for Students (DRS), # 448 Schmitz Hall, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please make an appointment to see me so we can discuss any accommodations you might need in this class.

Reading Assignments
The list of reading assignments is aspirational. Each class tends to spend more time on certain issues than others, so it will likely be necessary to make adjustments during the term. It is likely that not all readings will be discussed in class; however, you should read every assignment, unless I indicate otherwise.

WEEK 1: Introduction: The Conceptual Problem of Law or Legality
Tuesday, Jan. 7: What is law or legality? What is legitimacy?
Aquinas, “Summa Theologica,” pp. 163-167
Blackstone, “Commentaries,” pp. 168-172
Hart, “Law as the Union of Primary and Secondary Rules” pp. 202-207
Thursday, Jan. 9: Class postponed

**WEEK 2: Conceptual Complications: The Rule of Law and the Moral Obligation to Obey the Law**

Tuesday, Jan. 14: The rule of law
Fuller, “Eight Ways to Fail to Make Law,” pp. 27-31
Raz, “The Rule of Law and its Virtues,” pp. 32-37
Fuller, “The Problem of the Grudge Informer,” pp. 40-44
*Hamdi v. Rumsfield*, 44-53

Thursday, Jan. 16: Is there an obligation to obey the law?
Rawls, “The Justification of Civil Disobedience,” 59-65
M.B.E. Smith: “Is There a Prima Facie Obligation to Obey the Law?” (Reserve)

Friday, Jan. 17: Make-up Class

**WEEK 3: The Normative Problem of Legitimate State Authority, Social Contract Theory, and the Basic Structure of the Legitimate State**

Tuesday, Jan. 21: The Problem of Legitimate State Authority and Classical Social Contract Theory
Simmons, “Philosophical Anarchism” (Reserve)

Thursday, Jan. 23: The Structure of the Legitimate State: Basic Functions and Distributive Justice
Nozick, “Anarchy, State, Utopia” (reserve)

Friday, Jan. 24: Make-up Class -- The Structure of the Legitimate State: Basic Functions and Distributive Justice (cont.)
Rawls, “A Theory of Justice” (reserve)

**WEEK 4: The Basic Structure of the Legitimate State: The Doctrine of Judicial Supremacy and Theories of Constitutional Interpretation**
Tuesday, Jan. 28: The Doctrine of Judicial Supremacy
  Waldron, Law and Disagreement (Excerpts on course website)
  Dworkin, Freedom’s Law (Reserve)
Thursday, Jan. 30: Theories of Constitutional Interpretation: Fixed-Content Approaches (1): Originalism
  Bork, The Tempting of America, Chapters 7 and 8 (Reserve)
WEEK 5: The Basic Structure of the Legitimate State: Theories of Constitutional Interpretation
Tuesday, Feb. 4: Theories of Constitutional Interpretation: Fixed Content-Approaches: (1) Originalism (con't.) and (2) the Moral Reading of the Constitution
  Dworkin, Freedom’s Law (Reserve)
Dworkin, “Integrity in Law (Reserve)
Thursday, Feb. 6: Class Postponed
WEEK 6: The Basic Structure of the Legitimate State: Theories of Constitutional Interpretation
Tuesday, Feb. 11: Theories of Constitutional Interpretation: Fixed-Content Approaches (3): Textualism
  Scalia, “Common-Law Courts in a Civil Law System” (Reserve)
  Dworkin, “Comment on Scalia”
Thursday, Feb. 13: Class Postponed
WEEK 7: Theories of Constitutional Interpretation (cont.) and Principles Expressing General Limits on Criminalization
Tuesday, Feb. 18: Theories of Constitutional Interpretation: Living-Tree Approaches
  Popular Constitutionalism (Readings TBA)
Thursday, Feb. 20: The Harm and Offense Principles
  Texas v. Johnson
  Feinberg, “The Offense Principle” (Reserve)
WEEK 8: Principles Expressing General Limits on Criminalization and the Justification of Institutionalized Punishment
Tuesday, Feb. 25: Paternalism
  Dworkin, “Paternalism,” (Reserve)
  Devlin, “Morals and the Criminal Law,” (Reserve)
  Hart, “Immorality and Treason,” (Reserve)
Thursday, Feb. 27: Retributivism and Forward-Looking Theories of Justified Punishment

**WEEK 9: Challenges to Criminal Responsibility**

Tuesday, February 25: Scientific Challenges

  Morse, “Scientific Challenges to Criminal Responsibility” (Reserve)

Thursday, February 27: Luck and Desert

  Nagel, “Moral Luck,” (Reserve)

**WEEK 10: TBA**