

SOC/POLSCI 374: Law, Politics, and Society

Prof. David T. Johnson, UH Manoa, Fall 2018, T&TH 10:30–11:45AM, CR 105

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Description: This course explores law’s connections to politics, society, culture, and justice. It has two units: the nature of law, and law & justice. There are no formal prerequisites but some grounding in social studies is assumed. This course is required to earn a Certificate in Law & Society at UH (see <http://www.politicalscience.hawaii.edu/undergraduate/lawsoc.html>). Students are expected to come to class every day and to do all of the readings and assignments. There will be occasional pop quizzes in class.

The main *learning objective* for this course is to help students develop the ability to think clearly and independently about law-related issues. Students will: (1) learn several definitions and functions of law; (2) learn how and why law succeeds and fails; (3) learn how law has changed in American history; (4) learn how law employs and controls violence; and (5) learn how law promotes and impedes justice.

Grades: Grades will be based on how many points you earn. 90-100 points is an A, 80-89 a B, 70-79 a C, 60-69 a D, and 59 or fewer an F. There will be two exams: the first will be worth 50 points and the second will be worth 30 points. In addition, quizzes, assignments, and class participation will account for 20 points (100 points total).

Plagiarism: The UH Manoa Student Conduct Code states, “Plagiarism includes but is not limited to submitting, in fulfillment of an academic requirement, any work that has been copied in whole or in part from another individual's work without attributing that borrowed portion to the individual; neglecting to identify as a quotation another's idea and particular phrasing that was not assimilated into the student's language and style or paraphrasing a passage so that the reader is misled as to the source; submitting the same written or oral or artistic material in more than one course without obtaining authorization from the instructors involved; or ‘drylabbing,’ which includes obtaining and using experimental data and laboratory write-ups from other sections of a course or from previous terms.” *It is each student's responsibility to learn about plagiarism and how to avoid it.* Ignorance of the rules or saying “I forgot” or “I made a mistake” are not valid excuses. **NOTE:** Plagiarism or cheating of any kind will result in an F for the course.

Kokua: If you have a documented disability, I am willing to work with you and the KOKUA Program (Office for Students with Disabilities) to ensure reasonable accommodations to your situation. KOKUA tel 808-956-7511 & office QLC013.

Books (required)

1. Lawrence M. Friedman, *Law in America: A Short History* (Modern Library, 2002, 184 pages).
2. D. Graham Burnett, *A Trial by Jury* (Vintage Books, 2001, 183 pages).
3. Jon Krakauer, *Missoula: Rape and the Justice System in a College Town* (Doubleday, 2015, 349 pages).

UNIT 1: THE NATURE of LAW - DEFINITIONS, FUNCTIONS, and FAILURES

WEEK 1: 2 WAYS LAW CAN FAIL: CAPITAL PUNISHMENT in the USA & JAPAN

1. Carol Steiker and Jordan Steiker, "Capital Punishment", in *Reforming Criminal Justice*, Volume 4 (edited by Eric Luna), 2017, pp.147-167, at http://academyforjustice.org/wp-content/uploads/2017/10/8_Criminal_Justice_Reform_Vol_4_Capital-Punishment.pdf . *Also, watch video of Jon Oliver on the death penalty (12 minutes), from "Last Week Tonight" (May 4, 2014), at <https://www.youtube.com/watch?v=Kye2oX-b39E>
2. David T. Johnson, "Progress and Problems in Japanese Capital Punishment", in Roger Hood and Surya Deva, editors, *Confronting Capital Punishment in Asia*, 2013, pp.168-184, on Laulima

WEEK 2: WHAT IS (the) LAW?

3. Lon Fuller (1949), "The Case of the Speluncean Explorers" (*Harvard Law Review*), at <http://www.nullapoenade/stud/explorers.html> . *See also *optional* readings in "The Case of the Speluncean Explorers: A Fiftieth Anniversary Symposium" (*Harvard Law Review*, 1999), especially the Foreword by David L. Shapiro (pp.1834-1850), and the judicial opinion by Frank H. Easterbrook (pp.1913-1917), at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=10603&context=journal_articles . *Also, watch video, "4 True Stories of Survival Cannibalism" (How Stuff Works, March 13, 2015, 3 minutes), at https://www.youtube.com/watch?v=XZ_r4RfShK8

WEEK 3: LAW and the CONTROL of CORPORATIONS

4. Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press, 2004), ch.2, "Business as Usual" (pp.28-59) on Laulima. *Also, watch (in class) excerpts from DVD "The Corporation" (Zeitgeist, 2004, 145 minutes) + see study questions on Laulima
5. Patrick Radden Keefe, "Reversal of Fortune", on Chevron's environmental pollution in Ecuador and lawyer Steven Donziger (*The New Yorker*, January 9, 2012), <https://www.newyorker.com/magazine/2012/01/09/reversal-of-fortune-patrick-radden-keefe>
6. Steven Donziger, "Chevron's 'Amazing Chernobyl' in Ecuador" (*Huffington Post*, May 27, 2015), https://www.huffingtonpost.com/steven-donziger/chevrons-amazon-chernobyl_b_7435926.html

WEEK 4: LAW and DISCRETION

7. Mark Edwards, "Law and the Parameters of Acceptable Deviance" (*Journal of Criminal Law & Criminology*, Vol.97, No.1, 2006, pp.49-100), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001450. *Also, watch video in class, "A Meditation on the Speed Limit" (students at Georgia State University, 2007, 5 minutes), at <https://www.youtube.com/watch?v=1B-Ox0ZmVIU>
8. Anupam B. Jena, Cass R. Sunstein, and Tanner R. Hicks, "The Benefit of Having the Same Name as a Police Officer", at <https://www.nytimes.com/2018/08/04/opinion/sunday/police-bias-research-names.html>

WEEK 5: LAW in AMERICAN HISTORY

9. Lawrence Friedman (2002), *Law in America: A Short History* (ch.1-4, pp.1-72); see also "Lawrence Friedman Study Questions" (Q. 1-14), on Laulima
10. Richard L. Abel, "Torts", in David Kairys, editor, *The Politics of Law: A Progressive Critique* (Pantheon Books, 1990), ch.15, pp.326-349, on Laulima

WEEK 6: LAW in AMERICAN HISTORY, continued

11. Lawrence Friedman (2002), *Law in America: A Short History* (ch.5-7, pp.73-184); see also "Lawrence Friedman Study Questions" (Q. 15-30), on Laulima
12. Lawrence Friedman (*Asian Journal of Law & Society*, May 2014, pp.5-16), "Ghosts, Machines, and Asian Law: Some Comments", on Laulima
13. Floyd Abrams, *The Soul of the First Amendment* (Yale, 2017), chapter II, pp.35-58, free speech comparisons between the USA and other countries, on Laulima

WEEK 7: LAW & VIOLENCE: POLICING

14. National Institute of Justice, "Police Use of Force" + "Research on Police Use of Force" + "The Use-of-Force Continuum", at <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/welcome.aspx>
15. Peter Moskos, "When Should Cops Use Force?" (*New York Daily News*, 8/5/2014, on the Eric Garner case in NYC), at <http://www.nydailynews.com/opinion/cops-force-article-1.1891603>. *Also, watch video (3 minutes), at <https://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>

16. Franklin E. Zimring, "Mario Woods's Unnecessary Death" (*San Francisco Chronicle*, 12/9/2015, on the Mario Woods case in S.F.), at <https://www.sfchronicle.com/opinion/article/Mario-Woods-unnecessary-death-6686745.php>. *Also, watch video (1.5 minutes), at <https://www.youtube.com/watch?v=ij5TZuohoRg>
17. Franklin E. Zimring, "How the 'Broken Windows' Strategy Saved Lives in NYC" (*New York Post*, 8/24/2014) at <http://nypost.com/2014/08/24/how-the-broken-windows-strategy-saved-lives-in-nyc>
18. Interview of Issa Kohler-Hausmann, author of *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (Princeton, 2018), "The High Cost of Justice in America's 'Misdemeanorland'", by Elena Schwartz, in *The Crime Report*, August 1, 2018, at <https://thecrimereport.org/2018/08/01/the-high-cost-of-justice-in-americas-misdemeanorland/>

WEEK 8: LAW & VIOLENCE: PLEA BARGAINING and IMPRISONMENT

19. John Langbein, "Torture and Plea Bargaining" (*The University of Chicago Law Review*, 1978, pp.3-22), at http://digitalcommons.law.yale.edu/fss_papers/543 . *Also, watch video "Frontline: The Plea" (directed by Ofra Bikel, 2004, 85 minutes), at <https://www.pbs.org/video/frontline-the-plea/>
20. Peter Moskos, excerpt from *In Defense of Flogging* (2011, pp.1-9), at http://www.perseusbookspromos.com/docs/moskos_3.pdf. *Also, watch 2 videos (7 minutes) on judicial caning in Malaysia, at <https://www.corpun.com/vidju2.htm>

WEEK 9: LAW & VIOLENCE: CITIZEN PARTICIPATION as JURORS and VICTIMS

21. D. Graham Burnett, *A Trial by Jury* (2001), pp.1-183
22. Watch film, "12 Angry Men" (1957, 96 minutes, starring Henry Fonda), at <https://vimeo.com/210077571>. *Then read Charles D. Weisselberg, "Good Film, Bad Jury" (*Chicago-Kent Law Review*, Vol.82, 2007, pp.717-731), at <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2589&context=facpubs>
23. Jill Lepore, "The Rise of the Victims' Rights Movement" (*The New Yorker*, May 21, 2018), at <https://www.newyorker.com/magazine/2018/05/21/the-rise-of-the-victims-rights-movement>

*WEEK 10: NO CLASS - **TAKE-HOME EXAM 1** (50 points): get on 10/18 & return on 10/30

UNIT 2: LAW & JUSTICE

WEEK 11: MISCARRIAGES OF JUSTICE

24. Nicholas Schmidle, “Crime Fiction” (*The New Yorker*, 8/14/2014, pp.34-47), on the case of Tyrone Hood in Chicago, <https://www.newyorker.com/magazine/2014/08/04/crime-fiction>
25. Jennifer Thompson, “I Was Certain, but I Was Wrong”, at <https://www.nytimes.com/2000/06/18/opinion/i-was-certain-but-i-was-wrong.html>. *Also, watch video “Eyewitness”, on “60 Minutes” (June 16, 2011, 15 minutes), about the Jennifer Thompson and Ronald Cotton rape case in North Carolina, at <https://www.youtube.com/watch?v=-2oDRfj0vME>
26. National Registry of Exonerations (NRE), browse materials at <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>
27. Kathryn Schulz, read excerpt from Chapter 1, “Wrongology”, in *Being Wrong: Adventures in the Margin of Error* (Ecco, 2010), at <https://www.nytimes.com/2010/06/11/books/excerpt-being-wrong.html>

WEEK 12: CRIME & JUSTICE (no class on Tuesday 11/6 b/c of Election Day)

28. Donald Black, “Crime as Social Control” (*American Sociological Review*, 1983), pp.34-45, on Laulima. *Also, watch video, “A Look Back at 9/11” (Inside Edition, 9/11/2017, 2 minutes), at <https://www.youtube.com/watch?v=mHjH1sl1o9s>

WEEK 13: RAPE & JUSTICE in JAPAN

29. David McNeill, “Justice Postponed: Ito Shiori and Rape in Japan” (*The Asia-Pacific Journal/Japan Focus*, August 1, 2018, pp.1-6), at <https://apjif.org/2018/15/McNeill.html>. *Note: this article updates a previous article by David McNeill, “Murder of the Soul - Shiori and Rape in Japan” (*The Asia-Pacific Journal/Japan Focus*, August 1, 2017, pp.1-5), at <https://apjif.org/2017/15/McNeill.html>
30. Watch video, “Japan’s Secret Shame” (BBC documentary on the Ito Shiori and Yamaguchi Noriyuki rape case, 2018, 59 minutes), at <https://vimeo.com/278105236>
31. Watch video, “Sore demo Boku wa Yatte Inai” [“I Just Didn’t Do It”], directed by Suo Masayuki (released in 2007, 144 minutes), at <https://www.youtube.com/watch?v=8jsHQpAP0vM>. Note: this film is based on a true story; see Koizumi Tomoki, *Kanojo wa Uso o Tsuite Iru* (Bungei Shunju, 2006)

WEEK 14: RAPE & JUSTICE in the USA

32. Jon Krakauer, *Missoula: Rape and the Justice System in a College Town* (2015), parts 1-3, ch.1-16, pp.1-188
33. Watch documentary video, “The Hunting Ground” (Director Kirby Dick, 2015, 104 minutes). *Note*: Lois Tom of UHM Sinclair Library ordered DVD on 8/7/2018; at Amazon.com, rental is \$3.99 and purchase is \$12.99; see <https://www.amazon.com/Hunting-Ground-Kirby-Dick/dp/B014TVIJ4O>

WEEK 15: RAPE & JUSTICE in the USA, continued

34. Jon Krakauer, *Missoula: Rape and the Justice System in a College Town* (2015), parts 4-6, ch.17-32, pp.189-349
35. Harvard Law Professors, “Rethink Harvard’s Sexual Harassment Policy” (*Boston Globe*, October 15, 2014), at <https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html>. *See also *optional* readings by Harvard Law Professors, “Fairness for All Students Under Title IX” (August 21, 2017, pp.1-71), at <https://dash.harvard.edu/bitstream/handle/1/33789434/Fairness%20for%20All%20Students.pdf?sequence=1>
36. Rebecca Traister, “We Are All Implicated in the Post-Weinstein Reckoning” (*The Cut*, November 12, 2017), <https://www.thecut.com/2017/11/rebecca-traister-on-the-post-weinstein-reckoning.html>

*WEEK 16: **EXAM 2** (details TBA, 30 points)

SUPPLEMENTARY READINGS on LAW, POLITICS, & SOCIETY

Bamford, James, “The Most Wanted Man in the World” (on Edward Snowden & NSA leaks), <https://www.wired.com/2014/08/edward-snowden/>

Berger, Peter, *Invitation to Sociology: A Humanist Perspective* (Anchor Books, 1963). See especially p.143 on “bad faith” → “to pretend something is necessary that in fact is voluntary”

Caplan, Lincoln, “Rhetoric and Law”, on “the double life of Richard Posner, America’s most contentious legal reformer” (*Harvard Magazine*, January-February 2016), at <https://harvardmagazine.com/2015/12/rhetoric-and-law>

Chemerinsky, Erwin, *The Case Against the Supreme Court* (Penguin, 2015)

Drehle, David Von, “The Surveillance Society”, <http://nation.time.com/2013/08/01/the-surveillance-society/>

Engel, David M., *The Myth of the Litigious Society: Why We Don’t Sue* (University of Chicago Press, 2016), reviewed at <http://blogs.lse.ac.uk/lsereviewofbooks/2017/02/01/book-review-the-myth-of-the-litigious-society-why-we-dont-sue-by-david-m-engel/>

Feeley, Malcolm, “The Adversary System”, n.d., pp.753-766 (Fall 1991 UCB reader)

Frank, Jerome, *Courts on Trial: Myth and Reality in American Justice* (1949), especially Chapter III “Facts Are Guesses” (pp.14-36), and Chapter VI “The ‘Fight’ Theory versus the ‘Truth’ Theory” (pp.80-102)

Friedman, Lawrence, *Impact: How Law Affects Behavior* (Harvard, 2016)

Galanter, Marc, “Why the ‘Haves’ Come Out Ahead” (*Law & Society Review*, Autumn 1974, pp.95-160), https://www.jstor.org/stable/3053023?seq=1#page_scan_tab_contents

Gladwell, Malcolm, “The Engineer’s Lament” (*The New Yorker*, May 4, 2015), on two ways of thinking about automotive safety, <https://www.newyorker.com/magazine/2015/05/04/the-engineers-lament>

Goffman, Alice, *On the Run: Fugitive Life in an American City* (University of Chicago, 2014)

Haley, John Owen, “The Myth of the Reluctant Litigant” (*Journal of Japanese Studies*, Summer 1978, pp.359-390), https://www.jstor.org/stable/132030?seq=1#page_scan_tab_contents

Holiday, Ryan, *Conspiracy: Peter Thiel, Hulk Hogan, Gawker, and the Anatomy of Intrigue* (Portfolio, 2018), about free speech, privacy, and the media (relate to Berger on “bad faith”)

Johnston, David Cay, *Perfectly Legal: The Covert Campaign to Rig Our Tax System to Benefit the Super Rich – and Cheat Everybody Else* (Portfolio, 2003), summary (pp.1-5) available at https://www.economist.com/media/globalexecutive/perfectly_legal_e_02.pdf

Kairys, David, “Introduction” and “Legal Reasoning”, in David Kairys, editor, *The Politics of Law: A Progressive Critique* (Pantheon, 1982), pp.1-7 and pp.11-17

King, Samuel P., and Randall M. Roth, *Broken Trust: Greed, Mismanagement, & Political Manipulation at America’s Largest Charitable Trust* (University of Hawaii Press, 2006)

Legal Reasoning: Selected Cases - to illustrate the doctrine of *stare decisis*, five court cases showing the evolution of judicial opinion on domestic violence in North Carolina from 1862 to 1874, with an excerpt on “precedent” from Karl Llewellyn’s *The Bramble Bush* (1930), pp.275-284 (Fall 1991 UCB reader)

- Litman, Leah, "How Trump Corrupts the Rule of Law",
<https://www.nytimes.com/2018/06/18/opinion/trump-zero-tolerance-border.html>
- MacDougall, Ian, "Empty Suits: Defamation Law and the Price of Dissent" (*Harper's Magazine*, March 2018, pp.43-51), on "strategic lawsuits against public participation" (SLAPPs)
- Nader, Ralph, "Suing for Justice: Your Lawsuits Are Good for America" (*Harper's Magazine*, April 2016, pp.57-62)
- Packer, Herbert, "Two Models of the Criminal Process" (*UPLR*, 1964, pp.1-68),
https://scholarship.law.upenn.edu/penn_law_review/vol113/iss1/1/
- Peterson, Matt, "Is Obama's Drone War Moral? The Ethics of Defensive Killing",
<https://www.theatlantic.com/international/archive/2016/08/obama-drone-morality/496433/>
- Sala, Ilaria Maria, "Abortion in Italy, a Right Wronged",
<https://www.nytimes.com/2017/11/13/opinion/abortion-italy-conscientious-objectors.html>
- Seidman, Louis Michael, "Let's Give Up on the Constitution",
<https://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html>
- Silverstein, Gordon, *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics* (Cambridge, 2009)
- Singer, Peter, *Ethics in the Real World: 82 Brief Essays on Things That Matter* (Princeton, 2017)
- Sokolove, Michael, "How One Lawyer's Crusade Could Change Football Forever",
<https://www.nytimes.com/2014/11/09/magazine/how-one-lawyers-crusade-could-change-football-forever.html>
- Stannard, David E. *Honor Killing: How the Infamous "Massie Affair" Transformed Hawaii* (Viking, 2005). *On this infamous 1931 case, see also the PBS American Experience video "The Massie Affair" (2005, 60 minutes, use Google to find it)
- Stern, Gerald M., *The Buffalo Creek Disaster* (Vintage, 1976 and 2008)
- West, Mark D., "Losers: Recovering Lost Property in Japan and the United States" (2002, pp.1-61), at
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=316119
- Yanklowitz, Rabbi Shmuly, "Do Animals Have Legal Rights?" (March 28, 2016), at
https://www.huffingtonpost.com/rabbi-shmuly-yanklowitz/does-animals-have-legal-r_b_9548908.html
- Young, Kathryn M., "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight" (*Law & Society Review*, September 2014, pp.499-530),
http://www.kathrynyoung.com/uploads/2/4/8/6/2486969/everyone_knows_the_game_young.pdf