

Legal Studies R1B: The Sanctuary Tradition in Law and Social Practice

MW 5:00-7:30 PM | 279 Dwinelle
Fall 2021

Instructor: Bonnie Cherry

mlecherry@berkeley.edu

Mailbox: 2240 Piedmont Avenue

Office hours: Tuesdays, 2-3:30pm via Zoom

Zoom Classroom and Office Hours Location:

<https://berkeley.zoom.us/j/4591576273?pwd=U0kzNnBNeVFLQnJmK3VSS1Jlc0NzUT09>



Figure 1: Minneapolis State Patrol surround the Kenyan Community Seventh-Day Adventist Church during protests following following police killing of 20 year old Daunte Wright, April 2021. Photo by Scott Streble

“no need for geography
now that we’re safe everywhere.

point to whatever you please
& call it church, home, or sweet
love.

paradise is a world where everything
is a sanctuary & nothing is a gun.”

-danez smith, from ‘summer,
somewhere’

Course Overview

The debate over “sanctuary cities” in the United States has intensified over the last four years. Highly politicized, arguments for or against pro-immigrant state and local policies have fallen largely along liberal and conservative lines. However, the practice of providing sanctuary (legal, political, or religious) has endured for thousands of years and across cultures. In some cases, providing sanctuary to those who seek it is codified in law (in international human rights law, for example). In others, sanctuary is offered to those who seek refuge from the law itself (as was the case in the Underground Railroad). In most cases, the question of whether or not sanctuary must be given to those who seek it is a matter of a law higher than or set apart from the power of the sovereign (as exemplified by Bedouin sanctuary traditions in the Negev, or the church backed aid/sanctuary organizations currently operating in the US/Mexico Borderlands).

In short, sanctuary—as a social practice both inside and outside of the law—is a place where questions about law and society begin. In our readings, we will see that the act of creating sanctuary spaces or granting sanctuary is not always codified (written down) in law; sometimes, these acts are deeply ingrained within cultural and social practices. This makes the sanctuary tradition an excellent starting place for people interested in “law in action” as well as formal, written law.

Each week, we will develop our critical reading and composition skills while exploring sanctuary in the context of different areas of law.

Course Readings and Website

You do not need to purchase any books for this class, as all readings can be accessed on bCourses on the home page for this course. Please bring them (in either printed or digital form) to class. If you have a hard time accessing the readings, please let me know

Course Goals

The goal of this course is to prepare you to read and write critically about law, culture, and society. To this end, we will spend time every week analyzing and engaging with different forms of writing and explore the ways that people think, talk, write, and sometimes legislate about sanctuary...and law. On a more personal level, it is my hope that together we can foster the sense of intellectual and academic curiosity that Berkeley sometimes tends to kill.

This means learning to brainstorm and be inspired by our lived experiences, to ask meaningful questions about power and law, and to develop the tools necessary to answer those questions in an academic setting.

Learning Objectives

This is a four-unit course satisfying the second half of UC Berkeley’s Reading and Composition requirement. You should already have taken or tested out of R1A.

This course will explore the history of the sanctuary tradition across legal, social, political, and cultural contexts and will ask one overarching question: what can the sanctuary tradition teach us about culture and the boundaries of the law?

The sanctuary tradition, both in place and practice, blurs the lines between sacred and secular, between sovereign state and citizen power, and allows us to ask the following sub-questions:

- What does sanctuary look like? What are some shapes that sanctuary takes? What are the limits of the legal form in creating (or resisting) this space?
- What does the sanctuary tradition say about cultural practices and how these practices shape (or resist) law, and vice versa?
- What can we learn about legal consciousness and rights mobilization from looking at specific sanctuary movements?
- Who has the authority to give sanctuary? Where does this authority come from?

A Note on Catastrophic Events (COVID and Wildfires)

You're probably tired of hearing about "these unprecedented times" from your instructors and the administrators at Berkeley. I, personally, am tired of living in these unprecedented times. But until our times go back to being merely "precedented", we must remain vigilant and ready to switch it up at any given moment.

- **Course Content and Delivery:** Therefore, this course and its syllabus might change on a moment's notice to adapt to pandemic/wildfire related conditions in Berkeley. This means reverting to distance learning when we need to. The Zoom link for this course is listed at the top of the syllabus. Thank you for being flexible, and for continuing to have grace and patience with each other and yourselves.
- **Attendance:** I am also committed to being flexible with regard to your own lived realities. I am not imposing a strict attendance policy for this course. If you are sick, I want you to stay home. If your child is sick (or if their school shuts down because of a COVID case), I want you to stay home. If you know you've been exposed to COVID and are awaiting the results of a test...please stay home. If you desperately need a mental health day please take it.
 - Because participation is a significant part of your grade and will be graded largely on in-class assignments, missing these assignments could impact your grade. **If you need to miss class, please notify me so we can work out alternate/asynchronous learning options for you.**
- **COVID Mitigation:** Finally—this class is at capacity and is being held in a small, poorly ventilated room. Social distancing is impossible. Please do not eat or drink in class because it requires you to remove your mask. **Please always wear your masks, per UC policy, or I will ask you to leave. If it keeps up, I will drop you from the course. I am flexible about a lot of things, but not this. I am the solo parent of an unvaccinated nine year old child, and this classroom is a direct link between you and her. Please help me protect her and our broader community from the spread of COVID-19.**

Assignments and Grading

It is university policy that all R&C courses are taken for a letter grade. To fulfill the requirement, you must pass the course with a C- or better.

We will go over expectations for each assignment extensively in class and will often dedicate class time to completing your writing assignments. Complete assignment instructions can also be found on bCourses under “Assignments”.

Assignments	Percentage of grade
Comparative Paper	20%
Persuasive Paper	40%
Additional Writing Assignments (Diagnostic Essay, Annotations, Project Proposal)	20%
Class Participation (including project presentation)	20%

Assignment Due Dates/Timeline (Subject to change, for reasons noted above)

9/5 Diagnostic Essay Due (bCourses only)

9/8 Annotated Article/Argument Assignment (bring to class on due date)

9/15 Comparative Essay Draft 1 (bring to class on due date/turn in on bCourses)

9/22 Comparative Essay Draft 2 (bCourses only)

10/6 Comparative Essay Final (bCourses only)

10/13 Project Proposal and Thesis Statement (bCourses only)

10/20 Annotated Bibliography/Potential Sources (bCourses only)

10/27 Persuasive Research Essay Draft 1 (bring to class on due date/turn in on bCourses)

11/3 Persuasive Research Essay Draft 2 (bCourses only)

11/22 Persuasive Research Essay Final (bCourses only)

TBD Project Presentations

Written Assignment Formatting:

All writing assignments should be written in Microsoft Word or Google Docs.

- Format: Choose a size 12 sensible font (Times, Arial, etc), double spaced, sensible margins. Your work should be proofread for errors.
- When you cite, please use any recognized system (Chicago, MLA, APA etc.) If you're unsure *how* to cite something, then try your best. An incorrect citation will get a note from me about how to fix it; **failing** to cite ideas or words that aren't yours will affect your grade.
- All assignments will be submitted **on bCourses as a pdf, doc, or docx**. Please also bring a hard copy of your assignments to class for peer editing exercises when indicated above.

Weekly Reading Schedule

Notes about reading assignments:

- I have kept the reading load somewhat light for this course to respect both your time as well as the reality that truly close reading takes time. You should expect that **every 10 pages will take you an hour to read closely**. Because of this I have tried to keep the reading load to less than 30 pages per week. Please respect your colleagues' and my time as well and be sure to do your readings before class. I have listed key questions for each week to help guide your readings and prepare for discussion.
- **Readings are assigned to be completed before class on the day on which they are listed.** If they are marked "in-class," then you do not need to read or write these assignments ahead of time. I recommend you use your syllabus as a to-do list – check off or cross out readings and assignments as you complete them.

Week 1: Introduction to Sanctuary Tradition

- **8/25 Wednesday: Welcome!**
 - **Read before Class:** Syllabus; "Sanctuary and Asylum." From *Asylum and Sanctuary in History: A Social and Political Approach to Temporary Protections Around the World*. Whisker and Spiker, 2021. (10 pages)
 - **In Class Activity:** Write 1-2 paragraphs answering the questions: What aspects of your research and writing do you hope to improve on this semester? What part of the sanctuary tradition are you most interested in researching this semester, and why?
 - **Key Questions:** What does sanctuary mean to you? What/where is your sanctuary?

Week 2: Sanctuary as Space in Culture and Law

- **8/30 Monday: Culture, Society, and Law**
 - **Read before Class:**
 - Rosen, Lawrence. 2006. *Law as Culture: An Invitation*. "Introduction."
 - "Her Point Is: The Art of Summarizing" and "As He Himself Puts It", from *They Say, I Say* (Feel free to skim or ignore the last couple pages of these chapters, as they include exercises)
 - **In-Class Activity:** Summarizing Arguments
 - **Key Questions:** What is the law? How does it shape culture, and vice versa? Rosen quotes Geertz as saying that: "Law doesn't just mop up, it

defines.” *Think of three things in your life/world which have been defined by law and be prepared to talk about them in class.*

- **9/1 Wednesday: Sanctuary and Sacred Spaces in US Law**
 - **Read before Class:**
 - “Lyng vs Northwest Indian Cemetery Association: Taking the Holy Places” from *In the Courts of the Conqueror* by Walter Echo-Hawk
 - “Sacred Places and Moral Responsibility” from *God is Red: A Native View of Religion*, by Vine Deloria, Jr. (15 pages)
 - **Read In Class:** *Lyng vs Northwest Indian Cemetery Association*
 - **In Class Activity:** Annotating and analyzing articles, briefing a legal case
 - **Key Questions:** What is sanctuary in the context of this week’s readings? Who decides if a space is a sanctuary? How do law and culture assign or resist this power? How is understanding culture and law important for explaining decisions like *Lyng*?

Week 3: Sanctuary and Asylum in Ancient and Medieval Law

- **9/6 Monday: LABOR DAY NO CLASS**
 - **Diagnostic Essay Due Sunday 9/5!!!**
- **9/8 Wednesday: Sanctuary and Asylum in Western Antiquity**
 - **Read before class:**
 - “Sanctuary in Greece and Rome” **(51-66 only)** From *Asylum and Sanctuary in History: A Social and Political Approach to Temporary Protections Around the World*. Whisker and Spiker
 - “Greek Sanctuaries as Places of Refuge” In: *Oxford Readings in Greek Religion*, trans. R. Buxton, 70-85.
 - “Chapter 4: Yes/No/Okay But...” from *They Say/I Say*
 - **In Class Activity:** Bringing opposing arguments together in your writing
 - **Key Questions:** What is sanctuary in the context of this week’s readings? Who/what receives sanctuary? It has been argued that asylum is a secularized version of ancient sanctuary traditions rooted in religious belief. After reading about Greek religion and politics, but do you think of this distinction?

Week 4: Sanctuary and Asylum in Ancient and Medieval Law (cont'd)

○ 9/13 Monday: Sanctuary in Early Religious Law

▪ Read before class:

- "Introduction" (p 1-13) from *What's Divine About Divine Law?: Early Perspectives* by Christine Elizabeth Hayes
- "A Thousand Years of Medieval Sanctuary" from *Sanctuary and Asylum: A Political History* by Linda Rabben
- "Hebrew View of Asylum" From *Asylum and Sanctuary in History: A Social and Political Approach to Temporary Protections Around the World*. Whisker and Spiker

▪ In-Class Activity: Brainstorming a Research Topic

▪ Key Questions: What is sanctuary in the context of this week's readings? What authority or type of law provides these practices with legitimacy? What is the difference between divine and secular authority?

○ 9/15 Wednesday: Sanctuary and Service in Islam and Sikhism

▪ Read before class:

- Elmadmad, Khadija. "Asylum in Islam and in modern refugee law." *Refugee Survey Quarterly* 27.2 (2008): 51-63. (12 pages)
- "Asylum: Islamic Law" from *Asylum and Sanctuary in History: A Social and Political Approach to Temporary Protections Around the World*. Whisker and Spiker

▪ Read before class: [Why Sikhs Serve: The Tradition of Seva as Justice Inspired By Love](#), by Simran Jeet Singh for the Revealer

▪ In-Class Activity: Peer Editing Your First Drafts WHICH ARE DUE TODAY

▪ Key Questions:

- How might we interpret sanctuary in the context of Islamic law? Of the Sikh tradition of Seva?
- What role does justice (not just law) play in these interpretations?
- Pay attention to how Whisker and Spiker characterize the "contemporary Muslim world", and of what sanctuary/asylum might mean there. What do you think of this?

Week 5: Sanctuary in Customary Law

- **9/20 Monday: Bedouin Protection and Conflict Resolution**
 - **Read before class:**
 - "Settlement of Violence in Bedouin Society" by Sulayman Khalaf *Ethnology* 29, no. 3 (1990): 225-242.
 - **In-Class Activity:** Forming a quality research question
 - **Key Questions:**
 - What is sanctuary in the context of today's readings? What authority or type of law provides these practices with legitimacy?
 - Is customary law different from tribal/indigenous/folk law?
 - How is customary law different from statutory or written law? Do you see both as equally legitimate?
- **9/22 Wednesday: Sanctuary in English Common Law**
 - **Read before class:**
 - "Sanctuary: The Legal Institution in England." By Stephen Pope, *University of Puget Sound Law Review*
 - **Write before class:** Bring in three potential research questions for your persuasive/research paper!
 - **In-Class Activity:** Workshopping your amazing research questions
 - **Key Questions:**
 - The article mentions sanctuary as an ideology. What are some ways in which sanctuary might be more than just law and tradition...but also ideology?
 - How did church law inform/shape secular law? How did it limit secular law?

Week 6: Sanctuary in International Law

- **9/27 Monday: Mandatory Conferences/NO CLASS**
 - **Sign up for conferences on bCourses!**
- **9/29 Wednesday: Origins of International Human Rights Law**
 - **Read before class:** "From Religious Sanctuary to Secular Asylum", from *Sanctuary and Asylum: A Political History* by Linda Rabben

- **Research before class:** Look up one of the laws/acts/treaties Rabben cites in her chapter (ex: the Oxford Resolutions, the Peace of Westphalia, the Alien Act of 1798, etc). Come prepared to explain it (in conversational language) to your classmates.
- **In-Class Activity:** Developing a research question into a strong thesis statement
- **Key Questions:**

*****all readings after this are TBD/under construction

Week 7: Sanctuary and International Law, Cont'd

a. 10/4 Monday: Sanctuary and the Law of Armed Conflict

- i. Read before class:
 1. O'Driscoll, Cian. "Keeping tradition alive: just war and historical imagination." *Journal of Global Security Studies* 3, no. 2 (2018): 234-247.
 2. Hassner, On the Horns of the Altar
 3. Customary IHL Rule 38;
- ii. Peruse before class: Doctors Without Borders, Protected Spaces and Objects Guidelines

b. 10/6 Wednesday: Refugees and Asylum in the 20th Century

- i. **Gender,**

Week 8: American Slavery, Sanctuary, and the Underground Railroad

c. 10/11 Monday: LIBRARY VISIT

- i. Read before class:

d. 10/13 Wednesday: Sanctuary from the Law: Underground Railroad

- i. Read before class: Rabben "Nineteenth Century Sanctuary Outside the Law"
- ii. **Key Questions:** Previous examples of sanctuary have included instances of sanctuary from the law, and others have included examples of the law as legitimizer of sanctuary practice. How might we interpret sanctuary in the context of this week's readings? From which federal, state, and local laws did the Underground Railroad provide sanctuary?

Week 9: The US Sanctuary Movement of the 1980s

- e. 10/18 Monday: UGR and Sanctuary Movement Article, UGR [article](#) II
 - i. Listen before Class: [Sanctuary Movement Podcast I](#): Church
 - ii. Read Before Class: "Chapter 5: 'And Yet...'" from *They Say/I Say*
- f. 10/20 Wednesday:
 - i. Listen before Class: [Sanctuary Movement Podcast II](#): State

Week 10: Sanctuary Spaces and the LGBTQ Community

- g. 10/25 Monday:
 - i. Read Before Class:
 - 1. [Sanctuary After Pulse](#);
 - 2. baby youre my religion (intro)
 - ii. Visit Before Class: [Website for the Sisters of Perpetual Indulgence](#)
 - iii. In Class Exercise: Thick Description/Image and Film Analysis
- h. 10/27 Wednesday:

Week 11: Sanctuary and the Movement for Black Lives

- i. 11/1 Monday:
 - i. Read: pulpits and platforms
 - ii. [Sanctuary is a Stronghold of the Movement](#) (op-ed)
- j. 11/3 Wednesday:
 - i.

Week 12: Sanctuary in the US-Mexico Borderlands

- k. 11/8 Monday: Mandatory Conferences/NO CLASS
- l. 11/10 Wednesday:
 - i. Ideology/Worldview/Consciousness? (Luker, Silbey)
 - ii. Federal case against No Mas Muertes water drops

Week 13: Contemporary Sanctuary Cities in the US

- i. 11/15 Monday: Progressive and Restrictive Federalism
- m. 11/17 Wednesday: Beyond Sanctuary and Law
 - i. Abolitionist Sanctuary, Paik (Intro, Ch 4)
 - ii. [Abolitionist futures article](#)

- iii. Two a queer politics of fugitivity

Week 14: Class Presentations and Break

- n. 11/22 Monday: Presentations
- o. 11/24 Wednesday: THANKGIVING BREAK, NO CLASS

Week 15: Class Presentations

- p. 11/29 Monday: Presentations
- q. 12/1 Wednesday LAST DAY

Class and University Policies

Mask Policy

Per above, all students must comply with university mandated masking policies, which require face coverings at all times regardless of vaccination status. This is a public health and safety issue, and will be treated as such. Failure to comply will result in expulsion from the course and potential disciplinary measures.

Office Hours

Office hours can be used for anything: talking about the course, talking about your career/education plans, nerding out about law/society/theology...anything! My office hours this semester are listed at the top of this syllabus. If office hours conflict with your school, work, or family schedule please do not hesitate to email me and we can set up another time to meet.

Emailing/Communication

Please feel free to email me to make appointments, inquire about course logistics, to let me know about course absences, etc. **Please allow at least 24 hours for me to respond. I am a solo parent with three jobs and I am working on a dissertation and often cannot respond immediately. Please don't text me or message me on Twitter/social media! I know that boundaries are wobbly in the pandemic times but please: no texts.**

Extensions, late work and other unforeseen circumstances

- Again: I am flexible with deadlines. If you cannot meet a deadline I ask that you let me know as far in advance as possible.
- If you have not spoken to me ahead of time and you find that you cannot turn in an assignment when it is due I reduce your score by 5% per day if it is a letter-graded draft or final project. After three days with no contact (weekday or weekend) I will not accept the work and you will earn a 0. Basically: please just communicate with me if you need an extension or assistance with your assignment.

Class participation

To get full credit for participation you will have to contribute **regularly and meaningfully** to class discussions and exercises. I expect that before class you will have done the reading, and that you will be prepared to contribute. You will need to bring copies of the assigned readings to class – we will be using these readings to do in-class work together.

There are different ways to participate, even if you are – for any reason – less comfortable speaking in class. There will be many opportunities to speak up – in larger class discussions and in small group work, so please do your best to join in. There are other ways to participate as well; email me with a question that you would like to discuss in class, or start a discussion thread online.

Creating a space for respectful discussion and reflection

The topics covered in this class can be controversial and people can have strong personal and political beliefs. It is very important that we all bring an open mind, that different points of view are respected, and people are allowed to express themselves without fear of harassment, abusive language or personal attack. It is perfectly reasonable to challenge other people's opinions or readings of the text, but it must be respectful and based on the course or related content.

From my point of view everyone in section is an adult and we all want to have a productive discussion in a reasonable environment. I would ask that you behave in section like you would in any professional environment. Don't bring food that will cause interruptions, don't cut off your colleagues when they speak, arrive on time and sit near the exit if you need to leave early, and don't text or take calls.

PLEASE: if we revert to online/Zoom learning do not post screenshots of our Zoom classroom. This is a weird thing I've seen even professors do this year, and I want to stress the need to respect each other's privacy and not share images or recordings of each other without explicit consent.

Electronics Policy

You are welcome to use whatever electronic device you need to take notes or access your readings in class. Please do not scroll through Twitter or shop online during class; it is distracting to the people behind you who can see your screen, and it is insulting to whoever is teaching you. And trust me: we can tell. Please respect the space and don't abuse my lax electronics policy.

Classroom Accessibility and Basic Needs

Guess what! Literally every single person in this room and every other room on campus needs accommodations of some kind. It's true! This course is intended for all Berkeley students, including those with mental, physical, or cognitive disabilities, illness, injuries, impairments, or any other condition that tends to impact one's equal access to education. **If, at any point in the term, you find yourself not able to fully access the space, content, and experience of this course, you are welcome (and not required) to contact me by email or during office hours to discuss your specific needs.**

It is important that you also contact the Disabled Students Program (DSP) to arrange for accommodations through them. Please see the last page of this syllabus for their contact information and for other important student offices.

Other Campus Resources

Disabled Students' Program (DSP)

260 Cesar Chavez Student Center, University of California, Berkeley

642-0518, <http://dsp.berkeley.edu>

The DSP serves students with disabilities of all kinds, including mobility, visual, or hearing impairments; speech impairments; chronic illnesses such as AIDS, diabetes, and lupus; seizure disorders; head injuries; painful conditions such as back injuries and carpal tunnel syndrome; psychological disabilities such as bipolar disorder and severe anxiety or depression; attention deficit disorder; and learning disabilities. Services are individually designed and based on the specific needs of each student as identified by DSP's specialists. The Program's official website includes information on DSP staff, UC-Berkeley's disabilities policy, application procedures, campus access guides for most university buildings, and portals for students and faculty/proxy respectively.

Student Learning Center (SLC)

642-9494, <http://slc.berkeley.edu>

As the primary academic support service for students at the University of California, Berkeley, the SLC assists students in transitioning to Cal: navigating the academic terrain; creating networks of resources; and achieving academic, personal, and professional goals. Through various services including tutoring, study groups, workshops and courses, SLC supports students in Biological and Physical Sciences, Business Administration, Computer Science, Economics, Mathematics, Social Sciences, Study Strategies, and Writing.

Student Life Advising Services (SLAS)

642-4257, <http://slas.berkeley.edu>

SLAS is an academic counseling/advising service that assists all undergraduate students, with a primary focus on Education Opportunity Program students and students who participated in outreach programs. The SLAS office assists students in counseling/advising on academic, personal, and social matters.

Ombudsperson for Students

102 Sproul Hall

642-5754

The Ombudsperson for Students provides a confidential service for students involved in a University-related problem (either academic or administrative), acting as a neutral complaint resolver and not as an advocate for any of the parties involved in a dispute. The Ombudsman can provide information on policies and procedures affecting students, facilitate students' contact with services able to assist in resolving the problem, and assist students in complaints concerning improper application of University policies or procedures. All matters referred to this office are held in strict confidence. The only exceptions, at the sole discretion of the Ombudsman, are cases where there appears to be imminent threat of serious harm.

Tang Center Counseling and Psychological Services

2222 Bancroft Way

642-9494, <http://uhs.berkeley.edu>

The UHS Counseling and Psychological Services staff provides confidential assistance to students managing problems that can emerge from illness such as financial, academic, legal, family concerns, and more. In the realm of sexual harassment, UHS coordinates education programs, crisis counseling, advocacy, and medical care for women and men who have been harassed or assaulted (Tang Center, 2222 Bancroft Way: Prevention, 642-7202; Victim Assistance and Counseling, 642-6047; Counseling Services, 642-9494; Medical Care, 642-3188).