Law and Legal Thought  
IDSEM-UG 1643  
Fall 2012 Vasuki Nesiah  
Email: vn10@nyu.edu

Class Room & Class Hours: 1 Washington Place; Room 501  
Tuesday & Thursday: 9:30 AM to 10:45 AM

Office Room & Office Hours: 1 Washington Place; Room 530  
Tuesday 11:00-12:20 & 3:00-5:00 PM  
Thursday 11:00-12:20  
All meetings by appointment

The Contemplation of Justice (Cass Gilbert)  
The Authority of Law (Cass Gilbert)

Paying particular attention to critical traditions of legal analysis in the United States, this class examines the relationship between law and social justice to develop critical tools with which to approach everyday legal questions, from constitutional law to criminal law. How do different understandings of gender offer alternative trajectories for anti-discrimination law? How does the legal architecture of property rights impact labor law? What are the legitimate roles, rights and responsibilities of different actors in the system - from judges to corporations to welfare recipients? In addition to reading legal and social theory texts, we will anchor our discussions in key supreme court cases.

The primary text for the course, The Politics of Law by David Kairys, is available at the NYU bookstore and on Bobst Reserves. Other readings are available on Blackboard.
REQUIREMENTS/GRADING

1. Participation: 30%  
2. Reading Response I & II: 20% each  
3. Final paper: 30%

1. CLASS PARTICIPATION
Punctual attendance and active participation is key to your success in this course. Come to class prepared; this means you would have read and thought about the readings and will come to class ready to contribute to a collective exploration of the issues they raise.

As you undertake your readings, highlight a quote or argument from the readings that raised an interesting question or comment regarding the theme for the day and come to class prepared to discuss. If you cannot attend because of illness or an emergency of some kind, please email me in advance. Unexplained absences will affect your grade.

2. RESPONSE PAPERS
Requirement: 10 Response papers related to any ten sessions of class before the relevant class discussion takes place. These papers will be read and graded in two segments – as Reading Response I and Reading Response II. These will be no mid-term papers.

Substantive focus: One of the aims of this assignment is to give you an opportunity to critically reflect on the readings prior to class so that your contribution to class discussion will be thoughtful and informed. Thus papers should dig deep and engage with the cases and articles not summarize them or merely state your opinion about them.

Format: Reading responses can be from 2-5 pages in times font, double-spaced with one inch margins. Please send email these to be me as word documents and or pdf. documents.

Deadlines: Papers need to be submitted by Sunday night if they relate to the readings for Tuesday’s class or by Tuesday night if they relate to the readings for Thursday’s class. At least five papers should be submitted by Wednesday, October 24th (i.e. submissions for Reading Response I) and another five by Tuesday, December 11th (i.e. submissions for Reading Response II).

3. FINAL PAPER
Substantive focus: Final paper topics will be distributed mid-April. You are free to use outside material but the paper should also be anchored in readings from the course that are most relevant to the topic you are writing on. The paper should advance arguments with analytical rigor and insight, and assess and situate those arguments in conversation with background debates on that topic.

Format and deadlines: The paper should be approximately 18-20 pages long, in times font, double-spaced with one-inch margins. The final paper will be due on Friday, December 14th and should be submitted through ‘turnitin’ on Blackboard. A copy should also be emailed to me.

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Academic Integrity Policy (including plagiarism, illicit collaboration, doubling/recycling coursework & cheating): Consult www.gallatin.nyu.edu/academics/policies/policy/integrity.html
CLASS PLAN

I. “THE AUTHORITY OF LAW”

Week 1. Justice, Legality and Social Change I
Sept. 4:
Martin Luther King, Jr., Letter From a Birmingham Jail (1963)
Henry David Thoreau, Civil Disobedience (1849)
David Kariys, Free Speech in Kairys

Sept. 6:
Brown v. Board of Education (1954)
Cornell West, The Role of Law in Progressive Politics in Kairys

Week 2. Justice, Legality and Social Change II
Sept. 11:
Marbury vs. Madison (1803)
Lon Fuller (1958) "Positivism and Fidelity to Law: A Reply to Professor Hart". 71 Harvard L. Review 630

Sept. 13:
Lani Guinier (2009), Beyond Legislatures: Social Movements, Social Change and the Possibilities of Demosprudence, 89 BU L. Review 539

II. PROPERTY: “JUSTICE THE GUARDIAN OF LIBERTY?”

Week 3: Acquiring Property
Sept. 18
Johnson v. M’Intosh (1823)
Joseph Singer, Property Rights in Kairys
John Locke, Ch. V. of Second Treatise of Government (1690)

Sept. 20:
Identity in Mashpee by James Clifford (1988)
Foucault, “Incitement to Discourse” in the History of Sexuality, Part II (1977)

Week 4: Owning Property
Sept. 25:
Local 1330, United Steel Workers of America, F., et al. v. US Steel Corp. (1980)

Sept. 27:
In re Baby M (1988)
Karl Marx, “The Fetishism of Commodities” in Capital Vol. I (1887)

Week 5: Regulating Property
Oct. 2:
Pennsylvania Coal Co. v. Mahon (1922)
Molly McUsic, Redistribution and the Takings Clause in Kairys

Oct. 4:
Lochner v. New York (1905)

Week 6: Property in Contract
Oct. 9:
Richard Abel, Torts in Kairys

Oct. 11:
Home Building & Loan Association v. Blaisdell (1934)
House of Representatives, H-Res. 365 (2011)

Oct. 18:
No class

Week 7: Property, Personhood and the Public-Private distinction
Oct. 23:
Jennifer Waller et. al. v. City of New York (2011)
Karl Marx, On the Jewish Question (1844)

Oct. 25:
Kiobel v. Royal Dutch Petroleum (2012)
Duncan Kennedy, The Stakes of Law, or Hale and Foucault!

III.  IDENTITY: “EQUAL JUSTICE UNDER LAW?”

Week 8: Citizens
Oct. 30:
Arizona v. United States (2012)
Al-Aulaqi v. Panetta (2012)

Nov. 1:
Thornburg v. Gingles (1986)
Shelby County, Alabama v. Holder (2011)

Week 9: Workers
Nov. 6:
Fran Olsen, The Sex of Law in Kairys

Nov. 8:
NYU, 332 NLRB 1205(2000)
Brown University, 342 NLRB 483 (2004)
Karl Klare, Critical Theory and Labor Relations Law in Kairys

Week 10: Students. Race and ‘equal opportunity”
Nov. 13:
Fisher v. University of Texas (2012)
Regents of the University of California v. Bakke (1978)
Alan Freemon, Antidiscrimination Law from 1954 to 1989 in Kairys

Nov. 15:

Week 11: Welfare recipients
Nov. 20:
King v. Smith (1968)
Lucy Williams, Welfare and Legal Entitlements in Kairys

Week 12: Gender and Sex I
Nov. 27
Roe v. Wade (1973)
Taub and Schneider, Women’s Subordination and the Role of the Law in Kairys

Nov. 29:
Kimberly Crenshaw, A Black Feminist Critique of Anti-discrimination Law and Politics in Kairys

Week 13: Gender and Sex II
Dec. 4:

Dec. 6:
Janet Halley, Gay Rights and Identity Imitation in Kairys
Week 14. Legal actors
Dec. 11:
McCleskey v. Kemp (1987)
David Cole, Two Systems of Criminal Justice in Kairys

Dec. 12:
Gideon’s Trumpet
Austin Sarat, Going to Court in Kairys

IV. “THE CONTEMPLATION OF JUSTICE”

Dec. 13:
Duncan Kennedy, Legal Education as Training for Hierarchy in Kairys
Victor Rabinowitz, The Radical Tradition in the Law in Kairys