

## The Nature of Law

CUNY Graduate Center, Department of Philosophy

Samir Chopra (schopra@brooklyn.cuny.edu)

Monday: 6:30 – 8:30 PM

### Class Requirements:

- Weekly reading
- A weekly 500-word response to the assigned readings (60%). These should serve as the basis for our in-class discussions.
- A 3000-4000 word term paper (the remaining 40%). Final papers are due a week after the last class of the semester. (Incompletes are bad for your soul.)

### Texts and Readings:

1. February 2<sup>nd</sup>: Introduction. Classical Natural Law:

(1) Thomas Aquinas, Questions 90-97, *Summa Theologica, Treatise on Law*:

<http://dhspriority.org/thomas/summa/FS.html#TOC09>;

Recommended:

John Finnis, *Natural Law and Natural Rights*, Oxford University Press, 2011

2. February 9<sup>th</sup>: Positivism:

(1) H. L. A Hart, *The Concept of Law*, 2<sup>nd</sup> edition, Oxford University Press, 1997,

(Chapters 1-7, 9);

(2) J. Austin, *The Province of Jurisprudence Determined*, Cambridge University Press,

1995, Lectures I and V.

3. February 18<sup>th</sup>: The Hart-Fuller Debate:

(1) H. L. A. Hart (1958). "Positivism and the Separation of Law and Morals". *Harvard*

*Law Review* 71 (4): 593–629. doi:10.2307/1338225;

(2) Fuller, Lon L. (1958). "Positivism and Fidelity to Law — A Reply to Professor Hart". *Harvard Law Review* 71 (4): 630–672. doi:10.2307/1338226;

(2) Lon L. Fuller, *The Morality of Law*, Yale University Press, 1969, Chapters 2 and 3.

4. February 23rd: The Debate Continues:

(1) Ronald Dworkin, *Taking Rights Seriously*, Harvard University, 1998, Chapters 1-5 and Appendix; *Law's Empire*, Harvard University Press, 1986, Chapters 1 and 3;

(2) HLA Hart, Postscript, *The Concept of Law* pp. 238-276.

Recommended:

(1) Jules Coleman ed., *Hart's Postscript: Essays on the Postscript to the Concept of Law*, Oxford University Press.

5. March 2nd: Oliver Wendell Holmes' Positivism to Legal Realism:

(1) Holmes, The Path of the Law, 10 *Harvard Law Review* 457 (1897);

(2) Holmes, Law in Science and Science in Law, 12 *Harvard Law Review* 443 (1899);

(3) Holmes, Natural Law, 32 *Harvard Law Review* 40 (1918);

(4) Excerpt from: Holmes, *The Common Law*, in Fisher et. al (below).

Recommended:

(1) Holmes, *The Common Law*, Dover, 1991;

(2) B. Cardozo, *The Nature of the Judicial Process*, Yale University Press, 1960.

6. March 9<sup>th</sup>: Legal Realism: Fisher, Horwitz and Reed eds., *American Legal Realism*, Oxford University Press, 1993. Sections 1, 2, 5, 6, and 7.

7. March 16th: Critical Legal Studies I:

(1) James Boyle (ed.), *Critical Legal Studies*, NYU Press, Chapters 1-5, 7, 12-13;

(2) Duncan Kennedy interview:

<http://duncankennedy.net/documents/New/Legal%20Intellectuals%20in%20Conversation--Critical%20Legal%20Studies.pdf>.

8. March 23<sup>rd</sup>: Critical Legal Studies II:

(1) Hutchinson (ed.), *Critical Legal Studies*, Introduction and Chapters 6, 9, 12, 16;

(2) Duncan Kennedy, The Critique of Rights in Critical Legal Studies:  
<http://duncankennedy.net/documents/The%20Critique%20of%20Rights%20in%20cls.pdf>.

(3) John Finnis, "On the Critical Legal Studies Movement", 30 *American Journal of Jurisprudence* 1985  
[http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1854&context=law\\_faculty\\_scholarship](http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1854&context=law_faculty_scholarship).

Recommended:

(1) Duncan Kennedy, *A Critique of Adjudication [fin de siècle]*, Harvard University Press, 1998;

(2) Roberto Mangabeira Unger, *What Should Legal Analysis Become*, Verso, 1996, pp. 26-134.

9. March 30<sup>th</sup>: Critical Race Theory I: Crenshaw, Peller, Thomas, Gotanda eds., *Critical Race Theory: Key Writings That Formed the Movement*, New Press, 1996.

(1) Intro: xiii-xxxii;

(2) Bell (5-20), Bell (20-29), Freeman (29-46);

(3) Part 2 (Matsuda, Dalton, Cook, Crenshaw);

(4) Lawrence III (235-257); Gotanda (257-276); Bell (302-312).

10. April 13<sup>th</sup>: Critical Race Theory II: The Legal Construction of Race: Ian Haney Lopez, *White By Law: The Legal Construction of Race*, New York University Press, 1997, Chapters 1-5.

11. April 20<sup>th</sup>: Feminist Legal Theory I: Bartlett, K. and R. Kennedy (eds.), 1991. *Feminist Legal Theory*, Boulder: Westview Press, Parts 2 and 3.

12. April 27<sup>th</sup>: Feminist Legal Theory II: D. Kelly Weisberg (ed.), *Feminist Legal Theory*, Temple University Press. 1993. Parts 1 and 5.

13. May 4<sup>th</sup>: Legal Pragmatism I: Richard Posner, *The Problems of Jurisprudence*, Harvard University Press, 1993.

14. May 11<sup>th</sup>: Legal Pragmatism II:

(1) Richard Posner, *How Judges Think*, Harvard University Press, 2010. Part 1; Part 2 (Chapters 7, 8, 9).

(2) Richard Posner, *Overcoming Law*, Harvard University Press, 1995. (Intro, 1, 3, 5, 7, 11, 12, 19).

**Legal Theory Bibliography:**

An excellent, comprehensive bibliography may be found at:

<http://ratiojuris.blogspot.com/2009/09/philosophy-of-law-legal-theory-basic.html>