POLS 5380–LEGAL INTERPRETATION: PHILOSOPHY AND JUDICIAL BEHAVIOR (INDEPENDENT STUDY)

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OFFICE: 307 Benedict Hall
OFFICE HOURS: MWF 11:30 am-2:30 pm, or by appointment

COURSE DESCRIPTION
This course will help students understand legal interpretation and hermeneutics for the federal judiciary by engaging in a dialogue between legal philosophy and empirical political science examining judicial decision making. Students will become familiar with leading models of legal interpretation across constitutional and statutory texts within the United States federal judiciary, focusing on the Supreme Court. This course thus takes an interdisciplinary approach to legal interpretation, the philosophy of law, judicial decision making, and the rule of law.

LEARNING OUTCOMES
Over the course of the semester students will have:
- An understanding of legal interpretation from the standpoints of empirical public law and philosophical hermeneutics
- Become familiar with the arguments of prominent thinkers such as Martin Heidegger, Hans-Georg Gadamer, Ronald Dworkin, and Jacques Derrida
- Critically evaluate alternative models of legal interpretation and alternative methods
- Become familiar with empirical research on judicial decision making
- Evaluate differences in statutory and constitutional interpretations
- Generated an original research paper that would be appropriate for conference presentation or publication

COURSE REQUIREMENTS AND GRADING
Evaluation in this course will be based on the following components:

Weekly Reading Response Papers (5) 30%
Research Question and Outline 10%
Research Paper Draft 20%
Final Research Paper 40%
The grading scale is as follows:

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<th>Score Range</th>
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<tr>
<td>90-100</td>
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<td>80-89</td>
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*Weekly Reading Response Papers:* Each week (for 5 individual weeks of their choosing) students are required to turn in a (typed, hard copy) 3-5 page paper synthesizing and evaluating the readings due that week. These papers should synthesize the week’s readings to concisely discuss how the readings interact with each other and what conclusions can be drawn from these readings as well as evaluate any limitations (theoretical or empirical) in these works. These papers will be evaluated upon the depth of understanding and writing quality (such as organization, spelling, grammar, clarity, etc.). These papers are not due every week throughout the semester, rather only 5 weeks selected by the students require a paper due in class. As such, it is the student’s responsibility to ensure the completion of these assignments. These 5 papers will be averaged to produce the score weighted for the final course grade.

*Research Paper:* Due on December 2nd, students must submit a typed, hard-copy, 15-20 page research paper on original research. References must be included. This paper will be evaluated on clarity and specification of the research question and theoretical argument, the synthesis of the literature review, the appropriateness of the research design and methods, the quality of the quantitative or qualitative analysis, the proper interpretation of results, the presence and quality of diagnostic analyses (if appropriate), and writing quality, such as organization, clarity, spelling, and grammar. I welcome the submission of drafts to me prior to the deadline for revisions and feedback.

Students must submit their research question and proposal/ proposed outline by September 26th (or Week 6). The student must identify an appropriate research question and address why such a question is important and relevant (i.e. why should people care?). In addition, the proposal or outline should provide a tentative structure to what the paper will encompass and its framework.

Students must turn in (typed, hard-copy) rough draft of their paper by November 23rd (or week 14). This paper will be evaluated on clarity and specification of the research question and theoretical argument, the synthesis of the literature review, the appropriateness of the research design and methods, the quality of the quantitative or qualitative analysis, the proper interpretation of results, the presence and quality of diagnostic analyses (if appropriate), and writing quality, such as organization, clarity, spelling, and grammar. As such, this draft is designed to provide feedback to students prior to their final submission.
Special Needs

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to cass@utep.edu, or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at www.sa.utep.edu/cass. *CASS’ Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.* Additionally, students with special needs must contact me in order to arrange appropriate accommodations.

Academic Dishonesty

**Absolutely no form of academic dishonesty will be tolerated.** The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the Handbook of Operating Procedures (HOP) and available in the Office of the Dean of Students and the homepage of The Dean of Students at www.utep.edu/dos, may result in sanctions ranging from disciplinary probation, to a failing grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

General Expectations

I expect all students to behave professionally in this class. You will be held responsible for all material covered in the textbooks, quizzes, articles, videos, and the class discussions. If you miss a class, you are still responsible for the content of that day’s information. I will not tolerate disruptive behavior, including (but not limited to) reading newspapers, talking during lectures, using cell phones or pagers, and disrespecting classmates or the instructor. Additionally, I expect all students to attend class prepared and to show up on time. It is disrespectful to the instructor and the other students when individuals show up late or are not prepared to participate in the class discussion. I allow the use of laptops and phones for note-taking, research, and class assignment purposes only; however, should laptop usage become disruptive, I reserve the right to prohibit laptops and other electronic devices.

This class is designed to provide information and challenge students with new, sometimes controversial, ideas, and arguments. This class is designed to be a safe, open environment to express ideas, arguments, and opinions for learning purposes. This class
is designed to initiate an open discussion based upon the required readings, encourage critical thinking and application to current events, and enable students to digest difficult material through these discussions. *This class DOES NOT give you knowledge*—i.e. knowledge and understanding is not transfused to students by simply sitting in class. *Learning is an interactive process and one that is the primary responsibility of each student.*

**Late assignments will receive no credit.**

All grades are earned and reflect the mastery of material through the adequate completion of assignments by their deadline. As such, they do not reflect level of effort, interest, or intention. **I will not change final grades for the course under any circumstances,** with the single exception of cases where an error occurred.

**Course Schedule**

The following is a list of topics to be covered at each class meeting. I require you to read the appropriate material prior to the class. Articles will be provided in Blackboard or email whenever possible. The calendar is subject to change, yet any alterations to the course schedule will be clearly announced. (As a general rule the course will follow this order of topics, regardless of date changes, unless otherwise announced.)

Week 1:  
Martin Heidegger - "Language"  
Fred Dallmayr - "Hermeneutics and the Rule of Law"  
Ronald Dworkin - *The Philosophy of Law*

Week 2:  
Martin Heidegger - "Dialogue on Language"  
Gerald L. Bruns - "Law and Language: A Hermeneutics of the Legal Text"  
Jeffrey Segal and Howard Spaeth – *The Supreme Court and the Attitudinal Model Revisited*

Week 3:  
Martin Heidegger - "The Nature of Language"  
Francis J. Mootz, III - "Law and Philosophy, Philosophy and Law"  
Lawrence Baum – “What Judges Want: Judges’ Goals and Judicial Behavior”  
Jack Knight and Lee Epstein – “The Norm of Stare Decisis”  
Gregory Leyh - “Toward a Constitutional Hermeneutics.”

Week 4:  
Martin Heidegger - "Words"  
Dennis J. Schmidt - "Can Law Survive? On Incommensurability and the Rule of Law"
Mark Richards and Herbert Kritzer – “Jurisprudential Regimes in Supreme Court Decision Making”
Kirk Randazzo and Richard Waterman – “The U.S. Supreme Court and the Model of Contingent Discretion”
C.R. Sunstein, “On Analogical Reasoning”

Week 5: Martin Heidegger - "The Way to Language"
Michael J. Clark - "Foucault, Gadamer, and the Law: Hermeneutics in Postmodern Legal Thought"
Donald Songer and Stefanie Lindquist – “Not the Whole Story: The Impact of the Justices’ Values on Supreme Court Decision Making”
Frank Cross – “Political Science and the New Legal Realism”
Howard Gillman – “What’s Law Got to Do with It?”
K.M. Gabbia-Pinetti - “Statutory Interpretation, Democratic Legitimacy and Legal-system”

Week 6: Hans-Georg Gadamer - Truth and Method, Ch. 3 (172-266)
James Farr - "The Americanization of Hermeneutics: Francis Lieber’s Legal and Political Hermeneutics"
J. Habermas - Between Facts and Norms

Week 7: Hans-Georg Gadamer - Truth and Method, Ch. 4 (267-383)
Terence Ball - "Constitutional Interpretation and Conceptual Change"
Robert Howard and Jeffrey Segal – “An Original Look at Originalism”
Herbert Kritzer and Mark Richards – “Jurisprudential Regimes and Supreme Court Decision Making”
K. Werbach - “Looking It Up: The Supreme Court’s Use of Dictionaries in Statutory and Constitutional Interpretation”
G.H. Taylor - “Structural Textualism”

Week 8: Hans-Georg Gadamer - Truth and Method, Ch. 5 (384-492)
David Couzens Hoy - "Intentions and the Law: Defending Hermeneutics"
Lee Epstein ad Jack Knight – The Choices Justices Make

Week 9: Jacques Derrida - Of Grammatology, Part I
Mark Kelman - "Interpretive Construction in the Substantive Criminal Law"
Antonin Scalia - A Matter of Interpretation. Federal Courts and the Law

Week 10: Jacques Derrida - Of Grammatology, Part II (95-194)
Stanley Fish - "Fish V. Fiss"
Dan Simon – “A Psychological Model of Judicial Decision Making”
S. Soames - “Interpreting Legal Texts: What is, and What is not, Special about the Law.” In Philosophical Essays, Vol. 1
M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?,"

Week 11: Jacques Derrida - *Of Grammatology*, Part II (195-316)
Jack Balkin - "Deconstructive Practice and Legal Theory"
J.F. Manning, “Textualism and Legislative Intent.”
P. Brest, “Misconceived Quest for Original Understanding.”
S. Vogenauer, “What Is the Proper Role of Legislative Intention in Judicial Interpretation?”
J. Goldsworthy, “Legislative Intentions, Legislative Supremacy, and Legal Positivism.”

Drucilla Cornell - "Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation" (1-39)
W.N. Eskridge Jr., “Dynamic Statutory Interpretation.”

Week 13: Jacques Derrida - "Force and Significance"; "The Theater of Cruelty and the Closure of Representation"
Drucilla Cornell - "Institutionalization of Meaning " (40-95)
Ronald Dworkin, *Freedom’s Law*

Week 14: Jacques Derrida - "Violence and Metaphysics"
Duncan Kennedy - "A Semiotics ofCritique"
Philip Bobbitt - *Constitutional Interpretation*

Week 15: Jacques Derrida - "Plato's Pharmacy"
Pierre Schlag - "A Brief Survey of Deconstruction"
Michel Rosenfeld - *Just Interpretations*
Appendix: Additional Readings


Habermas, Jürgen (1971) "Der Universalitätsanspruch der Hermeneutik" (The Hermeutic Claim to Universality) in Karl- Otto Apel et al., eds., *Hermeneutik und Ideologiekritik* (Hermeneutics and Ideology) Frankfurt: Suhrkamp, 120-158.


Murphy, Mark C. (2006) *Natural Law in Jurisprudence & Politics*. Cambridge:
Cambridge University Press.


Valauri, John T. (1991) “Constitutional Hermeneutics” in The Interpretive Turn:


