

LEGAL STUDIES 100
FOUNDATIONS OF LEGAL STUDIES
FALL 2023

Syllabus plus reading assignments through October 25, 2023

TUESDAYS & THURSDAYS 2:00 TO 3:30
In-Person Instruction¹
Genetics and Plant Biology, Room 100

Course Organizers:

Lecture:

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

Office Hours: Wednesdays: 2:00-3:30 pm; Thursdays: 11:00 am to 12:30 pm (or email for an alternative appointment time if those are not possible). In person unless otherwise noted, room 592 Simon Hall (on Bancroft Way across from the International House). Please reserve time using Calendly [here](#). Groups of up to 3-4 students are encouraged.

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.

Sections:

Laika Abdulali

Section 103 (Wednesdays 3 pm-4 pm; 115 Anthro/Art Building)

Section 104 (Thursdays 4 pm to 5 pm; 124 Wheeler Hall)

laikaabdulali@berkeley.edu

Office Hours: Wednesdays 1 PM-2:30 PM (Zoom unless otherwise agreed)

[Laika's Office Hours Wejoinin Sign Up Sheet](#)

Todd Neece

Section 101 (Mondays 9:00 am-10:00 am; 124 Wheeler Hall)

Section 102 (Tuesdays 5:00 pm-6:00 pm; 174 Social Sciences Building)

toddtneece@berkeley.edu

Office hours (in person): Tuesdays & Thursdays 3:45-4:45

[Todd's Office Hours Wejoinin Sign Up Sheet](#)

Peyton Provenzano

Section 105 (Wednesdays 8 am-9am; 385 Physics Building)

Section 106 (Thursdays 4pm-5pm; 87 Evans)

peytonprov@berkeley.edu

Please contact me via bCourses messages, not via email

Office Hours (in person): Tuesdays & Thursdays 1-1:50pm at Cafe Zebb,
also by appointment

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):

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

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.

In Class Midterm: Short essay plus short answer choice questions based on readings and lectures OCTOBER 3 = **30 points**

Take-Home Final (you will be able to take the final via bcourses from Midnight until 11:59 pm on DECEMBER 12: Short essays plus short answer questions based on readings and lectures throughout the semester = **55 points**

Class attendance = - 5 points for substantial unexcused absence

² You will not need this book for the first month or so of the course. If you are on the waiting list you should wait until your enrollment is confirmed to purchase. We will not begin using the book in class before October 5th.

Section participation and assignments (you will receive .5 points each for turning your section discussion writing assignment in a timely manner and for attending in person unless you have an excused absence) = **15 points**

LS 100 Fall '22 Reading Assignments	Section discussion assignment - Write a < 300 word response to the following question or questions. Post to section assignment tab by 6 pm the day before section	Please read before class and come prepared to discuss. These readings are required unless marked as recommended.
Week 1: Why do people seek the law?	[No section]	Franz Kafka, Before the Law https://baierle.files.wordpress.com/2012/11/on-kafka-before-the-law.pdf
Week 2: Sovereignty and the Birth of “Law-in-the-books”	<i>Section discussion topic:</i> Why do people seek the law? Who or what are among the main “gate keepers” that prevent people from reaching the law?	Harold Berman. "The origins of Western legal science." Harv. L. Rev. 90 (1976): 894-908, 930-943. (estimated reading time 90 minutes) Max Weber, Three Types of Authority (1958) (estimated

		<p>reading time 30 minutes)</p> <p><u>Text of the Americans with Disabilities Act</u> (estimated reading time 120 minutes)</p>
<p>Week 3: Conquest and Dispossession</p>	<p><i>Section discussion topic:</i> What seems to have been the objective or objectives of the ADA? Has the law achieved these objectives?</p>	<p><u>Kelly Lytle Hernandez, City of Inmates chapter 1 Eliminary Option</u> (estimated reading time 120 minutes)</p> <p><u>Benjamin Madley, "Patterns of frontier genocide 1803–1910: The Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia."</u> <i>Genocide and Human Rights</i>, pp. 167-169, 176-181. 2017 (estimated reading time 120 minutes)</p> <p><u>McGirt v. Oklahoma</u> (Supreme Court 2020) 1-28. (estimated reading time 90 minutes)</p>

<p>Weeks 4-5: Slavery as a legal institution</p>	<p><i>Section discussion topic:</i> week 4: Identify one way that law facilitated the dispossession and genocide of Native Americans?</p> <p><i>Section discussion topic:</i> week 5: Have the 13th, 14th and 15th Amendments achieved their objectives?</p>	<p><u>North Carolina v. Mann</u> (North Carolina Sup. Ct. 1824) (estimate reading time 60 minutes)</p> <p><u>Laura F. Edwards (2005) Enslaved women and the law: Paradoxes of subordination in the post-Revolutionary Carolinas, Slavery and Abolition</u>, 26:2, 305-323, (estimated reading time 120 minutes)</p> <p><u>WEB Du Bois, The Souls of Black Folk - Ch. 2 The Dawn of Freedom</u> (estimated reading time 120 minutes)</p> <p><u>The 13th Amendment</u> (estimated reading time 20 minutes)</p> <p><u>The 14th Amendment</u> (estimated reading time 40 minutes)</p> <p><u>The 15th Amendment</u> (estimated reading time 20 minutes)</p> <p><u>California Task Force to Study and Develop Reparation Proposals for African Americans FINAL REPORT</u>, 2-17</p>
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		<p>(estimated reading time 60 minutes)</p> <p>recommended: <u>Ely Aaronson. <i>From slave abuse to hate crime: the criminalization of racial violence in American history.</i> “Chapter 2, Progressive Criminalization at the Heart of Darkness.”</u> 26-40 (estimated reading time 120 minutes)</p>
<p>September 26 - 28</p> <p>Immigration Restriction, Eugenics and Racial Governance</p>	<p><i>Section discussion topic:</i> How would reparations fill the gaps in the Reconstruction Amendments (13th, 14th and 15th)? What gaps would remain?</p>	<p><u>Chinese Exclusion Case—Chae Chan Ping v. United States</u> (1889) (estimated reading time 120 minutes)</p> <p><u>Kelly Lytle Hernandez, <i>City of Inmates</i>, Ch. 3 not imprisonment in a legal sense</u> (estimated reading time 120 minutes)</p> <p><u>Kahlil Muhammad, <i>The Condemnation of Blackness</i>, ch. 2: Writing Crime into Race</u> (estimated reading time 180 minutes)</p>

		Buck v. Bell (1927) (estimated reading time 20 minutes) Recommended: Thomas Leonard, Illiberal Reformers, pp. 141-168 (estimated reading time 120 minutes)
MIDTERM TUESDAY OCTOBER 3		
OCTOBER 5	<i>Section discussion topic:</i> What elements of eugenics remain in our legal system today?	<i>The Behavioral Code</i> ch.1
October 10 & 12 Deterrence and Incentives	<i>Section discussion topic:</i> Why do people invest so much in shaping the legal code and so little in the behavioral code?	<i>The Behavioral Code</i> ch. 2 & 3
October 17 & 19 Moral or Social Determinants of Behavior	<i>Section discussion topic:</i> Given what you've learned about law and behavior how would you expect a policy of arresting and prosecuting open drug users in San Francisco to work?	<i>The Behavioral Code</i> ch. 4, 5, & 6
October 24 & 26 Regulation	<i>Section discussion topic:</i> What alternatives to punishment would you	<i>The Behavioral Code</i> ch. 9 & 10

	propose to address San Francisco's problems with the personal (overdoses) and social (store closures, business failures) side effects of open drug sales and use?	
October 31-November 2 Law as a tool for social change	Section discussion topic: How should lawmakers incorporate the behavioral code in the legal code?	Joel B. Grossman, Herbert M. Kritzer and Stewart Macaulay, Do the Haves Still Come Out Ahead? Laura Beth Nielsen, Situating Legal Consciousness Catherine Albiston, The Rule of Law and the Litigation Process Lauren Edelman, Howard Erlanger, and John Lande, Internal Dispute Resolution
November 7 - November 9 The right to counsel (the Gideon Revolution and Public Defenders)	Section Discussion: What are the main obstacles to using law for social change?	Dawn Porter, Gideon's Army (2011) (The documentary will be shown in class on November 7) Erwin Chemerinsky, Lessons from Gideon
November 14 - November 16 - November 21	Section Discussion: Part of the civil rights revolution of the 1960s, Gideon v. Wainwright	Engel, David M., and Frank W. Munger. "Rights, remembrance, and the reconciliation of

<p>Rights, legal mobilization and Legal Consciousness</p>	<p>was arguably the biggest one time expansion of access to the law since Reconstruction. However, it appeared to do little to prevent mass incarceration in the decades that followed. Does that surprise you?</p>	<p>difference." Law & Soc'y Rev. 30 (1996): 7.</p> <p>McCann, Michael. "Causal versus constitutive explanations (or, on the difficulty of being so positive...)." Law & Social Inquiry 21.2 (1996): 457-482.</p> <p>Recommended: Rosen, Bien, Galven and Grunfeld, Jail Decree-Babu v Ahern Information Page</p> <p>National Lawyers Guild, Reject the Babu Settlement</p>
<p>HOLIDAY November 22, 23, 24</p>		
<p>November 28 - November 30</p> <p>Seeking the law, Reflecting on the law</p>	<p>Section Discussion: broad discussion of ADA in terms of law and social change?</p>	<p>McCain, Jesse, and Josipa Roksa. "'It's a Strength That I Draw From": First-Generation Background as a Cultural Resource in Law School." Journal of First-generation Student Success 3.2 (2023): 71-89.</p> <p>Franz Kafka, Before the Law</p>

		Teubner, Gunther. "The Law before its law: Franz Kafka on the (Im) possibility of Law's Self-reflection." German Law Journal 14.2 (2013): 405-422.
Review Session via Zoom		

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.³ If you are not clear about what

³ “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

constitutes plagiarism, please see resources provided by the Center for Student Conduct and the Berkeley Academic Guide.⁴ 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.

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

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>.

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

