

SYLLABUS
Jurisprudence
Fall Semester, 2007
Professor Nancy Ehrenreich

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office hrs: T/Th 1:00-2:00
(or by appointment)

Required Materials: Two volumes of photocopied materials, in the bookstore.

Requirements: Two papers on assigned topics: Paper No. 1 – 6pp maximum; 35% of grade
Paper No. 2 – 12pp maximum; 50% of grade
Class participation – 15% of grade

Papers: All assigned papers should be *double-spaced*, with a *reasonable-sized font* (eg, 12), and *reasonable margins*. Additionally, papers should comply with the stated page limits and the attached “Writing Guidelines” sheet.

Communication: Web- and e-mail based. My web page is: <http://www.law.du.edu/nehrenreich>. There, you will find a link to the Jurisprudence web page. The syllabus, paper topics, & occasional announcements or other materials will be posted there. Most announcements will also be e-mailed. Of course, free to e-mail me with questions or concerns (see e-mail address above).

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8/21 I. The Politics of Interpretation

A. Gender as an Example (Gilligan) – 1-12

8/23* B. Generalizing from Gender: the Link between Knowledge and Power (Foucault) – 13-33 (NB: You will need to read this piece at least *twice* to understand it, and will get the most out of it if you *outline* the argument.)

8/28 C. Interpretation & the Law (Kennedy) – 34-56

8/30 II. The Roots of Modern Jurisprudence

A. Overview (optional: Mensch, on reserve)

B. Early Liberal Thought (Atiyah) – 57-64

C. 19th Century Transformation (Hentz, Horwitz) – 65-72

9/4 D. Classical Legal Consciousness

1. Ideology of the era (Atiyah) – 73-79

2. Legal science (Field, Langdell, Weber) (optional: Gordon, on reserve) – 80-84

3. The rise of formalism (optional: Horwitz, on reserve)

* Heavy reading assignment for this class (either difficult material or lengthy pieces – or both)

- 9/6 4. Lochner v. N.Y.: the paradigmatic case
 (a) Social context; the industrialized workplace (Kens) – 85-92
 (b) The model of implied limitations on government (Atiyah, Lochner, Stone, Tribe) – 93-109
- 9/11 III. The Progressive and Realist Attack
 A. The Vulnerabilities of Classical Ideology (Holmes, White, Peller) – 110-23
- 9/13 B. The Attack on the Public/Private Dichotomy
 1. Contract (Peller, Pound, Hale) – 124-40
- 9/18 (continued) – (M. Cohen) – 141-53
- 9/23 2. Property (M. Cohen, Pa. Coal v. Mahon) – 154-69
 (optional: Commons, INS v. A.P., on reserve)
- 9/25* 3. Torts & Causation (F. Cohen, Vegeahn) – 170-99
 (optional: Ames, Holmes, Singer, on reserve)
- 9/30 (continued) – (no new readings)
 4. Legal reasoning (Dewey, F. Cohen) – 200-12
- 10/2 5. The Realist retreat (Fuller) – 213-20
 (optional: Boorstin, on reserve)

[Paper No. 1 Assigned – due Oct. 18, 5pm]

10/4 – [No Class]

- 10/9* IV. Current Legal Ideology (optional: Kelsen, on reserve)
 A. “Classic” Positivism (Kelsen, Hart) – 221-45
 B. Process-Based Jurisprudence
 1. A new synthesis of law – the legal process school
 (optional: Fuller, Boorstin, Llewelyn, Peller, Hart & Sacks, on reserve)
- 10/11* 2. Process theory & constitutional law – 246-85 (Wechsler (some required, some optional, as noted in the materials), Ely, Koppelman, Peller
 (optional: additional Ely, on reserve)

Review/Q&A re Paper No. 1

[End of Volume I]

* Heavy reading assignment for this class (either difficult material or lengthy pieces – or both)

- 10/16 C. Law and Economics
1. The theory (Posner, Calabresi) – 1-14 (optional: Posner, on reserve)
- 10/18 **Paper No. 1 Due, at 5pm**
2. Critiques (Baker) – 15-27
- 10/23 D. Critical Legal Studies
1. Overview (Gordon) – 28-36 (optional: Dalton, on reserve)
2. The indeterminacy/irrationalist argument (Boyle) – 37-48
3. The critique of rights – please review Kennedy’s discussion of rights analysis, in Vol. I, pp.40-41)
- 10/25 4. Critique of the public/private dichotomy (Olsen) – 49-69
- 10/30 5. Critiques of CLS (Fiss) – 70-81
(optional: J. Williams, on reserve)
- 11/1* E. Modern Liberal Legal Thought (Rawls, Matsuda) – 82-111

[Paper No. 2 Assigned – Due End of Exam Period (Dec.13, 4pm)]

- 11/6 F. Feminist Legal Thought
1. Equality Theory (Cal.Fed. v. Guerra, ACLU brief, brief by Coalition for Reproductive Equality, MacKinnon) – 112-35
- 11/8 2. Sex Stereotyping & Gender Discrimination (Avery & Crain) – (class handout)
- 11/13* G. Critical Race Theory: Affirmative Action and the Challenge to “Colorblindness” (Gotanda, Parents Involved) – to be handed out in class
- 11/15* H. Intersectionality Theory (Crenshaw, MacKinnon) – 136-61
- 11/20* I “Queer” Theory (Yoshino) – 162-88
- 11/22 [No Class – Thanksgiving Break]
- 11/27 **Review/Q&A re Paper No. 2**
- TBA Catchup Day (makeup class for 10/4– to be scheduled above if & when needed]

[Reminder: Paper No. 2 Due Last Day of Exam Period (Dec. 13), 4pm]

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