“Legalism” refers to rule-making, rule-following, and legal reasoning. This course considers the meaning and value of legalism as a way of approaching conflict. The course invites students to explore the distinctive characteristics of legal modes of thought; classical theories about the nature of law and legal obligation; and moral and romantic objections to rule-making and rule-following. Legal practices and institutions that operate at the margins of “law”—international law, torture, and war crimes tribunals—provide a location for us to test and develop our insights about the meaning and proper reach of law.

Requirements:

1. Consistent reading and weekly quizzes. A great deal of reading is assigned in this class, so just completing the readings each week is a substantial component of your grade. Each class will start with a question about the readings for you to answer and turn in. If you wish, you may print out a one or two paragraph response to the readings to give me at the start of class in lieu of the quiz. 20%.

2. In-class participation. Regular attendance, verbal participation in class and/or communication in office hours, and evidence of sustained engagement with course materials. Filling out a course evaluation will count towards your participation grade. After you evaluate the class, CTools will send a confirmation email to you, which you should immediately forward to me. 20%.

3. Three essay exams of 5-8 pages each, due February 15, March 21, and April 24. You will choose your topic from a list of questions distributed about ten days before the essay due date. 60%

4. Long Paper option. Students wishing to delve more deeply into the content of the course may choose to write a single 15-page term paper instead of the three essays, due December 18. If you wish to take this route, please meet with me to discuss before the first essay exam is administered. 60%.

Late papers (short essays and final papers) will be marked down 1/3 grade per day late.

Students may not use laptops in class without special permission.
Accommodations for Students with Disabilities:

If you need an accommodation for a disability, please let me know at least two weeks prior to the time when the accommodation will be needed. Some aspects of this course, the assignments, the in-class activities, and the way the course is usually taught may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Services for Students with Disabilities (SSD) to help us determine appropriate academic accommodations. SSD (734-763-3000; http://www.umich.edu/sswd) typically recommends accommodations through a Verified Individualized Services and Accommodations (VISA) form. Any information you provide is private and confidential and will be treated as such.

Materials:

The CTools website contains all articles marked (CT)
Carl Schmitt, *The Concept of the Political* (also available online through MLibrary)
Coetzee, *Disgrace*
H.L.A. Hart, *The Concept of Law*
Lon Fuller, *The Morality of Law*
Ronald Dworkin, *Law’s Empire*

All of these books have also been placed on reserve at the library.

Reading Schedule:


2. January 11. Legalism and Rules
   Judith Shklar, “Law and Ideology,” *Legalism* (CT)
   Frederick Schauer, “The Sources of Entrenchment” (ch 4) and “The Reasons for Rules” (ch 7), *Playing By the Rules* (CT)
   Dershowitz, “The Inconsistency of the Majority Justices” from *Supreme Injustice* (CT)

   Nell Noddings, *Caring: A Feminine Approach to Ethics* (excerpt) (CT)
   Coetzee, *Disgrace* (ch 1-7)

   Carl Schmitt, *The Concept of the Political* (1st ed. 1932), pp. 19-79

5. February 1. Legal Positivism
   John Austin, *The Province of Jurisprudence Determined* (excerpt) (CT)
6. February 8. Law’s Inner Morality: Did the Nazis Have Law?
Lon Fuller, *The Morality of Law*, chs 2, 3, and ch. 4 p. 152-168 only
H.L.A. Hart, “Positivism and the Separation of Law and Morals” — Section IV only (CT)
Lon Fuller. “Positivism and Fidelity to Law: a Reply to Professor Hart,” – Introduction (the paragraphs before Section I), Section V, VI only (CT)

7. February 15. Higher Law I: Natural Law
John Locke, *Second Treatise of Government*, chs. 2, 3, 4, 18 (CT)
John Finnis, *Natural Law and Natural Right* ch. 1, 10 (CT)
Robert George, TBA (CT)

UN Declaration of Human Rights (available online) (skim)
Jack Goldsmith and Eric Posner, “International Law and Moral Obligation” from *The Limits of International Law* (CT)
Michael Ignatieff, “Human Rights as Politics” (CT)

February 29: Winter break

Ronald Dworkin, *Law’s Empire* chs 1-3, 6, 10

10. March 14: Law for Social Scientists: How Do We Know Law When We See It?
Lars P. Feld, Stefan Voigt, “Making Judges Independent—Some Proposals Regarding the Judiciary.” (CT)
Look at the International Country Risk Guide's "law and order" variable, and spend some time looking at the ICRG’s purposes: https://www.prsgroup.com/ICRG_Methodology.aspx
World Justice Project, “The Rule of Law Index” (2011), skim (CT)

11. March 21. Legal Creativity
Robert Cover, “Nomos and Narrative” (CT)
William Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848*, p. 236-248. (If you are unfamiliar with William Garrison do a wiki search on him first) (CT)
Mari Matsuda, “When the First Quail Calls” from *Where Is Your Body?* (CT)
12. March 28. Legalized Torture?
Reconsider Schmitt’s *Concept of the Political*
Justice Department Office of Legal Counsel, “Memorandum for John Rizzo” (August 1, 2002) (CT)
Justice Department Office of Legal Counsel, “Memorandum for William J. Haynes” (March 14, 2003) (skim) (CT)
Alan Dershowitz, “Tortured Reasoning” (CT)
Elaine Scarry, “The Structure of Torture: The Conversion of Real Pain into the Fiction of Power” from *Bodies in Pain* (CT)
Stephen Holmes, “Battling Lawlessness with Lawlessness” (CT)
Optional: Jeannine Bell, “Behind This Mortal Bone”: The (In)Effectiveness of Torture”

13. April 4. International Tribunals
Martha Minow, “Trials” from *Between Vengeance and Forgiveness* (CT)