Columbia University  
Department of Political Science/Department of Philosophy  
Summer 2015 Undergraduate Program  

S3133/83133  
Issues in Legal Philosophy  

Instructor: Luke MacInnis  
Email: lsm2129@columbia.edu  
Class Times: T&Th 6:15pm-9:25pm, 201B Philosophy Hall  
Office Hours: TBA  

Course Description  
This course considers some fundamental and enduring problems about the nature of law. Legal philosophers, judges, academic lawyers, and political scientists give very different answers to the following questions: What is law? What kind of question is “what is law?”? Does law have a function and if so what is it? Is there a relationship between law and morality? Do citizens have an obligation to comply with law, and if so what is the nature of that obligation? How does that obligation arise? Do we have an obligation to comply with unjust laws? How should we interpret laws that are vague, ambiguous, contradictory, or apparently absurd? How should judges in a democratic society decide legal disputes? How in fact do judges in our society decide legal disputes? Our goal is to consider whether and how these questions might be answered.  
We will consider a variety of recent contributions to legal theory that draw from political and moral philosophy, sociology, judicial political science, the philosophy of language, and literary interpretation. We will focus on what tend to be regarded as the most important scholarly contributions, along with court cases that raise important theoretical questions.  
The philosophy of law might be of interest to anyone who studies political institutions. In order to study legally-constituted bodies like courts, legislatures, or international organizations, one must make assumptions about the nature of legal standards, and one’s answer to the question “what is law?” underwrites those assumptions. There are also political and moral dimensions to our interest law. Law is one of our most important and pervasive social practices. It apparently guides our behaviour, makes forms of social cooperation possible, and many of us treat law as though it deserves our respect. We criticize judges who ignore law, impeach politicians who flout law, imprison or dispossess citizens who break law, and many (though not all) of us accept a responsibility to uphold laws we find repulsive. We also appeal to law in order to justify stigmatizing others we judge to be law-breakers. Yet if judges, juries, lawyers, law-makers, legal philosophers, and ordinary citizens consistently disagree (as they do) about what law is, then it is not at all clear how we can justify these practices. A theory of law might therefore be regarded as a way to save ourselves from moral embarrassment.  

Learning Objectives  
A key objective will be to develop, through writing and discussion, skills involved in effective critical analysis. Since effective critical analysis requires that we understand the ideas we attempt to criticize, we will place at least as much emphasis on trying to clarify the various positions we encounter as we will place on trying to show why we think these positions are right or wrong. Five
main activities will occupy us: assigned readings, class discussions, in-class presentations, short analytical essays, and a final exam.

Readings and Class Discussions:
The reading schedule and class discussions are structured to allow you to engage reflectively on key issues without being buried in endless material. On average, there are about fifty pages of readings assigned for each class. Although we will cover many topics, in each session we will zero-in on only the most important parts of the most important articles, many of which are in direct dialogue with each other (i.e. the authors debate one another or at least discuss each other’s ideas). Some of the readings are just a few pages long, and many of them are quite entertaining to read.

Assigned readings should be completed before the session for which they are assigned, and you should arrive at class having thought through the main arguments you have read, perhaps with questions and comments ready to offer in class discussion.

I will begin each session with some introductory remarks and overview to provide essential background to the material that may not have been covered in the reading, or to clarify some issues that would be useful to clarify in advance of discussion. The rest of the session we will involve, I hope, energetic discussion and debate of the day’s topic.

Short analytical essays:
Students will be required to write two short (approximately 1500 words) analytical essays throughout the term. The first will be due on Friday, June 12 and the second on Friday, June 26th. For each of these essays, I will provide a “menu” of several questions based on the readings from which you will choose one to respond to in your essay.

The purpose of these essays is not to prove that you have completed the readings. Rather, they are assigned to help you develop your skill in analytical writing. So you should not waste space with long quotations or by giving long summaries of the readings. Instead, you should jump right into answering the question you’ve chosen to answer. State your position clearly, forcefully, and succinctly and then press it relentlessly forward in every subsequent sentence. These short essays should be carefully edited, tightened, and refined. If a sentence does not clearly advance your argument, it should disappear during the editing phase. These essays do not require any research beyond the assigned readings. When in doubt, substitute more thinking for additional reading or writing.

Before the first assignment is due I will discuss in class how to go about writing an effective short analytical essay and will provide samples of essays that have been successful in the past for your reference. I am always happy to assist you in all of your assignments. Please do consult with me as you prepare these short essays.

If you’re not satisfied with your grade on your first two short analytical papers, you will also have the option to write a third short analytical paper that will be due on the day of the last class, July 2. If you choose to write a third paper, your grade on these assignments will be based on the best two grades. There is no guarantee, of course, that your grade will improve on your last paper.

The topic questions for all of these papers will be assigned at least one week in advance of the due date (see the assignment due dates below).

In-Class Presentations
Depending on enrolment numbers, you may be assigned one or two dates on which to present a brief in-class introduction to the assigned readings. These presentations are short (roughly 5 minutes, and
no more than 10), and should begin with a brief overview of the main “headlines”, followed by a few critical comments or questions which might help to guide our class discussion. These headlines are the main issues that you believe arise in the readings, and what you take the authors’ central positions to be. The critical comments might point out an aspect of a reading you found confusing, or in need of clarification, or incorrect. Or, if you completely agree with one of the readings, you might offer some reasons why, or try to anticipate objections others might have.

Since some students tend naturally to be more talkative than others, these presentations provide an opportunity for everyone to contribute to class discussion. Part of your participation grade will be based on the quality of your in-class presentation.

**Evaluation**

Your course grade will be based on a final cumulative examination (to be held in class on the final day of classes), on your top two short analytical papers, and on your participation in class discussion (which includes any presentations), each weighted as follows:

- Final exam: 40%
- 2 short analytical papers: 40% (20% each)
- Participation in class discussion/presentations: 20%

**Assessment of final exam:**
The final exam will have two sections. The first will be a short-answer section asking for short explanations of specific concepts we’ve encountered in the readings and in class. The second section will ask for one or two longer essay-type answers to questions about larger themes we encounter in the course. You’ll be graded for the clarity and accuracy of your short answers, and the organization and cogency of your essays.

**Assessment of short analytical papers:**
Analytical papers will be assessed for how well you answer the question, the cogency of your argument, your engagement with the issues covered in reading and class discussions, and the clarity of your writing. (See above for more on these essays).

**Assessment of participation:**
Your participation grade will be based on a combination of class attendance, the quality of your in-class presentations, and your involvement in class discussion. Since some students may be more reticent than others to speak in class, on the margin I will include discussions with me via email or during office hours as counting toward your participation grade. The point of the participation grade is not to reward talkativeness, but to encourage active engagement with the material through all of our conversations, especially in class.

**Assignment/exam dates**

- **Friday, June 12:** First analytical paper due by email
- **Friday, June 26:** Second analytical paper due by email
- **Thursday, July 2:** Final examination (in class)
- **Thursday, July 2:** Optional analytical paper due by email
Course rules and academic honesty

Late work will be accepted only in extreme circumstances. If any issues arise, you should notify me immediately and in advance, if at all possible. Unless absolutely necessary, do not schedule flights or vacations for summer break that will interfere with your participation in the course.

Issues of academic integrity will be treated with the utmost seriousness. You must always submit your own work and not that of another student, scholar, or something you find on the internet. Plagiarism occurs in (but is not limited to) the following instances: copying or paraphrasing someone else’s writing without acknowledgement; using someone else’s facts or ideas without acknowledgement; handing in someone else’s work, or work that you have submitted for another course. You are responsible for the full citations of others’ ideas in all of your papers.

Schedule of Themes and Readings

Note: files for all of the readings are available on Courseworks.

Part 1: Law and Morality

Tuesday, May 26: Introduction: What is “What is Law?”?
- Riggs v. Palmer 115 N.Y. 506 (1889) (6 pages)

Thursday, May 28: The Natural Law Tradition
- Aristotle, Nichomachean Ethics (extract: 1 page)
- Thomas Aquinas. Summa Theologica (extract: 5 pages)
- John Locke, Second Treatise on Civil Government (extract: 5 pages)
- Declaration of Independence (extract: 1 page)
- (Recommended) John Finnis, “Natural Law Theories”, From Stanford Encyclopedia of Philosophy (2011) (read up to section 5) (20 pages)
Tuesday, June 2: *The Idea of Legal Positivism*

- Jeremy Bentham, *Of Laws in General* (1782) (extract: 18 pages)
- John Austin, *The Province of Jurisprudence Determined* (1832) (extract: 12 pages)

Thursday, June 4: *Dworkin’s Critique of Legal Positivism*


Part 2: Modern Theories of Law and of Judicial Behavior

Tuesday, June 9: *Contemporary Legal Positivism*


Thursday, June 11: *Law as Interpretation/Law as Integrity*

- Raz, in Dworkin’s Critics (Appendix only: 315-321) (7 pages)
Tuesday, June 16:  *American Legal Realism*
- Jerome Frank, *Law and the Modern Mind*, (Bretano’s Inc, 1949) (extract: 3 pages)

Thursday, June 18:  *The Political Science of Judicial Behavior*

Part 3: Justice, Democracy, and The Limits of Law

Tuesday, June 23:  *Justice, Rights, and Majorities*
- Robert Nozick, “Equality Versus Entitlement” from *Anarchy, State, and Utopia* (Basic Books, 1974) (only pages 46-54 are required reading) (8 pages)

Thursday, June 25:  *Democracy and Judicial Review*
Tuesday, June 30: *Law’s Authority and Disobedience*

Thursday, July 2: *Final Exam (In class)*