

# Foundations of Legal Studies

Legal Studies 100  
Spring Semester 2018  
Tuesdays and Thursday  
12:30 – 2:00  
2 LeConte

## **Professor Jonathan Simon**

592 Simon Hall

(510)643-5169

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

Office Hours: Monday 10:00 to 12:00 and by appointment

## **Graduate Student Instructors**

Alan Kluegel

Office Hours: TBA

Celina Romano

Office Hours: Thursdays 3:30-5:30pm, 259 Boalt

## **Course description:**

Like the economy or the political system, law is a generative part of our social life that can also become an analytic grid for studying all aspects of the human experience. To begin with law incorporates those artifacts recognized as distinctly legal, statutes, constitutions, decisions of courts, but it is simultaneously 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 do not aspire to teach you whole bodies of legal doctrine US or otherwise, but we will seek to introduce you to lawyerly analytical methods along with 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 will also explore how legal artifacts or conflicts, often reflected in plays, television dramas, and newspaper articles (or today social media), 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:

Nicole Gonzalez Van Cleve, *Crook County: Racism and Injustice in America's Largest Criminal Court* (2016) (any format)

Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of American Prisons* (2016) (any format)

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

### **Assessments:**

Students will be assessed through a variety of formative (helps you formulate your understanding) as well as summative (helps you summarize what you've learned) evaluations. The final grade will be based on these assessments by the following percentages

*Quizzes and in-class assignments* (0 percent): These will be self-graded and do not count toward your final grade, but they will be collected in class and reviewed by Professor Simon.

#### ***Assignment 1* (20 percent): **Court observation and write up****

Attend public court hearings in any California state court for a total of at least 5 hours over at least two different days. Take notes on what you see and hear. Elaborate on these notes after you leave court. Write an essay of at least 1000 words and no more than 2000, analyzing your observations and comparing them to Gonzalez Van Cleve's *Crook County* and which draws on and cites at least two other legal studies theorists from among those in the assigned readings or that you choose with the advice and consent of your GSI

Complete the observations by February 27

Assignment 1 due in class March 8

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

The exam will consist of short answer questions.

March 15

*Section assignments* (20 percent)  
Assignments to be made by your GSI  
Throughout the semester

*Two-part final exam* (20 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).

## Topics and Reading Assignments

### I. Law's Failures

#### **Tu. January 16. Law of the Owner**

*State v. Mann* (North Carolina 1824)  
Edwards, "Enslaved Women and the Law"

Assignment: Prepare a case brief of *State v. Mann* using the template on the course website

#### **Th. January 18**

*State v. Hale* (North Carolina 1823)  
*State v. Caesar* (North Carolina 1849)

Assignment: Prepare a dissenting opinion in *State v. Mann*

#### **Tu. January 23**

Brophy, *University, Court, Slave*, Introduction, plus chapters 7 through 8

#### **Th. January 25 Law and the Conqueror**

*Johnson v. M'Intosh* 21 U.S. 43 (1823) [concentrate on pages 571-592 of the report which gives you most of Chief Justice Marshall's opinion.]

Joseph William Singer, Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest (May 19, 2017). 10 *Albany Government Law Review* 1 (2017) [read the introduction and part III]

Available at SSRN: <https://ssrn.com/abstract=2971052>

Assignment: Prepare a case brief for *Johnson v. M'Intosh*.

**Special Guest Lecture: Dr. Richard Perry, Berkeley Law/Legal Studies**

## **Tu. January 30**

*Johnson v. M'Intosh* (1823) continued

Singer, Indian Title (2017) continued

## **Th. February 1**

Paul Finkelman, *Dred Scott v. Sandford* (2006). in *THE PUBLIC DEBATE OVER CONTROVERSIAL SUPREME COURT DECISIONS*, Melvin I. Urofsky, ed., pp. 24-33, CQ Press, 2006. Available at SSRN: <https://ssrn.com/abstract=1507086>

*Dredd Scott v. Sandford*, 60 U.S. 393 (1857)

[This opinion is over 200 pages. Please read pages 403-427 of Chief Justice Taney's opinion. Look through some of the other opinions to get a flavor of their objections. Is size alone a clue to how complex the constitutional problems created by slavery were? Is the fact that the opinion was superseded a few years later by the bloodiest war then known to humanity (the Civil War 1861-5) a sufficient example of law's failures?]

Holland Carter, "[Half Measures Won't Erase the Painful Past of Our Monuments](#)," Critics Notebook, The New York Times, January 12, 2018

## II. Criminal Trial Courts in Modern America

**Tu. February 6**

Nicole Gonzalez Van Cleve, *Crook County*, pp. 1 -93

**Th. February 8**

Nicole Gonzalez Van Cleve, *Crook County* pp. 93-157

*Connick v. Thompson*, 563 U.S. 51 (2011)

**Tu. February 13**

Nicole Gonzalez Van Cleve, *Crook County*, pp. 157 - 190

*Gideon v. Wainright* (1966) 372 U.S. 335

Recommended:

Abraham Blumberg, The Practice of Law as a Confidence Game, *Law & Society Review* (1968)

**Th. February 15: Court Field work: An Overview**

Special guest Dr. Anjali Verma, Chancellor's post-doctoral fellow  
Jurisprudence and Social Policy

Jocelyn Simonson, "The Criminal Court Audience in a Post Trial World,"  
127 *Harvard Law Review* 2174 (2013-2014) , pp. 2174-2195

III. Theories of Law and Society

**Tu. Feb. 20. Sovereignty and Law**

Thomas Hobbes, *Leviathan*, (1651)

Part I. Of Man. ["Chapter XIII The Naturall Condition of Mankind"](#)

Thomas Hobbes, *Leviathan*, Part II. Of Commonwealth. [Chapter VII. Of the Causes, Generation and Definition of a Commonwealth](#)

Charles Louis de Secondat, Baron de Montesquieu, *Spirit of the Laws*, Chapter III. [Positive Law](#) (1748)

**Th. February 22. Solidarity and Economy**

Durkheim, [Two Laws of Penal Evolution](#), *Economy and Society*, Vol.2(3): 285-308 (1973) (originally published in *Anne Sociologique*, Vol. 4 1899-1900)

[Kafka, Before the Law](#)

**Tu. February 27. Hierarchy**

Mark Galanter, Why the Have's Come out Ahead, *Law & Society Review*

Special guest Dr. Anjuli Verma, Chancellor's post-doctoral fellow  
Jurisprudence and Social Policy

**Th. March 1. Law as a Symbolic Structure**

Karl Marx, [Capital, Vol. 1](#), Chapter 6

Kitty Calavita, *California's Employer Sanctions: The Case of the Disappearing Law* (1983)

**IV. Mobilizing Law: Sexual Harassment a case study**

**March 6. Intellectual Origins**

Catherine Mackinnon, *reading to be announced*

*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57

**March 8. Statutory interpretation**

*Faragher v. City of Boca Raton* (1998) 524 U.S. 775

**March 13. Why do so few complain? And has the contemporary “#MeToo” movement changed things?**

Kristin Bumiller, “In the Name of the Victim”

**March 15. Midterm Exam**

**V. Law and Human Behavior**

**March 20. Rational Choice**

Six big ideas: Coase’s theory of the firm, *The Economist*, July 27, 2017

Coase, *The Theory of Social Cost*, pp. 1-8

**March 22. Cognitive Bias**

Harvard University, Project Implicit, <https://implicit.harvard.edu/implicit/>  
[Please take the Weapons IAT on this website. This test probes for implicit bias associating weapons with people of color. The aggregate results show that people are more likely to associate a Black face with a weapon than a White face. This is true even for people who consciously hold pro-Black views. Note down your own results (you will not be asked to share them) and any reactions you have to them, as well as any observations about the testing procedure, and any questions you have about this methodology. We will discuss the test and its implications in class].

**VI. Law, Self and Society**

**April 3 Dignity**

*Lawrence v. Texas*, 539 U.S. 558 (2003)

Recommended:

Jeremy Waldron, [\*Dignity, Rank and Rights\*](#), Tanner Lectures on Human Values, Berkeley, 2009

**April 5**

*Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015)

*Masterpiece Cake Shop v. Colorado Civil Rights Commission*,  
Read the Colorado Court of Appeals Decision

**VII. Torture and Evolving Standards of Decency**

**April 10. Torture**

Michel Foucault, *Discipline and Punish*, pp. 1-22

Office of Professional Responsibility, Report (Concerning Issues Relating to the Central Intelligence Agencies Use of “Enhanced Interrogation Techniques” on Suspected Terrorists, July 29, 2009, pp. 70-96

**April 12**

Jullily Kohler-Hausmann, Militarizing the Police: Officer Jon Burge, Torture, and War in the “Urban Jungle,” in *Challenging the Prison Industrial Complex: Activism, Arts, and Educational Alternatives*, Stephen Hartnett ed. (2011)

**April 17. Evolving Standards of Decency**

*Trop v. Dulles*, 356 U.S. 86 (1958)

Jonathan Simon, *Mass Incarceration on Trial*, introduction, Ch. 1-3

**April 19.**

Special guest lecture TBA

**April 24. Overcrowding**

*Rhodes v. Chapman*, 452 U.S. 337 (1981)

Simon, *Mass Incarceration on Trial*, ch. 4-5

**April 26. Dignity**



*Brown v. Plata*, 563 U.S. 493 (2011)

Simon, *Mass Incarceration on Trial*, ch. 6 and Conclusion