Philosophy Department

THE PHILOSOPHY OF LAW

Professor: Chris Latiolais 202 Humphrey House 337-7076 (Office); -7043 (Secretary)
Office Hours: 1) Mon. 9:00 - 10:00 2) Tues. 2:00 - 4:00 3) By Appointment.

TEXTS:

3. (Translated passages) Juergen Habermas: Faktizitaet und Geltung: Beitraege zur Diskurstheorie des Rechts
   und des demokratischen Rechtsstaats (Suhrkamp Verlag, Frankfurt am Main 1992).

COURSE GOALS:
This course is an introduction to some basic issues in the philosophy of law. In the first, historical part of the
course, we will review the traditional schools of thought concerning the origin and justification of legal
systems, from theological and natural-law theories to legal positivism, formalism and realism. The second part
of the course examines, in some detail, a contemporary challenge to the traditional idea that "the rule of law"
should be impartial and objective: the so-called "critical legal studies movement." In the third, we will explore
special problems in jurisprudence, such as legal paternalism, constitutional privacy, freedom of expression,
and constitutional interpretation. In the fourth, students will present their independent research of a current
legal issue.

EVALUATION:
Students will be evaluated on the basis of class participation, fidelity to an academic journal, two midterm
examinations and a final paper.

Class Participation, seminar presentations and discussion=30%
Midterm examinations 2 @ 15% each=30%
Biweekly Quizzes 5 at 5% each=25%
Journal (required though ungraded )
Final Paper 10-12 pages=15%

POLICIES:
Open, respectful, critical discussion is the life-blood of this course. Journal provides preparation for classroom
deliberation, and the paper offers the student the opportunity to gather his or her Journals will be collected
every three weeks. The final paper is due on the date scheduled for the final examination. 3 unexcused
absences will result in a full grade reduction.

READING SCHEDULE

INTRODUCTION:
WEEK ONE
WED, JAN. 3RD.

PART ONE: THE NORMATIVE FOUNDATIONS OF LAW: NATURAL LAW THEORY AND LEGAL POSITIVISM.

FRI, JAN. 5TH.
1. Norman Kretzmann: "Lex iniustia Non Est Lex: Laws on Trial in Aquinas' Court of Conscience."
2. Anthony D'Amato: "On the Connection Between Law and Justice."

SAT, JAN. 6TH. Movie: The Trial at Nuremberg.

A. THE HART-FULLER DEBATE:

WEEK TWO
MON, JAN. 8TH.
1. John Austin: A Positivist Conception of Law, from The Province of Jurisprudence Determined (1832).

WED, JAN. 10TH.
1. Lon L. Fuller: "Positivism and Fidelity to Law -- A Reply to Professor Hart" (1958).
2. Lon L. Fuller: Eight Ways to Fail to Make Law, from The Morality of Law (1964).
4. Quiz #1.

B. CIVIL DISOBEDIENCE: MUST LAWS BE MORAL?

FRI, JAN. 12TH.
1. Martin Luther King, Jr.: Letter from Birmingham Jail, from Why We Can't Wait (1963).

C. THE THIRD THEORY OF LAW:" DWORKIN'S REASSERTION OF THE CONNECTION BETWEEN MORALITY AND LAW.

WEEK THREE
MON, JAN. 15TH.

WED, JAN. 17TH.
1. O. W. Holmes, Jr.: "The Path of the Law" (1897).

FRI, JAN. 19TH.
1. Midterm examination #1.

D. THE CHALLENGE OF CRITICAL LEGAL STUDIES:
WEEK FOUR
MON, JAN. 22ND.
1. Andrew Altman: "Legal Realism, Critical Legal Studies, and Dworkin" (1986).
2. Andrew Altman: "Critical Legal Studies v. Liberalism" & "Liberalism and Legality" (Chapters One and Two of CLS).
3. Quiz #2.

WED, JAN. 24TH.
1. Andrew Altman: "The Possibility of the Liberal Rule of Law" (Chapter Three of CLS).

WEEK FIVE
MON, JAN. 29TH.
1. Andrew Altman: "The Contradictions of Law" (Chapter Four of CLS).

WED, JAN 31ST.
1. Andrew Altman: "Law and Social Reality" (Final Chapter of CLS).
2. Midterm Examination #2.

PART 2: THE CONSTITUTIONAL-DEMOCRATIC FOUNDATIONS OF LAW: THE GAP BETWEEN MORAL SELF-DETERMINATION AND POLITICAL LEGITIMACY.

A. CIVIL LIBERTIES AND THE SCOPE OF LAW:

WEEK SIX
MON, FEB. 5TH.

B. CONSTITUTIONAL PRIVACY:

WED, FEB. 7TH.
5. Quiz # 3.

C. FREEDOM OF EXPRESSION AND ITS LIMITS:

WEEK SEVEN
MON, FEB. 12TH.
1. Joel Feinberg: "Limits to the Free Expression of Opinion."

WED, FEB. 14TH.
1. Freedom of Expression (Continued).
2. Quiz #4.

PART THREE: JUSTICE AND THE POLITICAL-EMANCIPATORY ROLE OF LAW:

A. AFFIRMATIVE ACTION:

WEEK EIGHT
MON, FEB. 19TH.

B. GENDER-BASED DISCRIMINATION:

WED, FEB. 21ST.
7. Michael M. v. Superior Court of Sonoma County -- United States Supreme Court, 1981.
8. Quiz #5.

WEEK NINE
MON, FEB. 26TH.
1. Student Research Presentations.

WED, FEB 28TH.
1. Student Research Presentations (Continued).

WEEK TEN
MON, MARCH 4TH.
1. Student Research Presentations (Continued).

WED, MARCH 6TH.
1. Student Research Presentations (Continued).
2. Student Evaluations.

FINALS WEEK

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Official Credits

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