

## Legal Studies 100      Foundations of Legal Studies      Fall 2012

***Important Note:*** *This is the long-form syllabus for the LS 100 bSpace page. It provides the fuller information on University and Departmental policies and GSIs' office hours, etc. This long version also incorporates inputs from the survey of students' general and specific needs, interests, and scheduling concerns. 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: 12:10 - 1:00PM, Mon./Wed./Fri. in 155 Kroeber 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, legality, and socio-legal order. It highlights theoretical issues and trans-disciplinary scholarly methods of understanding questions of law and justice.

### **Instructor:**

Richard Perry, J.D., Ph.D.

337E Boalt North Addition; <[rwperry@law.berkeley.edu](mailto:rwperry@law.berkeley.edu)> (email is the best means of contact)

Office Hours: M/W/F 9:30 – 10:00PM and M/W/F 11:15-11:45, (I will continue to see students after class at 1:00 on most Mondays, Wednesdays, and Fridays, as well as on Tues/Thursdays by appointment)

**GSI:** Casey Hultin: Email <[casey.hultin@gmail.com](mailto:casey.hultin@gmail.com)>

Office hours: Monday, 2-3pm and Wed, 3-4pm at Cafe Zeb, on the Bancroft side of Boalt Hall  
Section 101 Monday 3-4:00 in 30 Wheeler; section 102 Wednesday 4-5:00 in 115 Kroeber

=====  
**LS 100 Learning Objectives (The Revised LS Major Course Requirements, starting with Fall Semester 2012, are Listed Below Immediately Following the Learning Objectives):**

Legal Studies 100 students should attain:

1. An understanding of “law” in the broadest, socially constitutive sense of legality, 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 "areas" (see the following section) with the disciplinary intersections, conflicts, and convergences that constitute legal studies as a field of scholarship and debate.
  4. An understanding, connected to these LS curricular areas, 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, emphasizing courts, alongside 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.
- 

### **Acknowledgements:**

LS 100 is a new course approved by the UC Berkeley Academic Senate in March 2012, for this academic year. Its goal is to provide an introduction to the interdisciplinary field of legal studies and more particularly to the structure and the rich academic resources of the UCB Legal Studies Department and its constituent curricular areas.

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." 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 Fall 2012, great appreciation is owed to 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](mailto:rwperry@law.berkeley.edu)). This course design also reflects feedback from the 2011-12 UC Berkeley Teaching Fellows Group chaired by Michelle Douskey.

---

**Revised Legal Studies Requirements – Beginning Fall 2012 (students should read through this structure of course requirements for the LS major as we move through LS 100, paying particular attention to the five curricular areas under the heading "Distribution Requirements" below)**

Prerequisites – Take one distinct course from each of the following four categories: Statistics; Philosophy; History; and Social/Behavioral Sciences. (4 courses) *See LS Dept. web site Appendix A for a list of courses that count for each of these areas.*

Unit Requirement – Students must take a minimum of 32 upper division units for the major.

Core Legal Studies Requirements – Take 4 courses from the list below, including at least one course designated as humanities (H) and at least one course designated as social sciences (SS). Students are strongly encouraged to take 100 early in pursuing the major as it provides a foundation for the Legal Studies curriculum. The 4 courses taken for core requirements cannot also be counted toward the distribution requirements.

- 100: Foundations of Legal Studies (H or SS)
- 103: Theories of Law & Society (H or SS)
- 107: Theories of Justice (H)
- 138: The Supreme Court & Public Policy (SS)
- 145: Law & Economics I (SS)
- 160: Punishment, Culture & Society (H or SS)
- 177: American Legal & Constitutional History (H)
- 182: Law, Politics & Society (SS)
- 184: Sociology of Law (SS)

Distribution Requirements – Take two courses\* in one of the following Areas and 1 course each in two additional Areas for a total of four courses. *See Appendix B.*

- Area I Crime, Law & Social Control
- Area II Law & Culture
- Area III Law & Markets
- Area IV Law, Rights & Social Change
- Area V Law & Sovereignty

\* LS H195B Honors Thesis or LS 199 Independent Study (for 4 units) may substitute for one of the two courses.

---

### **Student Responsibilities:**

Attendance: Students are expected to attend all lectures and section meetings having already completed 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 acknowledgement 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 acknowledgement, to paraphrasing another person's original phrases without acknowledgement. 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 Student's 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.

---

## LS 100 Course Materials:

A typical week's reading will consist of (i) primary materials – often key legal cases, sometimes a video clip of a courtroom; (ii) historical background material – often an excerpt from Friedman (2005); and (iii) one or more pieces of classic law & society scholarship – ranging from Jeremy Bentham to contemporary works in law & society by our own UCB faculty, past and present.

### Sources:

i. Lawrence M. Friedman, *A History of American Law*, 3<sup>rd</sup> 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 they cannot all be posted on bSpace. It will serve as a guidebook and general reference work. Many 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 some sections will not be included in the course reader at Copy Central, for reasons both of convenience and copyright. 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. There are several required chapters of cases & materials on *American Courts* that will be available ONLY on bSpace. The LS 100 bSpace site is the official and definitive location for both lecture and section announcements, assignments, and materials. All students are responsible for checking the bSpace site regularly. Please make certain that your email address on bSpace is correct. For each week's readings students will find a folder labeled "Required Reading" and another file labeled "Recommended Background and Further Reading."

iii. If there is sufficient student demand, hard copy course readers of most of the core required readings will be made available at Copy Central on Bancroft, in two volumes. The course reader at Copy Central is being made available as a convenience to those students who have requested it, because they prefer a hard copy to 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 discussion sections to supplement and reinforce the lectures. Each student is responsible for actively engaged participation both in lectures and in section discussions, for section activities and assignments, and for maintaining communication with the GSI (it is not the GSI's responsibility to track down lost students). As specified in the section below, class participation and section assignments will count for 20% of the total course grade.

---

## 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:

i. Discussion in lecture as well as section participation and section assignments (see the GSI's section syllabus): 20% of course grade. Students will be assigned to on-call groups to be called on in class on specific dates. This list will be posted on bSpace.

ii. The first take-home midterm for Part I (Foundational Concepts and Frameworks), AFTER week 6: =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 **SEVEN** days in which to complete the test, though the test process is designed to require only a few hours of reviewing-reflecting-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 often 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 one half-day court session (roughly 4 hours duration) = 15% of overall grade. 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. **NOTE: 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 Thanksgiving 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 major section of the course (i.e., **Part II: On Court Structures and Functions & the Lawyering Profession**) will be evaluated by several in-class short quizzes, designed to review the materials. These quizzes will be reviewed afterwards in section. There will also be one take-home short essay question on during week 11. These quizzes and essay, added together, will = 15% of the course grade. The take-home exam structure and process will be similar to the first midterm described above. The content tested will primarily reflect the material from second part of the course focused on courts and the legal profession. 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 Dec. 14<sup>th</sup> = 35% 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 than the earlier tests and the questions on the final exam will reflect material from the entire course.

Summary of grade structure:	Participation and section assignments =	20%
	First take-home midterm =	15%
	Court field observation report =	15%
	Second take-home midterm=	15%
	Final take-home exam =	<u>35%</u>
Total		100%

---

## **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 GSI 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 Court of Last Resort (PLEASE do NOT badger the GSI).
  - 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 to 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 the Change of Grade form submitted to the Registrar.
- 

## **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 in greater depth, and a number of important concepts and thinkers will be introduced in the early weeks and then taken up again later in the course as we discuss legal institutions)

### **General Course Structure:**

- I. Weeks 1-6 On Foundational Concepts, Conflicts, and Frameworks for Scholarship on Law and Legality**
- II. Weeks 7-11 The Emergence of Core Legal Institutions through the late 20<sup>th</sup> Century: Court Structures and Functions; the Regulatory State; the Lawyering Profession.**
- III. Weeks 11-15 *Law & Society* since the late 20<sup>th</sup> Century: Rights Consciousness, Social Change; the Evolving Visions of Trans-national Legality, Lawyers, and Institutions**

### **List of Topics and Readings:**

#### **Part I**

#### **Weeks 1-6: Foundational Frameworks for Understanding Law, Legality, Legal Consciousness and Cultures**

(Students should expect minor adjustments to this schedule from day to day, in accordance with the pace of class discussion; the scheduling of guest lecturers is also an evolving process)

<b>Week 1: Aug. 24</b>
------------------------

### **Lecture Week 1—Aug. 24: Introduction; Legality, Morality, Justice, Legitimacy:**

Introduction to the course plan, to the instructors, and to one another; a short 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 have not 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 UCB Professor Laura Nader's *To Make the Balance* (1966). We will discuss its current relevance and research methods, as well as 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 the "law," "legality," and "justice" are on bSpace Resources: Weeks 1-2.

**Discussion sections do not meet during Week 1.**

### **Week 2: Aug. 27, 29 & 31 On Law, Legality, and Legal Reasoning: 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 on legality; transactions, disputes, "trouble cases"
- ii. 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.
- iii. 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; contrast internal and external perspectives on law and legality.

Read for Weeks 2-3:

- i. Laura Nader, "Styles of Court Procedure: To Make the Balance" (1969);
- ii .Robert Kidder, Chs. 1-2 "Definitions of Law and their Consequences"
- iii. Friedman 2005: Prologue and Ch. 1, excerpt;
- iv. Skim Llewellyn and Hoebel, *The Cheyenne Way* (1941), excerpts focusing on empirical methods in legal studies: trouble-cases, law stuff, law ways, and law jobs.

1<sup>st</sup> Discussion section meetings: We will address enrollment issues; introductions and begin discussion of Nader and Kidder readings.

### **Week 3: Sep. 5 & 7 (No Class Sep. 3—Labor Day): Constitutive Understandings of Law as Distinctive Mode of Knowing and Making the Social World – What Does It Mean to Say that "Law is Everywhere"?**

- i. The socio-historical conditions for the emergence of legality (on law/legal systems; law and/as religion; complex societies and the governmental effects of literacy).
- 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. The early modern “government of laws”; Hobbes’ Leviathan, legality and sovereignty;

iv. On Blackstone’s Commentaries (1758). What are the roles of “custom” and “legal pluralism” in Anglo-American common law approaches to legality?

Read for Week 3 (please reflect on the links between weeks 2 and 4):

i. 19<sup>th</sup> century NC Sup. Ct. cases on precedent, *coverture*, and domestic violence;

ii. Friedman (2005) Ch 1, early American legal culture – both “external” and “internal”;

iii. Jeremy Bentham (1791) *Introduction to Principles of Morals and Legislation*

iv. Emile Durkheim “Law as Index of Social Solidarity” (1893), excerpt.

Connect last week’s discussion of “The Cheyenne Way”: on empirical method – “trouble-cases,” “law stuff,” “law ways,” and “law jobs” – to these frameworks for understanding law and legality (refer back to Kidder Ch.2).

Recommended: K. Erickson *Wayward Puritans* (1968), excerpts; Sally Falk Moore “Law and Custom on Kilimanjaro” (1985), on bSpace.

#### **Week 4: Sept. 10 (Group A), 12 (Group B) & 14 (Group C) Foundations of Legality:**

Comparative Law Study from Customary Law to the post-Westphalian Nation-state System:

i. If, as law & society scholarship argues, “the law is everywhere,” then how/why has it taken particular shapes in particular places and historical moments?

ii. What research methods can we use to investigate and understand these differences?

iii. The foundational concepts of the “government of laws” 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.

iv. Introduction to foundational thinkers and diverse conceptions of legality and “rule of law”: Hobbes, Montesquieu, Blackstone, Bentham, Jefferson.

v. On Foucault’s method and influence on socio-legal scholarship, especially at Berkeley.

Read for Week 4:

i. Hobbes, Montesquieu, Blackstone, Bentham, Beccaria, Jefferson: all short excerpts;

ii. Friedman pp: 31-38, on crime and *legal culture* in colonial America and the early republic;

iii. Selznick (1976) “The Ethos of American Law.”

iv. Foucault (1977), Ch 1

Recommended: Friedman Ch.1; Foucault (1977), Ch 2; excerpt from Jefferson’ *Notes on the State of Virginia* (1790); Bentham, *The Panopticon: The Inspection House* (1787); Posner “Bentham’s Influence on Law & Economics” (1999); see also Bentham’s new blog “Thinking Inside the Box” at [http://blogs.nature.com/jeremy\\_bentham/](http://blogs.nature.com/jeremy_bentham/). All links on bSpace

**4<sup>th</sup> Week Discussion section:** Student debate between utilitarians and communitarians

**Week 5: Sept. 17 (Group D), 19 (Group A) & 21<sup>st</sup> (Group B) Socio-Historical Foundations of American Exceptionalism: “In America the Law is King”; A New “Legal Culture” of Emerging Individual Rights in a New Republican Age**

- i. Positivist and natural rights theories, the “Grand Style” of legal reasoning; judicial review.
- ii. Tocqueville’s discovery of American legal culture: on the emergence of a distinctly American “rights culture”; the “aristocracy of bench and bar”; lawyers as a check on the “tyranny of the majority”; the jury and popular legal culture.
- iii. Introduce contemporary conceptions of “legal culture” – connect and contrast Tocqueville to Friedman, Selznick, Nader & other scholars of legal cultures.
- iii. 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 court functions; judicial review

Read for Week 5:

- i. Tocqueville, *Democracy in America* (1835) excerpts on lawyers & juries in American legal culture.
- ii. Selznick (1961) “Sociology and Natural Law.”
- iii. Friedman (1994) “Is there a Modern Legal Culture?”

Recommended: See bSpace for more on Tocqueville; also further background on Foucault at Berkeley.

Discussion section meetings: discuss Common Law case readings on precedent and analyzing cases; introduction to case-law and socio-legal research.

**Week 6: Sept. 24 (Group C), 26<sup>th</sup> (Group D) & 28<sup>th</sup> (Group A): Legal Culture and Legal Consciousness as Conceptual Frameworks for Law & Society Research**

i. We will ask: just WHERE IS LAW? Is it in “legal culture”? Or in “legal consciousness? From where does it derive its authority or force? And we’ll ask: How Can We Know *Law* when We See it? What methods can we use to study the pervasive legality of everyday life?

ii. View-discuss excerpts from Nader (1982) *Little Injustices* (in class, see also bSpace link or view at Moffitt DVD 9277)

Read for Week 6:

- i. [Susan Silbey \(2001\) “Legal Culture and Legal Consciousness: Overview”](#)  on bSpace
- ii. P. Ewick & S. Silbey (1998) *The Common Place of Law*, Ch2-3.
- ii. Erving Goffman (1982) "The Interaction Order" (skim for author’s main ideas and method)
- iii. Friedman (2005) Ch 4: The Law of Personal Status: Wives, Paupers, Slaves Friedman 2005
- iv. Thoreau (1849) "Civil Disobedience" note on legality
- v. [Celia's Case \(Missouri 1855\), edited by Annette Gordon-Reed](#)
- vi. [Dred Scott v. Sandford \(1857\) U.S. Sup. Ct.](#)
- vii. [People v. Hall \(1854\) California Sup. Ct.](#)

Recommended for next week: H. Hartog (1995) “Abigail Bailey’s Coverture”; P. Williams (1988) “On Being the Object of Property.”

**TAKE-HOME MIDTERM TEST HANDED OUT FRIDAY, Oct 5<sup>th</sup>; DUE IN CLASS ON FRIDAY, OCT. 12<sup>th</sup>**

**Week 7: Oct. 1 (Group B), 3 (Group C) & 5 (Group D) Nineteenth and Twentieth C. Courts and Emerging Institutions of Legality: New Visions of Lawyers and Judges**

- i. The post-Civil War re-organization of the U.S. court system;
- ii. The private law/public law structure of Anglo-American law: crime, tort, contract, property, the law of personal status, legal fictions and the corporate form.
- iii. The post-Civil War Amendments advance rights consciousness, a renewed discourse of individual rights that endures into the 21<sup>st</sup> century.

Read for Week 7:

- i. *American Courts* Chs 1 & 2 – sources of law, reading cases
- ii. *American Courts* Ch 5 – “finding the courthouse”
- iii. Tyler (2008) “Why People Obey the Law”
- iv. Friedman (2005), pp. 253-278.
- v. Civil War Amendments to the US Constitution

Recommended: Shapiro (1986) *Courts: A Comparative Political Analysis*, excerpt.

Discussion section: On courts research and paper writing.

***The guidelines for the Court Observation Report will be handed out on Oct. 12<sup>th</sup>. The report must be submitted in class on Nov. 26<sup>th</sup> (the Monday after Thanksgiving break). As announced above, this assignment will be graded P/NP.***

**Part II Weeks 7-11: The Emergence of Core Legal Institutions: Court Structures and Functions; the Regulatory State; the Lawyering Profession.**

**Week 8: Oct. 8 (Group A), 10 (Group B) & 12 (Group C): Dual sovereignty and the post-Civil War shifting maps of federal and state court jurisdiction;**

- i. Expanding appellate functions and the development of the Circuit Courts of Appeal;
- ii. The emergence of the National Reporter System;
- iii. The professionalization of legal training.
- iv. Emerging rights consciousness and Equal Protection doctrine in the courts

Read for Week 8:

- i. *American Courts*, Chs. 3, 4, 17 – state and federal jurisdiction; trial and appellate functions
- ii. Friedman (2005), On “Judges, Courts, and Procedure” pp. 279-308; “Legal Profession” pp. 463-482.
- ii. *Minor v. Happersett* (1873)
- iii. *Bradwell v. Illinois* (1875)
- iv. *Elk. v. Wilkins* (1884)
- v. *Yick Wo v. Hopkins* (1886)
- vi. *Plessy v. Ferguson* (1896)

Review quiz in class on Friday Oct. 12<sup>th</sup> – graded P/NP

**Week 9: Oct. 15 (Group D), 17 (Group A) & 19 (Group B): Courts, Legality, and the Boundaries of Public and Private Spheres: “Progressive” Rationalization and Nationalization of US Law, “Expert Knowledge” and Rise of Regulatory Agencies**

- i. Max Weber’s analysis of common law courts, formal and substantive rationality in appellate functions, professional legal education.
- ii. Evolving social role of the legal profession and judiciary in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries
- iii. The rise of the regulatory state and the new construction of legal knowledge and institutions.
- iv. The incursion of social science into law, courts and governance; the Brandeis Brief.

Read for Week 9:

- i. Weber on “Rationalization of Law, Economy, Society”
- ii. *American Courts*, Ch. 18, skim Ch 14 – trial process and alternative courts
- iii. Friedman (2005) pp. 367-389.
- iv. *Lochner v. New York* (1905)
- v. *Muller v. Oregon* (1908)
- vi. *Buck v. Bell* (1927)
- vii. Merry, (1994) “Courts as Performances”

Recommended: Friedman (2005) pp. 251-278 “Blood and Gold: Some Main Themes in Law in the Last Half of the Nineteenth Century.”

**Review quiz in class, Friday Oct. 19<sup>th</sup>.**

**Week 10: Oct. 22 (Group C), 24 (Group D), 26 (Group A) New Courts and Agencies; New Professional Roles**

Reading for Week 10:

- i. Merry (1994) “Courts as Performances”
- ii. *American Courts*, Chs. 6, 7, 8 – the institutional roles of lawyers and judges
- iii. Friedman (2002) “Internal Legal Culture”
- iv. Galanter (1974) “How the Haves Come Out Ahead: on the Limits of Social Change” (1974), excerpt.
- v. Felstiner, Sarat, Nelson (1981) “Naming, Blaming, Claiming”
- vi. Ladinsky (1961) “Social Backgrounds of the Lawyering Profession.”
- v. WSJ “The Great McDonalds Coffee Spill”

Recommended: Kagan (2001) *Adversarial Legalism*, Ch 1; Greenhouse “Interpreting American Litigiousness” ; Feeley (1979) *The Process is the Punishment*, excerpt

**Review Quiz on Friday Oct 26<sup>th</sup>**

**Week 11: Oct. 29 (Group B), 31<sup>st</sup> (Group C) & Nov 2<sup>nd</sup> (Group D)  
The Lawyering Profession: Ideals and Socio-economic Facts**

- 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: – 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)”
- iv. M. Galanter “How the Haves Come Out Ahead: the Limits of Social Change” (1974), excerpt.
- v. Freedman and Smith (2002) “Understanding Lawyers’ Ethics.”
- iv. Blumberg (1967) “The Practice of Law as a Confidence Game,” (1967), excerpt.

Recommended: Duncan Kennedy; Melissa Murray on Legal Education

### **Review Quiz on Friday, Nov. 2nd**

**Week 12:** Nov. 5<sup>th</sup> On-Call for Nov. 7<sup>th</sup> (Group D), Nov. 9<sup>th</sup> (Group A)

View excerpts from documentary *Well-Founded Fear* (2000), on multi-cultural and trans-national legality, advocacy, and administrative discretion in deportation hearings.

Demonstration of on-line experiential web site:

<http://www.pbs.org/pov/archive/wellfoundedfear/frameset.php3?section=waitingroom>

Reading: On Regulatory Law Hearings and Appellate Processes (for Volpp lecture)

## **Part III: A Globalizing *Law & Society* in the 21<sup>st</sup> Century: Rights Consciousness, Social Change; the Evolving Visions of Transnational Legality, Lawyers, and Institutions**

**Week 13: NO CLASS on Monday Nov. 12<sup>th</sup> – *Veterans’ Day Holiday*, Weds. Nov. 14<sup>th</sup> (Group B) & Nov. 16<sup>th</sup> Second Take-home Midterm Exam, Review, and Hand-out**

Over the long holiday weekend, please prepare for the Wednesday, Nov. 14<sup>th</sup> 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.

Read for Week 13:

- 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.
- iii. L.Volpp (2000), “Blaming Culture for Bad Behavior,” an article by Prof. Volpp on the role of courts and legal advocacy in trans-national and trans-cultural cases.

Recommended: Debates on Human Rights and Female Genital Curcuncisions

***Friday Nov. 16<sup>th</sup>, Take-home midterm exam essay on the changing functions of courts and in the role of the legal profession***

**Week 14: Nov. 19<sup>th</sup> (Group D) & Nov. 21<sup>st</sup> (Group A) (SHORT WEEK DUE TO THANKSGIVING HOLIDAY)**

- i. The Transformations in International and Domestic Law after WW II: Human Rights and the Influence of Nuremberg
- i. The globalization or trans-nationalization of courts, regulatory agencies, and legal cultures;
- ii. The WTO and convergence of lawyering profession;
- iii. Universal Jurisdiction

Read for Week 14:

- i. Friedman (2002) "Law: An American Export"
- ii. Kissinger (2004) "What's Wrong with Universal Jurisdiction?"
- iii. Haggard (2006) "Universal Jurisdiction as Praxis"

Recommended: Garth & Dezalay on bSpace

**Week 15: Nov. 26 (Group B), Nov. 28<sup>th</sup> (Group C), Nov. 30<sup>th</sup>  
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 Dec. 3-7:**

Review session tentatively scheduled for Monday, Dec. 3<sup>rd</sup>

Course review/summary and discussion of take-home final exam. The exam will be distributed on bSpace approximately 10 days before the campus final exam date, along with the instructions for submitted the final exam on Dec. 14th. Students unable to meet this exam schedule should notify the professor by the 13<sup>th</sup> week, so that a reasonable accommodation can be arranged.

**Final Exam Date and Time: Friday, December 14<sup>th</sup> 11:30-2:30,  
Location TBA (time and location are assigned by Registrar)**