



HON 251/COM 429: OXBRIDGE LECTURE SERIES

WHAT SHOULD THE LAW *DO*?

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Meet: T/Th 3:30-4:45 p.m.
Where: LAU 113 (and other places)

Course description



This course explores the questions, “What should law do?” and “How should law do it?” Put another way, the course asks what a citizen should look to law to reasonably accomplish, and how law should go about accomplishing these desired outcomes. In so doing, the course seeks to help students think about the nature of law and, in order to think through this critically, to step outside the realm of law.

As part of this pursuit, we will identify and question the assumptions and values implicit in U.S. jurisprudence in particular, realizing that U.S. law is one way to “do law,” but not the only way, even in the Western tradition. In exploring what law can or should do, the course also asks students to hone their own understandings of liberty, and to think through notions of sovereignty, power, coercion, citizenship, community and national identity.

Course Introduction

Some of the fun of this course is in examining where we (the first-person plural here refers to U.S. citizens) came from and how we sought to constitute ourselves as a nation, an enterprise that, as John Adams put it, assumes a primacy of and for law. Adams famously said that the United States should be regarded and constituted as a government of laws, not people. More than two centuries later, law could perhaps be described as a sort of secular religion or civic faith. The motion picture “National Treasure” romanticized this sacral relationship in its depiction of the Declaration of Independence as like a biblical scroll, with mystical qualities and hidden, coded meanings.



American identity seems peculiarly dependent on the idea of law and on something we call “the rule of law.” Indeed, Americans swear fealty to “the rule of law,” though seemingly no two people hold the phrase to mean precisely the same thing. That “the rule of law” could mean so many different things speaks to the fact that the law is neither a matter of revealed truth nor

a natural order. Rather, law is “a way of organizing a society under a set of beliefs that are constitutive of the identity of the community and of its individual members” (Paul Kahn, *The Cultural Study of Law*, 6). The law is a way of understanding that community as both a product of that community’s history and as constitutive of a certain kind of existence.

This course, then, seeks to help examine and question the hermetically sealed U.S. legal profession to ask why the law is the particular way it is and not some other way. Legal study in and by law schools is treated as a subject for professionals and practitioners only. Students are taught how to *use* the law as an accomplished fact, as something to be manipulated. In sharp contrast, this course, as an enterprise in the humanities, will encourage students to think about law as something that isn’t fixed, as something that is always changing in relationship to society and culture, and as a way a society sees itself.

The course will also examine, among other things, the relationship between “official law” and the lives of the people the law is supposed to regulate. Why do Americans pay taxes, but routinely speed and jaywalk? Does the law facilitate or slow the growth of, say, technological innovation or scientific development? Why do Americans simultaneously acknowledge inequities in the law and, by and large, obey it, even revere it? The course will ask students to think about how the law changes, including how social forces precipitate legal change, and how as a cultural system the law reflects and embodies the debates and divisions of the culture. That the law is utterly undone and at the same time an accomplished, complete *fact* is a riddle we will seek to understand.

Specific Learning Outcomes

- A better understanding of what law is, how it is made, what society looks to law to accomplish, and how law achieves (or fails to achieve) those goals
- Familiarity with U.S. law’s founding documents
- Critical and close reading skills
- Ability to read and understand court cases and legal briefs
- A better understanding of liberty, sovereignty, power, coercion, citizenship, national identity
- An appreciation for law as literature, as performance, as competition and as culture

Course requirements

- Response papers (roughly 2 pages each)
- Final, comprehensive capstone paper (roughly 10 pages)
- Leadership of discussion (frequency dependent on enrollment)

- Participation in discussion (each and every class)
- Professionalism, leadership, civility and citizenship

Leading discussion will make the students experts on at least those few readings on which they are facilitating discussion, and it will inspire participation every week, because all will have to depend on each other for a vibrant session. In addition, short reading quizzes might be administered to encourage careful reading.

Each student will post to the class blog, on the web at (<http://wanderingrocks.wordpress.com>), using the blog to respond to readings, discussions, films, speakers and each other. In striving to develop critical and analytical thinking skills and habits, students will summarize, evaluate and engage with ideas they encounter in both the readings and in discussion.

The course's **capstone project** will be to devise a system of law for a hypothetical new society, one that wishes to cull from the best thinking of the generations to create the greatest system of law on earth, or at least a darned good one. This project will involve investigation and contemplation, and it will ask students to reason out a solution, basing that solution on philosophical, moral and legal thought, precedent and practice.



How students will be graded

Response papers	40%
Final paper (capstone project)	25%
Discussion participation, including blog posts	15%
Discussion leadership	10%
Professionalism	10%
TOTAL	100%

A theory about human nature and grading: Most human beings turn out average work most of the time. Many can do superior work. Of that many, most could do excellent work. The factors involved are obvious: native intellect, gifts from the gods, interest, desire to succeed, desire to learn, discipline and old-fashioned hard work. The first two are beyond our control. The others are within our control.

To compute your final grade, add up your point totals, apply the appropriate percentages, refer to the grading system summarized here:

A = 93-100	A-= 90-92	B+=88-89	B=83-87
B- = 80-82	C+= 78-79	C=73-77	C-=70-72
D+= 68-69	D=60-67	F=59 and below	

Definitions of the grades can be found in the Berry College Catalog. “A” students will demonstrate an outstanding mastery of course material and will perform **far above** that required for credit in the course and **far above** that usually seen in the course. The “A” grade should be awarded sparingly and should identify student performance that is relatively unusual in the course.

Attendance/class participation

It should be obvious, but students are required to be in class. Recognizing that illness or personal problems may cause one not to be able to come to class, an absence and/or lateness is allowed before your course grade is affected. Unless credible, extreme circumstances arise that cause more than the one absence or lateness, any absence beyond the two will result in a point deduction from the professionalism-participation portion of the course grade.

In addition, students are required to bring relevant readings and other materials to class as outlined elsewhere on daily syllabus. Failure to have copies of assigned reading materials could also result in professionalism-participation deductions.

Decorum

Distractions, including those caused by and embodied in digital devices: Your professor is easily distracted; ringing cell phones, therefore, will be lobbed out of the classroom window and/or run over with a truck. Texters will be publicly humiliated. Late arrivals will be stared down. In short, be professional and civil, pay attention and don't distract anyone, including the professor. If you are unsure as to what “civil” means, the professor is happy to elaborate.



Complete the assignments and be ready to tackle the activities of the day. Be ready to discuss and debate ideas, approaches and opinions, and make sure you have closely read the assigned texts.

Because academic integrity is the foundation of college life at Berry, academic dishonesty will result in automatic failure on the assignment in question. Academic dishonesty includes, but is not limited to, the following: cheating, unauthorized collaboration, plagiarism, fabrication, submitting the

same work in multiple courses, and aiding and abetting. For definitions of these terms, please consult the instructor. Students who are sanctioned for violating the academic integrity policy forfeit the right to withdraw from the class with a grade of “W.”

What you will need

- Reserve readings
- Class blog: <http://wanderingrocks.wordpress.com>
- Class webpage: <http://cubanxgiants.com/berry/law>

Stuff you need to know

Instructor: Dr. Brian Carroll, Laughlin 100

Office phone: 706.368.6944 (direct)

E-mail: bc@berry.edu | bc@unc.edu

Home page: <http://www.cubanxgiants.com>

Office hours: MWF 10-noon; T/R 1-3pm | by appointment | walk-ins welcome

Writing requirements

You will be writing throughout the semester, realizing that writing IS thinking. It's difficult to write every day; it's even more difficult to write poorly every day. As your writing improves, so will your thinking, which will produce yet better writing. It is a virtuous cycle.

The course asks you to write in three basic forms or formats: two-page response papers, a deep analysis of roughly 10 pages, and short, discursive comments to the class blog, wanderingrocks.wordpress.com. These various writing assignments will invite you to engage in the pursuit of course goals as outlined above. The response papers should not be considered an informal diary of cryptic, vague thoughts, randomly recalled as they are inspired by a muse. Rather, they should be a deliberate and systematic analysis of ideas written in complete sentences and well-developed paragraphs.

To give you a sense of the kinds of writing you will be doing, below are a few possibilities for writing emphases in your response papers. The list is not comprehensive, but it should help you begin thinking about what to write (and how to write):

1. Consider significant arguments that cause you to think, to recognize a new perspective on or a new analysis of some idea/issue. In this type of response, you would define what the key idea is and then explain or analyze how and why that idea is significant to other parts of the article or to larger issues under discussion in the class. In this type of paper, you will not re-tell, re-

phrase or merely summarize what you have read. Instead, you will explain and analyze what ideas in the passages are provocative, new, troubling, brilliant and/or insightful. Identify and react to these “must be grasped” ideas, concepts and perspectives to retrieve from the article its essential ideas. Include **why** they are significant.

2. Think about and comment on some of the **implications** of one or more specific ideas in the article: implications for other articles we have read and their key ideas; for your own understanding of the idea discussed in the article or for related ideas you have previously held; for values and beliefs related to our law; for your own understanding, values, beliefs, and behaviors as any one or more of those relate to some as part of the question, “What should law do?”

3. Once we’ve read a few articles, I will ask you to write about how you see how two or more of the articles or texts interact or intersect. What is it you have noticed? Why is it intellectually engaging? What are some questions and issues that have arisen directly from readings or class discussion that you want to pursue further?

For all of the ideas and themes above, **DO NOT WAIT UNTIL THE NIGHT BEFORE TO WRITE YOUR PAPERS.** As Ernest Hemingway put it: “All first drafts are sh--.” And remember rule one of and for writing: “Sit your butt in the chair.”

Revisions of earlier ideas/analyses might also be required. You will get fair warning on when these will be due, and which papers you are to revise. These revisions (think ‘re-VISIONing,’ seeing anew) are critical, both for discussion and for your own journey.

Calendar of class sessions

Available online at <http://www.cubanxgiants.com/berry/law>