Positive Political Theory of Law
Political Science 104L
Peterson 104

Darren Schreiber
Winter 2011
Social Science Building 367
(858) 534-1854
dmschreiber@ucsd.edu

Class Meets: Wednesday, 5:00 p.m. – 7:50 p.m.
Office Hours: Wednesday, 2:00 – 3:00 p.m.

My Mission as a Teacher:
“To enable my students to learn joyfully, think clearly, read carefully, and write well.”

Abstract
While we begin with ancient conceptions about the fundamental nature of law, we will end by looking at the most recent thinking as influenced by new work in neuroscience. We still wrestle with questions of justice and responsibility that Moses, Hammurabi, and Lao Tzu faced as we move into an age of brain imaging and genome mapping.

Books
H.L.A. Hart The Concept of Law second edition (1997)($38.00)

Topics and Readings
Meeting 1.0 (Wednesday, January 5th) – Introduction
Lon Fuller’s “The Case of the Speluncean Explorers” (27 pages)
Martin Luther King, Jr., “Letter from a Birmingham Jail.” (12 pages)

Meeting 1.5 (Wednesday, January 5th) – Divine and Natural Law
Moses, Exodus 19-24 (8 pages)
L.W. King “Code of Hammurabi” (10 pages)
Wing-Tsit Chan “The Natural Way of Lao Tzu” (15 pages)
Benjamin Hoff “The Tao of Pooh” (24 pages)

Meeting 2.0 (Wednesday, January 12th) – Legal Formalism
Ernest Weinrib (1988) “Legal Formalism: On the Immanent Rationality of Law” (49 pages)

Meeting 2.5 (Wednesday, January 12th) – Legal Realism
Karl Llewellyn “A Realistic Jurisprudence – The Next Step” (24 pages)

Meeting 3.0 (Wednesday, January 19th) –
H.L.A. Hart The Concept of Law Preface, Chapter 1 (15 pages)

Meeting 3.5 (Wednesday, January 19th) –
H.L.A. Hart The Concept of Law, Chapter V (12 pages)
Meeting 4.0 (Wednesday, January 26th) –
First Paper Due (5 pages)
H.L.A. Hart The Concept of Law, Chapter VI (17 pages)

Meeting 4.5 (Wednesday, January 26th) –
H.L.A. Hart The Concept of Law, Chapter VII (23 pages)

Meeting 5.0 (Wednesday, February 2nd) –
Ronald Dworkin Law’s Empire, Chapter 1 (44 pages)

Meeting 5.5 (Wednesday, February 2nd) –
Ronald Dworkin Law’s Empire, Chapter 2 (42 pages)

Meeting 6.0 (Wednesday, February 9th) –
Ronald Dworkin Law’s Empire, Chapter 3 (27 pages)

Meeting 6.5 (Wednesday, February 9th) –
Ronald Dworkin Law’s Empire, Chapter 4 (37 pages)

Meeting 7.0 (Wednesday, February 16th) –
H.L.A. Hart The Concept of Law, Postscript (34 pages)

Meeting 7.5 (Wednesday, February 16th) – Discussion and Midterm review

Meeting 8.0 (Wednesday, February 23rd) – Midterm
Jurisprudence and the Brain

Meeting 8.5 (Wednesday, February 23rd) –
Daniel Dennett Freedom Evolves, Chapters 1 & 2 (62 pages)
Jeffery Rosen, “The Brain on the Stand” NY Times (14 pages)

Meeting 9.0 (Wednesday, March 2nd) –
Micheal Gazzaniga and Megan Steven, “Free Will in the 21st Century” (19 pages)
Jonathan Fugelsang and Keven Dunbar “A cognitive neuroscience framework for the understanding of causal reasoning and the law” (6 pages)

Meeting 9.5 (Wednesday, March 2nd) –
Morris Hoffman “The neuroeconomic path of the law” (10 pages)
Joshua Greene and Jonathan Cohen “For the law, neuroscience changes nothing and everything” (11 pages)
Stephen Morse, “New Neuroscience, Old Problems” (41 pages)

Meeting 10.0 (Wednesday, March 9th) –
Patricia Smith Churchland “A review of The Ethical Brain by Michael Gazzaniga” (7 pages)
Patricia Smith Churchland “Moral Decision-Making and the Brain” (27 pages)
Meeting 10.5 (Wednesday, March 9th) –

**Second Paper Due (10 pages)**
Oliver Goodenough and Kristin Prehn “A neuroscientific approach to normative judgment in law and justice” (18 pages)
Oliver Goodenough “Responsibility and punishment: whose mind? A response” (5 pages)

**Final Exam** (Monday, March 14th) – 7:00 p.m. – 9:59 p.m.

**Assignments & Grading**

40% -- Two Papers (5 pages (13%) and 10 pages (27%))
25% -- Midterm Exam
25% -- Final Exam
10% -- Five Quizzes (you can drop one)

D  Regurgitation – Like an infant, you are good at spitting it back out.
C  Basic – Applying the facts and skills "as is."
B  Intermediate – Applying the facts and skills to new problems or situations.
A  Advanced – Asking counter-factual questions, modifying or changing operative principles to illustrate command of the core-principles in challenging contexts.

**Grade Changes and Extensions**
All requests for grade changes must be made formally to your teaching assistant. Requests must be typed, double spaced, and include precise textual citations that support your contention. A review of any grade may result in either a higher or a lower grade. Extensions on assignments and make-up exams will only be granted in cases of documented illness or family medical emergencies. Please contact your teaching assistant as soon as possible if you need to request one.

**Late Policy**
Papers are due at the beginning of class. 2% bonus if an assignment is turned in more than 25 hours early. A 5% penalty applies for any papers turned in after the beginning of class, with a 5% additional penalty for each day an assignment is turned in late. No papers will be accepted electronically. A paper is not submitted until I have a physical copy of it.

**Plagiarism**
Fidelity to ones’ own ideas and the ideas of others dictates that proper citation be made for any work or idea of another. If I believe that you have violated this principle, I will change from being your advocate to being your prosecutor and I will seek the strongest penalty consistent with university policy.