INTRODUCTION

Legal Studies 250 is an introduction to the multi-disciplinary study of law and its role in society. We will be concerned with fundamental and enduring questions about the nature and functions of law, its effect upon human conflict, and its relationship to culture as a whole. We will look at law as a human construct, an artifact that expresses both the strengths and the weaknesses of culture and of the human condition. We will be concerned with the nature of the rule of law, not with the substantive content of the rules of law.

The course is not primarily about legal issues currently in the news, though we will certainly have to talk about some of them in order to understand more broadly the way law works, or why it does not. We must recognize that we live in dangerous times, in which national security, our constitutional rights, and an honest and rational public discourse are very much at risk. We will find it impossible, therefore, to ignore the contemporary implications of our study of law and society. But be aware that you will find no help in the syllabus for what to do if you get busted for illegally downloading music files or if your landlord refuses to return your security deposit, though we will probably talk about our culture’s attitude toward power and authority.

We will not be wringing our hands about all the times that an orderly legal process has protected an unfair social arrangement; but we could hardly have an honest discussion about law and society without exploring the tensions between law and justice. Most of us want to believe that the law has expressed the best in our culture; and we expect that the rule of law will continue to serve as a tool adequate to the protection of a humane and civilized existence. We shall have to discuss why these beliefs and expectations have been and are likely to remain so frequently frustrated. We will have to demystify the law.

As an introductory, liberal arts course that satisfies certain general education requirements, Legal 250 surveys many topics, focuses on a few, and moves fairly quickly. You may be relieved to get off a particular topic quickly or frustrated when a topic of interest ends before it has been explored fully. This course is usually an interesting experience for me as well as for most students. In spite of the number of students enrolled, we will not proceed by the traditional lecture method. Rather, we will try to create discussions and other interactive work wherever possible. If this experience is to be anything more to you than “doing academic time,” it will require that you engage in focused reading, careful thought, and active participation.

My expectations include, but are not limited to the following: 1) trying to introduce you to Legal Studies as a discipline and to get you interested in and engaged with the enduring questions about law and society that are at its core; 2) helping you to conclude, in a reasoned way and with some passion, that law is so fundamentally public that it is too important—not only to our social lives but to our private lives—to be left to lawyers; 3) enhancing your analytic abilities, critical thinking skills, writing quality, and resourcefulness; 4) increasing your respect for scholarship, evidence, reason, intellectual honesty, opposing viewpoints, and the ability to identify with the humanity of all persons; and 5) hoping that you will appreciate that both teaching and learning are subversive activities in which intellectual confusion and discomfort are sometimes the necessary precursors of useful learning.
There are very few “right answers” to the complex and ambiguous problems of dealing with human conflict. I consider it my job, therefore, to help you understand and become engaged in thinking about issues of law and society without prescribing what conclusions you should reach about them. I have strong and what I hope are carefully considered views about some of these issues, and I will not pretend otherwise. But you will not be required to agree with me in order to do well in this course.

You should consider it your job to focus primarily on analyzing the issues central to the course. Try to gain an overall understanding of the multi-disciplinary nature of the legal studies inquiry into law and society. Avoid the feeling that you need to memorize a list of facts about law or a flow chart of the judicial or legislative systems. I do want you to grasp the structure of legal institutions and processes, and I want to be responsive to your questions about these basics of formal law; but I do not want to pretend that these “facts” are anything more than a relatively small part of our enterprise this semester.

Central themes appear and reappear throughout. The course may seem circular at times, and confusion is to be regarded as the ally of a thoughtful inquiry, not the enemy of the drive to get good grades. The novel at the end of the course is there to help you draw the themes of the course together. The syllabus is subject to change in response to class discussion or outside developments relevant to the study of law and society. It will be your responsibility to be aware of any changes. This syllabus is available online and will be changed as necessary. You should check the course web page periodically.

Participation, Active Learning, Useful Feedback, and Respect for Our Limited Time Together

Your participation in discussion and your active engagement with all parts of your own learning are essential to this course. This is not only because active learning works well generally, but because of the nature of Legal Studies. The study of law and society requires many different modes of understanding and echoes many questions that have occupied humans for centuries. Such subjects admit of few pat answers. I also know that most of you want to receive constructive reactions from me and the TA’s about the quality of your work during the semester. With 150 students in the class, we will obviously be challenged in meeting these expectations of each other. I expect each of you to rise to this challenge. I have structured the class, within the limitations imposed by size and the absence of discussion sections, in a way that I hope will help us all. Please note the following requirements and opportunities:

Participation in a large class is difficult. It is impossible if you do not come to class prepared. It is your responsibility to read and think about the listed materials carefully BEFORE the class for which they are assigned, and to come to class prepared to engage in an active inquiry. Think about it this way: if you are not prepared to be called upon to discuss the day’s materials and the issues they present, you are not prepared to come to class that day. I think about my coming to class the same way. It may prove useful for you to bring reading materials to class on the day for which they are assigned.

It will be your responsibility to come to class well prepared, and to ask questions, to seek active ways to engage with me, the TA’s and other students about the issues, and to avoid any actions that might disrupt our concentration. I do not take attendance; but I believe that attendance is important, and I try to run the course so that there are clear and substantial benefits to learning and to grades for those who attend and participate regularly. Note that active participation can include not only speaking in class, but visiting us in office hours, using email for questions and comments, and engaging one of us in discussion before or after the class meeting.

There is considerable reading assigned in connection with most topics. These materials generally require thinking about a problem, comparing divergent views, or pondering the ways in which different disciplines understand human conflict and its handling by legal institutions. Preparation of these materials before class is essential, and includes not merely reading and note-taking, but thinking about what you have read. Come to class with an idea or a comment about what you have read, a question about its usefulness or validity, some information of your own, and a willingness to engage in problem-solving.
The graduate teaching assistants have office hours, as do I; we all have email addresses, and you are urged to make use of these opportunities to increase your understanding of and engagement in the topics that we will be examining. A list of office hours and email addresses and phone numbers will be provided after the first week of classes. We also have the benefit of working with an undergraduate TA. Though Elyse Wagner will not hold office hours and will not participate in grading, she will be available to you for discussion before and after class and at eawagner@student.umass.edu. In addition, Elyse will be helping out with the extra-credit film work referred to below.

Your class notes should reflect the discussion among students and the comments which the instructor or other students may inject, as well as any ‘lecture’ that may be given. Though there will be some occasions when points made in lecture or raised in discussion will be summarized, this is not a subject that lends itself easily to summaries and outlines. Developing your own judgment about what is and is not important—within the context of the academic literature—is a big part of our work. However, if you feel the need for summaries or for further discussion, do not hesitate to ask. There are no canned notes (from me or from commercial sources) available for this course, nor do I think such notes would be useful. I am aware that students who have come before you in this course may have left notes and other materials for you. Many of the issues we explore are eternal, but their context is ever-changing. I try to change the course focus and materials enough each semester so that you have to do your own work on the core questions in order to do well in here.

This course is in part about learning how to think for yourself, and about how to use the ideas of scholars and classmates to enhance your own thinking and judgment. Your own notes should contain questions asked in class as well as answers offered, and most importantly, your notes should allow you to look back at each class and remember the issues and perspectives that arose so that your memory of your own thinking and that of others is jogged.

Grading and other feedback

Grades will be based on two multiple-choice exams, each of which counts 15% of your grade; two essays of 5 pages, each counting 20% of your grade, and a take-home final essay-exam due during finals week and counting 30% of your grade. There will be no curves or other adjustments if it turns out that there are a large number of either good or poor grades, unless it turns out that the instructor has created an unfair exam or essay topic. Everyone gets what he or she earns. There are extra-credit opportunities (see below); borderline grades will definitely be adjusted upward for those who have participated actively, and an essay on which a student has worked hard but received a particularly low grade may result in a re-write opportunity.

Each exam will have computer-scored multiple choice questions to test whether you have read and understood the assigned materials and paid attention in class. Prior to the first exam I will distribute the questions, but not the possible multiple-choice answers. This should help you to focus your studying. It’s an experiment; if it works we will do it again for the second exam. In addition, you will have the opportunity to discuss your exam results with the TA’s after the grades have been posted. In this way we aim not merely to test you, but to increase your learning. The essay topic(s) will be distributed in class, and their due dates are noted on the syllabus. Essays are meant to test your understanding of the issues and your ability to think, reason, and write clearly about them. The final will have a number of topics from which to choose. Each will provide an opportunity to think and write about the course as a whole. You will receive comments along with your grades for each of the two essays during the semester. Please remember that carefully and fairly grading 150 essays on each of two occasions takes some time. We will make the effort to get your work back to you promptly.

There will be two mechanisms provided to encourage additional thinking about the course topics,
to provide additional feedback to you, and to allow you to earn extra credit. Each will be explained in detail in the second week of class. One allows you to form film-study groups of four students for joint viewing and discussing, and individually writing about law-related films drawn from two lists provided by me. The other allows you to do a small amount of individual responsive writing about some of the optional readings listed in the syllabus. The writing requirement for each of these opportunities is modest, two pages. Your work will be returned to you with a brief comment and an indication of whether you received credit for the work submitted. These short essays will not be graded; but if successfully completed, each can earn you a 2.5 point increase in your semester grade (for a total of 7.5 points).

Respect for our limited class-time together requires that everyone observe some simple rules. These may sound like obvious elements of civility, but it’s better to state them anyway. Do not come late to class. If coming late is unavoidable on a particular day, slip in quietly and sit at the back of the room. Do not leave the class early, except in an emergency or if you have notified me or the TA’s at the start of the class that you must leave early. If you don’t like what is going on in class, say so in class or later in office hours or by email. Constructive criticisms will receive constructive responses. Do not read newspapers, have side-conversations with other students, engage in text-messaging, or in any other way disrupt class. It takes everyone’s full attention and goodwill to make a class of 150 interesting and useful. Turn off the ringer on cell phones or pagers while you are in class. If you are too tired or too ill to stay awake and engaged, please stay home and take care of yourself and don’t come to class. We will provide some ways for you to meet other students in the class so that notes can be borrowed or other ways can be found to catch up on missed class time. If you sometimes find yourself bored or disinterested in what we are doing in class, please make an effort to discuss that openly with one of us rather than turning your intellect off and depriving us of feedback that might be useful and effective. In general, it’s all about respect and contributing to the effectiveness of our limited time together. Attendance is encouraged and, I hope, worthwhile; but it is not required. So if for any reason you cannot be respectful of your classmates and instructors, don’t come to class that day. And please, don’t do anything that would make me ask you to leave.

There are several things that have worked for students before. Listen carefully to what other students say, and make that a part of your notes. Their comments and questions are important when we are trying to build a discussion. If you can’t hear what’s being said, comments can be restated or repeated. If the class discussion somehow makes you uncomfortable participating, let me or one of the TA’s know. It is our intention to create an atmosphere of open discussion and exploration of issues, not to silence or penalize people because of their views. But we need your help in doing this. Don’t mistake disagreement for disrespect. The more robust our exchanges are the better, as long as we respect each other’s views. I and the TA’s are committed to making this an interesting, useful experience; and we want you to succeed. We will attempt to be responsive to your individual needs and interests, and encourage you to be assertive in letting us know what those needs and interests are.

Note on academic dishonesty: I am a generally easy-going person; and I oppose capital punishment. However, when it comes to academic dishonesty, I am neither easy-going nor opposed to capital punishment. Don’t undermine your own education, cheapen the University degree, insult me, or risk ruining your reputation and being expelled from the University by giving in to what might appear to be the easy or expedient way to get through this course.
TENTATIVE SYLLABUS for Fall 2007
[Each capital letter represents one class session]
(Planned dates in parentheses)

BTL = readings in Before the Law, 8th edition.
* = required readings available on ereserves (password will be distributed in class).
W= readings posted on course web page (some required, many optional)

First Meeting, 9/4--the beginning and the end of an Introduction to Legal Studies: “An Ethiopian Tale,” Sir Thomas More gives the devil “benefit of law,” and Orson Welles’ rendition of “the parable” from Kafka’s The Trial.

I. THE ARCHAEOLOGY OF LAW: The relationship between law and culture.

A. Introduction (9/6): Red Robe and Two Twists’ Case (P) discussed; “Four Functions of Law” (P) discussed.


Thursday, 9/13—NO Class, religious holiday.

C. & D. Law, Repression, and the Transformation of Culture. Read all of Miller’s The Crucible for Class C (9/18). FILM clip at start of Class D (9/20). Is due process just a technicality of formal law? Can law be effective at a time of revolutionary change?


Tuesday, 10/9—No Class, Monday schedule.

I. Civil Liberties in a National Emergency: The internment, without hearings, of Japanese Americans by the U.S. government during WWII (10/11). Read “Am I an
American, or Not?” and “Suppression of Evidence,” excerpts from Irons’ Justice at War* and the Sp. Ct. Opinions in Korematsu v.United States.* For discussion of Internment’s implications for separation of powers & independence of judiciary, read and evaluate the Introduction and Conclusion to Unchecked and Unbalanced by Schwartz & Huq*.

FIRST HOURLY EXAM—IN CLASS
Tuesday, October 16
[Covers topics A-I]

CLASS J. (10/18) Read Darrow’s “Address to Prisoners of Cook County Jail” (BTL 8.2), then excerpts from Virginia Slave Code 1705* & Declaration of Independence.* Read also State v.Mann,* CLASS K (10/23) Plessy v. Ferguson,* Brown v. Bd of Ed.,* “The Ego, the Id and Equal Protection” (BTL 16.6), and Seattle school desegregation case, U.S. Sp. Ct. 2007(W).

FIRST TAKE-HOME ESSAY
Due in Class M (film shown), Tuesday October 30
[Topics exclude J & K]

CLASS L, M, N. FILM: “Judgment at Nuremberg.” We will see most of the film in two parts on 10/25 & 10/30 (note that essays are due in class M, 10/30). In class N, on 11/1, we will see the last 20 minutes of the film and discuss the trial of Nazi judges and what it teaches about individual responsibility, the conflict of law and conscience, the idea of “justice” and crimes against humanity in the 21st Century. For class N, Read Robert Jackson’s “Opening Address for the United States, Nuremberg Trials”**and Wyzanski’s “Nuremberg: A Fair Trial?”** Optional reading: links on the International Criminal Court: The following web site links can also be found live in the on-line syllabus: On the ICC itself: http://www.icc-cpi.int/home.html&l=en A group supporting it: http://www.globalissues.org/Geopolitics/ICC.asp and a group opposing it: http://www.cato.org/pubs/pas/pa-311es.html

III. POPULAR PARTICIPATION IN FORMAL LEGAL PROCESS: Is law too important to be left to lawyers?
O. The Jury as a Political Institution: Jefferson, jury nullification & civil disobedience (11/6). Read BTL 15.1-15.7; Martin Luther King’s “Letter from a Birmingham Jail,” at BTL 9.2; John Rawls’ “Definition of Civil Disobedience.”* Discussion focus on Dougherty case (BTL 15.7). Optional reading: “Moral Exo-Skeletons and Endo-Skeletons.” (W)

P. Jury Selection in a Pluralistic Society: What is a jury of peers? (11/8). Read BTL 16.1--16.4, Batson case (BTL 16.5 and review 16.6), Miller-El (BTL 16.7) and Gotanda, (BTL 7.5).

SECOND HOURLY EXAM—IN CLASS, Thursday, November 15
[ Covers J-Q ]

IV. RELATIONSHIP OF LAW, SCIENCE AND RELIGION: One hard case and one no-brainer. Which is which?

R. (11/20) Evolutionary biology, Genesis and Creation Science. Clarence Darrow cross-examines William Jennings Bryan in the Scopes case (Film excerpt); Read Kitzmiller v. Dover School Board (2005)*

SECOND TAKE-HOME ESSAY DUE
In Class, Tuesday, November 20
[Topics J-Q]

THANKSGIVING BREAK 11/21—11/26


V. THE CULTURE OF AMERICAN LAW: Legal reasoning, the adversary system, & critical legal studies

T. Thumbnail Sketch of the Nature of the Common Law, Stare Decisis and the Adversary System (11/29). Class problem in the use of precedent. Read BTL 1.1, 1.7, 2.1, 13.2, and the cases at BTL 1.2--1.6

U. Legal Reasoning, the Ethics of Advocacy, and Systemic Criticisms of Formal Law (12/4): Read “Legal Reasoning** (Kairys); Curtis (BTL 13.1); “Conspiracy of Law** (Zinn); “Law is Terror Put into Words” (BTL section 9.1); & Menkel-Meadow’s “Portia in a Different Voice.”** Optional readings: “Law School: Caught in the Paradigmatic Squeeze” (BTL 12.1); “The Impact of Cyberspace on Disputes and Dispute Resolution” (BTL 22.1); and Lowering the Bar: Lawyer Jokes and Legal Culture (introduction) (W).

[Reader’s guide to Kafka’s The Trial distributed in class, 12/4]

V. PSYCHOANALYSIS OF LAW: The Trial

12/6 No Class. The only reading assignment is Kafka’s The Trial.
[NOTE: Begin reading The Trial after 12/4 class and be finished by start of class on 12/11]

V. (12/11) Discussion of Kafka’s, The Trial.

W. The End (12/13).
FINAL ESSAYS DUE DURING EXAM WEEK