

**The Foundation of Law:
The Quest for Justice**
Bard College PS 267
Fall, 2010
Weds./Fri. 1:30-2:50
Olin 101

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Office Hours:

Corporate executives hire high-priced lawyers to flout the law with impunity. Indigent defendants are falsely convicted, and even executed for crimes they did not commit. We say that law is the institutional embodiment of justice. And yet, it is equally true that law, as it is practiced, seems to have little connection to justice. As the novelist William Gaddis writes: "Justice? You get justice in the next world. In this world, you have the law." This course explores the apparent disconnect between law and justice. Can contemporary legal systems offer justice? Can we, today, still speak of a duty to obey the law? Is it possible for law to do justice?

Through readings of legal cases as well as political, literary, and philosophical texts, we seek to understand the problem of administering justice as it emerges in the context of contemporary legal institutions. Texts will include selections from Dostoevsky, Twain, Melville, Plato, Blackstone, Holmes, Milton, Kant, and others.

Required text: Immanuel Kant, *Groundwork of a Metaphysic of Morals* (translation by Paton). Herman Melville, *Billy Budd* (nb. Use the University of Chicago edition). Fyodor Dostoevsky, *Crime and Punishment* (nb. Use the translation by Richard Pevear & Larissa Volokhonsky). All other material is available on the Reserve Web website.

Requirements

1. Read everything, in advance of seminar meetings, and come prepared to discuss and argue about what you've read. Preparation means more than reading the texts; it demands that you think about and engage with what you read.
2. Attend all class meetings and participate fully in class discussions.
3. Write a series of short papers and one final paper, due by email or in my office on dates to be specified (no extensions, period).
4. There will be a mid-term exam and a final exam.

Introduction: Law and Justice.

Charles Dickens, *Bleak House* (Excerpt on RW)

Plato, *The Statesman* (Excerpt on RW)

Sir Edward Coke, *Sources in English Constitutional History* (Excerpt on RW)

F.W. Maitland, on Law French (Excerpt on RW)

Samuel Clemens, *Adventures of Huckleberry Finn* (Excerpt on RW)

Sir William Blackstone, *Commentaries on the Laws of England* (Excerpt on RW)

Roger Berkowitz, *The Gift of Science* (Preface)

Part One: Obligation and Responsibility:

A. Justice in Tort: Wrong, Harm, Responsibility and Punishment

White v. Island Amusement and extracts (from Robert S. Summers, *Law: Its Nature, Functions, and Limits*)

B. The History of Torts in England in America:

Butterfield v. Forrester

Davies v. Mann

British Columbia Electric Ry. Co. v. Loach

Li v. Yellowcab

Escola v. Coca Cola Bottling Co. of Fresno

Part Two: Obligation and Interpretation:

Pascal, *Provincial Letters* Letter V

St. Paul, *Letter to the Romans*

David Daube, "The Nails"

A. A. Hodge, *Popular Lectures on Theological Themes*, Lecture VII

Part Three: Obligation, Crime and Punishment:

A. Deterrence and Dessert

Lewis Carroll, *Through the Looking Glass*

John Milton, *Paradise Lost*

Jeremy Bentham, *Principles of Legislation*

B. Responsibility

Herman Melville, *Billy Budd*

Jane Austen, *Mansfield Park*

Samuel Butler, from *Erewhon*

M'Naghtens's case

Durham v. United States

Regina v. Dudley Stevens

C. Mercy

C.S. Lewis, *The Great Divorce*

Fyodor Dostoevsky, *The Brothers Karamazov*

Luke 15: 1-32, "The Prodigal Son"

Austin Sarat, *Mercy on Trial*

Part Four: Obligation and Freedom

Kant, *Groundwork of the Metaphysics of Morals*

A. Freedom

J.S. Mill, *On Liberty*

Uday Mehta, *Liberalism and Empire*

Dorothy Lee, *Freedom and Culture*

B.F. Skinner, *Walden Two*

Jean Piaget, *The Moral Judgment of the Child*

Pierre Clastres. Freedom, Misfortune, the Unnameable, in *Archaeology of Violence*

B. Obligation

Martin Luther, "Temporal Authority"

Yosal Rogat (on Holmes), "The Judge as Spectator"

H.L.A. Hart, *Concept of Law*

Part Five: Social Contract Theory and the Roots of The Interpretive Turn.

Max Weber, *Theory of Social and Economic Organization*

Jean Jacques Rousseau, *The Social Contract*

John Locke, *Second Treatise*

Part Six: Sanction

Fyodor Dostoevsky, *Crime and Punishment*

Aeschylus, *Eumenides*

Part Seven: Law and Friendship

Aristotle, *Nic. Eth.* Book V., 10.