

LEGAL STUDIES 182: LAW, POLITICS AND SOCIETY
Professors Malcolm M. Feeley
GSIs: Monica Castillejos-Aragon and Alexandra Koenig
Lecture Tuesday and Thursday 8-9:30am in 141 McCone Hall
Office 2240 Piedmont: hours: Wed 11:-00-12:30; Th 10:30 – 12:00
Fall 2009
Website at: <http:// bspace.berkeley.edu>.

Introduction:

This course examines the theory and practice of legal institutions in performing several major functions: allocating authority, defining relationships, resolving conflict, adapting to social change, and fostering social solidarity. In examining these functions, the course will also assess the nature and limits of law, consider alternative perspectives on law, and discuss various ways to structure legal processes.

Required Books:

Gerald Stern, THE BUFFALO CREEK DISASTER
Gerald Rosenberg, THE HOLLOW HOPE, 2nd ed.
Feeley, MATERIALS FOR LAW, POLITICS AND SOCIETY (available at Copy Central, Durant Mall)

NOTE: please bring a copy of the assigned readings for the day to each class.

Course Website (BSpace):

Note that the class has a website. The website contains the following materials: the course syllabus and supplementary materials. I will also use it to distribute assignments, post additional supplementary readings, post announcements, post section assignments (readings, short written assignments, and the like), post study questions, and post responses to queries and issues that might arise in class. You can access the website at: <http:// bspace.berkeley.edu>, and you should enroll yourself in the section assigned to you via Telebears. Instructions can be found by clicking Help on the My Workstation tab.:

Grading

The Course grade will be based upon several forms of evaluation described below:

Midterm and Final Exams:

These will be in a short-answer essay format

Paper:

One research paper with a maximum length of five pages (1250 words) will be assigned shortly after term begins. This paper will be turned in twice. Paper #1 is expected to be an example of the very best writing you are capable of. It will be carefully read and evaluated for style, grammar, and spelling, as well as for substance and organization. It will be graded and returned to you. You will then rewrite as necessary and resubmit it. This paper, #2, will again be graded. Both grades will be recorded and count equally in computing your final course grade.

The paper will be based upon assigned and supplemental reading assigned and made available early in the term. Dates and details will be forthcoming.

Discussion Section Assignments:

Discussion sections are an integral part of this course. You must sign up and attend all your section meetings. Sections provide an opportunity to review materials covered in lecture and to explore variations and alternative views to those covered in lecture. From time to time there will be additional section-based reading assignments, as well as oral and written reports and one or two pop quizzes. Details of these assignments will be announced in section meetings.

Assignments and Grading:

Below is a list of assignments and their value in terms of your final grade. Each assignment must be completed.

Midterm (date to be determined)	25%
Paper, Version #1 (dates to be determined)	15%
Paper, Version #2	15%
Final Exam (as scheduled)	30%
Discussion section assignments and misc. (participation, pop quizzes, etc.)	<u>15%</u>

TOTAL

100%

READING ASSIGNMENTS

I. Introduction to Law (and Politics)

Assigned Readings:

A. General:

L. Fuller, "The Case of the Speluncean Explorers," (HANDOUT and on Website)

T. Hobbes, Leviathan (excerpts) , MATERIALS

B. Sources of Law

J.B.White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life,"
MATERIALS

R. Cover, "Violence and the Word," MATERIALS

C. Fidelity to Law:

T. Tyler, Why People Obey the Law, MATERIALS

D. Basic Concepts

Supplementary materials about basic concepts are posted on the course website.

Suggested Readings:

Note: Many of the books listed in this section contain material relevant to the entire course, and it would be valuable for you to acquaint yourself with some of them. Many are on reserve in Moffitt Library.

B. Ackerman, RECONSTRUCTING AMERICAN LAW

A.M. Bickel, THE LEAST DANGEROUS BRANCH

H. Berman, LAW AND REVOLUTION

R. Cotterrell, THE SOCIOLOGY OF LAW: AN INTRODUCTION

R. Cotterrell, LAW'S COMMUNITY
J. Feinberg & H. Gross, eds., PHILOSOPHY OF LAW
L. Friedman, S. Macaulay & J. Stookey, eds., LAW AND THE BEHAVIORAL SCIENCES
M.P. Golding, ed., THE NATURE OF LAW
J. Haley, AUTHORITY WITHOUT POWER: THE JAPANESE PARADOX
H.L.A. Hart, THE CONCEPT OF LAW
E. A. Hoebel, THE LAW OF PRIMITIVE MAN
F. Hyack, THE ROAD TO SERFDOM
R. Lempert & J. Sanders, eds., AN INVITATION TO LAW AND SOCIAL SCIENCE
K.N. Llewellyn & E.A. Hoebel, THE CHEYENNE WAY
L. McIntyre, LAW IN THE SOCIOLOGICAL ENTERPRISE
A. Renteln & A. Dundes, FOLK LAW, VOLS. 1 & 2
M. Sandel, LIBERALISM AND THE LIMITS OF JUSTICE
S. Vago, LAW AND SOCIETY
R.P. Wolff, ed., THE RULE OF LAW

Assigned Readings:

II. The Adversarial System

A. The Adversary System: Theory

M. Feeley, "The Adversary System," MATERIALS
H. Packer, "Two Models of the Criminal Process, MATERIALS

B. The Adversary System: Practice

G. Stern, THE BUFFALO CREEK DISASTER (all)

C. Pathologies of the Adversary Process

J. Langbein "Undue Influence: The Battle of the Johnson and Johnson Fortune", MATERIALS
R. Kagan, ADVERSARIAL LEGALISM (excerpts), MATERIALS

D. Alternatives to the Adversarial Model

Laura Nader, "Disputing without the Force of Law," MATERIALS
Frank Sander, "Varieties of Dispute Processing," FRD, MATERIALS
John Griffiths, The Family Model (accompanying Packer, see above), MATERIALS
"Principles of Problem Solving Justice, MATERIALS
R. Mirchandani, "What's So Special about Specialized Courts?" MATERIALS

E. Alternatives: Looking Abroad

D. T. Johnson, "The Organization of Prosecution and the Possibility of Order", MATERIALS.
J. H. Langbein, "Land without Plea Bargaining: How the Germans Do It", MATERIALS.
J. Hodgson, "The Police, the Prosecutor and the Juge D'instruction....in France," MATERIALS

Suggested Readings:

John Braithwaite, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION
R. Kagan, ADVERSARIAL LEGALISM
David Johnson, THE JAPANESE WAY OF JUSTICE

III. Social and Political Influences on Courts

A. Social Influences on the Legal Process: How Courts Respond to Change

J. Lieberman, THE LITIGIOUS SOCIETY, (excerpts), MATERIALS
Marc Galanter, "Why the Have's Come Out Ahead," MATERIALS

C. Law, Symbols and Values: How the Law Hides

J. Noonan, "Persons and Masks of the Law," MATERIALS.
K. Bumiller, "Victims in the Shadow of the Law, MATERIALS.

IV. Political Influences on the Courts

(Additional readings to be distributed)

Suggested Readings:

R. Abel, ed., THE LAW AND SOCIETY READER
C. Smart, FEMINISM AND THE POWER OF LAW
J. Frank, COURTS ON TRIAL
A. Sarat & W. Felstiner, DIVORCE LAWYERS AND THEIR CLIENTS
D. Black and M. Mileski, eds., THE SOCIAL ORGANIZATION OF LAW
M. Feeley, THE PROCESS IS THE PUNISHMENT
M. Feeley and E. Rubin, JUDICIAL POLICY MAKING AND THE MODERN STATE : HOW THE COURTS REFORMED AMERICA'S PRISONS
W. Haltom and M. McCann, DISTORTING THE LAW
T. Baker, THE MEDICAL MALPRACTICE MYTH

IV. Courts and Politics: the Function of Courts

A. The Functions of Courts: A Historical Debate

Federalist Paper #78 (authored by A. Hamilton), MATERIALS.

Essays of the Anti-Federalist Brutus on the Judiciary, MATERIALS.

B. The Continuing Debate:

R. Dahl, "The Supreme Court as a National Policy-Maker," MATERIALS.

J. Casper, "The Supreme Court and National Policy Making," 70 Am. Pol. Sci. Rev. 50 (1976), MATERIALS

C. Interest Groups and Courts: Public Interest Lawyers and Class Action Suits

D. Truman, "The Governmental Process (excerpts, MATERIALS

A. Southworth, "Conservative Lawyers and the Contests over the Meaning of 'Public Interest Law'", MATERIALS.

D. Bell, "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," MATERIALS.

E. Courts in the Bureaucratic State

J.Q. Wilson, "Courts," (excerpt from BUREAUCRACY), MATERIALS.

J. Dwyer, Richard W. Brooks, and A. Marco, "The Air Pollution Permit Process for U.S. and German Automobile Assembly Plants," MATERIALS

M. Feeley and V. Swearingen, "The Prison Conditions Cases and the Bureaucratization of American Corrections: Influence, Impacts, and Implications", MATERIALS.

Suggested Readings:

L. Fuller, "The Forms and Limits of Adjudication," MATERIALS.

A. Chayes, "The Role of the Judge in Public Law Litigation," MATERIALS.

R. Dahl, HOW DEMOCRATIC IS THE CONSTITUTION?
FEDERALIST PAPERS

H. Storing, ed., THE ANTI-FEDERALIST: WRITINGS BY THE OPPONENTS OF THE
CONSTITUTION

M. Shapiro, COURTS
M. Damaska, THE FACES OF JUSTICE AND STATE AUTHORITY
D. Kairys, ed., THE POLITICS OF LAW
S. Scheingold, THE POLITICS OF RIGHTS
S. Melnick, BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS
S. Melnick, THE CLEAN AIR ACT
M. Olson, THE LOGIC OF COLLECTIVE ACTION
D. Truman, THE GOVERNMENTAL PROCESS
J. Segal & H. Spaeth, THE ATTITUDINAL MODEL
L. Epstein & J. Knight, THE CHOICES JUSTICES MAKE
D. Songer & S. Lindquist, 1996, "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision-Making," *American Political Science Review*, 1049-63.
G. Caldeira, 1986, "Neither the Purse Nor the Sword: Public Confidence in the United States Supreme Court," *American Political Science Review*, 1209-26.
L. Epstein and C.K. Rowand, 1991, "Debunking the Myth of Interest Group Invincibility in the Courts," *American Political Science Review*, 205-17.

V. The Impact (and Limits) of Courts

Assigned Readings:

A. General: Two Models of Courts – the Dynamic and the Constrained Court

Rosenberg, THE HOLLOW HOPE, pp. 1-38

B. Civil Rights: School Desegregation and Voting Rights

Brown v. Board of Education (I and II) (1954), cases on course website.

Rosenberg, pp. 39-172

C. Massey & N. Denton, AMERICAN APARTHEID (excerpts), MATERIALS.

C. Women's Rights and Abortion:

Roe v. Wade (1973), case on course website.

Rosenberg, pp. 173-268

D. Same Sex Marriage

Cases on course website

Cases to be posted on Blackboard

Rosenberg, pp. 339-419

E. Summing up and Assessing The Hollow Hope

Rosenberg, pp. The Fly-Paper Court pp. 420-429.

Suggested Readings:

W.H. Burns, "Law and Race in Early America," in D. Kariys, ed., THE POLITICS OF LAW

L. Friedman, "Brown in Context," in A. Sarat, ed., BROWN

A. Freeman, "Anti Discrimination Law from 1954 to 1989: Uncertainty, Contradiction, Rationalization, Denial," in D. Kariys, ed., THE POLITICS OF LAW

D. Bell, WE ARE NOT SAVED

K. Erikson, EVERYTHING IN ITS PATH

K. Luker, ABORTION AND THE POLITICS OF MOTHERHOOD

A. Thernston, WHOSE VOTES COUNT?

M. Klarman, FROM JIM CROW TO RIGHTS

M.McCann, RIGHTS AT WORK

VII. CONCLUSION

E.P. Thompson, Whigs and Hunters (Excerpts), MATERIALS.