

**ACCESS TO JUSTICE:
COMPARATIVE AND HISTORICAL PERSPECTIVES**

Legal Studies 190
Spring 2020
Wednesday, 2-4:59 PM
Latimer 102

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Office Hours	Thursdays, 3-5 PM
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Course Website	https://bcourses.berkeley.edu/courses/1489914
Units	4

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COURSE DESCRIPTION

Legal scholars and practitioners alike acknowledge an access to justice crisis. Although *Gideon v. Wainwright* guarantees indigent criminal defendants the right to counsel paid for by the state, we still have no nation-wide “Civil *Gideon*.” This seminar first introduces students to the origins of the access to justice problem, paying attention to disparate impacts along the lines of race, class, and gender. It examines how the costs of legal services, and in turn of law school tuition, steadily rose in the last several decades. Drawing on both historical and comparative case studies, this seminar then encourages students to think creatively about who can represent individuals at law. Law schools did not always have a monopoly over entry into the legal profession. A variety of professionals provided legal services in colonial North America. Even in the antebellum South, slaves and free people of color employed both lawyers and non-lawyers to help them access the legal system. Further inspiration comes from contemporary case studies outside North America and Europe. Finally, students will have an opportunity to execute a guided research project on a historical, comparative, or contemporary aspect of access to justice that helps shed light on potential solutions today.

Learning Outcomes: As a result of this course, students can expect to sharpen their critical reading and writing skills, learn to better express themselves orally, and practice developing and executing their own research project.

COURSE MATERIALS

Required:

Coursepack available for purchase at Vick Copy, 1879 Euclid Ave., Berkeley.

ASSIGNMENTS

Attendance: Due to the collaborative nature and intense pace of this course, attendance is mandatory. If you miss class for any reason, the burden is on the you to make up the work. If you are experiencing flu-like symptoms, please follow the Center for Disease Control guidelines (adopted by the UC Berkeley Academic Senate) of self-isolation for at least 24-hours after you are free of fever. A doctor's note is not required. If attendance is a chronic problem, it is up to you to decide whether you can continue in the course.

Classroom Participation: Come to class prepared to discuss the readings assigned for that day. For each reading, you should write for yourself a paragraph summarizing the readings, and two discussion questions. If classroom participation becomes an issue, I will require such short responses every week, and they will become part of the classroom participation grade. Pay attention to how often you are contributing. Scale back if you notice others have not had much opportunity to speak. Optional readings are not required; they are mostly listed as suggestions if you would like to pursue a given week's topic in your final paper.

Reading Responses: On Jan. 30, please come prepared to class prepared to sign up for two weeks during which you will submit a 2-3 page reading response (double-spaced, Times New Roman, 12 point font, 1-inch margins all around). Your reading response should include a summary of each of the readings, followed by an analytical discussion of how the readings fit together, how they help you understand the week's topic, and how they fit into the course's focus on access to justice. You may use any citation style, as long as you use it properly and consistently. Due 11:59 PM the night before seminar, to bCourses. Reading responses handed in after this time will lose ten points, and reading responses handed in after our seminar discussion has taken place will receive no credit.

Courtroom Observation: During the week of Feb. 26, we will not meet as a class. Instead, you should read the assigned readings, attend small claims court at the Wiley Manuel Courthouse in Oakland, and submit a two-page observation paper (double spaced, Times New Roman, 12 point font, 1-inch margins all around) observation paper. What did you observe? How does it deepen or challenge your understanding of self-representation, access to justice, and any other course themes? As a member of the public, you can observe small claims proceedings starting at Monday, Wednesday, or Thursday starting at 1:30 PM, or Wednesday starting at 9 AM. In order to ensure that you are able to observe a court session, you are strongly advised to arrive fifteen minutes before the scheduled start time.

Final Research Paper: With guidance from me and in collaboration with other students in the class, you will develop and execute a research project on a historical, comparative, or contemporary aspect of access to justice that helps shed light on potential solutions today.

GRADING AND EVALUATION PROCEDURES

Your grade will be determined based on the following elements:

Assignment	Percentage	Due
Attendance	5%	Throughout semester
Classroom Participation	10%	Throughout semester
Two Reading Response Papers (2-3 pages each)	20%	Twice during the semester, due the night before your chosen seminar by 11:59 PM, to bCourses
Courtroom Observation Paper (1.5 to 2 pages)	10%	March 1, 11:59 PM, to bCourses
Research Paper Incremental Assignments	10%	As assigned, by 11:59 PM the night before seminar, to bCourses
Final Research Paper (14-15 pages)	45%	May 13, 11:59 PM, to bCourses
Total	100%	

I will assess classroom participation based on the following criteria:

Quality of discussion	Poor	Needs Improvement	Meets Expectations	Exceptional
Characteristics of Class/Group Discussion	Does not participate regularly or actively contribute. May communicate ideas but fails to provide examples to support response. Demonstrates very limited understanding of material. Indifferent or may hinder group dynamics.	Participates regularly but contributions reveal shortcomings: i.e., are partially complete, repeats course materials with no further insight, displays only superficial understanding of material. Does not hinder group or class dynamics.	Participates regularly and contributes actively. Contributions and supportive examples are relevant, insightful. Helps group or class dynamics.	In addition to participating regularly, contributes in ways that build community. Responses are uniquely insightful, reflect critical thinking, demonstrate strong connections to others, and integrate class material from earlier in the semester.

I will assess reading responses and the final research paper based on these criteria:

	Questions	Comments	Points
Thesis	<ul style="list-style-type: none"> • Is there a main argument in the essay? • Does it fulfill the point of the assignment? • Is the thesis clearly stated? • Is it consistent throughout? 		/20
Organization	<ul style="list-style-type: none"> • Is the paper clearly organized? • Does it have a roadmap? • Does it have topic sentences? • Does each paragraph have a clear, consistent point? • Is the essay easy to follow? 		/30
Persuasiveness / Use of Supporting Material	<ul style="list-style-type: none"> • Is source selection effective and persuasive? • Is there analysis of each of the main texts examined? • Are specific assertions and quotes properly attributed? • Are opposing points of view examined in an understandable way? 		/40
Style	<ul style="list-style-type: none"> • Is the paper concise? • Are sentences clear and grammatically correct? • Are there spelling or proofreading errors? • Is citation style correct and consistent? 		/10
		Total:	/100

Letter grades may be understood as signifying the following:

Letter Grade	Signifies
A+	Truly outstanding, original work. The grade of “A+,” when awarded at the instructor’s discretion, represents extraordinary achievement, but does not receive grade point credit beyond that received for the grade of A.
A	Superb work. Compelling argument supported by abundant evidence. Virtually no discernible errors.
A-	Excellent work, with strong argument supported by substantial evidence. Few errors.
B+	Very good work with some flaws. Will demonstrate thorough knowledge and a clear argument.
B	Good work. Argument may be less clear than is expected of B+ work. Still reveals a good working knowledge of the subject.
B-	Adequate work. Some flaws in conception or execution. May be lacking an argument or may contain specific inaccuracies.
C+	Mediocre. Flawed in concept and execution. Lacks clear argument and has serious problems in the use of evidence. C+ work approaches the standards of B-work. C- work is notably weak in both conception and execution.
C	
C-	
D	Very poor quality work. Riddled with errors and serious inaccuracies. Lacks a clear argument.
F	Work not submitted, grossly inappropriate, or plagiarized.

This class will use Turnitin, an online plagiarism detection service that matches submitted papers to a text-matching database comprising traditional publications, internet publications, and other UC Berkeley and UC Berkeley Extension student papers. It is a useful tool for learning proper summary, paraphrase and quotation skills in addition to identifying overt instances of plagiarism. Further information and instructions can be found at Turnitin.com.

The courtroom observation and the incremental assignments leading up to your final research paper will be graded on a complete-incomplete basis.

SAFETY AND EMERGENCY PREPAREDNESS

Emergency Numbers: Dial 9-1-1 from any phone, on or off campus

- UC Berkeley Police (from cell phone): 510-642-3333
- City of Berkeley Police/Fire (from cell phone): 510-981-5911
- Campus Emergency Information line: 800-705-9998

Non-Emergency Numbers:

- UC Berkeley Police: 510-642-6760
- Bear Walk: 510-642-9255 (510-642-WALK) or visit <https://bearwalk.ridecell.com/request>

GENERAL POLICIES

Electronic Etiquette: Even for the best-intentioned of users, electronics provide a tempting distraction from what is going on in the class room. The primary purpose of class is discussion and participation in peer writing workshops, so exhaustive note-taking is not necessary. No laptops, tablets, cell phones, or any other electronic devices are allowed in class without prior approval from me. All such devices must be kept completely out of sight when class is in session, except in cases of prior approval. For the benefits of such a policy, see this article in the [New Yorker](#).

Email and Contact (ahavry@berkeley.edu): Please check the course syllabus before emailing me to see if your question can be answered there. Email is best used for questions that can be answered quickly, or to set up an in-person appointment. Please allow 24 hours for response on weekdays. Note that I generally do not check my work email on Saturdays or Sundays.

Office Hours: You are welcome and encouraged to attend office hours throughout the semester to discuss course material. If you cannot make my office hours, please let me know and we will arrange an alternative, mutually convenient time.

Students with Disabilities, Other Special Accommodations: The fundamental principles of nondiscrimination and accommodation in academic programs establish that students may not, on the basis of their disabilities, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any University program or activity. If you require academic accommodations for this course, you need to obtain a Letter of Accommodation from the Disabled Students' Program (see: <https://dsp.berkeley.edu/students/accommodations-and-services>). Once you receive your Letter of Accommodation, please make an appointment with me to confirm. Student athletes, parents, and others whose commitments might affect their ability to attend section should also speak to me about possible conflicts ahead of time.

Reporting Violations: To report discrimination, sexual harassment, or sexual violence, contact the Office for the Prevention of Harassment and Discrimination at ask_ophd@berkeley.edu or (510) 643-7985.

Counseling and Psychological Resources: With its rigorous academic standards, UC Berkeley can be a high-stress environment. Tang Center [Counseling and Psychological Services](#) (CPS) can be found at 2222 Bancroft Way #4300, and reached by telephone at (510) 642-9494. Drop-in appointments are available Monday-Friday, 10 AM to 5 PM. After-hours counseling is available by calling (855) 817-5667. Please note that I am not qualified to provide counseling on non-academic concerns.

Academic Honesty: All members of the UC Berkeley community are expected to act with honesty, integrity and respect for others. Both students and instructors have rights to academic freedom. Please respect the rights of others to express their points of view in the classroom. There are no circumstances in which plagiarism or cheating are permissible. A major curricular goal of this course is to gain a thorough understanding of what constitutes plagiarism, cheating, and academic dishonesty. You should also immediately review the resources available through the [Division of Student Affairs](#) and the [Center for Teaching and Learning](#).

Reasonable Accommodation for Students' Religious Beliefs, Observations and Practices: In compliance with Education code, Section 92640(a), it is the official policy of the University of California at Berkeley to permit any student to undergo a test or examination, without penalty, at a time when that activity would not violate the student's religious creed, unless administering the examination at an alternative time would impose an undue hardship which could not reasonably have been avoided.

SCHEDULE

With reasonable advance notice, schedule and content of readings may be modified. For important campus-wide dates and deadlines, see the [2019-2020 Academic Calendar](#).

UNIT 1: THE PROBLEM AND ITS ORIGINS
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Introduction

Jan. 22

In preparation for our first class meeting, please read:

Tonya L. Brito et al., "What We Know and Need to Know about Civil *Gideon*," *South Carolina Law Review* 67 (2016): 223-244.

Come prepared to introduce yourself and why you are interested in access to justice. I will introduce the topic, the syllabus, and the assignments.

Measuring the Problem and its Disparate Impacts

Jan. 29

Legal Services Corporation, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans” (June 2017) (50 pages).

State Bar of California, “California Justice Gap Study Interim Report,” (Oct. 2019) (2 pages).

Rebecca Sandefur, “Access to Civil Justice and Race, Class, and Gender Inequality,” *Annual Review of Sociology* 34 (2008), 339-358 (19 pages).

Optional:

California Commission on Access to Justice, “Executive Summary: Language Barriers to Justice in California” (2005).

Hon. Robert A. Katzmann, “Immigrant Representation: Meeting an Urgent Need,” in Estreicher, Samuel, and Joy Radice, eds., *Beyond Elite Law: Access to Civil Justice in America* [hereafter *Beyond Elite Law*] (New York: Cambridge University Press, 2016).

The Origins of the Problem

Feb. 5

Robert Gordon, “Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History,” *Daedalus: Journal of the American Academy of Arts & Sciences* 148, no. 1 (Winter 2019): 177-189 (13 pages).

Marc Galanter, “Why the Haves Come out Ahead: Speculations on the Limits of Legal Change,” *Law and Society Review* 9, no. 1 (Fall 1974): 95-160 (66 pages).

American Bar Association, Model Rules of Professional Conduct, Rule 1.5 (4 pages).

California Rules of Professional Conduct, Rule 1.5 (2 pages).

Optional:

In Re Goldstone, 214 Cal. 490 (1931).

Christopher Tomlins, “History in the American Juridical Field: Narrative, Justification, and Explanation,” *Yale Journal of Law and the Humanities* 16 (2004).

Legal Representatives before the Twentieth Century

Feb. 12

Cornelia Dayton Hughes, “Introduction,” and “From Godly Rules to Lawyerly Habits: Scenes from the New Haven Courtroom,” in *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Published by the University of North Carolina Press for the Omohundro Institute of Early American History and Culture: 1995), 1-68 (68 pages).

Martha J. McNamara, “Constructing a Profession: Lawyers, Courts, and Commerce in Eighteenth-Century Massachusetts,” in *From Tavern to Courthouse: Architecture and Ritual in American Law, 1658-1860*, 27-53 (27 pages).

In-class viewing of Robbins Collection digital exhibit on *The Medieval Law School*.

How Did Slaves Access Justice?

Feb. 19

Kimberly Welch, “Advocacy,” in *Black Litigants in the Antebellum South* (Chapel Hill: The University of North Carolina Press, 2018), 82-112 (31 pages).

“Of Slaves,” in Livingston, Derbigny, and Moreau Lislet, *Civil Code of the State of Louisiana* (New Orleans: J.C. de Romes, 1825), 52-58 (4 pages).

Alexandra Havrylyshyn, “Women and Girls Mobilize a Community to Litigate,” in “Free for a Moment in France: How Enslaved Women and Girls Claimed Liberty in the Courts of New Orleans (1845-1857),” Ph.D. diss (Berkeley: University of California, 2018) (35 pages).

In-class discussion and digital viewing of primary records of freedom suits from the Race and Slavery Petitions Database and the Historical Archives of the Supreme Court of Louisiana.

Navigators, Wayfinders, and Self-Represented Litigants

Feb. 26

We will not meet as a class during this week.

Instead, please visit Small Claims Court in Oakland (Wiley Manuel Courthouse, Department 106, 661 Washington St.)

On Monday and Thursday, proceedings begin at 1:30 PM. On Wednesday, proceedings begin at 9 AM and again at 1:30 PM. In order to ensure that you are able to observe a court session, you are strongly advised to arrive fifteen minutes before the scheduled start time on any of these days.

In preparation for your visit, read:

Rachel Ekery, “Court Facilitation of Self-Representation,” in *Beyond Elite Law* (2016) (18 pages).

Alice Woolley and Trevor Farrow, “Addressing Access to Justice Through New Legal Service Providers: Opportunities and Challenges,” *Texas A & M Law Review* 3 (Spring 2016): 549-580 (32 pages).

Judicial Council of California, “Recommendation 1.2: Increase and Improve Assistance for Self-Represented Litigants,” in *Commission on the Future of California’s Court System Report to the Chief Justice* (2017), 29-36 (8 pages).

And browse:

California Appellate Courts Self-Help Resource Center < <https://selfhelp.appellate.courts.ca.gov/> >.

Once you have observed court, submit a two-page (double spaced, Times New Roman, 12 point font, 1-inch margins all around) observation paper. What did you observe? How does it deepen or challenge your understanding of self-representation, access to justice, and any other course themes?

COURTROOM OBSERVATION PAPER DUE MARCH 1, 11:59 PM, TO BCOURSES
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MARCH 3, 11:59 PM: ONE-PARAGRAPH TOPIC IDEA DUE TO BCOURSES

Accessing Justice during Segregation and the Civil Rights Movement

March 4

Kenneth Mack, “Introduction,” “The Idea of the Representative Negro,” “Young Thurgood Marshall Joins the Brotherhood of the Bar,” “The Trials of Pauli Murray,” and “Conclusion,” in *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge: Harvard University Press, 2012), 1-11; 12-37; 111-130; 207-233; 265-270.

To view footnotes, please access Kenneth Mack’s e-book using your CalNet ID.

MARCH 10, 11:59 PM: RESEARCH QUESTION DUE TO BCOURSES

The Rising Cost of Law School

March 11

George C. Leef, “Why Law School Costs so Much,” *Regulation* (2003): 12-13 (2 pages).

John Bliss, “Divided Selves: Professional Role Distancing among Law Students and New Lawyers in a Period of Market Crisis,” *Law and Social Inquiry* 42, no. 3 (2017): 855-897 (42 pages).

Emily S. Bremer, “Loan Repayment Assistance and Access to Justice,” in *Beyond Elite Law* (2016), 218-248 (31 pages).

Optional:

Equal Justice Works, NALP, and the Partnership for Public Service, “From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service” (Nov. 2002).

UNIT 2: COMPARATIVE PERSPECTIVES

MARCH 17, 11:59 PM: SHORT BIBLIOGRAPHY DUE TO BCOURSES

March 18

Lessons from Countries and Regions where Legal Aid is Generously Funded

Helena Whalen-Bridge, “The Conceptualisation of Pro Bono in Singapore,” *Asian Journal of Comparative Law* 9 (2014): 97-144 (48 pages).

Latham & Watkins, “Pro Bono Practices and Opportunities in Taiwan” (Sept. 2015): 636-644 (9 pages).

Latham & Watkins, “Pro Bono Practices and Opportunities in Japan” (Sept. 2015): 342-352 (11 pages).

SRPING BREAK: MARCH 23-27

MARCH 31, 11:59 PM: ANNOTATED BIBLIOGRAPHY DUE TO BCOURSES

Lessons from Countries and Regions where Legal Aid is Under-funded

April 1

Sherie Gertler, “Legal Aid and International Obligation: Ensuring Access to Justice in the Liberian Context,” *Columbia Human Rights Law Review* 45 (2014): 955-986 (32 pages).

Jayanth Krishnan et al., “Grappling at the Grassroots: Access to Justice in India’s Lower Tier,” *Harvard Human Rights Journal* 27 (2014): 151-190 (39 pages).

Please also come to class prepared to share with everyone your research question, your working argument, and any issues you are having in the research process.

APRIL 7, 11:59 PM: SUMMARY AND DISCUSSION OF YOUR MOST PROMISING SOURCE, DUE TO BCOURSES
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The Legal Profession: Barriers to Entry

April 8

Richard L. Abel, “What Does and Should Influence the Number of Lawyers?” *International Journal of the Legal Profession* 2 (2012): 131-146 (15 pages).

Russel Pearce and Sinna Nasser, “The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values,” *International Journal of the Legal Profession* 2 (2012): 357-378 (21 pages).

UNIT 3: PROPOSING SOLUTIONS

APRIL 14, 11:59 PM: SUMMARY AND DISCUSSION OF YOUR SECOND MOST PROMISING SOURCE, DUE TO BCOURSES
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Rethinking the Unauthorized Practice of Law

April 15

California Rules of Professional Conduct Rule 5.5 (3 pages).

Michelle Cotton, “Experiment, Interrupted: Unauthorized Practice of Law versus Access to Justice,” *DePaul Journal for Social Justice* 5 (2012): 179-220 (41 pages).

Selina Thomas, “Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis,” *Professional Lawyer* (2015): 17-22 (5 pages).

APRIL 21, 11:59 PM: SUMMARY AND DISCUSSION OF A THIRD SOURCE, DUE TO BCOURSES

The San Francisco Experiment in a Civil *Gideon*

April 22

San Francisco Administrative Code, Article 58 (2012) (6 pages).

“San Francisco Right to Civil Counsel Pilot Program Documentation Report,” John and Terry Levin Center for Public Service and Public Interest, Stanford Law School (May 2014) (31 pages).

No Eviction without Representation Act (2018) (4 pages).

Conclusion and Final Paper Workshops

Weds., April 29

APRIL 29, IN CLASS: DRAFT OF FINAL RESEARCH PAPER DUE

Deborah L. Rhode, “Access to Justice: Connecting Principles to Practice,” *Georgetown Journal of Legal Ethics* (Spring 2004): 369-422 (53 pages).

Please bring a hard copy of your paper draft, which you will workshop with a partner. We will also have a concluding discussion.

MAY 4 – MAY 8: READING/REVIEW/RECITATION WEEK

May 6

Optional review session, focused on addressing questions related to final research papers.

MAY 13, 11:59 PM – FINAL RESEARCH PAPER DUE TO BCOURSES