

**LAW IN THE LIBERAL ARTS 201:**  
**ELEMENTS OF LAW**

**Keith J. Bybee**  
**Professor of Law**  
**and Political Science**

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

Office and Contact Info

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Office Hours

Tues., Thurs.  
12:00pm-  
1:30pm

**Course Description**

This course provides an introduction to law and legal institutions, and is designed to prepare lower-division 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; the folk wisdom of lawyer jokes; and the porous border between law and popular culture.

Please note that discussion sections will be held in addition to the Monday and Wednesday lectures. Please also note that this course counts for credit in the Liberal Arts Core as part of the Social Sciences Division.

**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. More specifically, the course assignments will 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.

A number of the required readings come from the public domain. Working links to these readings are provided on the Course Schedule below. In the case of judicial decisions, edited versions will be posted to Black Board.

There are additional required readings from a range of books and articles. These selections are either linked on the Course Schedule or they have been posted to Black Board.

Finally, 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 of class and guest lecture on 9/24, there is a reading assignment for every class. Students will be required to write four five-pages essays and to take a final exam. For more details, please see the Grading section below.

We will feature a guest speaker on Wednesday, 9/24 (please see Course Schedule for details). The guest lecture will be held at a slightly different time and at a different location than our regular class. Attendance at the guest lecture is required. Students will also be required to evaluate the arguments made by the guest speaker in one of their essay assignments.

### **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, class participation will be worth 15% of the final grade.

Essays: There will be four five-page essays assigned in this course. Each of the essays will be worth 15% of the final grade. Essay due dates are 9/29, 10/20, 11/10, and 12/3 (assignment handout dates and due dates are also 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 will be a closed-book final exam (with no books, articles, notes, or study guides allowed in the exam room) worth 25% of the final grade. The exam will be comprehensive in scope and will cover all of the material in the course. The final exam will be held on Monday, December 8, 3:00pm-5:00pm.

### **Course Policies**

There will be no extensions, make-up assignments, or make-up exams in this course. All written assignments must be handed in on the due dates listed on the Course Schedule. The assignments must be in printed form. Emailed assignments will not be accepted.

Although I do not object to the use of tape recorders to record class discussion, I expect all cell phones, pagers, 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, instant messaging, 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](http://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](http://supolicies.syr.edu/emp_ben/religious_observance.htm).

## Course Schedule

### I. Introduction

- **Course Overview** (8/25)  
Assigned reading:  
→None
- **Examples of Law** (8/27)  
Assigned reading:
  - United States Constitution, entire  
[http://www.senate.gov/civics/constitution\\_item/constitution.htm](http://www.senate.gov/civics/constitution_item/constitution.htm)
  - Emancipation Proclamation  
[http://www.archives.gov/exhibits/featured\\_documents/emanicipation\\_proclamation/transcript.html](http://www.archives.gov/exhibits/featured_documents/emanicipation_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 (9/1): No class.**

### II. Law and Coercion

- **Enforcing the Will of the Sovereign** (9/3)  
Assigned reading:
  - Hobbes, *Leviathan*, pp.76-79 (Ch. 13); pp.102-12 (Ch. 17, 18)  
[Black Board]
- **Coercion and the Criminal Justice System** (9/8)  
Assigned reading:
  - Foucault, *Discipline and Punish*, pp.3-24 [Black Board]
  - Alexander, *The New Jim Crow*, pp.58-94 [Black Board]

- **Law Without Coercion? The Case of Female Genital Mutilation (9/10)**  
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](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf)

### III. Law and Morality

- **What is the Relationship Between Law and Moral Principle? (9/15)**  
Assigned reading:  
→ Dworkin, “Is There Truth in Interpretation?” at  
<http://www.youtube.com/watch?v=742jyiqLhuk> (lecture begins at the 10 min 25 sec mark)
- **Morally Motivated Disobedience (9/17)**  
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>
- **Can Legal Judgments Avoid Moral Judgments? (9/22)**  
Assigned reading:  
→*Roe v. Wade*, 410 U.S. 113 (1973) [Black Board]  
NOTE: Essay Assignment #1 handed out today

### **Guest Lecture: \*Attendance Required\***

“Breaking In: The Rise of Sonia Sotomayor and the Politics of Justice”  
Joan Biskupic, Legal Affairs Editor, Reuters

Date: Wednesday, 9/24

Time: 12:00pm-12:50pm

Place: Gray Ceremonial Courtroom – Room 020, Dineen Hall

## IV. Law and Empowerment

- **Law: The Most Important Technology Ever Invented (9/29)**  
Assigned reading:  
→Hart, *The Concept of Law*, pp.18-25; 27-32; 50-60; 89-96  
[Black Board]  
NOTE: Essay Assignment #1 due in class today
  
- **Law Makes Possible a New Kind of Politics (10/1)**  
Assigned reading:  
→ Storing, *The Anti-Federalist*, “Dissent of the Minority of the Convention of Pennsylvania,” entire [Black Board]  
→*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 (10/6)**  
Assigned reading:  
→Radin, *Boilerplate*, pp.xiii-xvii; 3-18; 33-46; 243-8 [Black Board]

## V. Legal Reasoning in a Common Law System

- **Precedent and Analogical Reasoning (10/8)**  
Assigned reading:  
→Levi, *An Introduction to Legal Reasoning*, entire
  
- **Analogy in Action: Gender and Racial Discrimination (10/13)**  
Assigned reading:  
→*Frontiero v. Richardson*, 411 U.S. 677 (1973) [Black Board]
  
- **Slippery Slopes (10/15)**  
Assigned reading:  
→*Lawrence v. Texas*, 539 U.S. 558 (2003) [Black Board]  
NOTE: Essay Assignment #2 handed out today

## VI. Judges: Impartial Arbiters or Politicians in Robes?

- **Judges as Guarantors of Democracy (10/20)**  
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) [Black Board]

NOTE: Essay Assignment #2 due in class today
  
- **Judicial Bias and Legal Illusions (10/22)**  
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](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](http://search.ebscohost.com.libezproxy2.syr.edu/login.aspx?direct=true&db=e000xna&AN=360047&site=ehost-live&ebv=EB&ppid=pp_80)
  
- **The Response to Skepticism (10/27)**  
Assigned reading:
  - Gilmore, “Legal Realism: Its Cause and Cure,” available at [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3643&context=fss\\_papers](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? (10/29)**  
Assigned reading:
  - Galanter, “Why the ‘Haves’ Come Out Ahead” <http://www.jstor.org.libezproxy2.syr.edu/stable/3053023>
  
- **Do Courts Promote Inefficiency and Waste? (11/3)**  
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](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?** (11/5)

Assigned Reading:

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

NOTE: Essay Assignment #3 handed out today

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

- **Conflicting Public Perceptions of the Judicial Process** (11/10)

Assigned reading:

→Bybee, *All Judges are Political—Except When They Are Not*, pp.1-33

NOTE: Essay Assignment #3 due in class today

- **Public Belief in Law's Majesty** (11/12)

Assigned reading:

→Ewick and Silbey, *The Common Place of Law*, pp.1-32; 57-107

- **Public Cynicism about Law as a Mere Game** (11/17)

Assigned reading:

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

- **The Rule of Law as Rules of Etiquette** (11/19)

Assigned reading:

→Bybee, *All Judges are Political—Except When They Are Not*, pp.34-103

NOTE: Essay Assignment #4 handed out today

**Thanksgiving Break: No class 11/24 & 11/26**

- **The Folk Wisdom of Lawyer Jokes** (12/1)  
Assigned reading:  
→Galanter, *Lowering the Bar*, pp.31-47;61-3; 166-7; 170-1 [Black Board]
- **Law and Popular Culture** (12/3)  
Assigned reading:  
→Sherwin, *When Law Goes Pop*, pp.15-39 [Black Board]  
NOTE: Essay Assignment #4 due in class today

**\*\*Final Exam: Monday, December 8, 3:00pm-5:00pm\*\***

## **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).

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).
- 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).
- Richard Sherwin, *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (Chicago: University of Chicago Press, 2000).
- 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).

### ***Lectures***

Ronald Dworkin, "Is There Truth in Interpretation?" Available at <http://www.youtube.com/watch?v=742jyiqLhuk>.

### ***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).

*Lawrence v. Texas*, 539 U.S. 558 (2003).

### ***Authorities***

Emancipation Proclamation

Syracuse University: New Courses and Course Changes

Title VII of the Civil Rights Act of 1964

United States Constitution