

LEGAL THEORY  
F 8:30AM-11:20AM  
PSC 411C  
WRI C237

Professor Jerry L. Simich  
WRI A206  
Office Hours Friday 7:30AM-  
8:30AM & 11:20AM-11:50AM &  
by appointment  
jerry.simich@unlv.edu  
895-0403(office)

**The Course:** This course will focus primarily on the relationship between law and morals. This relationship was a vital concern to the ancients and it remains so in the present. Some schools of legal philosophy or jurisprudence, such as natural law, maintain that morality is the essence of law while others, legal positivism for example, argue for a conceptual separation of law from morals and that law can be identified and understood without having to satisfy moral criteria.

We will begin the course by reading and discussing representatives of the different schools of legal thought. We will also read and discuss court cases dealing with manifold issues of law and morality.

**Learning Outcomes:** Increase student understanding of the concept of law, especially natural law and legal positivism. To understand the relationship between law and morality

**Books to be purchased:** None

**Materials:** Reading material can be found on E-Reserves in two different sets. One is called Legal Theory: Collection, the other is a separate set of readings (B). Please refer to the syllabus "Topics and Readings."

**Course Requirements and Grading:** Grades will be based on examinations and oral participation in class. There will be two exams, a midterm and a final (12/11/09). The date for the midterm will be announced at least one week in advance. The final exam is not comprehensive. Three examinations at 30% each and classroom participation is worth 10%.

**Topics and Readings:** Assignments and dates for the readings will be announced in class the week before.

**Natural Law:**

Ancient Thinkers: Xenophon, Plato, Aristotle, Sophocles, Demosthenes, Cicero, Gaius.

Collection 1-3

Find points of commonality in the writings.

Natural Law in Various Traditions: Sundaram (Hindu), Shih (Chinese), Freehof (Jewish), Hakim (Islam), Collection 4-7

Find points of agreement.

St. Thomas Aquinas, "Law as an Ordinance of Reason" (B)

John C. Wu, "The Natural and the Positive Elements in Human Law," and "A Note on Law and Equity," Collection 8-10 & Wu, "Justice and Relation to Natural Law,"

Collection 11-12

William Blackstone, Commentaries, Collection 13

How does Blackstone define the law of nature?

Peter Stanlis on Edmund Burke, Collection 14

How does Stanlis interpret Burke on arbitrary power and natural law?

A.L. Goodhart “English Law and the Moral Law,” Collection 15

Find examples of how law influences morality.

John C. Wu, “The Eclipse of the Natural Law Tradition,” Collection 16

What is Judge Frank’s point?

Gregg Ivers, “Natural Law,” Collection 18

Note the different cases of natural law, accommodation to Ivers, our Constitution is a product of legal positivism. Why?

John Finnis, “Natural Law and Natural Rights,” (B)

Lon Fuller, “The Morality of Law”

Martin Luther King Jr., “Letter from a Birmingham Jail”

#### Cases on Law and Morals: Collection

*Union Pacific Ry v. Cappier* (1903) 19-20

*DePue v. Flateau* (1907) 21

*Bird v. Holbrooke* (1828) 22

*Sipp v. Coleman* (1910) 23

*Moore v. Strickling*(1899) 24-25

#### **Legal Positivism:**

Fred Schauer, “Legal Positivism,” (B)

H.L.A. Hart, “Austin, John,” (B)

John Austin, “Law as the Sovereign’s Command,” (B)

Henry Sumner Maine, “The Limits of the Analytical System,” (B)

H.L.A. Hart, “Obligation and Coercion,” (B)

#### **Legal Realism as Legal Positivism:**

O.W. Holmes Jr., “The Law as Predictions of What the Courts Will Do,” (B)

John Chipman Gray, “The Judge as Law Giver,” (B)

#### **Recent Legal Positivism:**

Hans Kelsen, “The Pure Theory of Law,” (B)

H.L.A. Hart, “Law as the Union of Primary and Secondary Rules”

Tracy McMillan, “Looks Good on Paper”

Leo Kanowitz, “The Place of Sanctions in Professor Hart’s Concept of Law”

C. Gordon Post, “Stare Decisis: The Use of Precedent”

Edward H. Levi, “Statutory Interpretation”

“Interpreting the Mann Act”

*Caminetti v. U.S.* (1917)

*Mortensen v. U.S.* (1944)

*Cleveland v. U.S.* (1946)

#### **Ronald Dworkin’s Critique of Legal Positivism:**

Anonymous, Ronald Dworkin and Law as Integrity,” (B)  
Ronald Dworkin, “Is Law a System of Rules?” (B)

### **Personal Rights:**

#### Cases:

<i>Buck v. Bell</i> (1927) <u>Collection</u>	39-40
<i>Griswold v. Connecticut</i> (1965)	(B)
<i>Roe v. Wade</i> (1973)	(B)
<i>Bowers v. Hardwick</i> (1986) <u>Collection</u>	34-38
<i>Lawrence et al v. Texas</i> (2003)	58-60
<i>Boy Scouts of America v. Dale</i> (2000) <u>Collection</u>	41-44

Robert Bork, “The Right of Privacy,” (B)

Patrick Devlin and H.L.A. Hart Debate: “Is Legal Moralism Justified?” (B)

#### In Re Matters of Race: Cases: Collection

<i>U.S. v. The Schooner La Jeune Eugenie</i> (1822)	45
<i>People v. Hall</i> (1854)	46
<i>Perez v. Lippold</i> (1949)	47-48
<i>Loving v. Virginia</i> (1967)	49
<i>Korematsu v. U.S.</i> (1944)	50-54

### **Contemporary Perspectives: Critical Legal Studies:**

Robert Unger, “The Rule of Law”

Patricia Smith, “Feminist Jurisprudence”

Susan Estrich, “Feminist Jurisprudence”

**Academic Misconduct** – “Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV’s function as an educational institution.”

An example of academic misconduct is plagiarism: “Using the words or ideas of another, from the Internet or any source, without proper citation of the sources.” See the “Student Academic Misconduct Policy” (approved December 9, 2005) located at:

<http://studentlife.unlv.edu/judicial/misconductPolicy.html>.

**Copyright** – The University requires all members of the University Community to familiarize themselves and to follow copyright and fair use requirements. **You are individually and solely responsible for violations of copyright and fair use laws. The university will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws.** Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. To familiarize yourself with copyright and fair use policies, you are encouraged to visit the following website:

<http://www.unlv.edu/committees/copyright/>.

**Disability Resource Center (DRC)** – It is important to know that over two-thirds of the students in the DRC reported that this syllabus statement, often read aloud by the faculty during class, directed them to the DRC office.

The Disability Resource Center (DRC) coordinates all academic accommodations for students with documented disabilities. The DRC is the official office to review and house disability

documentation for students, and to provide them with an official Academic Accommodation Plan to present to the faculty if an accommodation is warranted. Faculty should not provide students accommodations without being in receipt of this plan.

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The DRC is located in the Student Services Complex (SSC), Room 137, and the contact numbers are: Voice (702) 895-0866, TDD (702) 895-0652, fax (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>.

**Religious Holidays Policy** -- Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor no later than the last day at late registration of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. This policy shall not apply in the event that administering the test or examination at an alternate time would impose an undue hardship on the instructor or the university which could not be avoided.

<http://catalog.unlv.acalog.com/content.php?catoid=1&navoid=44&bc=1>

**Tutoring** -- The Academic Success Center (ASC) provides tutoring and academic assistance for all UNLV students taking UNLV courses. Students are encouraged to stop by the ASC to learn more about subjects offered, tutoring times and other academic resources. The ASC is located across from the Student Services Complex, #22 on the current UNLV map. Students may learn more about tutoring services by calling (702) 895-3177 or visiting the tutoring web site at: <http://academicsuccess.unlv.edu/tutoring/>

**UNLV Writing Center** – *The following statement is recommended for inclusion in course syllabi:*

One-on-one or small group assistance with writing is available free of charge to UNLV students at the Writing Center, located in CDC-3-301. Although walk-in consultations are sometimes available, students with appointments will receive priority assistance.

Appointments may be made in person or by calling 895-3908. The student's Rebel ID Card, a copy of the assignment (if possible), and two copies of any writing to be reviewed are requested for the consultation. More information can be found at: <http://writingcenter.unlv.edu/>