

LEGAL STUDIES 100  
FOUNDATIONS OF LEGAL STUDIES  
SPRING 2021

TUESDAYS & THURSDAYS 11:00 am to 12:29  
*REMOTE INSTRUCTION ONLY VIA [ZOOM](#)*

**Instructors:**

Professor Jonathan Simon  
jssimon@berkeley.edu

Schedule Office Hours here (or for a different appointment email me):

<https://calendly.com/jssimon-criminology/legal-studies-100-office-tuesday-hours>

Attend via [Zoom](#) Tuesdays 9-10 am

Attend via [Zoom](#) Wednesdays 2-3 pm

(or by appointment email me).

GSI:

Rafael Grillo  
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Brie McLemore

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Office Hours: Mondays 11AM-1PM (PST)

## **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:

- How modern legal systems developed
- The basic elements of modern legal systems
- The distinction in all modern legal systems between “law in the books” and “law in action”
- The role of law in the European colonization of the Americas and the maintenance of a regime of territorial expansion and native dispossession
- The critical role of enslaved people in establishing the United States and of the institution of slavery in constituting American law
- The influence of Eugenics and scientific racism in the development of the 20th century legal state in the US

- How law is used to govern human behavior (and how it fails).
- How law can help constitute consciousness or identity for individuals and communities

## **Evaluation:**

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

*Weekly Quizzes = 25 points*

A short take-home quiz will follow every two weeks of the class for a total of 7 quizzes. Students should take 5 quizzes in order to score the maximum available score of 25 points. Students who take all 7 quizzes will receive the grade based on their best 5.

*Multi-Step Writing Assignment: Gap Study = total 60 Points<sup>1</sup>*

This summer the twin crises of the pandemic and police violence, both of which highlighted grave racial and social injustices in the United States, generated a *Tsunami* of laws ranging from city and county orders and ordinances mandating conduct during different phases of the pandemic and budget decisions (*e.g.*, to defund policing in part), to one of the largest federal spending packages ever enacted during peacetime. For ordinary people, businesses, local officials and lawyers, all of these measures pose innumerable questions about how the “law on the books” is going to apply “in action” or “in real life”. For students of legal studies that expected “gap” between the two is its own subject of fascination and study. This project aims to induct you into this research tradition (which is in fact many traditions). Because state and local law is often ignored and poses many important questions for daily life, you will be asked to focus on a state or local (city and county) law, order or ordinance adopted this Summer or Fall anywhere in the United States in response to either:

- 1) The Pandemic (*e.g.*, stay at home orders, masking requirements, restaurant and business protocols), or

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<sup>1</sup> Additional details on the writing assignment will be provided in a separate hand-out in February.

- 2) The murder of George Floyd and the social/racial justice movement that shook American communities (e.g., use of force rules; removal of traffic law enforcement, curfews)

Step 1: Identify the Law in the Books that you want to study.

Due: Monday February 22nd by 5pm via upload to bcourses

Max Length: 200 words

Worth: 10 points

- Provide a link to the text of the law
- Identify dates enactment and enforcement (if different) and the political actors involved
- Specify how the law relates to either the pandemic or police violence
- What appears to be objective of the law (what result does it aim at achieving)

Step 2: Explore the background of the Law on the Books.

Due: Sunday March 22 by midnight via upload to bcourses

Max Length: 800 words

Worth: 20 points

- Who supported it?
- For what motivations?
- How did supporters expect the law to work on human behavior?
- Who opposed it?
- What did/do opponents fear would happen?

Step 3: Prepare a “gap study” proposal on the Law in Action

Due: Wednesday May 12 by midnight via upload to bcourses

Max Words: 1200

Worth: 30 points

- Identify any available evidence (probably mostly from the media sources but if safe possibly from your own observations) that the law is or is not having effects and what kinds of effects.
- Identify at least two published research studies that address similar laws and how they have fared in action.
- Identify at least three hypotheses or reasons based on those studies and the readings in LS 100 as to why the intentions of the proponents of the law (the law on the books) might fall short of their goals (the law in action), in what ways, and to what degree (the gap).
- Identify a method or methods you could use to test those hypotheses in a future “gap study”

*Section attendance/participation:*<sup>2</sup> Full or nearly full attendance/participation (no more than 2 unexcused absences) will earn students 15 points. Where attendance/participation has been partial, points will be adjusted accordingly.

There will be no midterm or final.

**Assignments:** All assigned materials will be available through the bcourses site organized with the class session.

## **Weekly Schedule**

### **WEEK 1: WHAT WE TALK ABOUT WHEN WE TALK ABOUT LAW**

Subtopics: Authority; Power; Resistance; Identity

Jan 19. Introduction: Where is the Law?

Franz Kafka, Before the Law (Translation by Ian Johnston)

<https://www.kafka-online.info/before-the-law.html>

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<sup>2</sup> Your instructors understand that some students will be unable to attend section synchronously. We will work out appropriate ways for you to earn your participation points.

Wikipedia summary of the Plot of Franz Kafka, *The Trial* (from which “Before the Law” is a small fragment)

[https://en.wikipedia.org/wiki/The\\_Trial](https://en.wikipedia.org/wiki/The_Trial)

Jan 21. The Law in the Books and the Law in Action

Kitty Calavita, *Invitation to Law & Society: An Introduction to the Study of Real Law*. University of Chicago Press Books, 2016.

(excerpt) [PDF]

## **WEEK 2: SOVEREIGNTY**

SUBTOPICS: Roman Law; Traditional/Indigenous Law; Absolutism; Libertarianism

Jan 26. The Legal Revolution & The (Re)Birth of “Law on the Books”

Harold Berman. "The origins of Western legal science." *Harvard Law Review*, Vol. 90 (1976):894-943, read 895-908. [PDF]

<https://heinonline-org.libproxy.berkeley.edu/HOL/Page?handle=hein.journals/hlr90&div=52&id=&page=&collection=journals>

Carol Greenhouse, Review of *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*. Laura Nader. Stanford, CA: Stanford University Press, 1990.370 pp.

<https://anthrosource-onlinelibrary-wiley-com.libproxy.berkeley.edu/doi/abs/10.1525/aa.1992.94.4.02a00260>

Jan 28. Law and Sovereignty (The Law in Action)

Hobbes, *Leviathan*, Ch. 8. “Of the Natural Condition of Mankind”

<https://www.gutenberg.org/files/3207/3207-h/3207-h.htm#link2HCH0013>

Don Herzog, More Laws, Less Freedom (from *The Little Book of Political Mistakes*)

<https://little-book-of-political-mistakes.pubpub.org/pub/18t49l2w/release/1>

**Quiz 1 will be available on Monday February 1**

### **WEEK 3. HOW DOES LAW GOVERN PEOPLE?**

SUBTOPICS: Deterrence; Dignity

Feb 2. Through Coercion?

Cesare Beccaria, *On Crimes and Punishment*, Chapter 2 (Of the Right to Punish); Chapter 7 (Of the Intent of Punishment); Chapter 9 (Of the Advantage of Immediate Punishment). Chapter 28 (Of the Punishment of Death)

[https://oll.libertyfund.org/title/voltaire-an-essay-on-crimes-and-punishments#lf1476\\_label\\_099](https://oll.libertyfund.org/title/voltaire-an-essay-on-crimes-and-punishments#lf1476_label_099)

Feb 4. Through Legitimacy?

Tom Tyler, *Why People Obey the Law?* (Chapter 1) (PDF)

### **WEEK 4. COLONISATION**

SUBTOPICS: Conquest; Genocide; “Trail of Tears”; Treaties; Jurisdiction; Allotment Era

Feb 9. Law and Colonisation

Benjamin Madley. "Patterns of frontier genocide 1803–1910: the Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia." *Journal of Genocide Research* 6, no. 2 (2004): pp. 167-170, 176-181, 189-190 [PDF]

<http://www.gooriweb.org/history/95.pdf>

Feb 11. Federal Indian Law

McGirt v. Oklahoma, Supreme Court, July 2020

18-9526 *McGirt v. Oklahoma* (07/09/2020) pp. 1-28,  
[https://www.supremecourt.gov/opinions/19pdf/18-9526\\_9okb.pdf](https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf)

**Quiz 2 will be available on February 15**

## **WEEK 5. SLAVERY**

SUBTOPICS: Racial Identity and the Law; Gender and the Law; Law, Power and Morality; Local and National Law; Trial and Appellate Courts; Common Law v. Statute; Abolition

Feb 16. Slavery as Constitution

North Carolina v. Mann (North Carolina Sup. Ct. 1824)  
<http://moglen.law.columbia.edu/twiki/pub/AmLegalHist/TedProject/Mann.pdf>

Edwards, Laura F. "Enslaved women and the law: Paradoxes of subordination in the post-Revolutionary Carolinas." *Slavery and Abolition* 26, no. 2 (2005): 305-307, 310-314 [PDF]  
<https://www-tandfonline-com.libproxy.berkeley.edu/doi/pdf/10.1080/01440390500176665?needAccess=true>

Feb 18. Reform or Abolition?

Ely Aaronson. "Chapter 2, Progressive Criminalization at the Heart of Darkness." *From slave abuse to hate crime: the criminalization of racial violence in American history*. Cambridge University Press, 2014. [PDF], 26-40.  
<https://www-cambridge-org.libproxy.berkeley.edu/core/books/from-slave-abuse-to-hate-crime/510FCBFCFA1A1785CBE3CBA565F055F9>



***Step 1 of Gap Study Proposal Uploaded to Bcourses by Monday February 22nd by 5 pm***

## **WEEK 6. RACING THE NATION**

SUBTOPICS: Reconstruction; White Supremacy; Immigration Restriction

Feb 23. The Color Line and the 20th Century

W. E. B. Du Bois, *The Souls of Black Folk*, Chicago: A.C. McClurg & Co. 1903. Chapter 2 “The Dawn of Freedom”

<https://www.gutenberg.org/files/408/408-h/408-h.htm#chap00>

Feb 25. Immigration Restriction

Anna Diamond, “The 1924 Law That Slammed the Door on Immigrants and the Politicians Who Pushed it Back Open,” *Smithsonian Magazine*. 05.19.20

<https://www.smithsonianmag.com/history/1924-law-slammed-door-immigrants-and-politicians-who-pushed-it-back-open-180974910/>

**Quiz 3 will be available March 1**

## **WEEK 7. PLAGUES AND POLICE**

SUBTOPICS: Police power; Individual Rights; Eugenics; Social Insurance

March 2. The Police Power

Jacobson v. Massachusetts 197 U.S. 11 (1905)

<https://www.law.cornell.edu/supremecourt/text/197/11>

Buck v. Bell 274 U.S. 200 (1927)

<https://www.law.cornell.edu/supremecourt/text/274/200>

*Optional*

“*Imbeciles* Explores Legacy of Eugenics in America.” All Things Considered.

<https://www.npr.org/2016/02/26/468297940/imbeciles-explores-legacy-of-eugenics-in-america> [8 minute audio]

March 4. A Modern Approach: The Vaccine Court

Anna Kirkland, *Vaccine Court: The Law and Politics of Injury* (2016), Introduction,

<https://muse-jhu-edu.libproxy.berkeley.edu/chapter/2037135/pdf>

## **WEEK 8. LAW, STATE AND THE SELF**

SUBTOPICS: Due Process; Harm; Family

March 9. Autonomy or Dignity

J. S. Mill, *On Liberty*. 1859. (excerpt) [PDF]

Obergefell v. Hodges, 576 U.S. 644 (2015) [PDF]

[https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

*Optional*

Mary Wollstonecraft, *A Vindication of the Rights of Woman*. London: 1792. (excerpts) [PDF]

March 11. Intersectionality

Devon Carbado, Kimberle Crenshaw, Vickie Mays., & Barbara Tomlinson, (2013). “INTERSECTIONALITY: Mapping the Movements of a Theory.” *Du Bois Review: Social Science Research on Race*, 10(2), 303-312. doi:10.1017/S1742058X13000349 [PDF]

<https://www.cambridge.org/core/journals/du-bois-review-social-science-research-on-race/article/intersectionality/1E5E73E8E54A487B4CCFE85BB299D0E6>

**Quiz 4 available March 15**

## **WEEK 9. LITIGATION AND DISPUTING**

SUBTOPICS: Litigation Explosion; Dispute Pyramid; Legal Endogeneity

March 16. Perceived Injury

William L.F. Felstiner, et al. “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .” *Law & Society Review*, vol. 15, no. 3/4, 1980, pp. 631–654. JSTOR, [www.jstor.org/stable/3053505](http://www.jstor.org/stable/3053505)

March 18. Repeat Players

Lauren Edelman, “How HR and Judges Made It Almost Impossible for Victims of Sexual Harassment to Win in Court,” *Harvard Business Review*, August, 22, 2018 [PDF]

<https://hbr.org/2018/08/how-hr-and-judges-made-it-almost-impossible-for-victims-of-sexual-harassment-to-win-in-court>

***Step 2 of Gap Study Proposal uploaded to Bcourses by Sunday, March 21st (before midnight)***

## **WEEK 10: March 23-25 SPRING BREAK**

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## **WEEK 11. POLICE VIOLENCE**

SUBTOPICS: Fourth Amendment; Police Use of Deadly Force;

March 30. Police Anti-Black Violence

Osagie Obasogie, “Police Killing Black People is a Pandemic,” *The Washington Post*, July 5, 2020 [PDF]

[https://www.washingtonpost.com/outlook/police-violence-pandemic/2020/06/05/e1a2a1b0-a669-11ea-b619-3f9133bbb482\\_story.html](https://www.washingtonpost.com/outlook/police-violence-pandemic/2020/06/05/e1a2a1b0-a669-11ea-b619-3f9133bbb482_story.html)

*Graham v. Connor*, 490 U.S. 386 (1989)

<https://tile.loc.gov/storage-services/service/l1/usrep/usrep490/usrep490386/usrep490386.pdf>

Mariame Kaba, To Stop Police Violence We Need Better Questions and Bigger Demands?

<https://gen.medium.com/to-stop-police-violence-we-need-better-questions-and-bigger-demands-23132fc38e8a>

#### April 1. Defund or Reform the Police?

Meares, Tracey. Policing: A Public Good Gone Bad. *Boston Review* August, 2017

<https://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad>

Chazaro, Angelica. 2020. “What Divesting from the Seattle Police is Really About, *Cross Cut*, Oct. 29, 2020.

<https://crosscut.com/opinion/2020/10/what-divesting-seattle-police-really-about>

Rachel Swan, “Oakland Formed a Taskforce to Defund the Police. Now Some Members Want the City to Reconsider,” *San Francisco Chronicle*, December 9, 2020.

<https://www.sfchronicle.com/bayarea/article/Oakland-formed-a-task-force-to-help-defund-the-15789604.php>

#### Quiz 5 available April 5

## **WEEK 12: LAW AND SOCIAL THEORY (A Glimpse)**

SUBTOPICS: Legal-Rational Authority; Collective Conscience

April 6. Weber

Max Weber, "Politics as a Vocation," From *Max Weber: Essays in Sociology*. Translated, Edited, and with an Introduction by H.H. Gerth and C. Wright Mills. Oxford University Press, December 1958.  
(excerpts) [PDF]

April 8. Durkheim

Emile Durkheim, "Ch. 2: Mechanical Solidarity: Solidarity by Likeness." *The Division of Labor in Society* (1893) Translated by George Simson. Published by The Free Press of Glencoe, Illinois. September, 1960.  
(excerpts) [PDF]

## **WEEK 13. LAW AND HUMAN BEHAVIOR**

SUBTOPICS: Efficiency; Transaction Costs; Implicit Bias

April 13. Economic Analysis of Law

Robert Cooter and Thomas Ulen, "What is the Economic Analysis of Law." *Law and Economics*. Berkeley Law Scholarship Repository, July 2016.  
[http://www.econ.jku.at/t3/staff/winterebmer/teaching/law\\_economics/ss19/6th\\_edition.pdf](http://www.econ.jku.at/t3/staff/winterebmer/teaching/law_economics/ss19/6th_edition.pdf). (excerpt) [PDF]

Optional

R. H. Coase, "The Problem of Social Cost," *The Journal of Law and Economics* Vol. 3, October 1960.  
<https://www.law.uchicago.edu/files/file/coase-problem.pdf>. (excerpt) [PDF]

April 15. Implicit Bias

Jennifer L. Eberhardt, 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. [PDF]  
<http://web.stanford.edu/~eberhard/downloads/2004-SeeingBlackRaceCrimeandVisualProcessing.pdf>

## Quiz 6 available April 19

### WEEK 14. BEYOND THE GAP PROBLEM

SUBTOPICS: Culture, Legal Consciousness, History and Memory

April 20. Law and Culture

Abigail C. Saguy and Forrest Stuart. "Culture and Law: Beyond a Paradigm of Cause and Effect." *The Annals of the American Academy of Political and Social Science*, vol. 619, 2008, pp. 149–164. JSTOR,  
[www.jstor.org/stable/40375800](http://www.jstor.org/stable/40375800) [PDF]

April 22. Law and Rhetoric

Samera Esmeir. "1948: Law, History, Memory." *Social Text*, vol. 21 no. 2, 2003, p. 25-48. Project MUSE  
<https://muse-jhu-edu.libproxy.berkeley.edu/article/43722/pdf>

### WEEK 15. BRINGING JUSTICE

SUBTOPICS: Theory of Justice; Migration; Citizenship; Democracy

April 27

Tommie Shelby, "Justice, deviance, and the dark ghetto." *Philosophy & Public Affairs* 35, no. 2 (2007): 126-160. (excerpts) [PDF]  
<https://www.jstor.org/stable/4623785?seq=1>

April 29

Sarah Song, "The significance of territorial presence and the rights of immigrants." *Migration in political theory: The ethics of movement and membership* 17, no. 1 (2016): 225. [PDF]

<https://escholarship.org/content/qt4g09s9rs/qt4g09s9rs.pdf>

**Quiz 7 available May 3**

**READING WEEK MAY 3-7 (Office hours but no classes)**

***Step 3 of the Gap Study Proposal uploaded via bcourses by Wednesday May 12 at midnight***

## **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.<sup>3</sup> If you are not clear about what constitutes plagiarism, please see resources provided by the Center for Student Conduct and the Berkeley Academic Guide.<sup>4</sup> 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

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.

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<sup>3</sup> "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.

<sup>4</sup> 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>.



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

