

# Legal Studies 100      Foundations of Legal Studies      Spring 2013

***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 GSI's office hours, etc. 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 GSI regarding both section and lecture assignments, absences due to health emergencies, for DSP matters, on needs for accommodation of religious, athletic, or other absences (see below for specifics).*

**Lecture Meetings: 3:10 - 4:00PM, Mon./Wed./Fri. in 170 Barrows 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:**

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Office Hours: M/W/F 2:10 – 3:00 PM, and by appointment.

**GSI:** Adam Hill: Email [adh@berkeley.edu](mailto:adh@berkeley.edu)

Office hours: Fridays 1:30-3pm and by appointment at Cafe Strada

Section 101 Tuesday 2-3:00 in 140 Barrows; section 102 Wednesday 1-2:00 in 140 Barrows

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**LS 100 Learning Objectives (The Revised LS Major Course Requirements, starting 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 sense of what Lawrence Friedman heuristically 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.

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### **Acknowledgements:**

LS 100 is a new course approved by the UC Berkeley Academic Senate in March 2012, for this 2012-13 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 have offered their feedback.

For this course design, as it stands in Spring 2013, 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.

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### **Revised Legal Studies Major Requirements – Beginning AY 2012-13 (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; look closely at the LS Dept. web site for updates)**

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.

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### **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 prior to 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 which may arouse strong beliefs and emotions. 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.*

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## **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 class 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 video of court proceedings; (ii) historical background material – often an excerpt from Friedman (2005); and, most centrally, (iii) one or more pieces of classic law & society scholarship – ranging from Jeremy Bentham to contemporary works in legal studies/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 in Moffitt). 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 100 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, a hard-copy course reader 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 purchasing a hard copy to reading & printing readings 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, lecture and section participation and section assignments will count for 20% of the total course grade.

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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:

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 after the roster is final at the end of Week 2.

ii. There will be three in-class written tests designed to review the material covered in the immediately preceding weeks. Please bring a bluebook on these designated dates.

iii. One field report of a courtroom observation visit of at least one half-day court session (roughly 4 hours duration) = 20% 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 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 cumulative take-home final exam will be made available at the RRR Week review session, and due on official exam date of May 15<sup>th</sup> = 30% 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%
	Three midterm review tests, 10% each =	30%
	Court field observation report =	20%
	Final take-home exam =	<u>30%</u>
Total		100%

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## Grade Disputes:

If you disagree with any 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 this 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 semester, the GSI has roughly five days in which 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 final grade. Once the grades have been submitted to the Registrar 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.
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## Order of Topics, Readings, Course Activities

(it is expected and intended that readings for one week will frequently "wrap around" to the next, connecting to the themes of one week to the next. Also, some readings will be taken largely as background while others will be

discussed 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 specific legal institutions.

## General Course Structure:

### I. List of Topics and Readings:

#### **Week 1: Jan. 23<sup>rd</sup> & 25<sup>th</sup> : Introduction to the *Cases of 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 done prior course reading. We will introduce the notion that "law is everywhere" and discuss classic legality/morality and positive/natural law distinctions in the study of law and justice.

Read on bSpace (Course Reader pp. 11-26):

- i. Elizabeth Mertz (2007) *The Language of Law School*: Introduction "Entering the World of U.S. Law"
- ii Hawkins v. McGee (NH 1929). Case opinions and casebook abstracts,
- iii. Also see, the bSpace video link to law school classroom interactions on case law.

Recommended: Martha Minow & Todd Rakoff (2007) "The Case for Another Case Method" - bSpace

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

#### **Week 2: Jan. 28<sup>th</sup>, 30<sup>th</sup>, Feb. 1<sup>st</sup> On Law, Legality, and Legal Reasoning: What is a Case? Legal and Social-Scientific Conceptions**

- i. Understanding the nature and uses of a 'case' as a central concept in law and socio-legal scholarship -- on legality; transactions, disputes, and "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 and 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.
- iv. On Blackstone's *Commentaries on the Law of England* (1765). What are the roles of "custom" and "legal pluralism" in Anglo-American common law approaches to legality?

Read on bSpace for Week 2 (Course Reader pp. 27- 80):

- i. Blackstone, (1765) short excerpt;
- ii. Hutchinson (2006) "Is Eating People Wrong?"
- iii. 19<sup>th</sup> century NC Sup. Ct. cases on *stare decisis*, *coverture*, and state sanction of "private" violence;
- iv. Friedman 2005: Prologue and Ch. 1, excerpts on 18<sup>th</sup> century court structures and processes

1<sup>st</sup> Discussion section meetings: We will address enrollment issues; introductions and begin discussion of Common Law cases.

**Week 3: Feb. 4, 6, 8<sup>th</sup>: Constitutive Understandings of Law – What Does It Mean to Say that “Law is Everywhere”?**

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. What research methods can we use to investigate differences in what Lawrence Friedman calls legal cultures?

Read for Week 3 (Course Reader pp. 81-143):

- i. Emile Durkheim “Law as Index of Social Solidarity” (1893), excerpt.;
- ii. Laura Nader, “Styles of Court Procedure: To Make the Balance” (1969);
- iii. Robert Kidder, Chs. 1-2 “Definitions of Law and their Consequences.”
- iv. Philip Selznick, “Legal Cultures and the Rule of Law” (1999)

Discussion of Laura Nader’s *To Make the Balance* (1966); Friedman’s conceptions of “legal culture” (internal and external); also “The Cheyenne Way” on empirical methods in legal studies – “trouble-cases,” “law stuff,” “law ways,” and “law jobs” – frameworks for understanding law and legality.

Recommended readings: K. Erickson *Wayward Puritans* (1968), excerpts; Sally Falk Moore “Law and Custom on Kilimanjaro” (1989), all on bSpace.

Discussion sections: enrollment finalized - review of Durkheim, Nader, Kidder readings.

**Week 4: Feb. 11<sup>th</sup> (Group A), 13<sup>th</sup> (Group B) & 15<sup>th</sup> (Group C) Foundations of the Rule of Law, “Modern Legal Culture” and Selznick’s *Legality*:**

- 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. The foundational concepts of the “government of laws” ideal; core legal institutions (sovereignty, 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.
- iii. Introduction to 18<sup>th</sup> century thinkers and diverse conceptions of legality and “rule of law”: Hobbes, Montesquieu, Beccaria, Bentham, and American constitutionalism.

Read for Week 4 (Course reader pp. 144-168):

- i. Hobbes (1651) *Leviathan*, short excerpts.
- ii. Montesquieu (1748) *L’esprit des lois (The Spirit of Laws)*, skim short excerpts for main ideas
- iii. Beccaria *Of Crimes and Punishments* (1764), overview and excerpts,
- iv. Bentham (1790) *Introduction to Principles of Morals and Legislation* – read closely (see Panopticon)
- v. L. Friedman (2005) excerpts on crime and morality in colonial American legal culture.



All excerpts on bSpace. Recommended: Foucault (1977), Ch 1-2 also background on Foucault at Berkeley; link to Jefferson's *Notes on State of Virginia* (1790); Bentham, *The Panopticon: The Inspection House* (1787).

**4<sup>th</sup> Week Discussion section:** Debate between utilitarian and communitarian approaches.

**Week 5: Feb. 18<sup>th</sup> Holiday-No Class, Feb. 20<sup>th</sup> (Group D) & 22<sup>nd</sup> Socio-Historical Foundations of American "Exceptionalism" as *Legality*: A New "Legal Culture" of Emerging Individual Rights in the New Republic**

- i. Positive and natural rights theories, judicial review and the "grand style."
- ii. Tocqueville's discovery of American legal culture: 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 in the early republic.
- iii. Introduce conceptions of "legal culture" – connect and contrast Tocqueville to Friedman, Selznick, Nader & other scholars of legal cultures.

Read for Week 5 (Course Reader pp. 169- 205):

- i. Tocqueville, *Democracy in America* (1835) excerpts on lawyers & juries in American legal culture.
- ii. Selznick (1976) "The Ethos of American Law."
- iii. Friedman (1994) "Is there a Modern Legal Culture?"
- iv. Celia's Case, Missouri Sup. Court 1855 (edited by Annette Gordon-Reed)
- v. Thoreau (1849) "On Civil Disobedience," short excerpt.

Recommended: See bSpace for links to Tocqueville; also see Greenhouse (1989) "Interpreting American Litigiousness."

Discussion section meetings: review Common Law case readings on precedent and case analysis.

**Friday Feb 22<sup>nd</sup> In-class Review Test**

**Week 6: Feb. 25<sup>th</sup> (Group B), 27<sup>th</sup> (Group C) & March 1<sup>st</sup> (Group D): Legal Culture and Legal Consciousness: Conceptual Frameworks for Law & Society Research**

- i. Where is *law*? Is it in "legal culture"? Or in "legal consciousness? From where does law derive its authority or force? 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* (short excerpt in class, see also bSpace link or view at Moffitt DVD 9277)

Read for Week 6 (Course Reader pp. 206-264):

- i. P. Ewick & S. Silbey (1998) *The Common Place of Law*, Chs. 2-3.
- ii. L. Friedman (2005) Ch 4: The Law of Personal Status: Wives, Paupers, Slaves Friedman 2005
- iii. Dred Scott v. Sandford, U.S. Sup. Ct. 1857.
- vi. People v. Hall California Sup. Ct. 1854

Recommended readings: *American Courts* Chs 1 & 2; Susan Silbey (2001) "Legal Culture and Legal Consciousness: Overview"; H. Hartog (1995) "Abigail Bailey's Coverture"; P. Williams (1988) "On Being the Object of Property." All readings on bSpace.

**Week 7: March 4<sup>th</sup> (Group A), 6<sup>th</sup> (Group B) & 8<sup>th</sup> (Group C) Late Nineteenth and Early Twentieth Century Courts, Regulation, and Emerging Forms of Legality**

- i. The Post-Civil War Development 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 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 Course Reader pp. 265-297):

- i. Max Weber (1922), on Rationality in Law, Economy, and Society
- ii. Sally Merry (1994) "Courts as Performances."
- ii. *American Courts* Chs. 3 & 4 – ONLY on bSpace, not in Course Reader;
- iii. Friedman (2005), On "Judges, Courts, and Procedure" pp. 279-308
- iv. Post-Civil War 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> Amendments to the US Constitution

Recommended: M. Shapiro (1986) *Courts: A Comparative Political Analysis*, excerpt; Sally Merry "Going to Court" (1979).

Discussion section: On court observational research & methods.

***Guidelines for Court Observation Report handed out; report to be submitted in class on April 22<sup>nd</sup>. As announced above, this assignment will be graded P/NP.***

**Week 8: March 11<sup>th</sup> (Group D), 13<sup>th</sup> (Group A) & 15<sup>th</sup> (Group B): Due Process and Procedural Legitimacy**

- i. Expanding appellate functions, federalism and the Circuit Courts of Appeal;
- ii. 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 (Course Reader pp. 298-351):

- i. *American Courts*, Chapters 6,7, 8 ONLY on bSpace, not in Course Reader
- ii. Tom Tyler (2008) "Why People Obey the Law"
- iii. L. Friedman (2005) "The Legal Profession."
- iv. *Minor v. Hapersett* (1873)
- v. *Bradwell v. Illinois* (1875)
- vi. *Elk. v. Wilkins* (1884)
- vii. *Yick Wo v. Hopkins* (1886)
- viii. *Plessy v. Ferguson* (1896)

Recommended: T. Davis "Race, Identity, and the Law: Plessy v. Ferguson";

## SECOND IN-CLASS REVIEW TEST

### **Week 9: March 18<sup>th</sup> (Group C), 20<sup>th</sup> (Group D) & 22<sup>nd</sup> (Group A): Courts, Legality, and “Progressive Era” Reforms**

- i. The evolving role of the legal profession and legal institutions in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries
- ii. The rise of the regulatory state and conflicts over legal knowledge and institutional intervention in the private sphere.
- iii. The influences of social science on law, courts and governance; the “Brandeis Brief.”
- iv. In-class discussion of Ozawa and Third citizenship cases.

Read for Week 9 (Course Reader pp. 352-373):

- i. *American Courts*, Chs. 17, 18 ONLY on bSpace, not in Course Reader.
- ii. L. Friedman (2005) “The Legal Profession in Early 20<sup>th</sup> Century”
- iii. *Lochner v. New York* (1905) – In-class discussion.
- iv. *Muller v. Oregon* (1908)
- v. *Buck v. Bell* (1927)

Recommended: J. Monaghan and L. Walker *Introduction to Social Science in Law*, excerpt on bSpace.

**NO CLASS MEETING ON MARCH 22<sup>ND</sup> – ALLOTTED COURT OBSERVATION DATE**

## **MARCH 25<sup>TH</sup> THROUGH MARCH 29<sup>TH</sup> NO CLASS MEETINGS -- SPRING BREAK**

### **Week 10: April 1<sup>st</sup> (Group B), 3<sup>rd</sup> (Group C), 5<sup>th</sup> (Group D) Courts and Procedures; New Professional Roles**

Video excerpts from *Soul of Justice: Thelton Henderson’s American Journey* (2006)

Reading for Week 10 (Course Reader 374-401):

- i. *American Courts*, Chs. 13 and 14 – ONLY on bSpace, not in Course Reader.
- ii. M. Feeley (1979) *The Process is the Punishment*, excerpt.
- iii. M. Galanter (1974) “Why the Haves Come Out Ahead: the Limits of Social Change”
- iv. Felstiner, Abel, and Sarat “Naming, Blaming, and Claiming.”

Recommended: Kagan (2001) *Adversarial Legalism*, Ch 1; Lucie White “Subordination, Rhetorical Survival, Sunday Shoes” (1990).

### **Week 11: April 8<sup>th</sup> (Group A), 10<sup>th</sup> (Group B) & 12<sup>th</sup> (Group C) The Lawyering Profession: Ethical 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: (Course Reader pp. 402-456):

- i. L. Friedman (2002) "Internal Legal Culture"
- ii. Jack Ladinsky (1963) "The Social Background of Lawyers"
- iii. C. Wright Mills, "On Lawyers," excerpt from *White Collar* (1951)"
- iv. Freedman and Smith (2002) "Understanding Lawyers' Ethics."
- vi. Blumberg (1967) "The Practice of Law as a Confidence Game," (1967), excerpt.

### **Third Review Test on Friday April 12<sup>th</sup>**

### **Week 12: April 15<sup>th</sup> (Group D), 17<sup>th</sup> (Group A) April 19<sup>th</sup> (Group B)**

On new institutional roles of lawyers and the legal profession: 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 advocacy training web site:

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

### **THIRD IN-CLASS REVIEW TEST**

### **Week 13: April 22<sup>nd</sup> (Group C), 24<sup>th</sup> (Group D), 26<sup>th</sup> (Group A)**

Over the weekend, please prepare for the Monday, April 22<sup>nd</sup> Guest lecture by Boalt Hall Professor Leti Volpp: on the role and ethics of the lawyering, reasoning, and advocacy. Prof. Volpp will discuss an asylum appeal case heard under U.S. Immigration Law, *In Re Kasinga*, 1996.

Read for Week 13 (Course Reader pp. 457-492):

Monday April 22<sup>nd</sup> Guest Lecture by Prof. Leti Volpp

- i. *In Re Kasinga* (1996), read first 14 pages of the opinion;
- ii. Charles Piot, "Representing Africa in the Kasinga Case" (2007) – read quickly for background of case
- 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.

### **Week 14: April 29<sup>th</sup> (Group A), May 1<sup>st</sup> (Group B), May 3<sup>rd</sup> (Group C) Can Modern Legality Transcend the Borders of the Nation-State? International and Domestic Law after WW II: Human Rights and the Influences of the Nuremberg Principles**

- i. The globalization or trans-nationalization of disputes, courts, regulatory agencies, and legal cultures;
- ii. The transnational convergence of lawyering profession;
- iii. Universal Jurisdiction, public international law, and human rights

Read for Week 14 (Course Reader pp. 493-532):

- i. L. Friedman (2002) "Law: An American Export"
- ii. Henry Kissinger (2004) "What's Wrong with Universal Jurisdiction?"

iii. Hajjar, (2010) “Universal Jurisdiction as Praxis.”

Video links to Pinochet and Kissinger; Nuremberg trials and to International Court of Human Rights

**RRR Week:**

Review session scheduled for Monday, May 6<sup>th</sup>.

Course review/summary and discussion of **take-home final exam**: the exam will be distributed on bSpace after the review session, approximately 10 days before the campus final exam date, along with the instructions for submitting the final exam on May 15<sup>th</sup>. Students unable to meet this exam schedule should notify the professor by the 12<sup>th</sup> week, so that a reasonable accommodation can be arranged.

**Assigned Final Exam Date and Time: Wednesday, May 15<sup>th</sup> 7:00-10:00 PM, Location TBA (time and location are assigned by Registrar)**