

LAW IN THE LIBERAL ARTS 201:
ELEMENTS OF LAW

Keith J. Bybee
Professor of Law
and Political Science

Monday & Wednesday
11:40am-12:35pm
340 Dineen Hall

Office and Contact

412 Dineen Hall
e: kjbybee@maxwell.syr.edu
t: 443-9743

Office Hours

Tuesdays,
12:30pm-
2:30pm

Course Description

This course provides an introduction to law and legal institutions, and is designed to prepare undergraduates for the further study of legal topics in departments across the College of Arts and Sciences. In LLA 201, students will explore different forms of law and they will learn the core elements of legal reasoning. Students will also consider the relationship between law, coercion, morality, and empowerment; the origins and consequences of judicial bias; the social and political effects of the judiciary's institutional design; the public's conflicting legal perceptions; and the folk wisdom of lawyer jokes.

Please note that weekly discussion sections will be held in addition to the Monday and Wednesday lectures. All of the discussion sections are on Fridays, 11:40am-12:35pm. Please also note that this course satisfies three separate requirements in the Liberal Arts Core: Writing Intensive Credit, Critical Reflections Credit, Social Sciences Divisional Credit.

Learning Outcomes

Students will have assignments spaced evenly throughout the semester (see the Grading and Course Schedule sections for details). The number and frequency of assignments will provide students with a helpful gauge of their performance as the course progresses. The course assignments will also provide a means of measuring five distinct learning outcomes:

1. Students will improve their ability to write analytically. In their writing, they will be required to state a clear thesis, to support the thesis with evidence and logic, and to refute objections to their position.

2. Students will learn how to use central tools of legal reasoning to assess controversial issues.
3. Students will learn a set of theories explaining the relationship between law, coercion, morality, and empowerment.
4. Students will gain a basic understanding of the ways in which judges and courts advance and impede self-government in the United States.
5. Students will learn how the public views law and the courts, and how these views help sustain the legal order.

Required Readings

The readings in this course are drawn from a diversity of sources. Students will read judicial decisions and other kinds of law as well as primary documents from the Founding of the United States. Students will also read scholarship written by philosophers, political scientists, sociologists, legal academics, and judges.

Most of the readings are available, free of charge, via working links on the syllabus or posted to Blackboard. The following books are required and available for purchase at the university bookstore:

- Edward H. Levi, *An Introduction to Legal Reasoning*
- Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*
- Keith J. Bybee, *All Judges Are Political—Except When They Are Not: Acceptable Hypocrisies and the Rule of Law*

Course Requirements

The assigned reading for each lecture is listed on the Course Schedule below. With the exception of the first day, there is a reading assignment for every lecture. Students should attend lecture having completed the reading for that day.

Students will be required to write four five-pages essays over the course of the semester. Students will also be expected to participate in class discussion. For more details, please see the Grading section below.

Grading

The final course grade will be determined as follows.

Class participation: I assume students will come to class prepared and I expect all students to be willing to participate in class discussion. In order to encourage substantive engagement in the course, class participation will be worth 20% of the final grade.

Essays: There will be four five-page essays assigned in this course. Each essay must use standard formatting (i.e., 12-point font, one-inch margins, double-spacing, numbered pages) and must use appropriate citations for sources. Each completed essay will be around 1800 words in length. The essays are each worth 20% of the final grade (assignment handout dates and due dates are marked on the Course Schedule). The emphasis for each essay will be argument and analysis: students will be expected to state a clear thesis, to support the thesis with evidence and logic, and to refute objections to their position.

Final Exam: There is no final exam.

Course Policies

There will be no extensions or make-up assignments in this course.

In LLA 201, we use the plagiarism detection and prevention system Turnitin for assigned essays. You will be required to turn in hard copies of each essay on the due dates listed on the course syllabus. You will also be required to submit an electronic copy of each essay to Turnitin through Blackboard. Your TA will explain this submission system to you in detail.

Turnitin compares submitted essays against documents on the internet and against all student papers submitted to Turnitin at SU (including all papers ever written for LLA 201) and at other colleges and universities. As a result, Turnitin allows us to monitor for plagiarism from sources and student papers from both within and outside of this class. Turnitin generates originality reports for each submitted essay. In interpreting the individual originality reports, we will take into account your knowledge of the subject matter of this course as well as your writing level and style.

You must follow the above protocol when handing in your essays. Emailed essays will not be accepted.

Although I do not object to the use of tape recorders to record class discussion, I expect all cell phones and similar devices to be turned off during class time. Wireless internet access is available in our classroom, but I believe that class time is best spent attending to lecture and to the comments of fellow students. I therefore ask that you refrain from emailing, surfing the web, texting, gaming, and other digital diversions during class.

Academic Integrity

Syracuse University's Academic Integrity Policy holds students accountable for the integrity of the work they submit. Students should be familiar with the policy and know that it is their responsibility to learn about course-specific expectations, as well as about university policy. The university policy governs appropriate citation and use of sources, the integrity of work submitted in exams and assignments, and

the veracity of signatures on attendance sheets and other verification of participation in class activities. The policy also prohibits students from submitting the same written work in more than one class without receiving written authorization in advance from both instructors. The presumptive penalty for a first offense by an undergraduate student is course failure, accompanied by a transcript notation indicating that the failure resulted from a violation of Academic Integrity Policy. The standard sanction for a first offense by a graduate student is suspension or expulsion. For more information and the complete policy, see <http://academicintegrity.syr.edu/academic-integrity-policy/>.

Disability-Related Accommodations

If you believe that you need accommodations for a disability, please contact the Office of Disability Services (ODS), <http://disabilityservices.syr.edu>, located in Room 309 of 804 University Avenue, or call (315) 443-4498, TDD: (315) 443-1371 for an appointment to discuss your needs and the process for requesting accommodations. ODS is responsible for coordinating disability-related accommodations and will issue students with documented Disabilities Accommodation Authorization Letters, as appropriate. Since accommodations may require early planning and generally are not provided retroactively, please contact ODS as soon as possible.

Religious Observances Policy

SU religious observances policy recognizes the diversity of faiths represented among the campus community and protects the rights of students, faculty, and staff to observe religious holidays according to their tradition. Under the policy, students are provided an opportunity to make up any examination, study, or work requirements that may be missed due to are religious observance provided they notify their instructors before the end of the second week of classes. For fall and spring semesters, an online notification process is available through MySlice/StudentServices/Enrollment/MyReligiousObservances from the first day of class until the end of the second week of class. The religious observance policy may be found at http://supolicies.syr.edu/emp_ben/religious_observance.htm.

Course Schedule

I. Introduction

- **Course Overview** (8/29)
Assigned reading:
→None
- **Examples of Law** (8/31)
Assigned reading:
 - United States Constitution, entire
http://www.senate.gov/civics/constitution_item/constitution.htm
 - Emancipation Proclamation
http://www.archives.gov/exhibits/featured_documents/eman-cipation_proclamation/transcript.html
 - Title VII of the Civil Rights Act of 1964, SEC. 2000e-2 (“Unlawful Employment Practices”)
<http://www.eeoc.gov/laws/statutes/titlevii.cfm>
 - Syracuse University: New Courses and Course Changes
<http://universitysenate.syr.edu/curricula/courses-proc/new-courses/>

Labor Day (9/5): No class.

II. Law and Coercion

- **Enforcing the Will of the Sovereign** (9/7)
Assigned reading:
 - Hobbes, *Leviathan*, pp.76-79 (Ch. 13); pp.102-12 (Ch. 17, 18)
[Blackboard]
- **Coercion and the Criminal Justice System** (9/12)
Assigned reading:
 - Foucault, *Discipline and Punish*, pp.3-24 [Blackboard]
 - Alexander, *The New Jim Crow*, pp.58-94 [Blackboard]

- **Law Without Coercion? The Case of Female Genital Mutilation (9/14)**
Assigned reading:
→World Health Organization, “Eliminating Female Mutilation,”
available at:
http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf

III. Law and Morality

- **Morally Motivated Disobedience (9/19)**
Assigned reading:
→Thoreau, “Civil Disobedience,” entire (Parts I, II, and III)
Part I: <http://thoreau.eserver.org/civil1.html>
Part II: <http://thoreau.eserver.org/civil2.html>
Part III: <http://thoreau.eserver.org/civil3.html>
- **How Do We Know If A Moral/Legal Decision is Right? (9/21)**
Assigned reading:
→ Dworkin, *Law’s Empire*, pp.23-30; 228-50; 254-75 [Blackboard]
- **Can Legal Judgments Avoid Moral Judgments? (9/26)**
Assigned reading:
→*Roe v. Wade*, 410 U.S. 113 (1973) [Blackboard]

IV. Law and Empowerment

- **Law: The Most Important Technology Ever Invented (9/28)**
Assigned reading:
→Hart, *The Concept of Law*, pp.18-25; 27-32; 50-60; 89-96
[Blackboard]

NOTE: Essay Assignment #1 handed out in discussion section on 9/30

- **Law Makes Possible a New Kind of Politics (10/3)**
Assigned reading:
→ Storing, *The Anti-Federalist*, “Dissent of the Minority of the Convention of Pennsylvania,” entire [Blackboard]
→*The Federalist Papers*, #1, #6, #10, #15, #51, #55, #57, #63, #84 available at
<http://thomas.loc.gov/home/histdox/fedpapers.html>

- **The Public Power of Private Contracts** (10/5)
Assigned reading:
→Radin, *Boilerplate*, pp.xiii-xvii; 3-18; 33-46; 243-8 [Blackboard]

NOTE: Essay Assignment #1 due in discussion section on 10/7

V. Legal Reasoning in a Common Law System

- **Precedent and Analogical Reasoning** (10/10)
Assigned reading:
→Levi, *An Introduction to Legal Reasoning*, entire
- **Analogy in Action: Gender and Racial Discrimination** (10/12)
Assigned reading:
→*Frontiero v. Richardson*, 411 U.S. 677 (1973) [Blackboard]
- **Slippery Slopes** (10/17)
Assigned reading:
→*Obergefell v. Hodges*, 192 L. Ed. (2015) [Blackboard]
- **Popular Constraints and Theories of Interpretation** (10/19)
Assigned reading:
→Kramer, *The People Themselves*, pp.9-34 [Blackboard]

NOTE: Essay Assignment #2 handed out in discussion section on 10/21

VI. Judges: Impartial Arbiters or Politicians in Robes?

- **Judges as Guarantors of Democracy** (10/24)
Assigned reading:
→*The Federalist Papers*, #78, #79, #81 available at
<http://thomas.loc.gov/home/histdox/fedpapers.html>
→*Brown v. Board of Education*, 347 U.S. 483 (1954) [Blackboard]
- **Judicial Bias and Legal Illusions** (10/26)
Assigned reading:
→Dewey, "Logical Method and Law," entire
<http://heinonline.org.lawezproxy.syr.edu/HOL/Page?handle=hein.journals/clqv10&collection=journals&index=journals/clqv91&id=91>

→Fred Rodell, "Goodbye to Law Reviews"

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3794&context=fss_papers

→Peretti, *In Defense of a Political Court*, pp.80-111

http://search.ebscohost.com.libezproxy2.syr.edu/login.aspx?direct=true&db=e000xna&AN=360047&site=ehost-live&ebv=EB&ppid=pp_80

NOTE: Essay Assignment #2 due in discussion section on 10/28

○ **The Response to Skepticism (10/31)**

Assigned reading:

→Gilmore, "Legal Realism: Its Cause and Cure," available at

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3643&context=fss_papers

→Kozinski, "What I Ate For Breakfast and Other Mysteries of Judicial Decision Making," available at

<http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1799&context=llr>

VII: Social and Political Effects of the Judiciary's Institutional Structure

○ **Do Courts Systematically Favor Some Groups Over Others? (11/2)**

Assigned reading:

→Galanter, "Why the 'Haves' Come Out Ahead"

<http://www.jstor.org.libezproxy2.syr.edu/stable/3053023>

○ **Do Courts Promote Inefficiency and Waste? (11/7)**

Assigned Reading:

→Kagan, *Adversarial Legalism*, pp.3-33

http://search.ebscohost.com.libezproxy2.syr.edu/login.aspx?direct=true&db=e000xna&AN=282054&site=ehost-live&ebv=EB&ppid=pp_3

○ **Do Courts Frustrate Social Change? (11/9)**

Assigned Reading:

→Rosenberg, *The Hollow Hope*, pp.9-36; 420-9 [Blackboard]

NOTE: Essay Assignment #3 handed out in discussion section on 11/11

VIII. The Rule of Law: What Role Does the Public Play?

- **Conflicting Public Perceptions of the Judicial Process** (11/14)
Assigned reading:
→Bybee, *All Judges are Political—Except When They Are Not*, pp.1-33
- **Public Belief in Law's Majesty** (11/16)
Assigned reading:
→Ewick and Silbey, *The Common Place of Law*, pp.1-32; 57-107

NOTE: Essay Assignment #3 due in discussion section 11/18

Thanksgiving Break: No class 11/21 & 11/23

- **Public Cynicism about Law as a Mere Game** (11/28)
Assigned reading:
→Ewick and Silbey, *The Common Place of Law*, pp.108-64
- **The Rule of Law as Rules of Etiquette** (11/30)
Assigned reading:
→Bybee, *All Judges are Political—Except When They Are Not*, pp.34-103

NOTE: Essay Assignment #4 handed out in discussion section on 12/2

- **The Folk Wisdom of Lawyer Jokes** (12/5)
Assigned reading:
→Galanter, *Lowering the Bar*, pp.31-47;61-3; 166-7; 170-1 [Black Board]
- **Legislative Thursday** (12/7)
Assigned reading:
→None

NOTE: Essay Assignment #4 due in discussion section on 12/9

Bibliography

Books

- Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010).
- Keith J. Bybee, *All Judges Are Political—Except When They Are Not: Acceptable Hypocrisies and the Rule of Law* (Stanford: Stanford University Press, 2010).
- Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986).
- Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).
- Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Allan Sheridan, trans., 2nd ed. (New York: Vintage Books, 1995).
- Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (Madison: University of Wisconsin Press, 2005).
- Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Mentor, 1961).
- H.L.A. Hart, *The Concept of Law* (London: Oxford University Press, 1961).
- Thomas Hobbes, *Leviathan*, Ian Shapiro, ed. (New Haven: Yale University Press, 2010).
- Robert A. Kagan, *Adversarial Legalism: The American Way of Law* (Cambridge: Harvard University Press, 2001).
- Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004).
- Edward H. Levi, *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 1949).
- Terri Jennings Peretti, *In Defense of a Political Court* (Princeton: Princeton University Press, 1999).
- Margaret Jane Radin, *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law* (Princeton: Princeton University Press, 2013).

Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. (Chicago: University of Chicago Press, 2008).

Herbert Storing, *The Anti-Federalist: An Abridgement, by Murray Dry, of The Complete Anti-Federalist, with Commentary and Notes* (Chicago: University of Chicago Press, 1985).

Henry David Thoreau, *Walden and Civil Disobedience*, Owen Thomas, ed. (New York : W.W. Norton, 1966)

Articles

John Dewey, "Logical Method and the Law," 10 Cornell L. Q. 17 (1924).

Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 Law & Soc'y Rev. 95 (1974).

Grant Gilmore, "Legal Realism: Its Cause and Cure," 70 Yale L.J. 1037 (1960-1961).

Alex Kozinski, "What I Ate For Breakfast and Other Mysteries of Judicial Decision Making," 26 Loy. L.A. L. Rev. 993 (1993).

Fred Rodell, "Goodbye to Law Reviews," 23 Va. L. Rev. 38 (1936-1937).

Reports

World Health Organization, "Eliminating Female Genital Mutilation: An Interagency Statement, OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UIFEM, WHO," 2008.

Cases

Brown v. Board of Education, 347 U.S. 483 (1954).

Frontiero v. Richardson, 411 U.S. 677 (1973).

Roe v. Wade, 410 U.S. 113 (1973).

Obergefell v. Hodges, 192 L. Ed. (2015)

Authorities

Emancipation Proclamation

Syracuse University: New Courses and Course Changes

Title VII of the Civil Rights Act of 1964

United States Constitution