

LEGAL STUDIES 100
FOUNDATIONS OF LEGAL STUDIES
FALL 2022

DRAFT SYLLABUS

TUESDAYS & THURSDAYS 3:30 TO 4:59
In Person Instruction¹
Physics Building
Classroom 2

Instructors:

Professor

Jonathan Simon

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592 Simon Hall

(510) 643-5169

Office Hours (In person Room 592 Simon Hall in the Law School quadrangle). If possible please reserve time using Calendly [here](#).

Wednesdays: 2:00-3:30 pm

¹ In person attendance is required and participation encouraged. We will however be recording the class so if you are sick with COVID or any other illness that could spread you are encouraged to stay home or seek treatment. All the classes will be available to all students in the class for review purposes.

Thursdays: 10:00 to 11:30 am

Or email for an alternative appointment time if those are not possible.

Faculty Support Staff - Tyler Slay, JD

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GSI

Eduardo Bautista Duran

ebautista@berkeley.edu

Office Hours: Mondays, 12 - 2pm (via Zoom)

Please use the Calendly link [here](#) to set up an appointment.

Use email for an alternative appointment if you are unable to meet on Mondays.

Margot Lipin

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Course Description

Just as Political Science studies political systems, and Economics studies economies, Legal Studies explores the role of law and legal systems in our societies and globally. Even more than other social science disciplines, Legal Studies is inherently interdisciplinary and includes the Humanities as well. 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 oddly 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. To begin to capture its complex role we will need to borrow from literature, Philosophy, Rhetoric, Economics, Sociology, Anthropology, Psychology, Ethnic Studies, African American Studies, Gender Studies, Public Policy, Criminology, Political Science, and Geography.

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.
- The gap in all legal systems between “law in the books” and “law in action”
- The role of law in the European colonization of the Americas and the creation here of a settler colonial state aimed territorial expansion, native dispossession, and racialized management of the population.
- 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 immigration law in the United States
- How law is used to govern human behavior (and why it so often fails to achieve its goals).
- How law, sometimes in the form of legal rights, can help constitute consciousness or identity for individuals and communities.
- Constitutions and Human Rights as sources of legal rights.

Textbooks and Reading Materials:

Required Text:

Benjamin Van Rooij and Adam Fine, *The Behavioral Code: The Hidden Ways Law Makes Us Better and Worse* (Beacon Press)²

All other readings will be available through the bCourses website. If you are having any difficulty accessing a reading please contact any of the instructors.

² We will not begin using the book until the end of September or beginning of October by which time the text book store should have the paperback available. You can also buy the hardback online at a discounted price.

Grading Breakdown:

Grades will be out of a total of **100** points which you will earn through quizzes, a two part writing assignment, and participating in section.

Bi-Weekly Quizzes = 35 points

A short take-home quiz will be posted through our bCourses site every two weeks of the class and review its contents. Each quiz will be worth 5 points and be graded using a multiple choice or multiple answer format that will be automatically tallied when you complete the quiz. ($7 \times 5 = 35$). Students may take as much time as they need for the quiz and may use their notes and books but you must complete the quiz within one week of its posting and after you take it, your score is final.

Two Part “law on the books” versus “Law in Action” Study = 50 Points³

Last year the California legislature considered over 5,000 Bills (the word for a law under consideration). Some of them made marginal changes to existing laws. Others introduced sweeping changes. They dealt with many topics from climate change, workers’ rights, police accountability and hate crimes. You can search them by keyword or author [here](#) for this recent session, or going back to earlier years. In this project you will use this tool to choose a Bill considered by the California legislature (whether it made into law or not) in the last five years (2021-22; 2019-2020; 2017-2018) and then analyze the potential for gaps between the intentions of the authors of the “law on the books” and “law in action” in were that law to be enacted an implemented in California’s communities.

Part 1 (15 points): Pick a Bill that aims to change how California people and or businesses behave. Not every law aims at changing behavior directly. For example, some may authorize the state to spend money studying how to do something effectively. Other laws increase the amount of money spent on some activity or give a state agency new responsibilities. In consultation with your GSI,

³ Additional details on the writing assignment will be provided in a separate hand-out in February.

choose a Bill that seems clearly aimed at altering the behavior of individuals or businesses.

- Provide a link to the law through the California Legislative Information page.
- Identify what (and whose) behavior the law is aimed at changing?
- Identify the purpose or purposes behind changing the behavior (why?)
- Identify the mechanisms through which the law aims at changing behavior (how)?

Must be submitted through the bCourses assignment page by Midnight on October 28, 2022

Part 2 (35 Points): Using two different theories of law and human behavior studied in this course, identify potential gaps between the intentions of the “law on the books” (if the bill becomes law) and how the law may actually (not) work “in action” and using the tools of what Fine and Von Rooij call “the behavioral code” recommend practical steps that could be taken to better align the “law on the books” with the “law in action”

Must be submitted through the bCourses assignment page by Midnight on Friday December 9, 2022

Section attendance/participation (15 Points):

Nearly perfect attendance and participation in the section (no more than 1 unexcused absence) will earn students 15 points. Where attendance/participation has been partial, points will be adjusted accordingly.

<p>LS 100 Fall '22 Reading Assignments</p>		<p>Please read before class and come prepared to discuss. These readings are required unless marked as recommended.</p>
<p>Aug 25</p>	<p>Where is the law?</p>	<p>Franz Kafka, Before the Law https://baierle.files.wordpress.com/2012/11/on-kafka-before-the-law.pdf</p>
<p>Aug 30</p>	<p>How did we come to associate law with books?</p>	<p>Harold Berman. "The origins of Western legal science." Harv. L. Rev. 90 (1976): 894-908, 930-943.</p> <p>Max Weber, Three Types of Authority (1958)</p>
<p>Sep 01</p>	<p>Conquest and Dispossession</p>	<p>Fletcher, "The Marshall Trilogy: A Cold Logic"</p>
<p>Sep 6</p>	<p>Grave Matters</p>	<p>Anthony Platt, Grave Matters (New edition 2021) Preface to new edition, xi-xv; and chapter 8 (An Argument About The Past), 151-178.</p>

<p>Sep 8</p>	<p>Genocide</p>	<p>Kelly Lytle Hernandez, <i>City of Inmates</i>, Ch 1. An Eliminator Option</p> <p><i>Recommended:</i> Madley, Benjamin. "Patterns of frontier genocide 1803–1910: the Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia." <i>Journal of Genocide Research</i> 6, no. 2 (2004): 167-170, 176-181, 189-190</p>
<p>Sep 13</p>	<p>Slavery as a legal institution</p>	<p>North Carolina v. Mann (North Carolina Sup. Ct. 1824) http://moglen.law.columbia.edu/twiki/pub/AmLegalHist/TedProject/Mann.pdf</p> <p><i>Recommended:</i> Laura Edwards, "Enslaved women and the law"</p>
<p>Sep 15</p>	<p>Racial capitalism and Reconstruction</p>	<p>W. E. B. Du Bois, <i>The Souls of Black Folks</i>, Ch 2. "Of the Dawn of Freedom"</p> <p>Cedric Robinson, <i>Black Marxism</i>, 1-4, 195-208</p>

		<p>Karl Marx, Capital, vol 1, chapter 6, The Consumption of Labor, https://www.marxists.org/archive/marx/works/1867-c1/ch06.htm</p>
Sep 20	Chinese Exclusion	<p>Kelly Lytle Hernandez, <i>City of Inmates</i>, Ch. 3 Not imprisonment in a Legal Sense.”</p> <p>Chae Chan Ping v. U.S., 130 U.S. 581 (1889)</p>
Sep 22	Racial governance after Reconstruction	<p>Kahlil Muhammad, The Condemnation of Blackness, ch. 1 “Saving the Nation, the Racial Data Revolution and the Negro Problem”</p> <p>Plessy v. Ferguson, 163 U.S. 537 https://www.law.cornell.edu/supremecourt/text/163/537</p>
Sep 27	Eugenics and the remaking of American law	<p>Thomas Leonard, Illiberal Reformers, excerpt,</p> <p>Buck v. Bell (1927) https://www.law.cornell.edu/supremecourt/text/274</p>

		/200 <i>Recommended:</i> “Imbeciles Explores Legacy of Eugenics in America” https://www.npr.org/2016/02/26/468297940/imbeciles-explores-legacy-of-eugenics-in-america [8 minute audio]
Sep 29	Law and human behavior	Fine and Van Rooj, <i>The Behavioral Code</i> , ch. 1-2
Oct 04 (Class canceled for observance of Yom Kippur)		
Oct 06		BC, ch. 3
Oct 11		BC, ch. 4
Oct 13		BC, ch. 5
Oct 18		BC, ch. 6
Oct 20		BC, ch. 7
Oct 25		BC, ch. 8
Oct 27		BC, ch. 9

Nov 01		<i>Behavioral Code</i> , ch 10	
Nov 03	Constitutional Law- Right to	Plessy v. Ferguson Lochner v. New	

	Contract to the Right to educational autonomy	York	
Nov 08	Constitutional Law - Right to contraceptive privacy through Abortion		
Nov 10	Constitutional Law - Sexual intimacy and marriage		
Nov 15	Constitutional Law - Abortion after Dobbs		
Nov 17	TBD		
Nov 22	TBD		
Dec 01	TBD		

Community Guidelines & Resources

Classroom Climate

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, you can consult your instructor(s) or seek assistance from campus resources.

Academic Integrity & Honor Code

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>.

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.⁴ If you are not clear about what constitutes plagiarism, please see resources provided by the Center for Student Conduct and the Berkeley Academic Guide.⁵ 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 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.

Academic Accommodations

⁴ "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.

⁵ 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>.

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

