Course Description: This course explores the ways law shapes society and society shapes law. It takes as a starting point the belief that law does not simply exist on its own, independent of influences by people, politics, and social institutions. Rather, law reflects the context in which it is made and used. Law also comes in many forms. It is not simply what is in leather-bound volumes in a lawyer's office. Nor is law simply what the U.S. Supreme Court says. In this course we will see law as constituted in many forms and places: on the streets, in individual exchanges, in cultural practices, on television, and in our classroom. Over the course of the semester, we will think about a variety of perspectives about the law: law as protection, law as violence, law as social order, law as a means to justice, and law as a way to shape an identity. We will use Austin Sarat's Law and Society reader as our basic text that will provide a structure and outline for our thinking about the law. It is a collection of important articles that have shaped law and society scholarship in this country, interspersed with helpful commentary and questions by the editor. We will read additional articles that I have placed on the course Laulima website. As usual, I end this course with my “Great Books in Law and Society” series. This year I have selected two texts examining aspects of the First Amendment: Anthony Lewis’ defense of the Freedom for the Thought we Hate, and Edward Humes’ analysis of the battle surrounding evolution in schools, Monkey Girl.

Course Objectives: student learning objectives of this course are as follows:

- Students taking this course will be able to identify, evaluate and critically review arguments about law and society and the evidence presented to support them.
- Students taking this course will be able to better understand how social, historical and legal trends in U.S. society either foster or hinder equal opportunities and equal treatment.
- Students taking this course will be able to identify a variety of theoretical approaches to judicial reasoning and identify major Supreme Court opinions.
- Students will be presented with alternative views and competing theories on law and society research, and as a result be prompted to inform, broaden and sharpen their own understanding of the intersection of law and society.
- Towards this goal, students will:
  - analyze the law as a social system and as a way to shape social identity
  - analyze law in its social context
  - analyze law as a method of social control and as a form of violence
  - analyze the possibilities of law as a form of social change

Law and Society Certificate: This course is the core course (and required) for the undergraduate Law and Society Certificate.

**Required Readings:** Our reader (Sarat) is available for purchase at the UH Bookstore. You should purchase our other two books (Humes and Lewis) at online bookstores such as Amazon or others. Both books are available in hardcover and paperback.

3. Anthony Lewis. *Freedom for the Thought We Hate: A Biography of the First Amendment.* (2010)
4. Articles posted on *Laulima* website, marked as “(W)"

**Course Evaluation: grading will be based on the following**

- class participation: 40%
- reaction papers (5 total): 20%
- Midterm Exam: 20%
- Final Exam: 20%

**Grading Scale:** A=90-100%; B = 80-89%; C=70-79%; D=60-69%; F=59% or below

**Attendance & Participation:** To succeed in this class you must attend class prepared to participate by completely reading all assigned readings for that day. You are expected to come to class on time and engage actively and critically with the reading material, and with each other in our discussions. Coming to class *on time* means that if you are more than 5 minutes late (or leave the class before the class is over) means that you will be marked absent for the day. Read the readings well enough so that you can answer and ask pertinent questions during class discussions. If you feel uncomfortable speaking in class I suggest you sit near the front of the class (it is generally a lot easier to speak in class when not looking at your fellow class mates). You will also be able to demonstrate that you have done the readings by handing in well thought-out reaction papers.

**Absence policy:** At the beginning of the semester, I assign everyone 40 points for their participation grade. Each unexcused absence decreases your participation grade by two points. Once you’ve missed two classes without an excused absence, your participation grade will drop to a B. With three absences, it will drop to a C. After four absences, your participation grade will be a D. After that 5, you will receive a failing grade for the participation component of your final grade.

If you must miss class, you should *notify* either your professor or the Teaching Assistant as soon as you know you will be absent. If you can document your excuse (doctor’s note, team travel), then your absence will not count against your grade.

**Personal preference day:** Everyone gets one day to miss class without it affecting your grade. However, you still must email me or the TA and let us know that you want your absence that day to count as your personal preference day.

If you need to be absent for any reason you are responsible for catching up with the materials and notes you missed. DO NOT contact the TA or myself asking what you missed. I highly recommend you find a “buddy” in the class with whom to exchange notes, questions,
and important dates or reminders for the class.

**Reaction Papers:** You will submit five (5) **Reaction Papers** during the first part of the course when we cover the Sarat Textbook Readings - beginning the week of September 3 and ending on October 29. These are one-to-two page, single-space typed papers that summarizes what you consider to be the reading’s main point. You must discuss ALL the readings – i.e. if three readings are assigned for that day, write three separate reactions. Reaction papers are worth a maximum of 4 points. Do not exceed the two-page limit.

Hand in a printed copy of your essay at the beginning class on the day that the readings are assigned. You may not make up the essay, unless you have a medical excuse for missing class. After collecting the papers I will select a few and ask you to discuss them in front of the class. Expect to be called on and to be evaluated on your performance.

**Exams:** There are two take-home exams in this class: a midterm exam and a final exam. You will be asked to respond to several questions, essay style, based on the readings and class discussions.

**Office hours:** My office is in Saunders 614, and I am there most days. My office hours are on Friday mornings, but please feel free to schedule meetings at different times. I am eager to hear from you about questions or feedback you have about this class. If you are concerned with any aspect of this class please contact me right away - I can only help you if I know there is a problem. The best way to reach me is by e-mail (heyer@hawaii.edu).

**A Note on Email Communications:** Please note that you should give at least 24 hours between your email to me and your expectation of a reply. You should not expect emails to be answered in the evening or on weekends. Please ensure that your email has an appropriate subject line, such as ‘POLS 374 Assignment Question’ and include your full name. Please do not write emails as though they are texts – you should consider all email communication with faculty as business letters. A word of warning: non-UH email addresses often end up in spam folders. Please use your UH email account to be certain that your email arrives without delay in my inbox and not a spam folder. For more suggestions on composing professional emails in corresponding with faculty please consult http://www.wellesley.edu/socialcomputing/Netiquette/netiquetteprofessor.html

**Accessibility Statement:** I am committed to making this class accessible to all students. Please contact me privately if you require disability-related accommodations of any kind. The KOKUA program on campus (956-7511) coordinates reasonable accommodations for students with documented disabilities.

**Plagiarism Policy:** Plagiarism is academic theft: it is taking somebody else’s words or ideas as your own and not crediting the source. Turning in the same paper for two courses also constitutes plagiarism. Plagiarism is a serious offense and will result in automatic failure of the course. Please consult the UH Student Conduct code, (www.catalog.hawaii.edu/about-uh/campus-policies1.htm)

**Course website:** This course has its own website on UH Laulima (laulima.hawaii.edu) which
you should access frequently.

**Classroom rules regarding electronic equipment**
- NO iPod earphones
- NO telephones
- NO text messaging
- Computer use is restricted to note-taking during class.

**Class Syllabus:**
Below is our syllabus for the semester. It is subject to change as we develop our flow as a class. Please keep checking our website for updates.

**August 27**  
First Day of Class: introduction to the course

**August 29**  
The Limits of Legal Protection
- 'Hockey Dad's Death Probed as Homicide,' Ed Hayward and David Talbot
- 'Dad Sentenced to 6 to 10 Years for Rink Death,' Geraldine Baum
- DeShaney v. Winnebago

**Sept 3**  
The Limits of Legal Protection
- 4. 'A Crime of Self Defense,' George Fletcher
- 5. 'In the Nation's Capital, It's the Season of Insecurity,' Jon Schmitz, Pittsburgh Post Gazette
- 6. 'The Spirit of the Laws,' Harold Koh

First week to submit reaction papers

**Sept 5**  
What Law Is For
- 7. 'Leviathan,' Thomas Hobbes
- 9. 'On Liberty,' John Stuart Mill
- 10. Lawrence v. Texas

**Sept 10**  
Access to Justice: The Demand for Law and Law's Demands
- 15. 'The Emergence and Transformation of Disputes,' William Felstiner, Richard Abel, and Austin Sarat
- 16. 'Liability: The Legal Revolution and Its Consequences,' Peter Huber
- 17. 'The Crisis Is Injuries, Not Liability,' Richard Abel

**Sept 12**  
Torts and Liability: The McDonald’s Coffee case
- 18. 'How Jury Decided How Much the Coffee Spill Was Worth,' Andrea Gerling

**Sept 17**  
Lawyers in Civil Cases
- 20. 'Lawyers and Consumer Protection Laws,' Stewart Macaulay
• 21. 'The Justice Broker: Lawyers & Ordinary Litigation,' Hebert Kritzer
• 22. 'The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court,' Carroll Seron et al.

Sept 19   Lawyer Jokes  (Professor out of Town for Conference)
• Mark Galanter. “Lowering the Bar: Lawyer Jokes & Legal Culture”
Submit summary of article along with your best lawyer joke for extra credit

Sept 24   Whose Law Is It Anyway?
• 23. Rusk v. Maryland
• 24. 'Rape,' Susan Estrich
• 26. 'Rights Talk and the Experience of Law,' Sally Engle Merry

Sept 26   Who Speaks and Who Is Heard: The Continuing Significance of Class
• 27. Goldberg v. Kelley
• 28. 'Subordination, Rhetorical Survival Skills, and Sunday Shoes,' Lucie White

October 1   From Severity to Leniency: Plea Bargaining & Possibility of Justice
• 30. 'American Courts: Process and Policy,' Lawrence Baum
• 31. Scott v. United States
• 32. 'Torture and Plea Bargaining,' John Langbein

October 3   Juries in Criminal Cases: Biased or Conscientious Judgment
• 38. 'Trial By Jury,' Alex de Tocqueville
• 39. 'Are Twelve Heads Better Than One?' Phoebe Ellsworth
• 40. 'Jury Duty: When History and Life Coincide,' Elisabeth Perry
• MIDTERM questions distributed in class

October 8   Sentencing
• 43. 'Federal Sentencing Guidelines: A View From the Bench,' Nancy Gertner
• 45. 'Thirty Years of Sentencing Reform,' Cassia Spohn
• 46. 'Sizing up Sentences,' Michael Higgins

October 10  Policing the Police
• 48. 'Broken Windows,' James Q. Wilson and George Kelling
• 49. 'Policing Disorder,' Bernard Harcourt

October 15  Law in Wartime
• 55. 'Want to Torture? Get a Warrant,' Alan M. Dershowitz

October 17  Rights at Wartime, Part II (Korematsu)
• VIDEO. “Of Civil Rights and Wrongs: the Fred Korematsu Story”

**MIDTERM Exam due in class**

**October 22  Punishment: Imprisonment**
- 56. 'Persons and Punishment,' Herbert Morris
- 57. 'Punishment, Power, and Justice,' Patricia Ewick
- 58. United States v. Bailey

**October 24  The Death Penalty: Controlling Juries/Preventing Discrimination**
- 60. Furman v. Georgia
- 61. Gregg v. Georgia
- 62. McClesky v. Kemp

**October 29  The Future of Capital Punishment**
- 64. 'God’s Justice and Ours,' Antonin Scalia
- 65. 'I Must Act,' George Ryan
- LAST DAY to submit reaction papers

**PART II  Justices, Judicial Reasoning, and the Supreme Court**

**October 31  Judicial Reasoning**

**November 1** Fuller, continued

**Nov 5 Judicial Reasoning**

**Nov 7 Great Book Series, part I**
Anthony Lewis. Freedom For the Thought We Hate, Chapters 1-3

**Nov 12** Lewis. Chapters 4-6

**Nov 14** Lewis. Chapters 7-9

**Nov 18** Lewis. Chapters 10-12

**Nov 21 Great Book Series, part II**
Edward Humes. Monkey Girl, Chapters 1-3

**Nov 25** Humes, Chapters 4-6

**Nov 28 Thanksgiving**

**December 3** Humes, Chapters 7-9
December 5 Humes, Chapters 10-12

December 10 Humes, Chapters 13-15

December 12 Humes, Chapters 16-17, Epilogue optional

Last day of Class – course evaluations