

Legal Studies 100  
Foundations of Legal Studies  
Monday, Wednesday, Friday  
11:00 – 11:59 am  
2 LeConte

Professor Jonathan Simon  
592 Simon Hall

[jssimon@berkeley.edu](mailto:jssimon@berkeley.edu)

Office Hours: Tuesday and Wednesday: 2:30 to 3:30; Mondays 9:30 to 10:30 am (No appointment is necessary but I'll take students in the order in which they arrived and limit the time to 20 minutes if others are waiting)

**Graduate Students Instructors:**

Chase Burton

Email: [chase.burton@gmail.com](mailto:chase.burton@gmail.com)

Office Hours: Mondays, 1:00-3:00 pm (please sign up in advance at [Wejoinin.com/chase](http://Wejoinin.com/chase) ) or by appointment. Location TBD

Gil Rothschild Elyassi

Email: [gilroth@berkeley.edu](mailto:gilroth@berkeley.edu)

Office hours: Thursday, 9:15 – 11:15 am (please sign up in advance at <https://www.wejoinin.com/sheets/gghlo>), or by appointment. Location TBD.

**Course description:**

Like the economy or the political system, law is a generative part of our social life that can become an analytic grid for studying all aspects of the human experience while simultaneously being an ensemble of institutions, practices, and beliefs that are influenced by all aspects of the social order. Law students learn whole bodies of American law, along with skills essential to being a good lawyer like spotting issues in fact patterns, performing case analysis to distinguish new facts from old rulings, and making public policy arguments supportive of one side or the other in a legal dispute. In legal studies we use the tools of the social sciences and humanities to explore how the law touches the lives of individuals and the organizations and communities they are part of. We also explore how legal materials, often reflected in plays, television dramas, and newspaper articles (or today blog posts), get taken up as a constitutive element in shaping our conception of our place and prospects in a social world.

## **Texts:**

Please purchase the following books:

Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (2015)

Austin Sarat (ed.) *The Social Organization of Law* (2004)

All other assigned readings will be available in a folder labelled “Supplementary Readings” in the Files section of our [bCourses website](#).

## **Assessment:**

Students will be assessed through several different assignments and receive feedback throughout the semester. The final grade will be based on these assessments by the following percentages

**Assignment 1** (10 percent): Write a 1000-word paper applying any 3 of the social science or humanities perspectives on law (Hobbes, Turk, Edwards, White, etc.) we have encountered so far in the course to Bryan Stevenson’s legal practice as described in *Just Mercy*.

Due February 22

**In-class midterm** (20 percent)

The exam will consist of short answer questions.

March 13

**Section assignments** (20 percent)

Assignments to be made by your GSI

Throughout the semester

**Two-part final exam** (25 percent x 2):

a. *Proctored Final exam*. The exam will consist of short answer questions.

May

b. *Take-home essay*. The questions / prompts will be designed to draw together concepts and materials from the entire course.

The prompt(s) will be distributed after the final review session, and the essay will be due on or before the last day of the exam period (an e-copy in MS Word should be uploaded to bCourses by that time).

## **Class and Section Policies:**

You are expected to attend each lecture and section meeting unless you have an illness or other excused absence and to do all reading assigned for the class ahead of time. For lecture, please be in your seat prior to 11:00 am. Lectures will begin promptly at 11:00 am with a minute of mindfulness. This brief exercise in silent contemplation is wholly secular (although it draws on the methods of many religions), it is intended to improve the quality of our learning experience and increase the amount we all retain from what we learn in class. If you come late, please wait until the end of the minute to take your seat. Please remain seated during the relatively short duration of the lecture and section unless personal circumstances require you to exit early or come and go (in which case please do so with the greatest consideration for the attention of others).

For the same reason, we respectfully insist that you refrain from all use of the internet to review social media or email for any reason other than contributing to the class discussion. Students violating this request will receive a warning and then face a deduction from their section grade for repeated violations.

We are committed to making Legal Studies 100 a safe and respectful learning environment for all participants. Since part of what makes law distinctive is the use of arguments and reasons to guide and explain decision making, legal studies students must be open to considering a wide range of arguments. Part of the way law has succeeded in managing the intense emotions generated by powerful social conflicts is by imposing norms of self-restraint and mutual respect on the public statements of all participants. We will endeavor to follow that model by addressing all arguments with a critical eye toward their merits and a respectful attitude toward those raising them (especially our classmates and instructors).

We are committed to making Legal Studies 100 an inclusive classroom for people living with disabilities. Students requiring [accommodation](#) for disability should make sure that one of your instructors receives the official accommodation notice from DSP **by the third week of the semester**.

Finally, please refer to Berkeley's Academic Integrity policy (<http://sa.berkeley.edu/conduct/integrity>). *The legal studies department and your instructors take academic integrity and honesty seriously. If you plagiarize, cheat, or are otherwise dishonest, you will at fail at least the assignment in question, and we will file an academic dishonesty report.* If you have any questions about what constitutes plagiarizing or cheating, please ask.

### **Learning Objectives:**

Each section of the course and each class will have its own learning objectives that we will discuss in advance. In general students are expected to learn how to use the methods of the social sciences and humanities to explore the role of legal institutions,

practices, and beliefs in shaping contemporary social life and to analyze how social conflicts and differences shape the outcomes of legal systems. Our major focus will be on the US legal system and its historical development but always with an eye toward differences across the globe.

## **COURSE READINGS AND SCHEDULE**

\*Note: Assignments are subject to change. Your instructors will endeavor to provide at least 1 week of notice where possible

### Part I. When Law Fails (or Reaches its Limits)

January 18 -20.

State v. Mann 13 NC 263 (Supreme Court of North Carolina 1829)

Laura Edwards, "Enslaved Women and the Law, Paradoxes of subordination in the post-Revolutionary Carolinas'," *Slavery & Abolition*, Vol. 26 No. 2:305 — 323

Stevenson, *Just Mercy*, ch. 1-3 (3-66)

January 23.

Deshaney v. Winnebago, *Sarat*, ch. 3

Crime of Self Defense (George Fletcher), *Sarat*, ch. 4.

Trayvon Martin Case

New York Times, [Events Leading to the Shooting of Trayvon Martin](#), June 27, 2012.

CNN, [Trayvon Martin Shooting Fast Facts](#), February 6 2016

January 25.

Special session on library resources:  
Guest speakers, [Jesse Silva](#)  
[I-Wei Wang](#)

(Read Stevenson, *Just Mercy*, ch. 5, 7, 9)

January 27.

Leviathan (Thomas Hobbes) Sarat, ch. 7

Law as weapon in social conflict (Austin Turk) Sarat, ch. 8.

January 30

Stevenson, *Just Mercy*, ch. 4

Furman v. Georgia, Sarat ch. 60

February 1

Gregg v. Georgia, Sarat ch. 61

Before the Law (Franz Kafka), Sarat, ch. 12

Property, Authority, and the Criminal Law (Douglas Hay), Sarat, ch. 13

February 3

Violence and the Word (Robert Cover), Sarat ch. 14

McLeskey v. Georgia, Sarat ch. 62

February 6.

Stevenson, *Just Mercy* ch.'s 11, 13, 15, Epilogue

Part II. Law and the Normative Order

February 8

David Trubek, "[Weber on Law and the Rise of Capitalism](#)," 1972 Wis. L. Rev. 720 (1972), pp. 720- 731, 739-748

"Silk Road [Drug Market was an Economic Experiment Gone Wrong](#)," *NPR Morning Edition*, December 2, 2014

"[As Uber Expands, It Asks Cities For Forgiveness Instead Of Permission](#)," *NPR Morning Edition*, December 26, 2014

February 10. China and the rule of law

Rachel Stern (podcast) [Rachel Stern on China's Legal System](#)

[CPC Sets New Blue Print for the Rule of Law](#)

Andrew Jacobs and Chris Buckley, "[China Moves to Reinforce the Rule of Law, With Caveats](#)," *The New York Times*, October 23, 2014, A1

*Special guest Rachel Stern, Professor of Law, Legal Studies, and Political Science*

February 13.

On Liberty (John Stuart Mill), *Sarat*, ch. 9

Lawrence v. Texas, *Sarat* ch. 10

February 15.

Meir Dan Cohen, "[The Concept of Dignity](#)" (2011),

February 17

Obergefell v. Hodges (2015)

Law as Rhetoric, Rhetoric as Law (James Boyd White), *Sarat* Ch. 11

February 20. PRESIDENT'S DAY HOLIDAY

### **Part III: Going to Law (Motivations, Obstacles, Consequences)**

February 22.

'The Emergence and Transformation of Disputes,' (William Felstiner, Richard Abel, and Austin Sarat), Sarat ch. 15

'The Crisis Is Injuries, Not Liability,' (Richard Abel), Sarat ch. 17

Recommended:

Liability: The Legal Revolution and Its Consequences,' (Peter Huber), Sarat ch. 16

February 24.

'Lawyers and Consumer Protection Laws,' (Stewart Macaulay), Sarat ch. 20

'The Justice Broker: Lawyers & Ordinary Litigation,' (Hebert Kritzer), Sarat ch. 21

'The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court,' (Carroll Seron et al.), Sarat ch. 22.

February 27

Dylan Penningroth, "My People, My People: The Dynamics of Community in Southern Slaver, pp. 166-178 in *New Studies in the History of American Slavery*, Edward E. Baptist and Stephanie Camp, eds.

*Special Guest Dylan Penningroth, Professor of Law, Legal Studies, History*

### **Part IV. Law and Social Change**

March 1

Brown v. Board of Education, 347 U.S. 483 (1954)

Parents Involved in Community Schools v. Seattle School Dist. No. 1, 551 U.S. 701 (2007)

Malcolm M. Feeley, [“Hollow Hopes, Flypaper, and Metaphors,”](#) 17 Law & Soc. Inquiry 745 (1992)

March 3

Rusk v. Maryland, Sarat ch. 23

Rape (Susan Estrich), Sarat ch. 24

March 6

Risking Relationships (Phoebe A. Morgan), Sarat ch. 25

Rights Talk and the Experience of Law, Sarat ch. 26

March 8.

Goldberg v. Kelly, Sarat ch. 27

Subordination, Rhetorical Survival Skills, and Sunday Shoes (Lucie E. White), Sarat ch. 28

March 10.

Dependency by Law (Frank Munger), Sarat ch. 29

Mark Galanter, [“Why the Haves Come Out Ahead.”](#) Law & Society Review (1974)

March 13. IN CLASS MIDTERM

## **Part V. Discretionary Justice**

March 15

'American Courts: Process and Policy,' (Lawrence Baum), Sarat ch. 30

Scott v. United States, Sarat ch. 31



'Torture and Plea Bargaining,' (John Langbein), Sarat ch. 32

Powell v. Alabama (1932)

March 17

'Convictability and Discordant Locales,' (Lisa Frohmann), Sarat ch. 33

'Understanding Lawyers' Ethics,' (Monroe Freedman and Abbe Smith), Sarat ch. 34

Imbler v. Pachtman (1976)

March 20

'Fine Line in Indictment: Defense vs. Complicity,' (Laura Mansnerus), Sarat ch. 35

Defending White-Collar Crime (Kenneth Mann), Sarat ch. 36

The Practice of Law as a Confidence Game (Abraham S. Blumberg), Sarat ch. 37

Gideon v. Wainwright (1963)

March 22

Trial by Jury (Alexis de Tocqueville), Sarat ch. 38

Are Twelve Heads Better than One (Phoebe C. Ellsworth), Sarat ch. 39

Jury Duty (Elizabeth Perry), Sarat ch. 40

Duncan v. Louisiana 391 U.S. 145 (1968)

March 24

When Race Trumps Truth in Court (Michael D. Weiss, Karl Zinsmeister), Sarat ch. 41

United States v. Thomas, Sarat ch. 42

March 27-29-31 SPRING BREAK

April 3

Federal Sentencing Guidelines (Nancy Gertner), Sarat ch. 43

Ewing v. California, Sarat ch. 44

April 5

Thirty Years of Sentencing Reform (Cassia Spohn), Sarat ch. 45

Sizing up Sentences (Michael Higgins), Sarat ch. 46

April 7

Justice Without Trial (Jerome Skolnick), Sarat ch. 47

Broken Windows (James Q. Wilson, George L. Kelling) Sarat ch. 48

April 10

Policing Disorder (Bernard Harcourt), Sarat ch. 49

Profiles in Justice (Milton Heumann and Lance Cassak), Sarat ch. 50

April 12

The Myth of Racial Profiling (Heather McDonald), Sarat ch. 51

Tennessee v. Garner, Sarat ch. 52

Officers in Bronx Fire 41 Shots, and an Unarmed Man is Killed (Michael J. Cooper), Sarat ch. 53

Charles Epp and Steven Maynard Moody, authors of [Pulled Over: How Police Stops Define Race and Citizenship](#), C-Span book interview (Video 16:51 seconds).

April 14

The Black Lives Matter Movement, [Platform: End the War on Black People](#) (2016)

Franklin Zimring, TBA

Recommended:

US Department of Justice, [Investigation of the Chicago Police Department](#), 1-16 (2017)

April 17

Alana Semuels, [Rethinking America's Dark Ghettos](#), interview with Tommie Shelby author of *Dark Ghettos: Injustice, Dissent, and Reform*. Atlantic Magazine, November 22, 2016

[Justice as Fairness](#) (Stanford Encyclopedia of Philosophy, article on John Rawls)

Recommended

Tommie Shelby, [Justice Deviance and the Dark Ghetto](#), *Philosophy and Public Affairs*, Vol. 35, No. 2 (2007),

April 19

Persons and Punishment (Herbert Morris), Sarat ch. 57

Punishment, Power, and Justice (Patricia Ewick), Sarat ch. 58

April 21

United States v. Bailey, Sarat ch. 58

Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-First Century America (Loic Wacquant), Sarat ch. 59

April 24

Brown v. Plata (2011)

Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of American Prisons* ch. 6

April 26

Calvin Morrill, Madelaine Adelman, Michael Musheno, and Cindy Bejarano, [Telling Tales in School: Youth Culture and Conflict Narratives](#), 34 *Law & Soc'y Rev.* 521 (2000),

April 28 How Lawyers Learn to Think

Elizabeth Mertz (2007) *The Language of Law School: Learning to Think Like a Lawyer* (Oxford University Press), Introduction "Entering the World of U.S. Law" 3-30