Discussion Questions for Thursday, September 16th

On Thursday we will be discussing the “basis” for law. In other words, what law is based upon? Where does law come from? Justice Oliver Wendell Holmes mocked those who saw law as a “brooding omnipresence in the sky” and famously wrote that “the life of the law is not logic but experience.” The various authors we read for Thursday’s class offer a variety of possible suggestions as to law’s basis. As you read their arguments think about the following questions and come to class prepared to discuss.

1. What do you believe should be the basis for law? Why? How do you think the average American would answer this question?

2. How would you describe the basis of law as laid out by each author or case? How does this basis differ from the way you think things should work?

3. What is the role of power in shaping the law? Who has the power in each of these articles? Should such power be limited? How?

4. Do you think “the people” can have too much power in a majority? How does your answer to this question jibe with the opinions of the Supreme Court in Romer v. Evans?