

## Alternative Curriculum Syllabus 2019-2020

Contact: [harvardlpe@gmail.com](mailto:harvardlpe@gmail.com)

*Feel free to share, print, and distribute this document.*

*To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)*

---

### **Introductory Comments**

*Many of us came to law school interested in how the law can advance justice, only to find ourselves disoriented by a first-year curriculum seemingly uninterested in and often hostile to these questions. This syllabus is a suggestion of readings organized around the 1L Curriculum aimed to challenge various assumptions underlying the law. Instead of the typical structure and content of core courses, which tend to obscure their significant implications for social justice, inequality, and democracy, this syllabus aims to clarify the stakes. We recommend forming reading groups with other students to discuss these texts or reading them on your own. We hope these materials may be the first steps in framing a longer, richer conversation.*

---

### **Introduction to Approach / Subject Matter**

#### *Critical Legal Studies:*

- Duncan Kennedy: [“Legal Education as Training for Hierarchy.”](#) (1982).
- Joseph William Singer: [“Persuasion.”](#) Michigan Law Review, (1989).

#### *Critical Race Theory:*

- Mari Matsuda: 22 Harv. C.R.-C.L. L. Rev. 323 (1987) [“Looking to the Bottom: Critical Legal Studies and Reparations”](#), 323-362; Recommended: Reparations section: 363-399

#### *Law and Political Economy:*

- David Singh Grewal, Amy Kapczynski and Jedediah Purdy. [www.LPEblog.org](http://www.LPEblog.org) (2017): [“Law and Political Economy: Toward a Manifesto”](#)
- 

### **Torts**

Lawrence Friedman, *A History of American Law*. [Chapter on Torts](#), 443-463.

Dina I Waked, [“Sense and Nonsense of the Economic Analysis of Tort Law”](#) (2017).

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

*The Reasonable Person:*

- Leslie Bender, "[A Lawyer's Primer on Feminist Theory and Tort](#)", Journal of Legal Education, Vol. 38 (1988)
- Lucinda M. Finley, "[A Break in the Silence: Including Women's Issues in a Torts Course](#)", Yale Journal of Law and Feminism (1989)

*Intentional Torts:*

- "[Intentional Torts](#)" in Martha Chamallas & Jennifer B. Wriggins, *The Measure of Injury: Race, Gender, and Tort Law* (2010).

*Nuisance:*

- "[Nuisance Law and the Industrial Revolution – Some Lessons from Social History](#)" by John P. S. McLaren in *The Oxford Journal of Legal Studies* (1983).

*Negligence:*

- "[Historical Perspectives on Negligence](#)" in Joanne Conaghan & Wade Mansell, *The Wrongs of Tort* (1999).

*Abnormally Dangerous Activity:*

- "[The Floodgates of Strict Liability: Bursting Reservoirs and the Adoption of \*Fletcher v. Rylands\* in the Gilded Age](#)" by Jed H. Shugerman in *The Yale Law Journal*, Vol. 110 (2000).

For more suggestions, see "[Torts: A Law and Political Economy Counter Syllabus](#)" by Conor Dwyer Reynolds at LPEBlog

---

## **Contracts**

Robert Lee Hale, "[Bargaining, Duress and Economic Liberty](#)", 43 Colum. L. Rev. 603 (1943)

Morton J. Horwitz, Chapter VI, "[The Triumph of Contract](#)" in *The Transformation of American Law, 1780-1860*.

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

Debora L. Threedy. "[Feminisms and Contract Theory](#)". 32 Indiana Law Review 1247 (1999)

Sandeep Vaheesan. "[We must end 'Rule By Contract'](#)" Current Affairs. (2019)

Jay M. Fienman, "[Relational Contract Theory in Context](#)", 94 Northwestern Univ. L. Rev. 737 (2000).

Duncan Kennedy, "[Form and Substance in Private Law Adjudication](#)", 89 Harv. L. Rev. 1685 (1976).

Deepak Gupta & Lina Khan, *Arbitration as a Wealth Transfer*, 35 Yale Law & Policy Review 499 (2017), <https://ylpr.yale.edu/arbitration-wealth-transfer>

---

### ***Property***

Morris R. Cohen, Property and Sovereignty, 13 Cornell L. Rev. 8 (1927), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1260&context=clr>]

Jedediah Purdy, *The Meaning of Property: Freedom, Community and the Legal Imagination* (2010)

Joseph Singer, "[Property as the Law of Democracy](#)", 63 Duke L.J. 1287 (2014)

Cheryl Harris, "[Whiteness as Property](#)", 106 Harv. L. Rev 1707 (1993) – read Parts I, II, and IV(a) and IV(c) (pp. 1707 – 1745, 1757-61, 1766-77)

Keeanga-Yamahatta Taylor, "[How Real Estate Segregated America](#)", *Dissent Magazine* (Fall 2018)

Katharina Pistor, Chapter two "[Coding Land](#)" in *Code of Capital* (2019); Recommended: Code of Capital in its entirety

David Kennedy, [Some Caution about Property Rights as a Recipe for Economic Development](#), Available online at Digital Access to Scholarship at Harvard (DASH).

Yochai Benkler, [Peer Production, the Commons, and the Future of the Firm](#), 15 Strategic

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

Org. 264 (2017).

### ***Responses to Law and Economics***

Zachary Liscow, "[Is Efficiency Biased?](#)" 85 U. Chi. L. Rev. 7, 1649 (Nov. 2018) [read section I – IV (pp. 1–25) and section VI (pp. 42–56)]

Ronald Dworkin, "[Is Wealth a Value? Change in the Common Law: Legal and Economic Perspectives](#)", 9 J. Legal Stud. 191, 194-209 (1980)

Christine Desan, "[The Constitutional Approach to Money: Monetary Design and the Production of the Modern World](#)", in Nina Bandelji et al. (eds.), *Money Talks* (2017)

David Singh Grewal, "[The Legal Constitution of Capitalism](#)", in Heather Boushy et al. (eds.), *After Piketty: The Agenda for Economics and Inequality* (2017)

Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap*. [LPEBlog Symposium](#) (2019)

Brooke D. Coleman, "[The Efficiency Norm](#)" in *The Boston College Law Review*, Vol. 56 (2015)

---

### ***Criminal Law***

Bryan Stevenson, *Just Mercy* (2015).

Michel Foucault, *Discipline and Punish: The Birth of the Prison*. Chapter 1 "[The body of the condemned](#)"

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New Press, 2012)

Angela Davis, *Are Prisons Obsolete?* (7 Stories Press, 2003)

Loïc Wacquant, "[The Punitive Regulation of Poverty in the Neoliberal Age](#)", *Criminal Justice Matters*, Sept. 2012

Kimberle Crenshaw, "[Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color](#)," *Stanford Law Review*, vol. 43, no. 6 (July 1991).

Carol E. Tracy et al., "[Rape and Sexual Assault in the Legal System](#)," *Women's Law Project* (2012).

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

Andrea Ritchie, "[Law Enforcement Violence against Women of Color](#)," in *The Color of Violence: INCITE! Anthology* (Duke University Press, 2016).

Jackie Wang, *Carceral Capitalism*, "[Introduction](#)" in *The New Inquiry* (2018)

---

### ***Constitutional Law***

David Singh Grewal & Jedediah Purdy, "[The Original Theory of Constitutionalism](#)", 127 *Yale L.J.* 664 (2018) (reviewing Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (2016))

K. Sabeel Rahman, "[Domination, Democracy, and Constitutional Political Economy in the New Gilded Age](#)", 94 *Tex. L. Rev.* 1329 (2016)

Joseph Fishkin & William E. Forbath, "[Wealth, Commonwealth, and the Constitution of Opportunity](#)", in *Wealth: NOMOS LVIII* 45 (Jack Knight & Melissa Schwartzberg eds., 2017)

Wendy Williams, "[Notes from a First Generation](#)", 1989 *U. Chi. Legal F.* 99

Reva B. Siegel, "[Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de Facto ERA](#)", 94 *Cal. L. Rev.* 1323 (2006)

Michael Klarman, "Race and Rights," *The Cambridge History of Law in America*, (Cambridge, 2008) [read pp. 403–441]

Aziz Rana, "[Race and the American Creed: Recovering black radicalism](#)", 24 *n+1* (2016)

Patricia J. Williams, *Alchemy of Race and Rights: Diary of a Law Professor* (Harvard University Press, 1991) [read pp. 15-43]

---

### ***Legislation and Regulation / Administrative Law***

K. Sabeel Rahman, "[Policymaking as Power-building](#)," 27 *S. Cal. Interdisc. L.J.* 315 (2018)

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

Jeremy K. Kessler, "[The Struggle for Administrative Legitimacy](#)," 129 Harv. L. Rev. 718, 771 (2016) (reviewing Daniel R. Ernst, *Tocqueville's Nightmare The Administrative State Emerges in America, 1900-1940* (2014))

Lucie White, "[Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.](#)" 38(1) Buffalo L. Rev. 1-59 (1990)

#### *Environmental:*

- Robert C. Hockett and Rhiana Gunn-Wright, "[The Green New Deal: Mobilizing for a Just, Prosperous, and Sustainable Economy](#)" (2019)
- Naomi Klein, [Let Them Drown: The Violence of Othering in a Warming World](#), London Review of Books 38(11) 11-14 (June 2, 2016)

#### *Health Care:*

- Allison K. Hoffman, "[Health Care's Market Bureaucracy](#)," 66 UCLA L. Rev. \_\_\_\_ (2019)
- *Antitrust:*  
Lina Khan, Note, "[Amazon's Antitrust Paradox](#)," 126 Yale L. J. 710 (2017) [read pp. 712-755; pp. 784-805]

---

### ***International Law***

#### *International Trade Law:*

- Andrew Lang, [World Trade Law After Neoliberalism](#), 23 Soc. & Leg. Stud. 408 (2014)
- David Singh Grewal, [Three Theses on the Current Crisis of International Liberalism](#), 25 Indiana J. Global Leg. Stud. 595 (2018)
- Alvaro Santos, Chantal Thomas & David Trubek (eds.), [World Trade and Investment Law Reimagined: A Progressive Agenda for an Inclusive Globalization](#) (2019)

#### *Intellectual Property and Access to Medicines:*

- Rochelle Dreyfuss and César Rodríguez G, "[Balancing Wealth and Health: The Battle over Intellectual Property and Access to Medicines in Latin America](#)" (Oxford Scholarship Online, 2014)

#### *Human Rights*

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

- Samuel Moyn, “[Human Rights and the Crisis of Liberalism](#)” in Human Rights Futures (Hopgood et al, eds; 2017)
- Balakrishnan Rajagopal, “[Counter-hegemonic International Law: rethinking human rights and development as a Third World strategy](#)” 27, Third World Quarterly 767–783 (2006).
- Shareen Hertel, “New Moves in Transitional Advocacy: Getting Labor and Economic Rights on the Agenda in Unexpected Ways” (12) Global Governance, 263–281 (2006)

### *Reparations*

- Zinaida Miller, “[Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice](#)”, 2(3) The International Journal of Transitional Justice 266-291 (2008).

### *Optional Background:*

- John Gerald Ruggie, [International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order](#), 36 *International Organization* 379 (1982)

---

## **Corporations**

Robert E. Wright, [Capitalism and the Rise of the Corporate Nation](#) in *Capitalism Takes Command: The Social Transformation of Nineteenth Century American* (Michael Zakim & Gary Kornblith eds.).

Paddy Ireland, [Efficiency or Power? The Rise of the Shareholder-oriented Joint Stock Corporation](#), 25(1) *Indiana J. Glob. Leg. Stud.* 291 (2018)

William G. Roy, [Socializing Capital: The Rise of the Large Industrial Corporation in America](#), especially Chapters 1, 2, 3 and 9.

Mark Roe & Lucian Bebchuk, [A Theory of Path Dependence in Corporate Ownership and Governance](#), 52 *Stanford Law Rev.* 127 (1999)

Lorraine Talbot, *Critical Company Law* (2008), esp. Ch. 4, 5 and 6.

Kenneth Lipartito. [What Have Lawyers Done For American Business? The Case of Baker & Botts of Houston](#). 64 *Business History Review* 489 (1990).

---

To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)

### **Labor**

Elizabeth Anderson, [Introduction](#) to *Private Government: How Employers Rule Our Lives (and Why We Don't Talk About It)*, Princeton University Press (2017)

Melinda Cooper, [Family Values: Between Neoliberalism and the New Social Conservatism](#), MIT Press (2017) (Chapter 1)

Silvia Federici, "[Wages Against Housework](#)" (1974), Pamphlet

Freeman and Medoff, [Introduction](#) to *What Do Unions Do?* NY: Basic Books (1984)

Benjamin Sachs, "[Law, Organizing, and Status Quo Vulnerability](#)", 96 Tex. L. Rev. 351 (2017)

Kate Andrias, "[The New Labor Law](#)", 126(1) Yale Law Journal 2 (2016)

---

### **Immigration**

Joseph Carens. *The Ethics of Immigration* (2013).

Chacon, Justin. Davis, Mike. *No One Is Illegal: Fighting Violence and State Repression on the U.S-Mexico Border* (2018).

Judith Butler and Gayatri Chacravorty Spivak, *Who Sings the Nation State: Language, Politics, and Belonging* (2007)

Giorgio Agamben, [On Arendt's 'We Refugees'](#) *Symposium* (2004)

Ieva Jusionyte, "Introduction" and Chapter 1 "Ankle Alley". *Threshold: Emergency Responders on the US-Mexico Border*, California U. Press (2018).

Mai M. Ngai, *Impossible Subjects, Illegal Aliens and the Making of Modern America* (Princeton University Press, 2004)

Chantal Thomas, "Transnational Migration, Globalization, and Governance: Theorizing a Crisis" (*The Oxford Handbook of the Theory of International Law*, 2014)



*To stay in touch and receive more materials and invitations to events throughout the year, sign up for our mailing list at [www.alternativelegaleducation.com](http://www.alternativelegaleducation.com)*

Jones, Reece, Violent Borders: Refugees and the Right to Move, Chapter 1 “The European Union: The World’s Deadliest Border,” Chapter 2 “The US-Mexico Border: Rise of a Militarized Zone,” and Chapter 6 “Bounding Wages, Goods, and Workers”