

CONTENTS of COURSE MATERIALS (in order)

[L. Fuller, "The Case of the Speluncean Explorers," (HANDOUT and on Internet)]
[T. Hobbes, Leviathan (excerpts)] HANDOUT
[J.B.White, "Law as Rhetoric, Rhetoric as Law,"] HANDOUT
[R. Cover, "Violence and the Word,"] HANDOUT
J. Noonan, "Persons and Masks of the Law," MATERIALS
L. Fuller, "Two Principles of Human Association," MATERIALS
K. Llewellyn, The Bramble Bush and Cases on Legal Reasoning MATERIALS
J. Lieberman, The Litigious Society, chaps. 1 and 2, MATERIALS
M. Feeley, "The Adversary System," MATERIALS
The Inquisitorial System (HANDOUT)
M. Feeley, The Process is the Punishment, MATERIALS
R. Kagan, "ADVERSARIAL LEGALISM," MATERIALS
M. Galanter, The Vanishing Trial, MATERIALS
J. Langbein. "Torture and Plea Bargaining," MATERIALS
J. Langbein, Land without Plea Bargaining: How the German's Do it," MATERIALS
Greg Berman and John Feinblatt, Good Courts, MATERIALS
John Braithwaite, Restorative Justice and Responsive Regulation, MATERIALS
Publius [Alexander Hamilton] Federalist #78, MATERIALS
Brutus, Anti-Federalist, MATERIALS
R. Dahl, "The Supreme Court as a National Policy-Maker," MATERIALS
J. Casper, "The Supreme Court and National Policy Making," MATERIALS
J. Wilson, "Courts," MATERIALS
J. Dwyer, Richard W. Brooks, and A. Marco, "The Air Pollution Permit Process for U.S. and German Automobile Assembly Plants," MATERIALS
O.Fiss, The Political Theory of Class Action, MATERIALS
D. Bell, "Serving Two Masters: Integration Ideals and Client Interests," MATERIALS
M. Feeley, "Implementing Court Orders: Judges as Executives," MATERIALS
S. Rushin, The Answer to Police Misconduct, MATERIALS
E.P.Thompson, Whigs and Hunters, MATERIALS.

SYLLABUS

Professors Malcolm M. Feeley

GSI: Dillon and Spoto

Lecture T Th 8:10 – 9:30 am

Fall 2014

Website at: <http://blackboard.berkeley.edu>

Introduction:

This course examines core issues about the nature and function of the legal system: what is the nature of legal authority? Why do we obey it? What is the adversary system? How does it work—receive information, resolve conflicts, adjust to change? What are its strengths? Weaknesses? Alternatives? How do courts respond to and contribute to social change? Do courts make policy? Should they? How successful are they when they try? What resources do courts have to affect their rulings?

Readings will be drawn from a variety of fields: philosophy, history, judicial opinions, and scholarly articles and books. If you are attentive to these materials and engage during lectures and discussion sections, you will become knowledgeable one of society's most important institution, the legal system.

Required Books:

Gerald Stern, THE BUFFALO CREEK DISASTER

Malcolm Feeley and Edward Rubin, JUDICIAL POLICY MAKING AND THE MODERN STATE: How the Courts Reformed America's Prisons

Malcolm Feeley, MATERIALS FOR LAW, POLITICS AND SOCIETY (available at Copy Central, Durant Mall)

NOTE: please bring the assigned reading materials for the day to class with you.

Course Website (BSpace):

Note that the class has a website. The website contains the following materials: the course syllabus, background materials, and from time to time additional supplementary materials. I will also use it to distribute assignments, and to post additional supplementary readings, announcements, section assignments (readings, short written assignments, and the like), study questions, and 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.

Background Materials about basic concepts are posted on bspace for the course. Read them.
Course Requirements:

1) Midterm and Final Exams:

Both will be in a short-answer essay format

2) 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.

3) Class and Discussion Section Attendance and Participation

Class and Section attendance and participation are integral parts of this course and mandatory. Come to class and to section having done your reading in advance, and be prepared to be called upon, to answer questions, and participate in group assignments, and respond to occasional pop quizzes, and the like. Lectures explicate the main points of the assigned materials and move well beyond them to put issues in historical, comparative, and philosophical context. Thus much goes on in class lectures that are not contained in the assigned readings. 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 and class-based reading and short writing assignments, as well as oral and written reports and pop quizzes.

4) Assignments and Grading:

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

Midterm (Oct __)	25%
Paper, Version #1 (dates to be determined)	15%
Paper, Version #2	15%
Final Exam (as scheduled (date fixed)	30%
Class and Section discussion, oral presentations, Participation, pop quizzes, etc., at discretion of GSI and instructor)	<u>15%</u>
TOTAL	100%

READING ASSIGNMENTS

I. Introduction to Law (and Politics)

A. Introduction

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

B. Sources of Law

T. Hobbes, Leviathan (excerpts), MATERIALS (HANDOUT)

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

R. Cover, "Violence and the Word," MATERIALS (HANDOUT)

C. Too Much Law?

L. Fuller, Two Principles of Human Association, MATERIALS

J. Noonan, "Persons and Masks of the Law," MATERIALS

Suggested Readings:

Note: 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
M.P. Golding, ed., THE NATURE OF LAW
J. Haley, AUTHORITY WITHOUT POWER: THE JAPANESE PARADOX
H.L.A. Hart, THE CONCEPT OF LAW
F. Hyack, THE ROAD TO SERFDOM

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

II. Common Law

K. Llewellyn, The Bramble Bush, and cases on Domestic Violence. MATERIALS

J. Lieberman, The Litigious Society, MATERIALS

III. The Adversarial System

Assigned Readings:

A. The Adversary System: Theory

M. Feeley, “The Adversary System,” MATERIALS
The Inquisitorial System (**HANDOUT**)

B.. Case Study: the Adversary System in Action

G. Stern, THE BUFFALO CREEK DISASTER
M. Feeley, The Process is the Punishment, MATERIALS
K. Bumiller, Victims in the Shadow of the Law, MATERIALS

C. Critiques of the Adversary System

R. Kagan, Adversarial Legalism, MATERIALS
M. Galanter. “The Vanishing Trial ,“(MATERIALS)

J. Langbein. “Torture and Plea Bargaining,” MATERIALS
J. Langbein, Land without Plea Bargaining: How the German’s Do it,” MATERIALS

J. Dwyer, et al., The Air Pollution Permit Process for U.S. and German Automobile Assembly Plants, MATERIALS

E. Alternatives to the Adversary System

1. Problem-Solving Courts

Greg Berman and John Feinblatt, Good Courts, MATERIALS

2. Restorative Justice

John Braithwaite, Restorative Justice and Responsive Regulation, MATERIALS

Suggested Readings:

J. Braithwaite, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION

R. Kagan, ADVERSARIAL LEGALISM

D. Johnson, THE JAPANESE WAY OF JUSTICE

M. Damaska, THE FACES OF JUSTICE AND STATE AUTHORITY

G. Berman, PROBLEM SOLVING COURTS

IV. Courts and Politics

A. Historical Perspective

Publius [Alexander Hamilton] Federalist #78, MATERIALS

Brutus, Anti-Federalist, XI, XII, XV, MATERIALS

B. The Continuing Controversy about Courts

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

J. Casper, "The Supreme Court and National Policy Making," MATERIALS.

C. Congress and the Courts

J.Q. Wilson, Courts, MATERIALS

J. Dwyer, et al., The Air Pollution Permit Process for U.S. and German Automobile Assembly Plants, MATERIALS , **RE-READ**

The following may be distributed as a HANDOUT

[J. Novkov, "How to Read a Case, MATERIALS

Wickard v. Fulburn

Garcia v. San Antonio Metropolitan Transit Authority

U.S. v. Lopez
NFIB v. Sebelius

V. Resources Available to Courts

A. Class Actions

O.Fiss, The Political Theory of Class Action, MATERIALS

D. Bell, “Serving Two Masters: Integration Ideals and Client Interests,” MATERIALS

B. Judges as Administrators

M. Feeley, Implementing Court Orders: Judges as Executives

C. Attorneys’ Fees [HANDOUT]

VI. Courts and Social Policy: Torts and Tort-like issues

J. Lieberman, The Litigious Society {RE-READ}

C. Epp, Liability’s Triumph (**HANDOUT**)

VII. Courts and Social Policy: Structural Reform Litigation

Stephen Rushin, “The Answer to Police Misconduct,” MATERIALS

Feeley & Rubin (herein after F&R), JUDICIAL POLICY MAKING AND THE MODERN STATE, , pp. 1-50

F&R, Case Studies of Prisons, pp. 51-95

F&R, Case Studies of Prisons, II. Pp. 96-144

F&R. Judicial Policy Making (as distinct from “interpretation”), pp. 145-203

F&R. Creating Doctrine, pp. 204-296

F&R. Implementing Judicial Policy, pp. 297-335

F&R. Conclusion and Assessment, pp. 336-361

Suggested Readings on Courts and Social Change

W. Haltom and M. McCann, DISTORTING THE LAW
K. Luker, ABORTION AND THE POLITICS OF MOTHERHOOD
M. Klarman, FROM JIM CROW TO RIGHTS
M. McCann, RIGHTS AT WORK
M. Miller and Jeb Barnes, MAKING POLICY, MAKING LAW
D. Schoenbred and Ross Sandler, DEMOCRACY BY DECREE
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
S. Scheingold, THE POLITICS OF RIGHTS
S. Melnick, BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS
S. Melnick, THE CLEAN AIR ACT
L. Epstein & J. Knight, THE CHOICES JUSTICES MAKE

VIII. CONCLUSION

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