

The Canon of American Legal Thought

Spring Semester 2008

This is a working translation

1. Description of course

Number of Course:	Number to be inserted
Title:	The Canon of American Legal Thought-From a european perspective
Remarks:	
max. participants: (Bidding)	24
max. participants: (Application of Professor)	24
Language of Teaching	German and English (see below)
Recommendation of Semester	7. Semester or 8. Semester, Master Level
Requisites:	Two hours per week
SWS:	3 SWS
Credits:	
Limitations:	Only students of the Master-Level, who are able to read legal texts in English efficiently.
Substance and Goals:	<ul style="list-style-type: none"> ▪ The content consists of a representative selection of key texts, which belong to The Canon of American Legal Thought and of scientific introductions of the individual texts by the editors of the book. ▪ Reading of these very important texts of American Legal Thought, which every American Legal Scholar is assumed to have read at least once which, are accessible in the book in full text and not, as usual, in excerpts. ▪ The goal is to expose the students to respect to substance and teaching method as it used in an American Law School, including the intensive reading of the texts in English, the respective preparation of the classes, the class participation in a modified Socratic teaching method and the exam culture. ▪ The purpose is to be able work on a methodological meta-level based on key texts, which as the editors write, are of paramount importance, since "many of the tools of legal structure that lawyers, and policy makers use every day and take for granted, are originated in these texts as a dramatic intellectual innovation". ▪ An important purpose is the showing of the interconnection between history and politics of the evolution of american Legal Thought and american Legal Policies. Students should realize and discover a strong intellectual theoretical culture in American Legal Thought

Structure and exam method:

- A further purpose from an interdisciplinary perspective is to realize how political theory, sociology, psychology and above all economics, as they are reflected in certain of the texts, become part of the American Legal Thought and make a major contribution to the understanding "how law works from the inside"
 - A last purpose from a European perspective is, to at least in the form of an issue spotting discover the most basic differences in the legal system, in which the participants have been exposed to in their Bachelor and Master Program semesters at the University of St. Gallen so far.
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- The course replicates regarding to substance, teaching method a course, which preparation, traditionally is being taught by one of the editors of the book "The Canon of American Legal Thought" at Harvard Law School.
 - It is planned to hold video-conferences at the beginning and at the end of the course with Professors David Kennedy and William Fischer III, in which the Professor Drolshammer will interview his colleagues on the concept of history of American Legal Thought; this has proven attractive and helpful in the course offered in summer semester 2005 with Alan Dershowitz, based upon his book "America on trial-Inside The Legal Battle That Transformed Our Nation".
 - In the centre will be the reading and the prepared discussions in class of the 20 articles contained in the book, with short introductions and remarks by the professor.
 - Parallel optional reading of a short introductory book by Peter Hay into the American Legal System and the American Legal Thought in order to be better able to put the texts contained in the book in context and perspective.
 - Possible developing of a overview document on the essentials of the texts to be read according to assigned roles by the professor; this has been proven helpful in the course on the book of Alan M. Dershowitz "America On Trial-Inside The Legal Battle That Transformed Our Nation" and has been a useful as a learning tool for the exams.
 - Replication of the didactic method and the examination culture of an American Law School

Literature:

Compulsory reading: David Kennedy and William W. Fischer III ed., **The Canon of American Legal Thought**; published in 2006 with specific comments of the texts used as the bases for the course; this book is traditionally being taught by one of the editors at Harvard Law School.

The Canon of American Legal Thought

Edited by David Kennedy and William W. Fischer III

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Introduction

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Part I: Attacking the Old Order: 1900-1940

Oliver Wendell Holmes, "The Path of the Law," 10 Harvard Law Review 457 (1897) 19

Wesley Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," 23 Yale Law Journal 16 (1913) 45

Robert Hale, "Coercion and Distribution in a Supposedly Noncoercive State," 38 Political Science Quarterly 470 (1923) 83

John Dewey, "Logical Method and Law," 10 Cornell Law Quarterly 17 (1924) 111

Karl Llewellyn, "Some Realism About Realism--Responding to Dean Pound," 44 Harvard Law Review 1222 (1931) 131

Felix Cohen, "Transcendental Nonsense and the Functional Approach," 35 Columbia Law Review 809 (1935) 163

Part II: A New Order: The Legal Process, Policy, and Principle: 1940-1960

Lon L. Fuller, "Consideration and Form," 41 Columbia Law Review 799 (1941) 207

Henry M. Hart, Jr., and Albert M. Sacks, The Legal Process: Basic Problems in the Making and Application of Law, Problem No. 1 (unpublished manuscript, 1958) 241

Herbert Wechsler, "Toward Neutral Principles of Constitutional Law," 73 Harvard Law Review 1 (1959) 311

Part III: The Emergence of Eclecticism: 1960-2000

Policy and Economics

Ronald H. Coase, "The Problem of Social Cost," 3 Journal of Law and Economics 1

(1960) 353

Guido Calabresi and Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," 85 Harvard Law Review 1089 (1972) 401

The Law and Society Movement

Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," 28 American Sociological Review 55 (1963) 445

Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 Law and Society Review 95 (1974) 481

Liberalism: Interpretation and the Role of the Judge

Ronald Dworkin, "Hard Cases," 88 Harvard Law Review 1057 (1975) 549

Abram Chayes, "The Role of the Judge in Public Law Litigation," 89 Harvard Law Review 1281 (1976) 603

Critical Legal Studies

Duncan Kennedy, "Form and Substance in Private Law Adjudication," 88 Harvard Law Review 1685 (1976) 647

Liberalism: Legal Philosophy and Ethics

Robert Cover, "Violence and the Word," 95 Yale Law Journal 1601 (1986)
733

Frank Michelman, "Law's Republic," 97 Yale Law Journal 1493 (1988)
777

Identity Politics

Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," 7:3 Signs: Journal of Women in Culture and Society 515 (1982) 829

Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence," 8 Signs: Journal of Women, Culture, and Society 635 (1983) 869

Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds., "Introduction," Critical Race Theory: The Key Writings that Formed the Movement, The New Press, New York, 1996 at xiii-xxxii 887

Preface and introduction (S. 1 – 19) des Buches The Canon of American Legal Thought als pdf. Attached (Kalkofen entscheidet ob dies möglich ist) und als download auf www.drolshammer.net/academic/teaching/classesandseminars

Website David Kennedy: www.law.harvard.edu/faculty/dkenedy/

Website William W. Fischer III: www.tfischer.org/

Website Harvard Law School: www.law.harvard.edu/

Optional Reading: Peter Hay, US-amerikanisches Recht, Ein Studienbuch, München 2000 and further optional readings contained in a list of introductory literature to the American legal system that will be distributed in the first class by the professor.

Additional information:

Compulsory Reading: David Kennedy and William W. Fischer III ed., The Canon of American Legal Thought, Princeton University Press 2006 and the Optional Reading Peter Hay, Law of the United States, An overview, Munich 2002, have to be ordered on amazon.com ahead of time, so they can be used in the first class of the semester.

The professor wishes that interested students preregister by email at office@drolshammer.com at the latest two weeks before the first class.

He is willing to answer any questions students may have.

Since the course is demanding from the subject and the reading perspective, it is suggested that only students participate, which are willing and able to read English legal texts. The professor might possibly adopt the reading assigned if necessary and convenient.

Pre-discussion (PHD courses):
Rhythm of classes (PHD courses):
Organisation/Information (PHD courses):
Subscription deadline (PHD courses):

2. Description of exam

Responsible for exams	Prof. Dr. Jens Drolshammer
Format of exam: (written examination period, 80%) (class participation 20%), open book	Central
1. written exam period, 80%	yes

3. Language of teaching

Language of teaching	X
German	X
English	X
French	
Italian	
Japanese	
Russian	
Spanish	

Comment: Compulsory reading will be containing 20 texts in English of approximately a total of 850 pages (may be reduced by professor due to limitations of hours for a three credit course), the classes will be held in German, the planned video-conferences will be held in English.