

LEGAL STUDIES 100
FOUNDATIONS OF LEGAL STUDIES
FALL 2024
(Almost final) 9/9/24

TUESDAYS & THURSDAYS 8:00 am— 9:29 am
In-Person Instruction¹
390 Hearst Mining Building
August 29, 2024-December 5, 2024

Course Organizers:

Lecturer:

Prof. Jonathan Simon
jssimon@berkeley.edu
592 Simon Hall
(510) 643-5169

Office Hours: In person but able to do zoom as well. Monday 2-3:30 and Thursday 10:30-12:00. Appointments by reservation using Calendly [here](#). Groups of up to 3 welcome. Let me know if you cannot make these times and I'll find an alternative.

Sections:

Rahel Fischer

¹ In person attendance is required. Attendance will be taken in lecture and section. I will be recording the lecture so if you are ill you are excused from attending. Students may also access recorded lectures for study purposes.

rahel.fischer@berkeley.edu

Office Hours: Monday 12:30 – 2:30 pm and by appointment, [sign-ups required](#).
On [Zoom](#) unless otherwise requested.

Michael Banerjee,

michael_banerjee@berkeley.edu

Office Hours: Thursdays from 3-5PM in Law School Room 257 or by appointment (please send Michael an email to schedule)

Valeria Guerrero

vlguerre@berkeley.edu

Office Hours:

Course Description

Law is everywhere. It is in language. It is in documents you carry. It is in signs posted on the walls of buildings and in the police cars rolling by you on the street. It belongs to lawyers and courts, but also to people in everyday life who use concepts like debt, contract, property, discrimination and marriage to stake claims on their family, neighbors, and communities.

Just as Political Science studies political systems, and Economics studies economies, Legal Studies explores the role of law and legal systems in modern US society and globally. Legal Studies is inherently interdisciplinary, and with its grounding in history, literature, and philosophy, includes the humanities as well as the social sciences.

Our course will be organized in three segments. Part I, mostly grounded in history, will examine the roots of our contemporary legal system in systems of colonization, enslavement, and racial governance that transformed life in North America beginning with European empire building in the 17th century. Part II, mostly grounded in the social and behavioral sciences, will explore the question of

why people obey the law, why people break the law, and how organizations and social movements shape those dynamics. Part III, mostly grounded in jurisprudence (legal theory) and case law of the US Supreme Court, will explore the role of law in the form of rights (constitutional, statutory, contractual and international human rights) in the formation of personal identity, family relations, and communities.

Learning Goals

Students can expect to come away with a working knowledge of the following:

- The basic elements of modern legal systems (e.g., courts, legislation, enforcement agencies).
- How modern legal systems developed historically.
- How western legality came to emphasize “law in the books”, that is, law as a formal and distinct system of texts separated from oral traditions, or moral, religious and political texts.
- The “gap” between the objectives of “law in the books” (what the authors of the law and those who supported it expected the law would accomplish) and “law in action” (what empirical observation suggests about how the law, in fact, shapes the behavior of people, firms, and governments).
- The role of law in the European colonization of the Americas and the creation here of a “settler colonial” state aimed at territorial expansion, native dispossession, and maintaining an economy based on racial othering.
- Slavery as a legal institution and its role in shaping the development of the economy and society of the United States.
- The influence of eugenics and scientific racism more generally in the development of modern law in the United States including immigration law and criminal law.
- How law is expected to govern human behavior (and why it so often fails to achieve those goals).
- How law, in the form of legal rights, can help constitute political and social consciousness for individuals and shape identity for individuals and communities.

Textbook and Reading Assignments:

Please purchase (or use the libraries reserve copies):

Kelly Lytle Hernandez, [*City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*](#) (*Justice, Power, and Politics*)
Any edition (available online through library)

All other readings will be available through a PDF in the files section of the bCourses website, or through a URL on this syllabus, or both. (If you are having any difficulty accessing a reading please contact any of the instructors).

Grading Breakdown:

Grades will be out of a total of **100 points**.

Writing Assignment 1: OCTOBER 17 = **20 points** [>1000 words]

How did your family come to California? Are you a settler? Did your parents move here? Grandparents? Pick the chapter in Kelly Lytle Hernandez's book that most closely hews to the era of your family's California journey. If you (they) came more recently work with the final chapter. If possible interview a family member who knows the history. Consider the economic and political context of their decision to come to California and the consequences. How did law facilitate, or create obstacles to their/your arrival in California and prospering here?

Writing Assignment 2: DECEMBER 13 = **50 points** [> 1500 words]

How would you structure a reparations program for Californians who experienced racial injustice in their California journey? Read the report and write an editorial column for your hometown newspaper arguing for a version of reparations that you think would best serve California's future?

The California Reparations Report

<https://oag.ca.gov/ab3121/report>

Section participation: = **15 points**

Quizzes:

5 quizzes based on readings and lecture 3 points per quiz x 5 = **15 points (open for 1 week following posting)**

Reading Assignment:

Read Kelly Lytle Hernandez, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965 (Justice, Power, and Politics)* Any edition by The beginning of October.

Part I: Foundations of US Legality: Sovereignty, Race, Discipline, Eugenics

August 29: Why do people seek the law?

Franz Kafka, *Before the Law*

<https://baierle.files.wordpress.com/2012/11/on-kafka-before-the-law.pdf>

September 3: The Legal Revolution

Harold Berman. "[The origins of Western legal science.](#)" *Harv. L. Rev.* 90 (1976): 894-908, 930-943.

Max Weber, *Three Types of Authority* (1958)

September 5: Courts and the birth of Public Justice

Michel Foucault, "Truth and Juridical Form" PDF pp. 1-5, 32-52

September 10: Federal Indian Law

Matthew Fletcher, [A Short History of Indian Law in the Supreme Court, American Bar Association](#) (2014)

[Johnson v. McIntosh](#) (selection) (Sup Ct. 1823) pp. 572-577, 584-(from "By the treaty..") - 592, 603-605.

September 12: California Indian Genocide

[Benjamin Madley, "Patterns of frontier genocide 1803–1910: The Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia." *Genocide and Human Rights*, 167-170 \(to beginning of Tasmanian case\), 176-181 \(Yuki case\), 189-190 \(conclusion\).](#)

Kelly Lytle Hernandez, [City of Inmates: Conquest, Rebellion and the Rise of Human Caging in Los Angeles](#), Chapter 1. An Eliminary Option.

September 17: Reconstruction of Tribal Authority

[McGirt v. Oklahoma](#) (Supreme Court 2020) 1-28.

[Kevin Washburn, Landback for Indian Tribes lecture](#)

September 19: Enslavement and Discipline

[North Carolina v. Mann](#) (North Carolina Sup. Ct. 1824)

[Laura F. Edwards \(2005\) Enslaved women and the law: Paradoxes of subordination in 1:16:58 the post-Revolutionary Carolinas, *Slavery and Abolition*, 26:2, 305-323,](#)

September 24. Reconstruction and the Birth of the Administrative State

W. E. B. Du Bois, *The Souls of Black Folk*, Chicago: A.C. McLurg & Co. 1903. [Chapter 2 The Dawn of Freedom](#)

September 26. The Consolidation of Jim Crow

Kahlil Muhammad, [The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America](#) (2010) revised edition 2019 preface 2019 and chapter 2: [Writing Crime Into Race](#)

[Plessy v. Ferguson](#) (Sup. Ct. 1896)

October 1

Kelly Lytle Hernandez, [City of Inmates](#), ch. 3
[Chinese Exclusion Case—Chae Chan Ping v. United States](#) (1889)

['The Poet and the Silk Girl': A Japanese American Story of Love, Imprisonment and Protest | KQED](#)

October 3 Class canceled for religious observance

October 8

Kelly Lytle Hernandez, [City of Inmates](#), ch. 3. Not Imprisonment in a Legal Sense

October 10

[California Task Force to Study and Develop Reparation Proposals for African Americans FINAL REPORT, 2-17](#)

Ta-Nehisi Coates Revisits the Case for Reparations, The New Yorker, June 10, 2019

October 15

Kelly Lytle Hernandez, [City of Inmates](#), ch. 6

Elizabeth Hinton, [From the war on poverty to the war on crime: The making of mass incarceration in America](#). Harvard University Press. Chapter 2 “the war on black poverty” and chapter 4 “the war on black crime” 2016.

October 17 Deterrence

Nagin, Daniel S. "Deterrence in the twenty-first century." *Crime and justice* 42, no. 1 (2013): 199-263. Read - 199-207, 230-233

October 22 Coase Theorem and Contracts

Diana Reddy, TRANSACTION BENEFITS AT WORK: REGULATING THE FUTURE OF WORK FOR THE FUTURE OF SOCIETY, forthcoming *Columbia Law Review*, Vol. 125 (2025), pp. 5-11, 23 (Coase’s Theory of the Firm) -28

October 24 Procedural justice

Tyler, Tom R. "The legitimacy of legal institutions." In *Research Handbook on Law and Psychology*, pp. 34-48. Edward Elgar Publishing, 2024.

October 29 Implicit biases

Eberhardt, Jennifer L., Phillip Atiba Goff, Valerie J. Purdie, and Paul G. Davies. "Seeing black: race, crime, and visual processing." *Journal of personality and social psychology* 87, no. 6 (2004): 876.

November 5 Law & Social Theory I

Emile Durkheim, *Mechanical Solidarity*

November 7 Law & Social Theory II

Karl Marx, *Capital*, Vol. I. Chapter Six: The Buying and Selling of Labour-Power

November 12]Legal Endogeneity

Edelman, Lauren B. "Law at work: The endogenous construction of civil rights." In *Handbook of employment discrimination research: Rights and realities*, pp. 337-352. New York, NY: Springer New York, 2005.

[Text of the Americans with Disabilities Act](#)

November 14 Legal Consciousness

Laura Beth Nielson, *Situating Legal Consciousness*

David Engel and Frank Munger, *Rights, Remembrance and the reconciliation of difference*

November 19 Law and social movements

Levitsky, Sandra R. "Law and social movements: old debates and new directions." *The handbook of law and society* (2015): 382-398.

November 21 Why do the “haves” come out ahead

Galanter, Marc. "Why the haves come out ahead: Speculations on the limits of legal change." *Law & Soc'y Rev.* 9 (1974): 95.

November 26 (video lecture)

Felstiner, William LF, Richard L. Abel, and Austin Sarat. "The emergence and transformation of disputes: Naming, blaming, claiming...." In *Theoretical and Empirical Studies of Rights*, pp. 255-306. Routledge, 2017.

November 28 THANKSGIVING HOLIDAY

December 3

Albiston, Catherine R., Lauren B. Edelman, and Joy Milligan. "The dispute tree and the legal forest." *Annual Review of Law and Social Science* 10, no. 1 (2014): 105-131.

December 5 Conclusion

Kafka, *Before the Law*

Community Guidelines & Resources

Classroom Climate

Maintaining an atmosphere of safety, inclusion, and respect for the dignity of all participants in the class is essential to achieve the learning objectives of the class and is a top priority for your lecture and section organizers. The UC Berkeley Honor Code states: “As a member of the UC Berkeley community, I act with honesty, integrity, and respect for others.” We are all responsible for creating a

learning environment that is welcoming, inclusive, equitable, and respectful. If you feel that these expectations are not being met, please let us know. You may also seek additional support from UC Berkeley's [Division of Equity and Inclusion](#).

Academic Integrity & Honor Code

Any assignment submitted by you and that bears your name is presumed to be your own original work that has not been previously submitted for credit in another course unless you obtain prior written approval to do so from your instructor. You may use words or ideas written by other individuals in publications, websites, or other sources, but only with proper attribution.² If you are not clear about what constitutes plagiarism, please see resources provided by the Center for Student Conduct and the Berkeley Academic Guide.³ The Student Learning Center and Library can provide information and advice on how to avoid plagiarism. If you are not clear about the expectations for completing an assignment or taking a test or examination, be sure to seek clarification from your teaching staff.

As a member of the campus community, you are expected to demonstrate integrity in all of your academic endeavors and be evaluated on your own merits. The consequences of cheating and academic dishonesty — receiving an academic penalty for the assignment or for the class, receiving conduct and educational

² “Proper attribution” means that you have fully identified the original source and extent of your use of the words or ideas of others that you reproduce in your work for this course, usually in the form of a footnote or parenthesis. Generally, if you are citing from a published source or from a website and the quotation is short (up to a sentence or two), place it in quotation marks; if you employ a longer passage from a publication or website, please indent it and use single spacing. In both cases, be sure to cite the original. The Center for Student Conduct states: “Cheating includes fraud, deceit, or dishonesty in an academic assignment, or using or attempting to use materials, or assisting others in using materials that are prohibited or inappropriate in the context of the academic assignment in question. Plagiarism includes use of intellectual material produced by another person without acknowledging its source.” For more information, see, for example, <https://writing.berkeley.edu/students/academic-honesty>.

sanctions, or being asked to disclose your conduct history on a graduate school, law school, medical school, or dental school application — are simply not worth it.

More information on what Academic Integrity means in UC Berkeley's context can be found on the following website:

<https://teaching.berkeley.edu/resources/design/academic-integrity>.

Please note that Legal Studies follows the [Berkeley Law policy](#) that prohibits the use of generative AI software for class related research or on exams.

Academic Accommodations

The purpose of academic accommodations is to ensure that all students have a fair chance at academic success. Disability, or hardships such as basic needs insecurity, uncertain documentation and immigration status, medical and mental health concerns, pregnancy and parenting, significant familial distress, and experiencing sexual violence or harassment, can affect a student's ability to satisfy particular course requirements. Students have the right to reasonable academic accommodations, without having to disclose personal information to instructors.

For more information about accommodations, scheduling conflicts related to religious creed or extracurricular activities, please see the Academic Accommodations hub website:

<https://evcp.berkeley.edu/programs-resources/academic-accommodations-hub#accommodations> .

Sexual Violence & Sexual Harassment (SVSH)

If you or someone you know experiences sexual violence or harassment, there are options, rights, and resources, including assistance with academics, reporting, and medical care. Please visit <https://survivorsupport.berkeley.edu/>, check out the PATH to Care Center (<https://care.berkeley.edu/>), or call the 24/7 Care Line at 510-643-2005.

Seeking help is a smart and courageous thing to do—for yourself and for those who care about you. If you need support, I am happy to help you find the right campus resource who can help. You never need to disclose private personal information to me. I am a Responsible Employee, which means that if you tell me about sexual violence or sexual harassment that you or another student experienced, I need to share that information with OPHD (<https://ofew.berkeley.edu/ophd.berkeley.edu>). There are confidential resources (<https://svsh.berkeley.edu/support/support-survivors>) I can connect you with.

Student Learning Center

The Student Learning Center (SLC) provides a variety of services for students to assist them with their coursework and assignments. Study groups, writing consultations and a variety of workshops are all available. Please visit <http://slc.berkeley.edu/general/index.htm> for more information

Counseling & Psychological Services

The Tang Center provides counseling and psychological services for students struggling with any number of concerns: adjusting to school, deciding on a career or major, dealing with family or relationship issues, coping with personal crises. If you're struggling, they're here to help. Please visit <https://uhs.berkeley.edu/caps> for more information

