

**Political Science 179/Philosophy 144/CLS C100:
The Nature of Law
T/Th 11-12:30, MSTB 120**

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In this course we will investigate and evaluate both philosophical theories of jurisprudence and the U.S. Supreme Court's actual record of important decisions on controversial constitutional questions. We will first look at a number of influential accounts of what law is and how it differs from other social institutions, paying particular attention to the implications of such accounts for the question of how courts should actually apply laws in deciding controversial cases. We will then go on to look at some of the Supreme Court's most influential recent decisions regarding such matters as privacy and the regulation of sexual conduct, segregation, racist hate speech, and affirmative action. Throughout the course we will be asking whether our philosophical theories offer a convincing picture of actual law and legal decisionmaking and whether particular decisions by the Court can be defended in light of what we ultimately take the best available conception of law and legal decisionmaking to be.

Texts: H. L. A. Hart, The Concept of Law; Ronald Dworkin, Law's Empire; J. S. Mill, On Liberty; several articles and excerpted opinions of the U. S. Supreme Court available electronically through Course Reserves.

Requirements: One Midterm (30% of your final grade) and one Final exam (40%), both in-class, closed-book and closed-note. Also, students must write a term paper (30%) analyzing one or more Supreme Court decisions (other than those assigned for the course) in light of the theories of legal interpretation we will discuss (approx. 2,000 words, due at the final course meeting). Attendance at *and participation in* discussion sections will decide borderline grades and will sometimes improve final grades even more.

1/10 Why All the Fuss? Constitutional Interpretation and the Nature of Law; Austin and 'Law as the Command of the Sovereign'.

1/12 The Sovereign Under Attack! Criticisms of the Command Theory. Read Law's Empire (LE), pp. 1-6 and The Concept of Law (CL), Chs. 2-4.

1/17 A New Legal Positivism: Law as the Union of Primary and Secondary Rules. Read CL, Chs. 5-6.

1/19 Legal Positivism vs. Legal Realism. CL, Ch. 7.

1/24 Challenging Positivism: Legal Principles. Dworkin, “The Model of Rules I”; LE, Ch. 1.

1/26 A Theory of Interpretation: LE, Ch. 2 (through p. 73).

1/31 Interpretation and Law: LE, Ch. 3.

2/2 Law as Integrity: LE, Ch. 7 (through p. 266).

2/7 Interpreting Statutes/Deciding Cases: LE, Ch. 9; Plessy v. Ferguson; Brown v. Board of Education of Topeka.

2/9 In-Class Midterm

2/14 Constitutional Law, Judicial Review, and Substantive Due Process: LE, Ch. 10.

2/16 The Right to Privacy: Griswold v. Connecticut, Bowers v. Hardwick.

2/21 Privacy Continued (‘With Whom Can You Have Sex And Why?’): Lawrence v. Texas.

2/23 Mill on Free Speech and Deliberative Values: On Liberty, Chs. 1-2.

2/28 Mill and 1st Amendment Jurisprudence: On Liberty, Chs. 3-5.

3/2 Constitutional Protection of Speech, and the Problem of Racist Hate Speech: R.A.V v. City of St. Paul.

3/7 Racist Hate Speech Continued (‘What Can You Say And Why?’) : Virginia v. Black.

3/9 Race-Based Classification, Affirmative Action, Education, and “Equal Protection Under the Law”: U. C. Regents v. Bakke

3/14 Affirmative Action Today (‘What Law School Can You Get Into And Why?’), Part I: Gratz v. Bollinger.

3/16 Affirmative Action Today ('What Law School Can You Get Into And Why?'), Part II: Grutter v. Bollinger; Course Papers due.