PHILOSOPHY OF LAW

LECTURE NOTES:

PROFESSOR: Chris Latiolais, Chair
Philosophy Department
Kalamazoo College
Humphrey House #201
Telephone # 337-7076

OFFICES HOURS
- Monday 1:00 - 3:00.
- Tuesday 10:30- 11:30.
- Thursday 10:30 - 11:30.

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 challenges to the traditional idea that "the rule of law" should be impartial and objective: Feminist Jurisprudence and 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 quizzes, and a final paper.

<table>
<thead>
<tr>
<th>TYPE OF EVALUATION</th>
<th>FREQUENCY</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Class Participation: Seminar presentations, classroom discussion and email correspondence</td>
<td></td>
<td>20%</td>
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<tr>
<td>Quizzes</td>
<td>12 @ 5%</td>
<td>60%</td>
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<tr>
<td>Final Paper (10-15 pages)</td>
<td>1 @ 20%</td>
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POLICIES:

Students are expected to follow the reading schedule and come to class prepared to actively discuss the texts they have read. More specifically, students must bring their texts to class with marginal notes with highlighted passages of particular importance. Quizzes offer students the opportunity to identify and clarify central terms and concepts, on the one hand, and to rehearse pivotal arguments, on the other. The final paper offers students the opportunity to respond in depth to a single topic of their choosing, taken from the specific topics of international law, tort, contract law, feminist concerns, or race issues. The final paper is due on the day scheduled for the final examination. 3 unexcused absences will result in a full grade reduction. Late papers will be marked down a half grade for the first day and a full grade for the second day. All work must be turned in at the end of term, unless alternative assignments have been given by the instructor. Plagiarism will result in a failing grade for the assignment.

TEXTS:


READING SCHEDULE

INTRODUCTION:

TUESDAY (Week 1):

- Course Mechanics.
- Introductory Lecture: The Philosophical Study of Law.
PART ONE: THE TRADITIONAL NORMATIVE FOUNDATIONS OF LAW: NATURAL LAW THEORY, LEGAL POSITIVISM, AND LEGAL REALISM

THURSDAY: The Natural Law Tradition:

- Saint Thomas Aquinas: Selections from On Law, Morality, and Politics
- Lon Fuller: "Eight Ways to Fail to Make a Law" (1964)
- Altman: "The Rule of Law"
- Quiz #1

TUESDAY (Week 2)

- Altman: "Law and Morality"
- Mark Murphy: "Natural Law Jurisprudence" (2003)
- Jeremy Bentham: "Of Laws in General"

THURSDAY: Legal Positivism:

- John Austin: "A Positivist Conception of Law, from The Province of Jurisprudence Determined" (1832).
- H.L.A. Hart: "Law as the Union of Primary and Secondary Rules" (1961)
- Quiz #2

TUESDAY: (Week 3): From Legal Positivism to Legal Realism and Skepticism:

- Jules Coleman: "Negative and Positive Positivism" (1982)
- Joseph Raz: "Institutionalized Normative Systems" (1975)
- O. W. Holmes, Jr. "The Path of the Law" (1897)
- Jerome Frank: "Legal Realism" (1963)

INTERLUDE: Martin Luther King and Malcolm X as U.S. Representatives of Normative and Factual Approaches to the U.S. Constitution: What is it to "Do the Right Thing?"

THURSDAY: Is There a Moral Obligation to Obey the Law?

- Plato: Crito
- Martin Luther King, Jr.: "Letter from Birmingham Jail" (1963).
- M. B. E. Smith: "Is There a Prima Facie Obligation to Obey the Law?" (1996)
- Quiz #3.

THURSDAY NIGHT MOVIE: Do The Right Thing (Recital Hall, 8:00 PM)

TUESDAY (Week 4): Principles and Legal Interpretation:

- Ronald M. Dworkin: "Integrity in Law" (1986).
- Ronald Dworkin: "Comments" (1997)
- Altman: "The Constitution"
- Quiz #4

PART TWO: CRITICAL LEGAL STUDIES VERSUS LIBERALISM

THURSDAY:

- Altman, Critical Legal Studies:
  - Introduction
  - Chapter One: "Critical Legal Studies v. Liberalism"
  - Chapter Two: "Liberalism and Legality"

TUESDAY: (Week 5)

- Altman, Critical Legal Studies:
  - Chapter Three: "The Possibility of the Liberal Rule of Law"
  - Quiz # 5
  - Recommended: Altman Chapter 9: "Critical Legal Studies"

THURSDAY

- Altman, Critical Legal Studies:
  - Chapter Four: "The Contradictions of Law"
  - Chapter Five: "Law and Social Reality"
  - Quiz #6.
PART THREE: HABERMAS'S DISCOURSE THEORY OF LAW AND DEMOCRACY AS A CRITIQUE OF TRADITIONAL LEGAL THEORY:

TUESDAY: (Week 6)
- Juergen Habermas: Between Facts and Norms, Translator's Introduction
- Quiz # 6

THURSDAY:
- Juergen Habermas: Between Facts and Norms, Chapter One: "Law as a Social Mediation between Facts and Norms"
- Quiz # 7

TUESDAY: (Week 7)
- Juergen Habermas: Between Facts and Norms, Chapter Two: "The Sociology of Law versus the Philosophy of Law"
- Quiz # 8

THURSDAY:
- Juergen Habermas: Between Facts and Norms, Chapter Two: "A Reconstructive Approach to Law 1: The System of Rights"
- Quiz # 9

TUESDAY: (Week 8)
- Quiz # 10

THURSDAY:
- Juergen Habermas: Between Facts and Norms, Chapter Five: "The Indeterminacy of Law and the Rationality of Adjudication"
- Quiz # 11

TUESDAY: (Week 9)
- Juergen Habermas: Between Facts and Norms, Chapter Six: "Judiciary and Legislature: On the Role and Legitimacy of Constitutional Adjudication"
- Quiz # 12

THURSDAY:
- Open

TUESDAY: (Week 10)
- Open

THURSDAY:
- Student Evaluation

FINALS WEEK