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SOCG205
Thursday 7-9
Fall 2005

Theoretical Perspectives in Law, Policy, and Society

Subject

Since, as Alexis de Tocqueville pointed out in the 1820's, "lawyers are the natural aristocracy of a republic," attorneys play an enormous role in shaping the American social structure. Law is not simply a set of formal rules, it is a battleground of social theory. This course contrasts several major schools of thought about the relationships between law, public policy and social experience. The differing assumptions about the law in formalism, legal realism, originalism, pragmatism, social choice theory, law and economics, Marxism, critical legal studies, communitarianism, conflict theory and natural law will be examined in order to reveal their theoretical bases and their policy-making implications. Each school will be presented with attention to how its scholars claim to know what they know, how its theories are created, tested, and evaluated, the range of issues that are regarded to fit to study, and how research agendas are set. We will also look in depth at Sociological perspectives on law and the origin of the notion that government should be constrained by law.

There are no formal prerequisites but students without a background in either law or policy research will have to work hard to keep up. This course is required for all Law, Policy and Society Ph.D. students but is open to others. The course is organized so that students will share their intellectual strengths through group projects.

Readings

Weeks 1 through 2: Foundations of the Law: An Interdisciplinary and Judicial Primer by Bailey Kuklin and Jeffrey W. Stemple. Pick an area of specialization and begin working in coordination with your group.

Weeks 2 and 3: Readings: Sociological Perspectives on Law; Packet available at Gnomon Copy Shop on Huntington Avenue

Weeks 4 and 5: On the Rule of Law: History, Politics, Theory by Brian Tamamaha

Weeks 6 and 7 In Defense of Tort Law by Thomas Koenig and Michael Rustad.

Weeks 8 and 9 Rights vs. Public Safety After 9/11 edited by Amitai Etzioni et al.

Week 10 Law's Order: What Economics Has to Do with Law and Why It Matters by David Friedman

Weeks 11 and 12 Law, Pragmatism and Democracy by Richard Posner (get paperback edition scheduled to be issued in October 2005).

Weeks 13 and 14 Legal Education and the Reproduction of Hierarchy: A Polemic Against the System by Duncan Kennedy

There will also be readings to be assigned by the presenting groups.

Requirements

During the first four weeks, we will lay out the general debates in the area of law, policy and society. Emphasis will be on the perspectives about the societal role of law championed by major social thinkers ranging from pre-Christian thinkers of ancient Greece, Egypt, and Rome to the present. Because the topic is so broad, this introductory phase will have to be quite superficial. The remainder of the course will take us into the contemporary debates between the most powerful schools of legal thought. The packet of readings and the On the Rule of Law book will provide a history of social analysis of the role of law. The remaining books will provide sharply opposing views of the nature of the law and its relationship to public policy.

There are 4 assignments:

- (1) Students will divide into four groups. Each group will take responsibility for leading the class through one viewpoint. The presentation should briefly summarize the paradigm and clear up any contradictions and difficult points. Readings should be provided for the class. Contrast the views of each author about this perspective and explore the policy implications of the author's position. Students will have to do research on their chosen field and read beyond the class syllabus. Many of the best presentations have shown how members of the group employ these concepts in their jobs and everyday life.
- (2) Each group will produce a set of comprehensive notes on the paradigm they present. The group will produce copies for every member of the class. These notes will be useful when students take their comprehensive exams. This packet will also free students from the need to write down what the panel says so that they can participate in the class discussion rather than take a passive role.
- (3) LPS students will write a take-home final in which issues from the course will be applied to a social or policy question of your choice. The paper will approach a topic of your choice from several different perspectives. Non-LPS students can choose either the take home final or to write a research paper.
- (4) Each student will also write a two to three page review of a 2005 book dealing with a legal issue. This review will summarize the argument of the author, describe the reading level, and briefly evaluate how the book might be used. The best reviews will be published in The Bi-Monthly Review of Law Books. I expect that most (if not all) students will have their reviews published.