

AMERICAN LEGAL THOUGHT

Prof. Collier

Spring 2012

Course Requirements

1. Casebook: Charles W. Collier, *Basic Themes in Law and Jurisprudence*. LexisNexis or Anderson Publishing Co., 2000. Pp. xviii + 486.

2. Preparation. Advance preparation for class is essential. I will usually attempt to give a rough estimate of the next week's reading on Thursdays. *But in any event you are always responsible for preparing at least 10 pages beyond the point where the previous class ended.*

We'll generally follow the order of the readings in the materials, but some selections may be skipped, and other assignments may be added from other sources from time to time. (Any such modifications will be announced in class.)

3. Class participation. Students will be called on regularly. Much of the material in this course is subject to multiple interpretations; your insights are a highly relevant component of the course. The quality of class participation will be taken into account in the determination of grades.

4. Classroom Etiquette. Cellphones should be turned off prior to class or not brought into the classroom at all. If you need to make or take a call during the class period, you should not attend class that day. If you think your computer might make a noise during class, please do not bring it into the classroom that day. These rules are for the benefit of your fellow classmates.

5. Paper Requirements. Two papers are required for this course; there are no exams. The first paper (10 pages (double-spaced) maximum) will be due at our last class (which is not necessarily the same day as the "last day of classes" generally). At that time the topic for the second paper (5 pages (double-spaced) maximum) will be handed out. The second paper is due on the last day of the examination period.

The topic for the first paper is as follows: Write a paper having something to do with one or more of the coursebook readings. You must turn in a written *statement of*

your topic before Spring Break. Along with this statement you should also include a *statement of your thesis*. Your thesis is the proposition you will advance and argue for in the paper. "I am going to discuss *The Lottery*" is not a thesis. "I am going to show that the political philosophy underlying *The Lottery* is illogical, irrational, inconsistent, and contradicts all that American legal thought stands for" is a thesis. Formulating a thesis will help to focus and guide your thinking. If at that time you can also provide a brief *outline* of your paper, that would be good too (but this is not required).

6. Office hours: Mondays and Wednesdays at 5:00 p.m. (Right before class is *not* a good time.) My office is room 373 Holland Hall.

Course Description

Credits: 3. An introduction to the fundamental issues and ideas that have shaped the law. Theorists of American law include legislators, governmental administrators, judges, lawyers, legal scholars, and commentators from other disciplines. This course examines basic concepts in legal thought, primarily of the American twentieth century. Topics include: law as literature and as portrayed in literature; law and society; freedom and necessity; the reach of the law; the legal and the non-legal; law and morality; justice; and critical perspectives on law (Critical Legal Studies). This course is especially recommended for students who are interested in the development of legal theory or are considering a career in law teaching.

Part I *Law and Society*

Introduction

Chapter 1: Communities in Crisis

Shirley Jackson, "The Lottery" (1948)

A Trial of Witches (1682)

Thomas J. Dimsdale, *The Vigilantes of Montana* (1866)

Kai T. Erikson, "On the Sociology of Deviance," in *Wayward Puritans* (1966)

Notes and Questions

Chapter 2: From Community to Society

Garrett Hardin, "The Tragedy of the Commons" (1968)

The Federalist No. 10 (James Madison) (1787)

Papachristou v. City of Jacksonville (1972)

City of Chicago v. Wilson (1978)

Walker v. Superior Court (1988)

Paris Adult Theatre I v. Slaton (1973)

Notes and Questions

Part II *Freedom and Necessity*

Introduction

Chapter 3: Life or Death

Regina v. Dudley and Stephens (1884)

United States v. Holmes (1842)

Lon L. Fuller, "The Case of the Speluncean Explorers" (1949)

Notes and Questions

Chapter 4: Self-Defense and Its Limits

Bill Bell v. State (1885)

People v. Goetz (1986)

Notes and Questions

Chapter 5: Other Forms of Necessity

Bird v. Jones (1845)

United States v. Moore (1973)

Bailey v. Alabama (1911)

Robert L. Hale, "Coercion and Distribution in a Supposedly Non-Coercive State" (1923)

Notes and Questions

Part III *The Reach of the Law*

Introduction

Chapter 6: Some Findings of Social Science

Solomon E. Asch, "Opinions and Social Pressure" (1955)

Stanley Milgram, "Behavioral Study of Obedience" (1963)

Craig Haney, Curtis Banks & Philip Zimbardo, "A Study of Prisoners and Guards in a Simulated Prison" (1973)

Katz v. Superior Court (1977)

Notes and Questions

Chapter 7: Warfare and the Reach of the Law

The Nuremberg Trials: Justice Jackson's Report to the President (1945)

The Nuremberg Trials: Proceedings (1946)

The Nuremberg Trials: Judgment (1946)

United States v. Calley (1973)

Notes and Questions

Chapter 8: The Abuse Excuse

United States v. Alexander and Murdock (1972)

Jahnke v. State (1984)

State v. Norman (1989)

Notes and Questions

Part IV

The Legal and the Non-Legal

Introduction

Chapter 9: Rule-Governed Institutions

Ferdinand de Saussure, "Invariability and Variability of the Sign," in *Course in General Linguistics* (1916)

Law No. 94-665 of 4 August 1994 Relative to the Use of the French Language (1994)

Emily Post, *Etiquette* (1922)

Emily Post, "The True Meaning of Etiquette," in *Etiquette* (10th ed. 1960)

New York Rules of Court: Standards of Civility (1998)

Gretchen Craft Rubin & Jamie G. Heller, "Restatement of Love" (1994)

Cornell University Sexual Harassment Procedures (1991)

Willey v. Springs (1995)

Notes and Questions

Chapter 10: Smaller Groups and Associations

"The Scout Law," *Boy Scout Handbook* (7th ed. 1965)

Randall v. Orange County Council, Boy Scouts of America (1998)

Boy Scouts of America v. Dale (2000)

Walter O. Weyrauch, "Unwritten Constitutions, Unwritten Law" (1999)

Dawkins v. Antrobus (1879)

United States v. Ballard (1944)

Stambovsky v. Ackley (1991)

Notes and Questions

Chapter 11: Quasi-Legal Governance

Mercury Bay Boating Club v. San Diego Yacht Club (1989)

Robert's Rules of Order Revised (1915)

Department of the Army Field Manual, *The Law of Land Warfare* (1956)

Notes and Questions

Part V *Law and Morality*

Introduction

Chapter 12: The Realms of Law and Morality Distinguished

Oliver Wendell Holmes, "The Path of the Law" (1897)

H.L.A. Hart, "Moral and Legal Obligation," in *The Concept of Law* (1961)

Riggs v. Palmer (1889)

Notes and Questions

Chapter 13: Legal Implications of Personal Morality

Henry M. Hart, Jr. & Albert M. Sacks, "The Invitation to Dinner Case," in *The Legal Process* (1958)

Hamer v. Sidway (1891)

People v. Lafka (1959)

Bowers v. Hardwick (1986) (selection)

Lawrence v. Texas (2003)

Notes and Questions

Chapter 14: Are There Affirmative Legal Duties?

Union Pacific Railway Co. v. Cappier (1903)

People v. Beardsley (1907)

Pope v. State (1979)

Theodore Dreiser, *An American Tragedy* (1925)

Notes and Questions