

Legal Studies 100A Foundations of Legal Studies Spring 2012

Important Note: This is the long-form syllabus for the LS 100 and Departmental web sites. It provides information on important University and Departmental policies, instructors' office hours, grading procedures, etc. This long version also incorporates input from a survey administered during the first week classes on enrolled students' majors, previous coursework, and specific needs, interests, and scheduling issues.

All students are responsible for making sure that the email address listed for them on bSpace and BearFacts is correct and for maintaining regular contact with their GSIs regarding both section and lecture assignments, absences due to health emergencies, for DSP matters, on needs for accommodation for religious, athletic, or other absences (see below for specifics).

Lecture Meetings: 12:30 - 2pm, Tuesday/Thursday in 3 LeConte Hall

Course Description (4 units): A lecture class with required discussion sections designed as a gateway course to introduce new and prospective Legal Studies majors to the foundational frameworks and cross-disciplinary perspectives from humanities and social sciences that distinguish legal studies as a scholarly liberal arts field. It provides a comparative and historical introduction to the diverse forms, ideas, institutions, and systems of law and socio-legal ordering. It highlights theoretical issues and trans-disciplinary scholarly methods of understanding questions of law and justice.

Instructor:

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Office Hours: T/Th 11:00 – 12:00, and by appointment

GSI: Andrew Brighten: <andrew.brighten@berkeley.edu> ; Office hours: Wednesday 3:00-4:00 at Free Speech Café, Moffitt Hall; Thursdays 10:00-11:00 at Café Zeb, Boalt Hall

GSI: Kelsey Mayo: kwmayo@berkeley.edu ; kelsey.mayo@gmail.com Office hours: Thurs 2:30-4:30 in 257 Boalt Hall

Learning Objectives:

Legal Studies 100 students should attain:

1. An understanding of “law” in the broadest, socially constitutive sense, one that interweaves humanities and social science scholarship in the liberal arts tradition; a grasp of what Lawrence Friedman calls “external” and “internal legal cultures” in their diverse forms. Course materials will include empirical, ethnographic, historical, literary, new media, and other sources.
2. An understanding of both normative and positive approaches to law, legality, and justice in scholarship and in concrete institutional forms.

3. A working familiarity, linked to the Legal Studies Department's curricular "neighborhoods," with the disciplinary intersections, conflicts, and convergences that constitute legal studies or "law & society" as a field of scholarship and debate.
 4. An understanding, connected to these LS curricular neighborhoods, of the diverse ways of knowing and of inquiring about law and society, i.e., of the methods of socio-legal scholarship including empirical-quantitative, experimental, ethnographic-qualitative, logical-analytic, archival and narrative-- also including basic case-law research tools.
 5. A grasp of the emergence and functioning of core legal institutions, including courts, other governmental agencies and regulatory bodies, and non-state entities such as law firms and law schools, and an integrated discussion of sovereignty, jurisdiction, and legal legitimacy, from the local level all the way to the aspirational "universal jurisdiction" of modern human rights law.
 6. A familiarity with the continuing development of the legal profession in its diverse forms of knowledge and practice, and of the related evolution of legal education.
 7. An understanding of the conceptual structure of law and legality: the ways that legal categories segment and articulate the social world; e.g., substantive versus procedural law, public versus private law; the legal understandings of objects, events, actions, and consequences that are embodied in *property*, *contract*, *tort*, and *crime*.
 8. An experience of field observation in one or more legal-institutional sites, e.g., a courtroom, with an assigned short write-up of field observation data.
 9. An awareness of the concrete policy implications of socio-legal scholarship, both of scholarship's potential policy contributions and of the "pull" such policy concerns may exert on scholarly research agendas.
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Acknowledgements:

LS 100 is a new course approved by the UCB Academic Senate for the 2011-12 academic year. Its goal is to provide an introduction to the interdisciplinary field of legal studies and more particularly to the structure and rich academic resources of the UCB Legal Studies Department. This course design is an ongoing process in its attempts to balance both the breadth and depth of its coverage of this field and its sub-areas, or "curricular neighborhoods" (each version of this course design will inevitably seem to succeed better in some areas than in others. Each offering will seek to improve upon the previous one. For this reason, students will be subjected to periodic surveys in addition to the other written assignments and tests; future generations of students will owe a debt to those who went first and offered their feedback.

For this course design, as it stands in 2011-12, great appreciation is owed to the many thoughtful suggestions from numerous faculty colleagues, in particular to Professors Albiston, Edelman, Lieberman, Musheno, Simon, and Volpp for the ways in which this class succeeds in achieving its goals (and, for all the areas where this course design still needs improvement, please send any and all criticisms and suggestions to rwperry@law.berkeley.edu). This course design also reflects feedback from the 2011-12 UC Berkeley Teaching Fellows Group chaired by Michelle Douskey.

Special gratitude is owed to the three LS 100 GSIs who have bravely gone where none had ever gone before. Ayako Hirata and Kelsey Mayo have both been immensely patient, thoughtful, and unfailingly helpful -- each of them offering distinct areas of expertise. Andrew Brighten has taken on the GSI duties for two successive semesters and his many contributions to every aspect of this course design will still be evident for semesters to come.

Course Materials:

- i. Lawrence M. Friedman, *A History of American Law*, 3rd ed. 2005. The purchase of this classic law and society text is strongly recommended (it will also be placed on library reserve). Numerous chapters of it will be required reading and cannot all be posted on bSpace. It will serve as a guidebook and general reference work. Most weeks' reading assignments will include a section of Friedman as socio-historical foundation to the week's discussion of the other assigned scholarly materials, cases, documentary clips, etc. A few key sections of Friedman 2005 will be posted on bSpace, but will not be included in the course reader at Copy Central, for reasons both of convenience and copyright, to avoid students' feeling obliged to purchase the same chapters in the book as in the reader. All LS 100 students are thus encouraged to obtain and to keep this classic text on their bookshelves for reference purposes in this and other Legal Studies courses.
 - ii. All other required and recommended readings will be made available on the LS 100A bSpace site. Supplementary resources, such as video links to court observation sites and documentary film clips, etc. will also be listed there. The LS 100 bSpace site is the official locus for both lecture and section announcements, assignments, and materials. All students are responsible for checking the bSpace site regularly.
 - iii. A course reader of core required readings will be made available at Copy Central on Bancroft, if there is sufficient student demand. The course reader at Copy Central is being made available as a convenience to those students who have requested, rather than reading and printing from bSpace. In accordance with UC policy, the LS 100 bSpace site will remain the *definitive* site for all class readings, assignments, announcements, and general communications to the class.
 - iv. LS 100 is a course that relies heavily on the pedagogical resources of weekly discussion sections to supplement and reinforce the lectures. Each student is responsible for active participation in section discussions, for completing section assignments, and for maintaining a relationship with the GSI. As noted below, class participation and section assignments will count for 30% of the total course grade.
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Student Responsibilities:

Attendance: Students are expected to attend all lectures and section meetings having already prepared any readings or assignments. If you are unable to attend due to illness of yourself or a dependent you need not contact the Professor or GSI unless you will be absent for more than a week, in which case you should be prepared to offer medical verification of the problem. During the first two weeks of classes, however, when we will be taking attendance in order to permit students on the waiting list to add the class, you must contact us on the same day of any absence.

Caveat on Missed Exams: If you should find that you must miss a midterm or final exam due to serious illness or other comparable circumstance, you must email your GSI before the testing period to notify her of your situation. The GSI will discuss your circumstances with the professor and we will make an effort to accommodate your circumstances. However, any student who misses a test and only contacts the GSI *after* the testing date is not likely to be allowed to sit for a make-up test – except in very rare cases, such an accommodation would clearly be unfair to the rest of the class. This course design is intended to minimize the likelihood of missed exams by using take-home rather than in-class tests.

Classroom expectations: While in class please turn your cell phone off. If your laptop has wireless access you may use it to access information relevant to the discussion but please do not read emails, newspapers, or other

non-class related materials during class (the rules in discussion sections will be different). The topics of this course include many subjects on which strong feelings and emotions may be generated. Students are encouraged to speak up with their own questions and comments, and to respond to points raised by other students. The maintenance of an effective discussion space in class, however, obliges all of us to act with respect for and sensitivity toward everyone else in the room.

Plagiarism:

According to the College of Letters and Sciences:

All written work submitted for a course, except for acknowledged quotations, must be expressed in the student's own words. It must also be constructed upon a plan of the student's own devising. Work copied without acknowledgment from a book, from another student's paper, from the internet, or from any other source is plagiarized. Plagiarism can range from wholesale copying of passages from another's work to using the views, opinions, and insights of another without acknowledgment, to paraphrasing another person's original phrases without acknowledgment. The submission of such work will, under University rules, render the offending student subject to an F grade for the work in question or for the entire course, at the discretion of the instructor, and will also make the student liable for referral to the SJA.

University Regulations on Accommodations:

DSP Accommodation:

If you have specific needs due to documented disabilities we will make every effort to accommodate these needs, in close collaboration with the Disabled Students Office. For information on University policies regarding students with disabilities, and federal and state laws affecting people with disabilities, contact: <http://access.berkeley.edu/> Please convey your DSP accommodation letter to your GSI early in the semester (i.e. during the first two weeks) so that the teaching staff can make all appropriate arrangements.

Accommodation of Religious Creed:

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 that could not reasonably have been avoided. Requests to accommodate a student's religious creed by scheduling tests or examinations at alternative times should be submitted directly to the faculty member responsible for administering the examination by the second week of the semester.

Reasonable common sense, judgment and the pursuit of mutual goodwill should result in the positive resolution of scheduling conflicts. The regular campus appeals process applies if a mutually satisfactory arrangement cannot be achieved.

Conflict between Extracurricular Activities and Academic Requirements:

The UCB Academic Senate has established Guidelines Concerning Scheduling Conflicts with Academic Requirements to address the issue of conflicts that arise between extracurricular activities and academic requirements. They specifically concern the schedules of student athletes, student musicians, those with out-of-town interviews, and other students with activities (e.g., classes missed as the result of religious holy days) that compete with academic obligations. The Senate guidelines assign responsibilities as follows:

-It is the student's responsibility to notify the instructor(s) in writing by the second week of the semester of any potential conflict(s) and to recommend a solution, with the understanding that an earlier deadline or date of examination may be the most practicable solution.

-It is the student's responsibility to inform him/herself about material missed due to any absence, whether or not he/she has been formally excused.

Grade Disputes:

If you disagree with the grade that you have received on an assignment and wish to contest it, here is the process:

- 1) Submit a one-page request for a re-grade *within 7 days* of receiving your grade. This request should explain why you wish your grade to be reconsidered, and should be delivered *in person* along with the assignment itself.
 - 2) The GSU will re-grade your exam within one week of receiving your request. You should be aware that your grade may go down, up, or stay the same; in all cases the re-grade will replace your original grade.
 - 3) If you disagree with the second grade, you should advise your GSI and then make an appointment with the professor. You are responsible for providing all of these materials (original graded exam, your request, and the re-grade) to the professor two days before your appointment with him. The professor's decision on the matter is final; you should think of him as the Supreme Court, the final arbiter.
 - 4) At the end of the term, the teaching staff has roughly four days to grade all final exams and to submit all course grades to the Registrar. After that date the exams are kept for 12 months in the LS Department in order to enable students mount an appeal of any incorrect grade. After the grades have been submitted to the Registrar on the Tuesday after the final exam date, University regulations only permit a grade to be altered in cases of clear and demonstrated error in the grading process, and the professor is required to detail in writing the nature of this procedural error on Change of Grade form submitted to the Registrar.
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Written Assignments and Student Evaluation:

(These LS 100 assignments and testing methods are designed to encourage and assess competence in foundational concepts and skills for legal studies scholarship, including writing skills, empirical observation, and analytical skills – all core tools of socio-legal research):

- i. Discussion section participation and section assignments (see each GSI's section syllabus): **30% of course grade**
- ii. The first take-home midterm, handed out March 8th – due in class March 13th: **=15% of the course grade.** The exam will consist of short to medium-length essay questions on material from the first weeks of the course. Students are allowed a limited degree of choice in which questions to answer. The completed exams must be concisely written and typed up within a specific page limit and submitted to the GSI according to instructions on the exam prompt. Students will have five days in which to complete the test, though the test process is designed to require only a few hours of reflection-reviewing-writing and editing. In this sort of test, it is of the utmost importance for students to read the questions closely, to reflect on the specific concepts that they are being asked to apply in each question, and then to answer simply the question that they are asked to answer. This sort of take-home question, with this extended time-frame, is designed to maximize each student's reflection and understanding and to discourage the sort of rushed, panicky, speculative data-dump that typically results from traditional in-class Blue Book essay exams. This is clearly an "open book exam," but all answers must be the student's own original work (see the notice on plagiarism above).

- iii. One field report of a courtroom observation visit of at least 4 hours duration = 15% of grade. Quite detailed guidelines for this assignment will be handed out after the first midterm exam is submitted; examples of ethnographic court observation scholarship will be primary assigned reading during the previous week. This assignment will be graded P/NP. This mode of grading is designed to encourage students to approach their observations with an open mind and to write up what they *actually observe*, thereby emphasizing each student's own specific individual field-work experience rather than any prior notions of what one would expect to observe at the chosen site. The multi-week time frame for completing this assignment includes our Spring break period, for the benefit of those students whose normal weekly schedule would make it otherwise difficult to find a half-day to visit a court house.
- iv. The second take-home midterm handed out on April 5th – due on April 10th: 15% of course grade. The exam structure and process will be similar to the first midterm described above, also allowing five days to complete. The content tested will primarily reflect the material from second part of the course, but will also seek to build upon the concepts from the first part of the course. Once again, thoughtful reflection, refined and edited for clarity of understanding are what is sought and rewarded in this sort of test.
- v. The take-home final exam will be made available at the RRR Week review session, and due on official exam date of May 10th = 25% of course grade. The general structure and process of the final will resemble the two prior take-home midterms. The RRR week scheduling allows students nine days to complete the final exam. It will have a somewhat longer maximum length and the questions on the final exam will reflect material from the entire course.

Summary of grade structure:	Participation and section assignments =	30%
	First take-home midterm =	15%
	Court field observation report =	15%
	Second take-home midterm=	15%
	Final take-home exam =	<u>25%</u>
Total		100%

Order of Topics, Readings, Course Activities

(it is expected that readings for one week will frequently “wrap around” to the next, connecting to the themes of the following week; also, some readings will be assumed more as background while others will be treated more in depth, a number of important concepts and thinkers will be introduced in one week and then taken up again later in the course)

LS 100 Part I: Emerging Legal Institutions and Foundational Frameworks for Understanding Law and Society through the mid-19th Century

Lecture Week 1 (Jan. 17, 19): Introduction; Legality, Morality, Justice, Legitimacy:

Introduction to the course plan, the instructors, and to one another; a short demographic survey of the students will be administered so that the instructors can better know and serve our students' backgrounds and interests (other short surveys will be conducted during the semester). Since this class has historically been over-enrolled, at these first class meetings the course roster will likely still be in flux. This course is designed for prospective majors who will have had little exposure to this field and they will not have been able to do prior course reading. Therefore, in

addition to the student survey and the obligatory taking of attendance, we will view a filmed excerpt from *Billy Budd* (1962: 119), using this to spark a discussion of broad concepts of the “rule of law” and its legitimacy in the modern state, including questions of law in wartime, and of law beyond national borders. We will view in class current newspapers and related media and emphasize the core insight that the law is everywhere. We will introduce and discuss classic legality/morality and positive/natural law distinctions in the study of law and justice.

Recommended background materials on Melville, *Billy Budd*, and the relations between “law” and “justice” are available on bSpace under Resources: Week 1.

1st Discussion section meetings (Jan. 24-26): Introductions and *Billy Budd* mock appeal activity
* Instructions distributed for case-summary assignment #1 due at 2nd section meeting

Lectures Week 2 (Jan. 24, 26): Law and Legal Reasoning I: What is a Case? Legal and Social-Scientific Conceptions:

- i. Understanding the nature and boundaries of the ‘case’ as a central concept in law and socio-legal scholarship;
- ii. Introduction to the common law system of adjudication and appeal and the doctrine of precedent or *stare decisis*; law vs. politics/policy, law vs. ethics, and the disputed nature of ‘legal reasoning’ in ‘case’-centered adjudication as a distinctive activity and body of knowledge; case analysis in legal scholarship, legal training, and legal practice.
- iii. Contrast common law and other classical traditions in Europe and elsewhere, custom vs. reason: *nomos, dike, halakha, jus, lex, haq, fiqh, trouble cases, disputing processes*. The approaches to “case reasoning” in legal scholarship will be contrasted to the use of case methods and to the modes of drawing “law-like” generalizations from particular instances in social sciences, natural sciences, and other professional training.

Read for Week 2-3:

- i. Friedman 2005: Prologue and Ch. 1, excerpt;
- ii. Karl Llewellyn *The Bramble Bush* (1930) brief excerpt on legal reasoning;
- iii. early-19th century cases on precedent, coverture, and domestic violence;
- iv. Llewellyn and Hoebel, *The Cheyenne Way* (1941), excerpt on empirical methods in legal studies: trouble-cases, law stuff, law ways, and law jobs.

Recommended: Arthur L. Goodhart, “Determining the Ratio Decidendi of a Case” (1930); Karl N. Llewellyn, “Remarks on the Theory of Appellate Decision and Rules or Canons about how Statutes are to be Construed” (1950).

2nd Discussion section meetings (Jan. 31 – Feb. 2): on reading and summarizing cases; basic introduction to case-law and socio-legal research using the UC library and special legal research resources and databases (academic Lexis).

* case-summary assignment #1 due in hardcopy at beginning of section.

Lectures Week 3 (Jan. 31, Feb. 2): Socio-Historical Foundations I: Constitutive Understandings of Law as a Distinctive Mode of Knowing and Making the Social World – How Is Law Everywhere?

- i. The socio-historical conditions for the emergence of law/legal systems; law and/as religion; complex societies and the governmental effects of literacy.
- ii. European developments, Renaissance, Reformation and Enlightenment emergence of the early modern state and its new citizen;
- iii. Hobbes' *Leviathan*, legality and sovereignty;
- iv. Structure of Blackstone's *Commentaries* (1758); survey system writs, courts, and lawyering in the colonial era; diverse colonial court structures (video portrayals of both trial and appellate court processes in "The Amistad Case" 1839-41/1997).
- v. What is "legal pluralism"?

Read for Week 3-4: :

- i. Continue Friedman on early American legal culture;
- ii. Continue "The Cheyenne Way": on empirical method – "trouble-cases," "law stuff," "law ways," and "law jobs";
- iii. Emile Durkheim "Law as Index of Social Solidarity" (1893);
- iv. Laura Nader, "Styles of Court Procedure: To Make the Balance" (1969);
- v. Brian Tamanaha, "Understanding Legal Pluralism" (2008), excerpt.

Recommended: Jack Goody (1986) *The Logic of Writing and the Organization of Society*; Laura Nader, "The Ethnographic Study of Law" (1965); Jill Lepore, *In the Name of War: King Phillip's War and American Identity* (1998) excerpt; Perry Miller "Puritan State and Puritan Society" (1951); K. Erickson "Wayward Puritans" (1968).

3rd Discussion section meetings (Feb. 7-9): discussion of Week 3 readings

* bspace forum reflection assignment due by 10pm on evening before section

Lectures Week 4 (Feb. 7, 9): Socio-Historical Foundations II: Comparative Law Study from Classical Traditions to the Modern Nation-state System: If, as law & society scholarship argues, "the law is everywhere," then how/why has it taken particular shapes in particular places and historical moments? What research methods can we use to investigate and understand these differences?

- i. View/discuss excerpts from Laura Nader's *To Make the Balance* (1966) and *Little Injustices* (1981); multiple qualitative methods; the principle of "studying up" from small villages to global commodity chains – Let's ask: just WHERE IS law?
- ii. Survey foundational concepts of the "government of laws" (*Rechtstaat*) ideal; core legal institutions (sovereigns, legislatures, courts); nation-states, citizenship, and rights; Enlightenment influences on continental and common law traditions; law's relation to religion and the government; religious conflicts and colonial legal forms; constitutions.

Read for Week 4:

- i. Hobbes, *Leviathan*, short excerpt;
- ii. Montesquieu *The Spirit of Laws* (1748), excerpt;
- iii. Blackstone's *Commentaries* (1758);
- iv. Friedman pp: 332-35, crime in colonial America.
- v. Bentham's *Introduction to the Principles of Morals and Legislation* (1780);
- vi. Beccaria, *On Crimes and Punishments* (1767), excerpt;
- vii. The U.S. Declaration of Independence (1776); the U.S. Bill of Rights (1788).

Recommended: Friedman Ch.1 remainder; Clifford Geertz, *Local Knowledge: Fact and Law in Comparative Perspective* (1983), excerpt; Sally Falk Moore "Law and Custom on Kilimanjaro" (1989)

4th Discussion section meetings (Feb. 14-16): discussion of readings from Week 4
* bspace forum reflection assignment due by 10pm on evening before section

Lectures Week 5 (Feb. 14, 16): Socio-Historical Foundations III: "In America the Law is King"—New Enlightenment Rights in a New Republican Age:

- i. Positivist and natural rights theories, the "Grand Style" of legal reasoning; legal historicist and early-social science theories and their connection to divergences about the nature of legal reasoning and law reform.
- ii. What was modern reason? Blackstone, Beccaria, and Bentham: classical liberalism and the making and disciplining of the Rational Man. Law, legitimacy and the ideals of democratic self-government.
- iii. The effect of emerging market-based social ordering on early republican legality;
- iv. Foucault's counter-reading of the Enlightenment; from the "art of unbearable sensations" to the "economy of suspended rights" – the making of the modern subject and the "scientific-judicial complex." On Foucault's method and influence at Berkeley.

Read for Week 5:

- i. Survey Friedman Ch 3, as background;
- ii. Review Bentham and Beccaria excerpts; see also Bentham's new blog "Thinking Inside the Box" at http://blogs.nature.com/jeremy_bentham/
- iii. Foucault *Discipline and Punish* (1977), Chapters, 1 and 2, further short excerpts.

Recommended: Foucault *Security, Territory, Population* 1977, excerpt from Jefferson' *Notes on the State of Virginia* (1790); Bentham, *The Panopticon: The Inspection House* (1787); Posner "Bentham's Influence on Law and Economics" (1999); E. Kantorowicz, *The King's Two Bodies* (1957).

5th Discussion section meetings (Feb. 21 - 23): discuss Franz Kafka, *The Penal Colony* (1919).
* bspace forum reflection assignment due by 10pm on evening before section

Lectures Week 6 (Feb. 21, 23): On American Exceptionalism – A New Legal Culture and a New Legal Consciousness:

- i. Tocqueville's discovery of America: on the emergence of a distinctly American legal culture; the "aristocracy of bench and bar"; lawyers as a check on the "tyranny of the majority"; distinctive American discourses of rights, politics, commerce, "secondary associations," Indian Removal, slavery, and the social position of women;
- ii. The American "reception" of the Common Law and paths not taken in the Federal Era and early republic: the codification movement, case law, trial and appellate functions; ecclesiastical and equity courts; the private law/public law "architecture" of Anglo-American law: crime, tort, contract, property, the law of personal status, legal fictions and the early corporate form. On Marbury, judicial review, and appellate court process.
- iii. In-class discussion of video excerpt of early trial procedure, *Young Mr. Lincoln* (1939).

Read for Week 6-7:

- i. Tocqueville, *Democracy in America* (1835/1840) Chs. 14-16.
- ii. Friedman 2005, Ch.3 "The Law of Personal Status: Wives, Paupers, and Slaves";
- iii. Silbey, "Legal Culture and Legal Consciousness";

Recommended: Thoreau "On Civil Disobedience" (1849); G. Beaumont, *Marie, Ou L'Esclavage aux Etats-Unis* (1835); Silbey and Ewick (1998) excerpt on narrative, story-based socio-legal research (touching on Hartog's "Abigail Bailey").

6th Discussion section meetings (Feb. 28 – March 1): discuss Week 6 readings

* bspace forum reflection assignment due by 10pm on evening before section

Lectures Week 7 (Feb. 28, March 1): Contested Rights for Contested Persons (Some of them Human): Race, Gender, Indigeneity and Rights-Consciousness in Pre-Civil War Legal Thought and Appellate Cases:

- i. From 1776 to 1861: the pre-Civil War U.S. Constitution and federal courts on the contestation of rights, personhood, and citizenship; alienable and inalienable rights
- ii. The new business corporation – *Dartmouth College v. Woodward* (1819)
- iii. From Blackstone's coverture to the *Seneca Falls Declaration* (1848);
- iv. *Johnson v. M'Intosh*, Native resistance and Indian Removal;
- v. The Mexican War and *Civil Disobedience*;
- vi. The Missouri Compromise, John Brown's Body and Bloody Kansas;
- vii. Natural/ positive law discourses of gender, race, citizenship: identities-rights-duties in court reasoning.

Read for Lecture 7-8:

- i. Friedman Ch. 3, continued;
- ii. Hendrik Hartog, "Abigail Bailey's Coverture: Law in a Married Woman's Consciousness" (1993);

- iii. Annette Gordon-Reed, "Race on Trial: Celia's Case."
- iv. *People v. Hall* (1854);
- v. *Dred Scott v. Sandford* (1857).

Recommended: Thoreau "On Civil Disobedience"; Thoreau "Letter"; R. Ferguson *Law and Letters in American Culture*, excerpts; H. Melville *Billy Budd*; C. Tomlins *Freedom Bound*, excerpt; P. Williams "On Being the Object of Property" (1988).

7th Discussion section meetings (March 6-8): discussion of Week 7 readings.

* bspace forum reflection assignment due by 10pm on evening before section

Lectures Week 8 (March 6, 8): Post-Civil War Reconstruction and Reaction: After the Trans-Continental Railway and Telegraph, Toward a Newly Rationalized and Nationalized U.S. Legal System

- i. View-discuss excerpt from *Birth of a Nation* (1915) on Reconstruction and Reaction;
- ii. The 14th Amendment to the US Constitution;
- iii. Summary of U.S. court structure: federal-state system of dual jurisdiction; trial and appellate functions and jurisdictions. The new federal circuit courts; the National Reporter System; the construction of national system of circuit courts of appeals;
- iv. C.C. Langdell and the emergence of the case method and the modern law school;

Reading for Week 8-9:

- i. The 13th, 14th, and 15th Amendments;
- ii. Friedman pp. 154-166; pp. 253-308 (these are background for weeks 8-9)
- iii. James Allen (2000) *Without Sanctuary* – a multi-media web site with images of lynching, it is possible to view only the text portions.

Recommended: *The Slaughterhouse Cases*;

First Take-home Midterm Given Out Thurs, March 8th – due in Lecture on Tues. March 13th

Lectures Week 9 (March 13, 15): Reconstruction and Reaction II: Rationalization, and Nationalization Risk, and the Rise of Regulation:

- i. Max Weber's analysis of common law courts, formal and substantive rationality; appellate functions,
- ii. Rationalization comes to America: West's National Reporter System, the regulatory functions of the bar association, and the emergence of Harvard model of professional legal education.
- iii. On the changing nature and evolving social role of the legal profession in the late 19th and early 20th centuries.
- iv. *Santa Clara County v. Southern Pacific Railroad* (1886); on railroads, torts, and the beginnings of the regulatory state, transforming contracts and labor law.

Read for Week 9:

- i. Weber on Rationalization of Law, Economy, Society
- ii. Friedman pp. 404-407, pp. 463-482 on Langdell's contract theory, formalist jurisprudence, casebook and case method, invention of modern legal education; also the emergence of the modern architecture of trial and appellate courts;
- iii. Shapiro, "Courts: An Introduction" (1986), excerpt;
- iv. *Bradwell v. Illinois* (1873); *Minor v. Happersett* (1875);
- v. *Yick Wo v. Hopkins* (1886), *Plessy v. Ferguson* (1896)

Recommended: Ariela Gross "Teaching Contracts as History of Contract" (2012); Frank Norris, *The Octopus: A Story of California* (1898); Friedman, "Blood and Gold: Some Main Themes in the Law in the Law Half of the Nineteenth Century" and "The Underdogs: 1850-1900" (2005).

Discussion section meetings (March 13-15): discussion of Week 8 readings
* case-summary assignment #2 due in hardcopy at beginning of section.

First midterm submitted as hard copy in lecture on Tuesday March 13th

Court Observation Assignment Guidelines handed out on Thursday March 15th – due in Lecture on Tuesday, April 3rd

Lectures Week 10 (March 20, 22): New Modes of Legal Knowledge for a New Century: The Progressive Era "Path of Law" from Legal Formalism to Sociological Jurisprudence and Legal Realism:

- i. Holmes on Langdell and "The Path of Law" – law as "logic, not experience";
- ii. Brandeis' "The Right of Privacy," and the Brandeis brief and cause lawyering;
- iii. Pound and Cardozo, from botany to "Sociological Jurisprudence";
- iv. Llewellyn and Frank – Legal Realism as Critique and Progressive Era Reform

Read for Week 10:

- i. *Lochner v. New York* (1905) and *Muller v. Oregon* (1908)
- ii. Holmes, "The Path of Law" (1897), excerpt;
- iii. Frank "Why not a Clinical Lawyer School?" (1931);
- iv. Sally Merry "Courts as Performances" (1994)
- v. *Palsgraf v. Long Island Railroad* (1928)

Recommended: Karl Llewellyn, *The Bramble Bush* (1930); John Noonan, *Persons and Masks of the Law* (1973), excerpts; Morton Horwitz *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (1992), Ch. 6.; Jerome Frank, *Law and the Modern Mind* (1931).

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9th Discussion section meetings (March 20-22): discussion of Week 9 readings.

* bspace forum review assignment due by 10pm on evening before section

*** Week of March 26-30 SPRING BREAK – NO CLASS MEETING**

(Please note that this week also provides an opportunity to those students who might otherwise have schedule conflicts to conduct Courtroom Observation during the time slots of our regular course periods)

Court Observation Assignment Due in Lecture Period on Tuesday April 3rd

Lectures Week 11 (April 3, 5): The Lawyering Profession in the 21st Century: Ideals and Sociological Facts (Week 11 includes a special guest lecture)

- i. What are the daily activities that most lawyers actually do? Where do they work and under what conditions?
- ii. The politics and economics of public and private legal practice;
- iii. The social stratification of the bar;
- iv. The ethics of lawyering practice.

Read for Week 11: For Tues April 3rd – all of these except Friedman are very short excerpts):

- i. L. Friedman, *American Law: An Introduction*, Ch. 13 (for background);
- ii. C. Wright Mills, "On Lawyers," From *White Collar* (1951)'
- iii. M. Galanter "How the Haves Come Out Ahead: Speculation on the Limits of Social Change" (1974), excerpt.
- iv. M. Freedman and A. Smith, *Understanding Lawyers' Ethics* (2002), excerpt.
- v. A. Blumberg, "The Practice of Law as a Confidence Game," (1967), excerpt.

Thursday April 5th Guest Lecture by Professor Leti Volpp:

Guest lecture by Boalt Hall Professor Leti Volpp: on the role and ethics of the lawyering, reasoning, and advocacy. Prof. Volpp will discuss a case heard under U.S. Immigration Law of an asylum appeal, *In Re Kasinga*, 1996.

- i. *In Re Kasinga* (1996), read first 14 pages of the opinion;
- ii. Charles Piot, "Representing Africa in the Kasinga Case" (2007), an anthropologist reflects on how his research was cited as evidence in the appellate opinion.

Recommended reading : L. Volpp (2000), "Blaming Culture for Bad Behavior," an article by Prof. Volpp on the role of legal advocacy in other cases.

Also recommended reading: M. Galanter, "Changing Legal Consciousness in America: From the Lawyer Joke Corpus," (2002).

NB: Second Midterm given out on Thursday April 5th – Due on Tues. April 10th

10th Discussion section meetings (April 3-5): Discussion of Week 10 readings.

* bspace forum review assignment due by 10pm on evening before section

Lectures Week 12 (April 10, 12): Seeing Like a Victor State – Legal Reasoning after WWII:

- i. From Legal Realism to The Process School, seeking legal legitimacy in the aftermath of Auschwitz and Hiroshima;
- ii. The Nuremberg Trials and the Universal Declaration of Human Rights;
- iii. Warren court, *Mendez v. Westminster*, *Brown v. Board*, the role of social science evidence in 14th Amendment equal protection and due process jurisprudence;
- iv. The Civil Rights Movement and moral reasoning
- v. Wechsler's Neutral Principles and the Hart-Fuller Debate

Reading Week 12:

- i. Friedman (2005) 523-536 (background).
- ii. *Korematsu v. U.S.* (1944), excerpt;
- iii. *Brown v. Board of Education* (1954), excerpt;
- iv. M.L. King, "Letter from the Birmingham City Jail," (1963), excerpt;
- v. H.L.A. Hart (1958), "Positivism and the Separation of Law and Morals," pp. 594-600, 606-615.
- vi. L. Fuller (1958), pp. 661-669.

11th Discussion section meetings (April 10-12): discussion of Week 11 readings.

Recommended: G. Peller "Toward Neutral Principles in the 1950s" (1988); B. Harcourt, "Making Willing Bodies: Manufacturing Consent Among Prisoners and Soldiers" (2011); Hannah Arendt *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963).

R. Gordon, "Unfreezing Legal Reality" (1987), excerpt.

Second Midterm Due in Lecture on Tues. April 10th

Lectures Week 13 (April 17, 19): Law, Social Sciences, and Social Critique

- i. Law and social change: contested knowledges
- ii. Law and social sciences
- iii. Regulation, the welfare state, and the economic analysis of law
- iv. Critical theories of law/society

Reading Week 13 (April 24, 26):

- i. L. Friedman “The Deterrence Curve,” (1975) excerpt;
- ii. T. Tyler, “Why People Obey the Law” (2006), excerpt;
- iii. G. Calabresi (1970) *The Cost of Accidents*, excerpt;
- iv. R. Posner (1987) “The Law and Economics Movement.”
- v. U. Gneezy & A. Rustichini (2000) “A Fine is a Price.”
- vi. R. West (1988) “Jurisprudence and Gender,” excerpt.
- vii. K. Crenshaw (1989) “A Black Feminist Critique of Anti-discrimination Law.”

12th Week Discussion section meetings (April 17-19):

* bspace forum reflection assignment due by 10pm on evening before section

13th Discussion section meetings (April 24-26): discussion of Week 13 readings.

Lectures Week 14 (April 24, 26): New Legal Actors, New Modes of Legal Education: Local Practices and Global Transformations:

- i. Demographic and economic changes in legal education;
- ii. New roles in a globalizing market for skills and credentialing;
- iii. Tocqueville’s vision of American legal populism reimaged;

Reading for Week 14 (April 24, 26):

- i. L. Friedman (2005) pp. 538-553 (background);
- ii. A. Amar & I. Ayres (2011) “Paying Students to Quit Law School?”
- iii. D. Kennedy (1983) “Legal Education as Reproduction of Hierarchy,” abridged.
- iv. M. Murray (2012) “Law School for Poets?”
- v. B. Tamanaha (2012) *Failing Law Schools*, excerpt.

Recommended: R. Stevens (1988) *Law School: Legal Education in America 1850-1980s*, excerpt; W. Espeland (2012) *Fear of Falling: The Effects of Rankings on Legal Education in America*, excerpt; M. Murray (2005) “Eminem, Duncan Kennedy and the Limits of Critique”; Heinz, Nelson, Sandefur, and Laumann (2005) “Urban Lawyers: The New Social Structure of the Bar.”

RRR Week (April 30 - May 4): Review Session scheduled for Tuesday, May 1st, take-home final distributed on bSpace after Review Session – to be submitted on May 10th at scheduled exam time (below)

Thursday, May 10th: The UCB Campus-Assigned Final Exam Period: 3:00-6:00 PM – Submit Take-home Final (mode of submission to be announced with exam instructions)