Introduction:
This course examines core issues about the nature and function of the legal system: what is the nature of legal authority? Why do we obey it? What is the adversary system? How does it work—receive information, resolve conflicts, adjust to change? What are its strengths?, Weaknesses? Alternatives? How do courts respond to and contribute to social change? Do courts make policy? Should they? How successful are they when the try? What resources do Court have to effect their rulings?

Readings will be drawn from a variety of fields: philosophy, history, judicial opinions, and scholarly articles and books. If you are attentive to these materials and engage during lectures and discussion sections, you will become knowledgeable one of society’s most important institution, the legal system.

Required Books:
Gerald Stern, THE BUFFALO CREEK DISASTER
Gerald Rosenberg, THE HOLLOW HOPE
Charles Epp, MAKING RIGHTS REAL
Malcolm Feeley, MATERIALS FOR LAW, POLITICS AND SOCIETY (available at Copy Central, Durant Mall)

NOTE: please bring the assigned reading materials for the day to class with you.

Course Website (BSpace):
Note that the class has a website. The website contains the following materials: the course syllabus, background materials, and from time to time additional supplementary materials. I will also use it to distribute assignments, and to post additional supplementary readings, announcements, section assignments (readings, short written assignments, and the like), study questions, and responses to queries and issues that might arise in class. You can access the website at: http://bspace.berkeley.edu, and you should enroll yourself in the section assigned to you via Telebears. Instructions can be found by clicking Help on the My Workstation tab.

Background Materials about basic concepts are posted on bspace for the course. Read them.

Course Requirements:
1) **Midterm and Final Exams:**

Both will be in a short-answer essay format

2) **Paper:**

One research paper with a maximum length of five pages (1250 words) will be assigned shortly after term begins. This paper will be turned in twice. Paper #1 is expected to be an example of the very best writing you are capable of. It will be carefully read and evaluated for style, grammar, and spelling, as well as for substance and organization. It will be graded and returned to you. You will then rewrite as necessary and resubmit it. This paper, #2, will again be graded. Both grades will be recorded and count equally in computing your final course grade.

The paper will be based upon assigned and supplemental reading assigned and made available early in the term. Dates and details will be forthcoming.

3) **Class and Discussion Section Attendance and Participation**

Class and Section attendance and participation are integral parts of this course. You are expected to attend all lectures and meetings of discussion sections, and be ready to be called on, answer questions, and participate in group assignments, and respond to occasional pop quizzes. Lectures explicate the main points of the assigned materials and move well beyond them to put issues in historical, comparative, and philosophical context. Thus much goes on in class lectures that are not contained in the assigned readings. Sections provide an opportunity to review materials covered in lecture and to explore variations and alternative views to those covered in lecture. From time to time there will be additional section and class-based reading and short writing assignments, as well as oral and written reports and pop quizzes.

4) **Assignments and Grading:**

Below is a list of assignments and their value in terms of your final grade. Each assignment must be completed.

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Midterm (Oct 10, tentative)</td>
<td>25%</td>
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<tr>
<td>Paper, Version #1 (dates to be determined)</td>
<td>15%</td>
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<tr>
<td>Paper, Version #2</td>
<td>15%</td>
</tr>
<tr>
<td>Final Exam (as scheduled) (Dec 18, fixed)</td>
<td>30%</td>
</tr>
<tr>
<td>Class and Section discussion, oral presentations, participation, pop quizzes, etc., at discretion of GSI and instructor</td>
<td>15%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100%</strong></td>
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READING ASSIGNMENTS

I. Introduction to Law (and Politics)

**Assigned Readings:**

A. Introduction

L. Fuller, "The Case of the Speluncean Explorers," (HANDOUT and on Internet)

B. Sources of Law

T. Hobbes, Leviathan (excepts), MATERIALS


R. Cover, “Violence and the Word,” MATERIALS

L. Fuller, The Morality that Makes Law Possible

C. Fidelity to Law:

T. Tyler, Why People Obey the Law, MATERIALS

L. Fuller, The Problem of the Grudge Informer, MATERIALS

J. Noonan, “Persons and Masks of the Law,” MATERIALS

D. Too Much Law?

L. Fuller, Two Principles of Human Association, MATERIALS

R. Schwartz, Social Factors in the Development of Law, MATERIALS

**Suggested Readings:**

Note: The books listed in this section contain material relevant to the entire course, and it would be valuable for you to acquaint yourself with some of them. Many are on reserve in Moffitt Library.
B. Ackerman, RECONSTRUCTING AMERICAN LAW
A.M. Bickel, THE LEAST DANGEROUS BRANCH
H. Berman, LAW AND REVOLUTION
R. Cotterrell, THE SOCIOLOGY OF LAW: AN INTRODUCTION
R. Cotterrell, LAW’S COMMUNITY
M.P. Golding, ed., THE NATURE OF LAW
J. Haley, AUTHORITY WITHOUT POWER: THE JAPANESE PARADOX
H.L.A. Hart, THE CONCEPT OF LAW
F. Hyack, THE ROAD TO SERFDOM
K.N. Llewellyn & E.A. Hoebel, THE CHEYENNE WAY
L. McIntyre, LAW IN THE SOCIOLOGICAL ENTERPRISE
A. Renteln & A. Dundes, FOLK LAW, VOLS. 1 & 2
M. Sandel, LIBERALISM AND THE LIMITS OF JUSTICE
S. Vago, LAW AND SOCIETY

II. The Adversarial System

Assigned Readings:

A. The Adversary System: Theory

M. Feeley, “The Adversary System,” MATERIALS

B. How the Adversary Works and Changes in Common Law Systems

K. Llewellyn, The Bramble Bush and Cases on Legal Reasoning. MATERIALS

C. Case Study: the Adversary System in Action

G. Stern, THE BUFFALO CREEK DISASTER

D. Critiques of the Adversary System


J. Langbein, Land without Plea Bargaining: How the German’s Do it,” MATERIALS
E. Alternatives to the Adversary System

1. Problem-Solving Courts

Greg Berman and John Feinblatt, Good Courts, MATERIALS

2. Restorative Justice

John Braithwaite, Restorative Justice and Responsive Regulation, MATERIALS

Suggested Readings:

J. Braithwaite, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION
R. Kagan, ADVERSARIAL LEGALISM
D. Johnson, THE JAPANESE WAY OF JUSTICE
M. Damaska, THE FACES OF JUSTICE AND STATE AUTHORITY
G. Berman, PROBLEM SOLVING COURTS

IV. Courts and Politics

A. Historical Perspective

Publius [Alexander Hamilton] Federalist #78, MATERIALS
Brutus, Anti-Federalist, MATERIALS

B. Courts and the Administrative State

J. Wilson, “Courts,” MATERIALS
J. Dwyer, et al., “The Air Pollution Permit Process for U.S. and German Automobile Assembly Plants,” MATERIALS
V. Resources Available to Courts

A. Mobilizing the Law

S. Krislov, “The Amicus Curiae Brief: From Friendship to Advocacy,” MATERIALS

M. McCann, “Legal Mobilizaton,” MATERIALS

B. Class Actions

O. Fiss, The Political Theory of Class Action, MATERIALS

D. Bell, “Serving Two Masters: Integration Ideals and Client Interests,” MATERIALS

C. Judges as Administrators

M. Feeley, “Implementing Court Orders in the United States,” MATERIALS

M. Feeley, “Prison Conditions Cases and the Bureaucratization of American Corrections,” MATERIALS

D. Settlement and Public Policy

O. Fiss, Against Settlement, MATERIALS

VI. Courts and Social Policy: The Continuing Debate--Pro

A. Specifying Issues


B. Reading Cases

J. Novokov, “How to Read a Case, MATERIALS

VII. Courts and Social Policy: Claims of Success

A. Torts: the Theory
C. Epp, MAKLING RIGHTS REAL, pp. 1-30

B. The Police and Liability

Epp, pp. 31-114

C. Radiating Effects

Epp, pp. 115-164

D. Variations on a Theme: Sexual Harassment and Playground Safety

Epp. 165-214

E. Wrap-up

Epp, 215-232

VIII. Courts and Social Policy: Claims of Failure

A. An Overview

R. Dahl, “The Supreme Court as a National Policy-Maker,” MATERIALS

B. Case Studies of Courts and Social Change II

A. G. Rosenberg, THE HOLLOW HOPE

Brown v. Board of Education (I and II) (reread)

G. Rosenberg, THE HOLLOW HOPE pp. 39-172

B. Women's Rights and Abortion:

Roe v. Wade (1973) (reread)
Rosenberg, pp. 173-268
C. The Hollow Hope: Same Sex Marriage

U.S. v. Windsor, 570 U.S. ___ (June 26, 2013)

Rosenberg, pp. 339-419

D. Summing up and Assessing Epp and Rosenberg


Suggested Readings:

M. Feeley and E. Rubin, JUDICIAL POLICY MAKING AND THE MODERN W. Haltom and M.McCann, DISTORTING THE LAW

K. Luker, ABORTION AND THE POLITICS OF MOTHERHOOD

M. Klarman, FROM JIM CROW TO RIGHTS

M.McCann, RIGHTS AT WORK

M. Miller and Jeb Barnes, MAKING POLICY, MAKING LAW

D. Schoenbred and Ross Sandler, DEMOCRACY BY DECREE

R. Dahl, HOW DEMOCRATIC IS THE CONSTITUTION?

FEDERALIST PAPERS


M. Shapiro, COURTS

M. Damaska, THE FACES OF JUSTICE AND STATE AUTHORITY

S. Scheingold, THE POLITICS OF RIGHTS

S. Melnick, BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS

S. Melnick, THE CLEAN AIR ACT

L. Epstein & J. Knight, THE CHOICES JUSTICES MAKE

VIII. CONCLUSION

Assigned Readings:

E.P.Thompson, Whigs and Hunters (Excerpts), MATERIALS.