Philosophy Department

KALAMAZOO COLLEGE

1200 Academy St. Kalamazoo, MI 49006

THE PHILOSOPHY OF LAW

WINTER, 2005

Professor: Chris Latiolais
201 Humphrey House
337-7076 (Office)
337-7043 (Secretary)

Office Hours:
1) Mon. 9:30 - 11:30
2) Tues. 10:30 - 11:30
3) By Appointment.

TEXTS:


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 Critical Legal Studies movement. In the third part of the course, we will examine the most sophisticated attempt to move beyond the basic schools of jurisprudence discussed in the first two parts of the course.
**EVALUATION:**

Students will be evaluated on the basis of class participation, weekly article briefs, and a final paper.

<table>
<thead>
<tr>
<th>Class Participation</th>
<th>30%</th>
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<tbody>
<tr>
<td>Weekly Briefs of Articles</td>
<td>10 at 5% each</td>
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<tr>
<td>Final Paper</td>
<td>10-12 pages</td>
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**POLICIES:**

Open, respectful, critical discussion is crucial to this seminar, and a considerable portion of the grade is based upon students' preparation for such participation. Journals allow students to prepare detailed notes for classroom discussions, and quizzes offer students the opportunity to demonstrate mastery of basic concepts and arguments. 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:**

**TUESDAY**  
1. Course Mechanics

2. Introductory Lecture on the the philosophical study of law.

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

**THURSDAY.**


2. Lon Fuller: "Eight Ways to Fail to Make a Law" (1964)

3. Altman: "The Rule of Law"

**A. THE HART-FULLER DEBATE:**

**TUESDAY**  
1. John Austin: "A Positivist Conception of Law, from The Province of Jurisprudence Determined" (1832).


4. Altman: "Law and Morality"

THURSDAY:

1. Lon L. Fuller: "Positivism and Fidelity to Law -- A Reply to Professor Hart" (1958)


3. Riggs v. Palmer (1889)

4. Jules L Coleman and Brian Leiter: "Legal Positivism" (1996)

5. Quiz #1

B. THE MORAL OBLIGATION TO OBEY THE LAW

TUESDAY WEEK THREE

1. Plato: Crito

2. Martin Luther King, Jr.: "Letter from Birmingham Jail" (1963)

THURSDAY

1. M. B. E. Smith: "Is There a Prima Facie Obligation to Obey the Law"


3. Quiz #2.

C. LA W FROM THE PERSPECTIVE OF THE JUDGE

TUESDAY WEEK FOUR

1. O. W. Holmes, Jr. "The Path of the Law" (1897)

2. Jerome Frank: Legal Realism, from Law and the Modern Mind (1963)

3. Ronald M. Dworkin: "Integrity in Law" (1986)

4. Lon Fuller: "The Case of the Speluncean Explorers" (1949)

THURSDAY:


3. Altman: "The Constitution"

4. Quiz #3.
TUESDAY

WEEK FIVE


3. Quiz #4.

D. FEMINIST CONCERNS IN JURISPRUDENCE:

THURSDAY:


5. Michael M. v. Superior Court of Sonoma County -- United States Supreme Court, 1981.

6. Altman: "Feminism and the Law" (Altman, pp. 199-238).

7. Quiz # 5.

E. THE CHALLENGE OF CRITICAL LEGAL STUDIES:

TUESDAY:                        WEEK SIX


2. Andrew Altman: "Critical Legal Studies v. Liberalism" & "Liberalism and Legality" (Chapters One and Two of CLS). [Recommended]

THURSDAY:

1. Critical Legal Studies (Cont.).

2. Andrew Altman: "The Possibility of the Liberal Rule of Law" (Chapter Three of CLS) [Recommended].

3. Andrew Altman: "The Contradictions of Law" (Chapter Four of CLS) [Recommended].

4. Andrew Altman: "Law and Social Reality" (Final Chapter of CLS) [Recommended].

5. Quiz # 6.

PART 2: THE DISCOURSE THEORY OF LAW AND DEMOCRACY

TUESDAY:

WEEK SEVEN
1. Habermas: "Law as a Category of Social Mediation between Facts and Norms"

THURSDAY:

1. Habermas: "Law as a Category of Social Mediation between Facts and Norms" (Continued)
2. Quiz #7.

TUESDAY: WEEK EIGHT

1. Habermas: "A Reconstructive Approach to Law 1: The System of Rights"

THURSDAY:

2. Quiz #8

TUESDAY: WEEK NINE

1. Habermas: "The Indeterminacy of Law and the Rationality of Adjudication"
2. Quiz #9.

THURSDAY:

1. Habermas: "Judiciary and Legislature: On the Role and Legitimacy of Constitutional Adjudication"
2. Quiz #10.

TUESDAY: WEEK TEN

1. Habermas: "Paradigms of Law"

THURSDAY:

1. Student Evaluations.

FINALS WEEK
January 3rd, 2005