

LAW IN THE LIBERAL ARTS 201:
ELEMENTS OF LAW

Keith J. Bybee

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Monday & Wednesday
11:40am-12:35pm

ALL LECTURES WILL BE HELD ONLINE VIA BLACKBOARD COLLABORATE ULTRA
ACCESSIBLE THROUGH THE LLA 201 COURSE PAGE ON BLACKBOARD.
ALL LECTURES WILL BE RECORDED.

Contact

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Zoom Personal Meeting Room

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Office Hours

Wednesdays, 1pm-3pm

ALL OFFICE HOURS WILL REQUIRE AN APPOINTMENT AND
WILL BE HELD VIA ZOOM MEETING.

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 role of 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. YOU WILL RECEIVE COMMUNICATIONS FROM YOUR TEACHING ASSISTANT EXPLAINING THE MODALITY IN WHICH DISCUSSION SECTIONS WILL BE TAUGHT. Please also note that this course simultaneously satisfies three separate requirements in the Liberal Arts Core: Writing Intensive Credit, Critical Reflections Credit, Social Sciences Divisional Credit.

Stay Safe Pledge

Syracuse University's Stay Safe Pledge reflects the high value that we, as a university community, place on the well-being of our community members. This pledge defines norms for behavior that will promote community health and wellbeing. Whenever you are in a physical classroom, expectations include the following: wearing a mask that covers the nose and mouth at all times, maintaining a distance of six feet from others, and staying away from class if you feel unwell. Eating and drinking require the lowering of the face mask, creating a potentially dangerous situation. For this reason, students are not allowed to eat or drink in an in-person class during the COVID-19 pandemic. Students who do not follow these norms will not be allowed to continue in face-to-face classes; repeated violations will be treated as violations of the Code of Student Conduct and may result in disciplinary action.

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 seven 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, to use appropriate citation, 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.
6. Students will employ methods of inquiry found within the social sciences to examine issues, objects, time periods, or works leading to informed conclusions or judgments.
7. Students will explore and reflect on social and ethical issues, ideas, artifacts, and events relevant to contemporary life.

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, psychologists, 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:

- 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-page 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. The discussion sections provide the primary opportunities for participation.

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). 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. Students must use [The Chicago Manual Author-Date](#) style to cite the sources on which their arguments depend.

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 in discussion section on the listed due dates. 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. If you do not follow the submission protocol when handing in an essay, your essay will not be accepted.

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). Turnitin also compares SU essays to work submitted 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.

Please note that all of the online Blackboard Collaborate lectures will be recorded and the recordings will be made available to students for the duration of the fall semester. Recordings of class sessions are the intellectual property of the course instructor. You may review the recordings for your use in this class. However, you may not provide these materials to other parties (e.g., web sites, social media, other students) without permission. Doing so is a violation of intellectual property law and of the Code of Student Conduct.

When you logon to a lecture on Blackboard Collaborate, please make sure that your microphone and video are muted—this will allow for better connectivity and a smoother lecture experience. When you want to ask a question during a Blackboard Collaborate lecture, please click on the “raise hand” icon at the bottom of your Blackboard Collaborate screen.

Academic Integrity

Syracuse University’s Academic Integrity Policy reflects the high value that we, as a university community, place on honesty in academic work. The policy defines our expectations for academic honesty and holds students accountable for the integrity of all work they submit. Students should understand that it is their responsibility to learn about course-specific expectations, as well as about university-wide academic integrity expectations. The 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 work in more than one class without receiving written authorization in advance from both instructors. Under the policy, students found in violation are subject to grade sanctions determined by the course instructor and non-grade sanctions determined

by the School or College where the course is offered as described in the Violation and Sanction Classification Rubric. SU students are required to read an online summary of the University's academic integrity expectations and provide an electronic signature agreeing to abide by them twice a year during pre-term check-in on MySlice. For more information about the policy, go [here](#). The Violation and Sanction Classification Rubric establishes recommended guidelines for the determination of grade penalties by faculty and instructors, while also giving them discretion to select the grade penalty they believe most suitable, including course failure, regardless of violation level. Any established violation in this course may result in course failure regardless of violation level.

Disability-Related Accommodations

If you believe that you need accommodations for a disability, please contact the [Center for Disability Resources](#) (CDR) located in Suite 303 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. CDR 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 CDR 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 [here](#).

Course Schedule

I. Introduction

- **Course Overview** (8/24)
Assigned reading:
→None
- **Examples of Law** (8/26)
Assigned reading: (continued on next page)
→[United States Constitution](#), entire
→[Emancipation Proclamation](#)

- [Title VII of the Civil Rights Act of 1964, SEC. 2000e-2 \(“Unlawful Employment Practices”\)](#)
- [Syracuse University: Learning Objectives](#)

II. Law and Coercion

- **Enforcing the Will of the Sovereign (8/31)**
Assigned reading:
→Hobbes, *Leviathan*, pp.76-79 (Ch. 13); pp.102-12 (Ch. 17, 18) [Blackboard]
- **Coercion and the Criminal Justice System (9/2)**
Assigned reading:
→Foucault, *Discipline and Punish*, pp.3-24 [Blackboard]
→Kelling & Wilson, “Broken Windows” [Blackboard]

PLEASE NOTE: The below lecture will be held on Saturday, 9/5, 11:40am-12:35pm. The Saturday class is required for the COVID-19 compressed semester.

- **Law Without Coercion? The Case of Female Genital Mutilation (9/5)**
Assigned reading:
→World Health Organization, [“Eliminating Female Genital Mutilation”](#), entire.

III. Law and Morality

- **Morally Motivated Disobedience (9/7)**
Assigned reading:
→[Thoreau, “Civil Disobedience”](#), entire.
- **How Do We Know If A Moral/Legal Decision is Right? (9/9)**
Assigned reading:
→Dworkin, *Law’s Empire*, pp.23-30; 228-50; 254-75 [Blackboard]
- **Can Legal Judgments Avoid Moral Judgments? (9/14)**
Assigned reading:
→*Roe v. Wade*, 410 U.S. 113 (1973) [Blackboard]

IV. Law and Empowerment

- **Law: The Most Important Technology Ever Invented (9/16)**
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 9/18

- **Law Makes Possible a New Kind of Politics (9/21)**
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](#)
- **The Public Power of Private Contracts (9/23)**
Assigned reading:
 - Radin, *Boilerplate*, pp.xiii-xvii; 3-18; 33-46; 243-8 [Blackboard]

NOTE: Essay Assignment #1 due in discussion section on 9/25

- **Precedent and Analogical Reasoning (9/28)**
Assigned reading:
 - Minow, “Analogy and Precedent” [Blackboard]
 - Levi, *An Introduction to Legal Reasoning* [Blackboard]
- **Analogy in Action: Gender and Racial Discrimination (9/30)**
Assigned reading:
 - *Frontiero v. Richardson*, 411 U.S. 677 (1973) [Blackboard]
- **Slippery Slopes (10/5)**
Assigned reading:
 - *Obergefell v. Hodges*, 192 L. Ed. (2015) [Blackboard]

V. Who Guards the Guardians?

- **Judges as Guarantors of Democracy (10/7)**
Assigned reading:
 - [The Federalist Papers, #78, #79, #81](#)
 - *Brown v. Board of Education*, 347 U.S. 483 (1954) [Blackboard]

NOTE: Essay Assignment #2 handed out in discussion section on 10/9

- **Judicial Bias and Legal Illusions (10/12)**
Assigned reading:
 - Fred Rodell, *Woe Unto You, Lawyers!* [Blackboard]
 - Peretti, “Does Judicial Independence Exist?” [Blackboard]
- **The Response to Skepticism (10/14)**
Assigned reading: (continued on next page)

- [Gilmore, “Legal Realism: Its Cause and Cure”](#)
- [Interview with Supreme Court Justice Antonin Scalia.](#)

NOTE: Essay Assignment #2 due in discussion section on 10/16

VI: Social and Political Effects of the Judiciary’s Institutional Structure

- **Do Courts Systematically Favor Some Groups Over Others?** (10/19)
Assigned reading:
→[Galanter, “Why the ‘Haves’ Come Out Ahead”](#)
- **Do Courts Promote Inefficiency and Waste?** (10/21)
Assigned Reading:
→[Kagan, *Adversarial Legalism*, pp.3-33](#)
- **Do Courts Frustrate Social Change?** (10/26)
Assigned Reading:
→Rosenberg, “Tilting at Windmills” [Blackboard]

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

- **Personal Experience of Procedural Justice** (10/28)
Assigned reading:
→Tyler, “Procedural Justice and the Courts” [Blackboard]
→Rosenberg, “The Simple Idea that Could Transform US Criminal Justice” [Blackboard]

NOTE: Essay Assignment #3 handed out in discussion section on 10/30

- **Conflicting Public Perceptions of the Judicial Process** (11/2)
Assigned reading:
→Bybee, *All Judges are Political—Except When They Are Not*, pp.1-33
- **Public Belief in Law’s Majesty** (11/4)
Assigned reading:
→Ewick and Silbey, *The Common Place of Law*, pp.1-32; 57-107

NOTE: Essay Assignment #3 due in discussion section 11/6

PLEASE NOTE: Additional discussion sections will be held on Sunday, 11/8, 11:40am-12:35pm. The Sunday discussion sections are required for the COVID-19 compressed semester.

- **Public Cynicism about Law as a Mere Game** (11/9)

Assigned reading:

→Ewick and Silbey, *The Common Place of Law*, pp.108-64

○ **The Rule of Law as Rules of Etiquette** (11/11)

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 11/13

○ **The Folk Wisdom of Lawyer Jokes** (11/16)

Assigned reading:

→Galanter, *Lowering the Bar*, pp.31-47;61-3; 166-7; 170-1
[Blackboard]

○ **Legislative Thursday** (11/18)

Assigned reading:

→None

NOTE: Essay Assignment #4 due in discussion section on 11/20.

Bibliography

Books

- 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*. Available [here](#).
- 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).
- Edward H. Levi, *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 1949).
- Margaret Jane Radin, *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law* (Princeton: Princeton University Press, 2013).
- Fred Rodell, *Woe Unto You, Lawyers!* 2nd ed. (New York: Pageant Press, 1957). 1st ed. published 1939.
- 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

- 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).
- George L. Kelling and James Q. Wilson, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic* (March 1982).
- Martha Minow, "Analogy and Precedent," *The Bridge*, n.d. Available [here](#).
- Gerald N. Rosenberg, "Tilting at Windmills: Brown II and the Hopeless Quest to Resolve Deep-Seated Social Conflict Through Litigation," 24 *Law & Ineq.* 32 (2006).
- Tina Rosenberg, "The Simple Idea that Could Transform US Criminal Justice," *The Guardian*, 23 June 2015.
- Tom R. Tyler, "Procedural Justice and the Courts," 44 *Court Review* 26 (2007).

Chapters

Terri Jennings Peretti, "Does Judicial Independence Exist? The Lessons of Social Science Research." In Stephen B. Burbank and Barry Friedman, eds., *Judicial Independence at the Crossroads: An Interdisciplinary Approach* (Sage Publications, 2002): 103-133.

Interviews

Justice Antonin Scalia, C-SPAN, June 19, 2009. Available [here](#).

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: Learning Objectives

Title VII of the Civil Rights Act of 1964

United States Constitution